RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice.
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Department of Civil Service

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-01-15-00004-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by adding thereto the position of øDirector Youth Services Quality Assurance (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-01-15-00005-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Agriculture and Markets, by increasing the number of positions of Secretary from 2 to 3.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Consolidated Regulatory Impact Statement

1. Statutory authority: The New York State Civil Service Commission is authorized to promulgate rules for the jurisdictional classification of offices within the classified service of the State by Section 6 of the Civil Service Law. In so doing, it is guided by the requirements of Sections 41, 42 and 43 of this same law.

2. Legislative objectives: These rule changes are in accord with the statutory authority delegated to the Civil Service Commission to prescribe rules for the jurisdictional classification of the offices and positions in the classified service of the State.

3. Needs and benefits: Article V, Section 6, of the New York State Constitution requires that, wherever practicable, appointments and promotions in the civil service of the State, including all its civil divisions, are to be made according to merit and fitness. It also requires that competitive examinations be used, as far as practicable, as a basis for establishing this eligibility. This requirement is intended to provide protection for those

individuals appointed or seeking appointment to civil service positions while, at the same time, protecting the public by securing for it the services of employees with greater merit and ability. However, as the language suggests, the framers of the Constitution realized it would not always be possible, nor indeed feasible, to fill every position through the competitive process. This point was also recognized by the Legislature for, when it enacted the Civil Service Law to implement this constitutional mandate, it provided basic guidelines for determining which positions were to be outside of the competitive class. These guidelines are contained in Section 41, which provides for the exempt class; 42, the non-competitive class and 43, the labor class. Thus, there are four jurisdictional classes within the classified service of the civil service and any movement between them is termed a jurisdictional reclassification.

The Legislature further established a Civil Service Department to administer this Law and a Civil Service Commission to serve primarily as an appellant body. The Commission has also been given rulemaking responsibility in such areas as the jurisdictional classification of offices within the classified service of the State (Civil Service Law Section 6). In exercising this rule-making responsibility, the Commission has chosen to provide appendices to its rules, known as Rules for the Classified Service, to list those positions in the classified service which are in the exempt class (Appendix 1), non-competitive class (Appendix 2), and labor class (Appendix 3).

In effect, all positions, upon creation at least, are, by constitutional mandate, a part of the competitive class and remain so until removed by the Civil Service Commission, through an amendment of its rules upon showing of impracticability in accordance with the guidelines provided by the Legislature. The guidelines are as follows. The exempt class is to include those positions specifically placed there by the Legislature, together with all other subordinate positions for which there is no requirement that the person appointed pass a civil service examination. Instead, appointments rest in the discretion of the person who, by law, has determined the position's qualifications and whether the persons to be appointed possess those qualifications. The non-competitive class is to be comprised of those positions which are not in the exempt or labor classes and for which the Civil Service Commission has found it impracticable to determine an applicant's merit and fitness through a competitive examination. The qualifications of those candidates selected are to be determined by an examination which is sufficient to insure selection of proper and competent employees. The labor class is to be made up of all unskilled laborers in the service of the State and its civil divisions, except those which can be examined for competitively.

4. Costs: The removal of a position from one jurisdictional class and placement in another is descriptive of the proper placement of the position in question in the classified service, and has no appreciable economic impact for the State or local governments.

5. Local government mandates: These amendments have no impact on local governments. They pertain only to the jurisdictional classification of positions in the State service.

6. Paperwork: There are no new reporting requirements imposed on applicants by these rules.

7. Duplication: These rules are not duplicative of State or Federal requirements.

8. Alternatives: Within the statutory constraints of the New York State Civil Service Commission, it is not believed there is a viable alternative to the jurisdictional classification chosen.

9. Federal standards: There are no parallel Federal standards and, therefore, this is not applicable.

10. Compliance schedule: No action is required by the subject State agencies and, therefore, no estimated time period is required.

Regulatory Flexibility Analysis

The proposal does not affect or impact upon small businesses or local governments, as defined by Section 102(8) of the State Administrative Procedure Act, and, therefore, a regulatory flexibility analysis for small businesses is not required by Section 202-b of such act. In light of the fact that this proposal only affects jurisdictional classifications of State employees, it will not have any adverse impact on small businesses or local governments.

Rural Area Flexibility Analysis

The proposal does not affect or impact upon rural areas as defined by Section 102(13) of the State Administrative Procedure Act and Section 481(7) of the Executive Law, and, therefore, a rural area flexibility analysis is not required by Section 202-bb of such act. In light of the fact that this proposal only affects jurisdictional classifications of State employees, it will not have any adverse impact on rural areas.

Job Impact Statement

The proposal has no impact on jobs and employment opportunities. This proposal only affects the jurisdictional classification of positions in the Classified Civil Service.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-01-15-00006-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of General Services," by deleting therefrom the position of Chief of Centralized Insurance Services and by adding thereto the position of Insurance Services Manager.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-01-15-00007-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by adding thereto the positions of Internal Investigator 1 (OCFS) (9) and Internal Investigator 2 (OCFS) (2).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS

Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-01-15-00008-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of the Governor," by deleting therefrom the positions of Appointments Officer, Assistant Appointments Officer (6) and Deputy Appointments Officer and by decreasing the number of positions of Confidential Assistant from 23 to 21, Confidential Stenographer from 55 to 51 and Special Office Assistant from 20 to 19; and, in the Executive Department under the subheading "Office of General Services," by deleting therefrom the position of Director of Special Events and by adding thereto the positions of Appointments Officer, Assistant Appointments Officer (4), Confidential Assistant (2), Confidential Stenographer (4), Deputy Appointments Officer, Program Associate (3) and Special Office Assistant.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-01-15-00009-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Housing and Community Renewal," by decreasing the number of positions of Program Research Specialist from 2 to 1 and by adding thereto the position of Assistant Counsel.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-01-15-00021-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department

under the subheading "Division of Criminal Justice," by increasing the number of positions of Secretary from 2 to 3.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-01-15-00022-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Environmental Conservation, by deleting therefrom the positions of Agency Program Aide (4) (until first vacated); Assistant Superintendent of Belleayre Ski Center (2), øBelleayre Ski Marketing Representative (1), Captain, Marine Fisheries Vessel (1), Clerk 1 (3) (until first vacated), Environmental Impact Examiner Trainee 1, Environmental Impact Examiner Trainee 2, Keyboard Specialist 1 (2) (until first vacated), Laboratory Technician (1) (until first vacated), Love Canal Treatment Facility Operator (1), Maintenance Supervisor 2 Ski Center, Minority Business Specialist 3 (2), Park Worker 1, Park Worker 2, Photographer 1 (1) (until first vacated), Ski Patrol Director (1), Ski Patroller 1 (6), Ski Patroller 2 (3), Ski School Director (1), Ski School Instructor 1 (7) and Ski School Instructor 2 (2), and by decreasing the number of positions of Calculations Clerk 1 (until first vacated) from 3 to 1, Clerk 2 (until first vacated) from 7 to 1, Environmental Engineering Technician 1 (until first vacated) from 7 to 1, Environmental Engineering Technician 2 (until first vacated) from 2 to 1, Fish and Wildlife Technician 1 (until first vacated) from 14 to 5, Forestry Technician 1 (until first vacated) from 5 to 2, Minority Business Specialist 1 from 3 to 2, Minority Business Specialist 2 from 2 to 1 and Secretary 1 (until first vacated) from 4 to 2.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-01-15-00023-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Criminal Justice Services," by adding thereto the position of Laboratory Accreditation Specialist 2 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Education Department

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Epinephrine Auto-injectors

I.D. No. EDU-01-15-00011-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Addition of section 136.6 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), 921(1) and (2); and L. 2014, ch. 424

Subject: Epinephrine auto-injectors.

Purpose: Prescribe standards for provision, maintenance, and administration of epinephrine auto-injectors in the event of an emergency.

Text of proposed rule: Section 136.6 of the Regulations of the Commissioner of Education is added, effective April 1, 2014, as follows:

§ 136.6 Authorized Use of Epinephrine Auto-Injector

(a) Definitions. As used in this section:

(1) Epinephrine auto-injector means an automated injection delivery device, approved by the United States Food and Drug Administration, for injecting a measured dose of the drug epinephrine.

(2) Trained school personnel means any person employed by a school district, board of cooperative educational services, county vocational education and extension board, charter school or non-public elementary and secondary school, including but not limited to, health professionals who have successfully completed a training course in the use of epinephrine auto-injector devices approved by the Department of Health pursuant to Public Health Law section 3000-c.

(3) Collaborative agreement means a written agreement with an emergency health care provider pursuant to Public Health Law section 3000-c that incorporates written practice protocols, and policies and procedures that shall ensure compliance with the provisions of Public Health Law section 3000-c.

(4) Emergency health care provider means: (i) a physician with knowledge and experience in the delivery of emergency care; or (ii) a hospital licensed under Article 28 of the Public Health Law that provides emergency care.

(5) Regional Council means a regional emergency medical services council established pursuant to Public Health Law section 3003.

(6) Instructional school facility means a building or other facility maintained by a school district, board of cooperative educational services, a county vocational education and extension board, charter school, or non-public elementary and secondary school where instruction is provided to students pursuant to its curriculum.

(b) Each school district, board of cooperative educational services, county vocational education and extension board, charter school, and non-public elementary and secondary school may provide and maintain on-site in each instructional school facility epinephrine auto-injectors for use during emergencies in accordance with Public Health Law section 3000-c. Each such facility shall have sufficient epinephrine auto-injectors available to ensure ready and appropriate access for use during emergencies to any student or staff having symptoms of anaphylaxis whether or not there is a previous history of severe allergic reaction. In determining the quantity and placement of epinephrine auto-injectors in collaboration with the emergency health care provider, consideration shall be given to:

(1) the number of students, staff and other individuals that are customarily or reasonably anticipated to be within such facility; and

(2) the physical layout of the facility, including but not limited to:

(i) location of stairways and elevators;

(ii) number of floors in the facility;

(iii) location of classrooms and other areas of the facility where large congregations of individuals may occur; and

(iv) any other unique design features of the facility.

(c) The school district, board of cooperative educational services, county vocational education and extension board, charter school, or non-public elementary and secondary school shall file a copy of the collaborative agreement with the appropriate Regional Council. Trained school personnel shall not administer an epinephrine auto-injector in accordance with Public Health Law 3000-c prior to the filing of the collaborative agreement with the Regional Council.

(d) In the event of an emergency, trained school personnel may administer an epinephrine auto-injector to any student or school personnel having symptoms of anaphylaxis in an instructional school facility, whether or not there is a previous history of severe allergic reaction pursuant to Public Health Law section 3000-c.

(e) Every use of an epinephrine auto-injector device pursuant to this section and Public Health Law section 3000-c shall immediately be reported to the emergency health care provider.

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Cosimo Tangorra, Jr. , Deputy Commissioner, State Education Department, Office of P-12 Education, State Education Building, 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@nysed.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 207 empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Education Law section 305(1) and (2) provide the Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any statute relating to education, and responsibility for executing all educational policies of the Regents.

Chapter 424 of the Laws of 2014 added a new section 921 of the Education Law, effective February 27, 2015, to allow school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in the State to provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. Section 921 also provides that school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state or any person employed by any such entity may administer epinephrine auto-injectors in the event of an emergency pursuant to the requirements of section three-thousand-c of the Public Health Law.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is necessary to implement Education Law section 921, as added by Chapter 242 of the Laws of 2014, by prescribing standards for the provision, maintenance, and administration of epinephrine auto-injectors in the event of an emergency.

3. NEEDS AND BENEFITS:

Chapter 424 of the Laws of 2014 added a new section 921 of the Education Law, effective February 27, 2015, to allow school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state to provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. The proposed rule prescribes standards for the maintenance and use of epinephrine auto-injectors pursuant to Education Law section 921, so as to ensure their ready and appropriate use in the emergency event of a student or staff having anaphylactic symptoms on site at an instructional school facility.

4. COSTS:

(a) Costs to State government: The proposed rule will not impose any additional costs on State government, including the State Education Department.

(b) Costs to local governments and private regulated parties: The amendment will not impose any additional costs on local governments or private regulated parties. Chapter 424 of the Laws of 2014 Chapter 424 of the Laws of 2014 added a new section 921 of the Education Law, effective February 27, 2015, to allow school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in the State to provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic

reaction. The proposed rule is necessary to implement this statute, and merely provides definitions and otherwise clarifies the circumstances regarding the emergency use of epinephrine auto-injectors. The proposed rule does not impose any additional costs on these entities beyond those imposed by the statute. Consistent with the statute, school districts, BOCES, county vocational education and extension boards, charter schools, and non-public schools may, but are not required to, provide and maintain epinephrine auto-injectors.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES. It merely provides definitions and otherwise clarifies the circumstances regarding the use of epinephrine auto-injectors on-site in an instructional school facility in an emergency situation pursuant to Education Law section 921, as added by Chapter 424 of the Laws of 2014. The proposed rule restates the statutory authority which allows school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state to maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. Consistent with the statute, school districts, BOCES, county vocational education and extension boards, charter schools, and non-public schools may, but are not required to, provide and maintain epinephrine auto-injectors.

In determining the quantity and placement of epinephrine auto-injectors in collaboration with the emergency health care provider, consideration shall be given to:

(1) the number of students, staff and other individuals that are customarily or reasonably anticipated to be within such facility; and

(2) the physical layout of the facility, including but not limited to:

(i) location of stairways and elevators;

(ii) number of floors in the facility;

(iii) location of classrooms and other areas of the facility where large congregations of individuals may occur; and

(iv) any other unique design features of the facility.

6. PAPERWORK:

Pursuant to the requirements of Public Health Law section 3000-c, any emergency administration of an epinephrine auto-injector must be reported to the physician or hospital representative listed in the collaborative agreement. The school district, BOCES, county vocational education and extension board, charter school, or non-public elementary and secondary school shall file a copy of the collaborative agreement with the appropriate Regional Council.

7. DUPLICATION:

The amendment does not duplicate any existing State or Federal requirements, and is necessary to implement Education Law section 921, as added by Chapter 424 of the Laws of 2014.

8. ALTERNATIVES:

The proposed rule is necessary to implement Education Law 921, as added by Chapter 424 of the Laws of 2014. There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties can achieve compliance with the proposed rule by its effective date. The proposed rule merely provides definitions and otherwise clarifies the circumstances regarding the use of epinephrine auto-injectors on-site in an instructional school facility in an emergency situation pursuant to Education Law section 921, as added by Chapter 424 of the Laws of 2014. Consistent with the statute, school districts, BOCES, county vocational education and extension boards, charter schools, and non-public schools may, but are not required to, provide and maintain epinephrine auto-injectors.

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed rule applies to school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools, and relates to the availability and use of epinephrine auto-injectors in the event of an anaphylactic emergency. The proposed rule does not impose any economic impact, or other compliance requirements on small businesses. Because it is evident from the nature of the proposed rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

The proposed rule applies to school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools, and relates to the availability and use of epinephrine auto-injectors in the event of an anaphylactic emergency.

1. EFFECT OF RULE:

The rule applies to school personnel in each of the 695 school districts, 37 BOCES, 248 charter schools, and one existing county vocational education and extension board in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed rule does not impose any additional compliance requirements upon local governments. It merely provides definitions and otherwise clarifies the circumstances regarding the use of epinephrine auto-injectors on-site in an instructional school facility in an emergency situation pursuant to Education Law section 921, as added by Chapter 424 of the Laws of 2014. The proposed rule restates the statutory authority which allows school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state to maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. Consistent with the statute, school districts, BOCES, county vocational education and extension boards, charter schools, and non-public schools may, but are not required to, provide and maintain epinephrine auto-injectors.

In determining the quantity and placement of epinephrine auto-injectors in collaboration with the emergency health care provider, consideration shall be given to:

(1) the number of students, staff and other individuals that are customarily or reasonably anticipated to be within such facility; and

(2) the physical layout of the facility, including but not limited to:

(i) location of stairways and elevators;

(ii) number of floors in the facility;

(iii) location of classrooms and other areas of the facility where large congregations of individuals may occur; and

(iv) any other unique design features of the facility.

Pursuant to the requirements of Public Health Law section 3000-c, any emergency administration of an epinephrine auto-injector must be reported to the physician or hospital representative listed in the collaborative agreement. The school district, BOCES, county vocational education and extension board, charter school, or non-public elementary and secondary school shall file a copy of the collaborative agreement with the appropriate Regional Council.

3. PROFESSIONAL SERVICES:

The proposed rule does not impose any additional professional services requirements on local governments.

4. COMPLIANCE COSTS:

The proposed rule does not impose any additional compliance costs on local governments. Chapter 424 of the Laws of 2014 Chapter 424 of the Laws of 2014 added a new section 921 of the Education Law, effective February 27, 2015, to allow school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state to provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. The proposed rule is necessary to implement this statute, and merely provides definitions and otherwise clarifies the circumstances regarding the emergency use of epinephrine auto-injectors. The proposed rule does not impose any additional costs on these entities beyond those imposed by the statute. Consistent with the statute, school districts, BOCES, county vocational education and extension boards, charter schools, and non-public school may, but are not required to, provide and maintain epinephrine auto-injectors.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule does not impose any additional costs or technological requirements on local governments.

6. MINIMIZING ADVERSE IMPACT:

The proposed rule does not impose any additional compliance requirements or costs on local government. Chapter 424 of the Laws of 2014 Chapter 424 of the Laws of 2014 added a new section 921 of the Education Law, effective February 27, 2015, to allow school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state to provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to

be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. The proposed rule is necessary to implement this statute, and merely provides definitions and otherwise clarifies the circumstances regarding the emergency use of epinephrine auto-injectors. The proposed rule does not impose any additional compliance requirements or costs on these entities beyond those imposed by the statute. Consistent with the statute, school districts, BOCES, county vocational education and extension boards, charter schools, and non-public schools may, but are not required to, provide and maintain epinephrine auto-injectors.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, from the chief school officers of the five big city school districts and from charter schools.

8. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory requirements of Chapter 424 of the Laws of 2014, and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

2. REPORTING, RECORDKEEPING, AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed rule does not impose any additional reporting, recordkeeping or other compliance requirements. It merely provides definitions and otherwise clarifies the circumstances regarding the use of epinephrine auto-injectors on-site in an instructional school facility in an emergency situation pursuant to Education Law section 921, as added by Chapter 424 of the Laws of 2014. The proposed rule restates the statutory authority which allows school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state to maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. Consistent with the statute, school districts, BOCES, county vocational education and extension boards, charter schools, and non-public schools may, but are not required to, provide and maintain epinephrine auto-injectors.

In determining the quantity and placement of epinephrine auto-injectors in collaboration with the emergency health care provider, consideration shall be given to:

(1) the number of students, staff and other individuals that are customarily or reasonably anticipated to be within such facility; and

(2) the physical layout of the facility, including but not limited to:

(i) location of stairways and elevators;

(ii) number of floors in the facility;

(iii) location of classrooms and other areas of the facility where large congregations of individuals may occur; and

(iv) any other unique design features of the facility.

Pursuant to the requirements of Public Health Law section 3000-c, any emergency administration of an epinephrine auto-injector must be reported to the physician or hospital representative listed in the collaborative agreement. The school district, BOCES, county vocational education and extension board, charter school, or non-public elementary and secondary school shall file a copy of the collaborative agreement with the appropriate Regional Council.

The proposed rule does not require any additional professional services upon entities in rural areas.

3. COSTS:

The proposed rule does not impose any additional compliance costs on local governments. Chapter 424 of the Laws of 2014 Chapter 424 of the Laws of 2014 added a new section 921 of the Education Law, effective February 27, 2015, to allow school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state to provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. The proposed rule is necessary to implement this statute, and merely provides definitions and otherwise clarifies the circumstances regarding the emergency use of epinephrine auto-injectors. The proposed rule does not impose any additional costs on these entities beyond those imposed by the statute. Consistent with the statute, school districts, BOCES, county vocational education and extension boards, charter schools, and non-public school may, but are not required to, provide and maintain epinephrine auto-injectors.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Chapter 424 of the Laws of 2014. The statutory requirements do not make exceptions for entities located in rural areas. Because the statutory requirements upon which the proposed rule is based applies throughout the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt entities in rural areas from the provisions of the proposed rule. The State Education Department does not believe that making a change for school personnel who live or work in rural areas is warranted because uniform standards are necessary across the State to ensure the health and safety of student and school personnel.

5. RURAL AREA PARTICIPATION:

The State Education Department has sent the proposed rule to the Rural Advisory Committee, which has members who live or work in rural areas across the State.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory requirements of Chapter 424 of the Laws of 2014, and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed rule is necessary to implement Education Law section 921, as added by Chapter 424 of the Laws of 2014, which allows school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state to provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. The proposed rule is necessary to implement this statute, and merely provides definitions and otherwise clarifies the circumstances regarding the maintenance and emergency use of epinephrine auto-injectors. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Financial Services

EMERGENCY RULE MAKING

Title Insurance Agents, Affiliated Relationships, and Title Insurance Business

I.D. No. DFS-29-14-00014-E
Filing No. 1096
Filing Date: 2014-12-23
Effective Date: 2014-12-23

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Parts 20 (Regulations 9, 18 and 29), 29 (Regulation 87), 30 (Regulation 194) and 34 (Regulation 125); and addition of Part 35 (Regulation 206) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 107(a)(54), 301, 2101(k), 2109, 2112, 2113, 2119, 2120, 2122, 2128, 2129, 2132, 2139, 2314 and 6409

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: Long-sought and critically needed legislation to license title insurance agents was enacted as part of Chapter 57 of the New York Laws of 2014, which was signed into law by the governor on March 31, 2014. Chapter 57 took effect on September 27, 2014.

A number of existing regulations that apply to insurance producers generally are amended to make them applicable to title insurance agents. Specifically, Part 20 addresses temporary licenses (Insurance Regulation 9), addresses appointment of insurance agents (Insurance Regulation 18), and regulates premium accounts and fiduciary responsibilities of insurance agents and insurance brokers (Insurance Regulation 29), and are amended to include references to title insurance agents. Part 29 (Insurance Regulation 87) addresses special prohibitions regarding sharing compensation with other licensees with respect to certain governmental entities and is amended to address a limited exception for title insurance business insuring State of New York Mortgage Agency and certain other circumstances. Part 30 (Insurance Regulation 194) addresses insurance producer compensation transparency and is amended to reflect specific requirements in new Insurance Law section 2113 for title insurance agents. Part 34 (Insurance Regulation 125) governs insurance agents and brokers that maintain multiple offices and is amended to clarify the applicability of the regulation to title insurance agents. In addition, a new Part 35 (Insurance Regulation 206) is added that address unique circumstances regarding title insurance agents.

It is critical for the protection of the public that appropriate rules and regulations are in place on and after the effective date of Chapter 57 to apply to newly-licensed title insurance agents and the title insurance business generated. Although the Department has diligently developed regulations to implement Chapter 57, due to the short time frame, it is necessary to promulgate the rules on an emergency basis for the furtherance of the general welfare.

Subject: Title insurance agents, affiliated relationships, and title insurance business.

Purpose: To implement requirements of chapter 57 of Laws of 2014 regarding title insurance agents and placement of title insurance business.

Substance of emergency rule: The following sections are amended:

Section 20.1, which specifies forms for temporary licenses, is amended to make technical changes and to add references to title insurance agents.

Section 20.2, which specifies forms of notice for termination of agents, is amended to make technical changes and to add references to title insurance agents.

Section 20.3, which governs fiduciary responsibility of insurance agents and brokers, including maintenance of premium accounts, is amended to make technical changes and to add references to title insurance agents.

Section 20.4, which governs insurance agent and broker recordkeeping requirements for fiduciary accounts, is amended to make technical changes and to add references to title insurance agents.

Section 29.5, which implements Insurance Law section 2128, governing placement of insurance business by licensees with governmental entities, is amended to make technical changes and to conform to amendments to section 2128, with respect to title insurance agents.

Section 29.6 is amended to remove language regarding return of disclosure statements.

Section 30.3, which governs notices by insurance producers regarding the amount and extent of their compensation, is amended by adding a new subdivision that modifies the requirements of the section with respect to title insurance agents, in order to conform to new Insurance Law section 2113(b).

Section 34.2, which governs satellite offices for insurance producers, is amended by adding a new subdivision that exempts from certain provisions of that section a title insurance agent that is a licensed attorney transacting title insurance business from the agent's law office.

A new Part 35 is added governing the activities of title insurance agents and the placement of title insurance business. The new sections are:

Section 35.1 contains definitions for new Part 35.

Section 35.2 specifies forms for title insurance agent licensing applications.

Section 35.3 specifies change of contact information required to be filed with the Department.

Section 35.4 addresses affiliated business relationships.

Section 35.5 addresses referrals by affiliated persons and the required disclosures in such circumstances.

Section 35.6 addresses minimum disclosure requirements for title insurance corporations and title insurance agents with respect to fees charged by such corporation or agent, including discretionary or ancillary fees.

Section 35.7 provides certain other minimum disclosure requirements.

Section 35.8 governs the use of title closers by title insurance agents and title insurance corporations.

Section 35.9 establishes record retention requirements for title insurance agents.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-29-14-00014-P, Issue of July 23, 2014. The emergency rule will expire February 20, 2015.

Text of rule and any required statements and analyses may be obtained from: Paul Zuckerman, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5286, email: paul.zuckerman@dfs.ny.gov

Consolidated Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority to promulgate these amendments and the new Part derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 107(a)(54), 301, 2101(k), 2109, 2112, 2113, 2119, 2120, 2122, 2128, 2129, 2132, 2139, 2314, and 6409 of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent as the head of the Department of Financial Services ("Department").

FSL section 302 and Insurance Law section 301 authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law, among other things.

Insurance Law section 107(a)(54) defines title insurance agent.

Insurance Law section 2101(k) defines insurance producer to include title insurance agent.

Insurance Law section 2109 addresses temporary licenses for title insurance agents and other insurance producers.

Insurance Law section 2112 addresses appointments by insurers of insurance agents and title insurance agents.

Insurance Law section 2113 requires that title insurance agents and persons affiliated with such title insurance agents provide certain disclosures to applicants for insurance when referring such applicants to persons with which they are affiliated. Section 2113 also requires the Superintendent to promulgate regulations to enforce the affiliated person disclosure requirements and to consider any relevant disclosures required by the federal real estate settlement procedures act of 1974 ("RESPA"), as amended.

Insurance Law section 2119 permits title insurance agents to charge fees for certain ancillary services not encompassed within the rate of premium provided its pursuant to a written memorandum.

Insurance Law section 2120 addresses the fiduciary responsibility of title insurance agents and other producers.

Insurance Law section 2122 addresses advertising by title insurance agents and other insurance producers.

Insurance Law section 2128 prohibits fee sharing with respect to business placed with governmental entities.

Insurance Law section 2132 governs continuing education for title insurance agents and other insurance producers.

Insurance Law section 2139 is the licensing section for title insurance agents.

Insurance Law section 2314 prohibits title insurance corporations and title insurance agents from deviating from filed rates.

Insurance Law section 2324 prohibits rebating, improper inducements and other discriminatory behavior with respect to most kinds of insurance, including title insurance.

Insurance Law section 6409 contains specific prohibitions against rebating, improper inducements and other discriminatory behavior with respect to title insurance.

2. Legislative objectives: Long-sought and critically needed legislation to license title insurance agents was enacted as part of Chapter 57 of the New York Laws of 2014, which was signed into law by the governor on March 31, 2014 and took effect on September 27, 2014. By way of background, title insurance agents in New York: (a) handle millions of dollars of borrowers' and sellers' funds, (b) record documents, and (c) pay off mortgages. Yet for years, title insurance agents have conducted business in New York without licensing or other regulatory oversight, standards or guidelines. Because, as a matter of practice in New York, the title insurance agents control the bulk of the title insurance business, including bringing in customers, conducting the searches and other title work, the title insurance corporations often have little choice but to deal with title insurance agents who they may otherwise consider questionable or unscrupulous. Without licensing or regulatory oversight, an unscrupulous title insurance agent who was fired by one title insurer could simply take the business to another title insurer, who is usually more than willing to appoint that title insurance agent.

This lack of State regulation over title insurance agents made for an alarming weakness in New York law, and specifically New York law addressing title insurance rebating and inducement. For example, lack of regulatory oversight and licensing created a gaping loophole, which led to serious breaches of fiduciary duties and exploitation by unscrupulous actors to commit fraud in the mortgage origination and financing process. Over the years, this gap in New York law and lack of regulatory oversight allowed these actors to freely engage in theft, abuse, charging of excessive fees, and illegal rebates and inducements to the detriment of consumers, with little fear of prosecution. These abuses cost consumers of the State millions of dollars and at least one New York title insurer became insolvent because of the activities of its title insurance agents.

3. Needs and benefits: Now that New York law requires title insurance agents to be licensed, a number of existing regulations governing insurance producers need to be amended in order include title insurance agents or to address unique circumstances involving them, including affiliated persons' arrangements and required consumer disclosures. Specifically, Insurance Regulation 9 addresses temporary licenses; Insurance Regulation 18 addresses appointment of insurance agents; and Insurance Regulation 29 regulates premium accounts and fiduciary responsibilities of insurance agents and insurance brokers; and each is amended to include references to title insurance agents. Insurance Regulation 87 addresses special prohibitions regarding sharing compensation with other licensees with respect to certain governmental entities and is amended to address a limited exception for title insurance business insuring State of New York Mortgage Agency and certain other circumstances. Insurance Regulation 194 addresses insurance producer compensation transparency and is amended to reflect specific requirements in new Insurance Law section 2113 for title insurance agents. Insurance Regulation 125 governs insurance agents and brokers that maintain multiple offices and is amended to clarify the applicability of the regulation to title insurance agents. Regulation 125 also is amended to address unique circumstances involving title insurance agents who are also licensed attorneys.

New Insurance Regulation 206 addresses a number of miscellaneous issues involving title insurance agents. Some of these changes simply add provisions that are similar to those that apply to other insurance producers; for example, it prescribes the form of applications and requires licensees to notify the Department of any change of business or residence address. Other provisions of Regulation 206 set forth the new disclosure requirements; require title insurance agents to comply with a rate service organization's annual statistical data call; and address the obligation of title insurance agents and title insurance corporations with respect to title closers. Of particular significance are provisions of the regulations that codify Department opinions regarding affiliated business relations with respect to the applicability of Insurance Law section 6409, which prohibits rebates, inducements and certain other discriminatory behaviors.

4. Costs: Regulated parties impacted by these rules are title insurance agents, which heretofore were not licensed by the Department, and title insurance corporations. They may need to provide new disclosures in accordance with the regulation if they are not already making such disclosures but they already have an obligation to make changes to notices pursuant to the legislation. There are also new reporting requirements to the Department but these are the same that apply with respect to other licensees. In any event, the costs of these new disclosures and reporting requirements should not be significant. The proposed rules also subject title insurance agents to requirements regarding the maintenance of fiduciary accounts that already apply to other insurance producers. The cost impact on title insurance agents will likely vary from agent to agent but should not be significant.

Although the Department already was handling complaints and investigating matters regarding title insurance, because licensing title insurance agents is a new responsibility for the Department, anticipated costs to the Department are at this time uncertain. Existing personnel and line titles will handle any new licensing applications or enforcements issues initially.

These rules impose no compliance costs on any state or local governments.

5. Local government mandates: The new rules and amendments impose no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The amendments and new rules now apply certain requirements that are applicable to other insurance producers to title insurance agents as well. For example, title insurance agents are made subject to the same reporting requirements as other insurance producers when changing addresses, maintaining records, and submitting applications, and title insurers are required to file certificates of appointment of their title insurance agents with the Department. In addition, to reflect the specific notice requirements of Insurance Law section 2113, the disclosure requirements to insureds under Insurance Regulation 194 are modified for title insurance agents to reflect the statutory requirements. The new law also contains certain new disclosure requirements and the new rules implement those changes, and require certain other disclosures to applicants for insurance, such as a notice advising insureds or applicants for insurance about the different kinds of title policies available to them.

7. Duplication: The amendments do not duplicate any existing laws or regulations.

8. Alternatives: Prior to proposing rules in the July 23, 2014 issue of the State Register, the Department circulated drafts of the proposed rules to a number of interested parties and, as a result, the Department made a number of changes to proposed new Regulation 206, particularly with respect to affiliated business relationships, and title insurance corporation or title insurance agent responsibility for title insurance closers. In response to comments received during the public comment period, the Department has made a number of changes that are incorporated in the emergency rules that clarify the proposal or eliminates unnecessary requirements.

The Department received a number of comments regarding the significant and multiple sources of business provisions of the regulation with respect to affiliated business relationships. Because of the critical need to have regulations in effect on and after the September 27, 2014 effective date of Chapter 57, the Department is promulgating the emergency regulations utilizing the provisions contained in the proposed rulemaking, while the Department continues to evaluate and review those comments and consider whether any changes should be made to those provisions.

9. Federal standards: RESPA, and regulations thereunder, contain certain requirements and disclosures that apply to residential real estate settlement transactions. These requirements are minimum requirements and do not preempt state laws that provide greater consumer protection. The amendments and new rules are not inconsistent with RESPA and, consistent with New York law, provide greater consumer protection to the public.

10. Compliance schedule: Chapter 57 of the New York Laws of 2014 took effect on September 27, 2014. In order to facilitate the orderly implementation of the new law, the Superintendent was authorized to promulgate regulations in advance of the effective date, but to be make such regulations effective on that date.

Consolidated Regulatory Flexibility Analysis

1. Effect of the rule: These rules affect title insurance corporations authorized to do business in New York State, title insurance agents and persons affiliated with such corporations and agents.

No title insurance corporation subject to the amendment falls within the definition of "small business" as defined in State Administrative Procedure Act section 102(8), because no such insurance corporation is both independently owned and has less than one hundred employees.

It is estimated that there are about 1,800 title insurance agents doing business in New York currently. Since they are not currently licensed by the Department of Financial Services ("Department"), it is not known how many of them are small businesses, but it is believed that a significant number of them may be small businesses.

Persons affiliated with title insurance agents or title insurance corporations would not, by definition, be independently owned and would thus not be small businesses.

The rule does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

2. Compliance requirements: The proposed rules conform and imple-

ment requirements regarding title insurance agents and placement of title insurance business with Chapter 57 of the Laws of 2014, which made title insurance agents subject to licensing in New York for the first time. A number of the rules will make title insurance agents subject to the same requirements that apply to other insurance producers. There are also disclosure requirements unique to title insurance.

3. Professional services: This amendment does not require any person to use any professional services.

4. Compliance costs: Title insurance agents will need to provide new disclosures in accordance with the regulation if they are not already making such disclosures but they already have an obligation to make changes to notices pursuant to the legislation. There are also new reporting requirements to the Department but these are the same that apply with respect to other licensees. In any event, the costs of these new disclosures and reporting requirements should not be significant. The proposed rules now subject title insurance agents to requirements regarding the maintenance of fiduciary accounts that already apply to other insurance producers. The cost impact on title insurance agents will likely vary from agent to agent but should not be significant.

5. Economic and technological feasibility: Small businesses that may be affected by this amendment should not incur any economic or technological impact as a result of this amendment.

6. Minimizing adverse impact: This rule should have no adverse impact on small businesses.

7. Small business participation: Interested parties, including an organization representing title insurance agents, were given an opportunity to comment on draft proposed rules as well as the proposed rulemaking that was published in the State Register on July 23, 2014.

Consolidated Rural Area Flexibility Analysis

The Department of Financial Services ("Department") finds that this rule does not impose any additional burden on persons located in rural areas, and will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

Rural area participation: Interested parties, including those located in rural areas, were given an opportunity to review and comment on draft versions of these rules as well as the proposed rulemaking that was published in the State Register on July 23, 2014.

Consolidated Job Impact Statement

The Department of Financial Services finds that these rules should have no negative impact on jobs and employment opportunities. The rules conform to and implement the requirements of, with respect to title insurance agents and the placement of title insurance business, Chapter 57 of the Laws of 2014, which make title insurance agents subject to licensing in New York for the first time and, by establishing a regulated marketplace, may lead to increased employment opportunity.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

EMERGENCY RULE MAKING

Assessment of Entities Regulated by the Banking Division of the Department of Financial Services

I.D. No. DFS-01-15-00010-E

Filing No. 1092

Filing Date: 2014-12-22

Effective Date: 2014-12-22

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Part 501 to Title 3 NYCRR.

Statutory authority: Banking Law, section 17; Financial Services Law, section 206

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision (including examination) of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of in the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

Litigation commenced in June, 2011 challenged the methodology used by the Banking Department to assess mortgage bankers. On May 3, 2012, the Appellate Division invalidated this methodology for the 2010 State Fiscal Year, finding that the former Banking Department had not followed the requirements of the State Administrative Procedures Act.

In response to this ruling, the Department has determined to adopt this new rule setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

The emergency adoption of this regulation is necessary to implement the requirements of Section 17 of the Banking Law and Section 206 of the Financial Services Law in light of the determination of the Court and the ongoing need to fund the operations of the Department without interruption.

Subject: Assessment of entities regulated by the Banking Division of the Department of Financial Services.

Purpose: To set forth the basis for allocating all costs and expenses among and between any person or entity licensed, registered, incorporated or otherwise formed pursuant to the Banking Law.

Text of emergency rule: *Superintendent's Regulations*

Part 501

§ 501.1 Background.

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated on October 3, 2011 into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL. Effective October 3, 2011, assessments are governed by Section 206 of the FSL, provided that Section 17 of the BL continues to apply to assessments for the fiscal year commencing on April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (including, but not limited to, compensation, lease costs and other overhead costs) of the Department attributable to institutions subject to the BL are to be charged to, and paid by, such regulated institutions. These institutions ("Regulated Entities") are now regulated by the Banking Division of the Department. Under both Section 17 of the BL and Section 206 of the FSL, the Superintendent is authorized to assess Regulated Entities for its total costs in such proportions as the Superintendent shall deem just and reasonable.

The Banking Department has historically funded itself entirely from industry assessments of Regulated Entities. These assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This regulation sets forth the basis for allocating such expenses among Regulated Entities and the process for making such assessments.

§ 501.2 Definitions.

The following definitions apply in this Part:

(a) "Total Operating Cost" means for the fiscal year beginning on April 1, 2011, the total direct and indirect costs of operating the Banking Division. For fiscal years beginning on April 1, 2012, "Total Operating Cost" means (1) the sum of the total operating expenses of the Department that are solely attributable to regulated persons under the Banking Law and (2) the proportion deemed just and reasonable by the Superintendent of the other operating expenses of the Department which under Section 206(a) of the Financial Services Law may be assessed against persons regulated under the Banking Law and other persons regulated by the Department.

(b) "Industry Group" means the grouping to which a business entity regulated by the Banking Division is assigned. There are three Industry Groups in the Banking Division:

(1) The Depository Institutions Group, which consists of all banking organizations and foreign banking corporations licensed by the Department to maintain a branch, agency or representative office in this state;

(2) The Mortgage-Related Entities Group, which consists of all mortgage brokers, mortgage bankers and mortgage loan servicers; and

(3) The Licensed Financial Services Providers Group, which consists of all check cashers, budget planners, licensed lenders, sales finance companies, premium finance companies and money transmitters.

(c) "Industry Group Operating Cost" means the amount of the Total Operating Cost to be assessed to a particular Industry Group. The amount is derived from the percentage of the total expenses for salaries and fringe benefits for the examining, specialist and related personnel represented by such costs for the particular Industry Group.

(d) "Industry Group Supervisory Component" means the total of the Supervisory Components for all institutions in that Industry Group.

(e) "Supervisory Component" for an individual institution means the product of the average number of hours attributed to supervisory oversight by examiners and specialists of all institutions of a similar size and type, as determined by the Superintendent, in the applicable Industry Group, or the applicable sub-group, and the average hourly cost of the examiners and specialists assigned to the applicable Industry Group or sub-group.

(f) "Industry Group Regulatory Component" means the Industry Group Operating Cost for that group minus the Industry Group Supervisory Component and certain miscellaneous fees such as application fees.

(g) "Industry Financial Basis" means the measurement tool used to distribute the Industry Group Regulatory Component among individual institutions in an Industry Group.

The Industry Financial Basis used for each Industry Group is as follows:

(1) For the Depository Institutions Group: total assets of all institutions in the group;

(2) For the Mortgage-Related Entities Group: total gross revenues from New York State operations, including servicing and secondary market revenues, for all institutions in the group; and

(3) For the Licensed Financial Services Providers Group: (i.) for budget planners, the number of New York customers; (ii.) for licensed lenders, the dollar amount of New York assets; (iii.) for check cashers, the dollar amount of checks cashed in New York; (iv.) for money transmitters, the dollar value of all New York transactions; (v.) for premium finance companies, the dollar value of loans originated in New York; and (vi.) for sales finance companies, the dollar value of credit extensions in New York.

(h) "Financial Basis" for an individual institution is that institution's portion of the measurement tool used in Section 501.2(g) to develop the Industry Financial Basis. (For example, in the case of the Depository Institutions Group, an entity's Financial Basis would be its total assets.)

(i) "Industry Group Regulatory Rate" means the result of dividing the Industry Group Regulatory Component by the Industry Financial Basis.

(j) "Regulatory Component" for an individual institution is the product of the Financial Basis for the individual institution multiplied by the Industry Group Regulatory Rate for that institution.

§ 501.3 Billing and Assessment Process.

The New York State fiscal year begins April 1 and ends March 31 of the following calendar year. Each institution subject to assessment pursuant to this Part is billed five times for a fiscal year: four quarterly assessments (each approximately 25% of the anticipated annual amount) based on the Banking Division's estimated annual budget at the time of the billing, and a final assessment (or "true-up"), based on the Banking Division's actual expenses for the fiscal year. Any institution that is a Regulated Entity for any part of a quarter shall be assessed for the full quarter.

§ 501.4 Computation of Assessment.

The total annual assessment for an institution shall be the sum of its Supervisory Component and its Regulatory Component.

§ 501.5 Penalties/Enforcement Actions.

All Regulated Entities shall be subject to all applicable penalties, including late fees and interest, provided for by the BL, the FSL, the State Finance law or other applicable laws. Enforcement actions for nonpayment could include suspension, revocation, termination or other actions.

§ 501.6 Effective Date.

This Part shall be effective immediately. It shall apply to all State Fiscal Years beginning with the Fiscal Year starting on April 1, 2011.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 21, 2015.

Text of rule and any required statements and analyses may be obtained from: Hadas A. Jacobi, Esq., Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5890, email: hadas.jacobi@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department (the "Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services (the "Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

In response to a court ruling, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012) ("Homestead"), that held that the Department should adopt changes to its assessment methodology for mortgage bankers through a formal assessment rule pursuant to the requirements of the State Administrative Procedures Act ("SAPA"), the Department has determined to adopt this new regulation setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

2. Legislative objectives

The BL and the FSL make the industries regulated by the former Banking Department (and now by the Banking Division of the new Department) responsible for all the costs and expenses of their regulation by the State. The assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This reflects a long-standing State policy that the regulated industries are the appropriate parties to pay for their supervision in light of the financial benefits it provides to them to engage in banking and other regulated businesses in New York. The statute specifically provides that these costs are to be allocated among such institutions in the proportions deemed just and reasonable by the Superintendent.

While this type of allocation had been the practice of the former Banking Department for many decades, Homestead found that a change to the methodology for mortgage bankers to include secondary market and servicing income should be accomplished through formal regulations subject to the SAPA process. Given the nature of the Banking Division's assessment methodology - - the calculation and payment of the assessment is ongoing throughout the year and any period of uncertainty as to the applicable rule would be extremely disruptive - - the Department has determined that it is necessary to adopt the rule on an emergency basis so as to avoid any possibility of disrupting the funding of its operations.

3. Needs and benefits

The Banking Division regulates more than 250 state chartered banks and licensed foreign bank branches and agencies in New York with total assets of over $2 trillion. In addition, it regulates a variety of other entities engaged in delivering financial services to the residents of New York State. These entities include: licensed check cashers; licensed money transmitters; sales finance companies; licensed lenders; premium finance companies; budget planners; mortgage bankers and brokers; mortgage loan servicers; and mortgage loan originators.

Collectively, the regulated entities represent a spectrum, from some of the largest financial institutions in the country to the smallest, neighborhood-based financial services providers. Their services are vital to the economic health of New York, and their supervision is critical to ensuring that these services are provided in a fair, economical and safe manner.

This supervision requires that the Banking Division maintain a core of trained examiners, plus facilities and systems. As noted above, these costs are by statute to be paid by all regulated entities in the proportions deemed just and reasonable by the Superintendent. The new regulation is intended to formally set forth the methodology utilized by the Banking Division for allocating these costs.

4. Costs

The new regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division. Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities.

5. Local government mandates
None.
6. Paperwork
The regulation does not change the process utilized by the Banking Division to determine and collect assessments.
7. Duplication
The regulation does not duplicate, overlap or conflict with any other regulations.
8. Alternatives
The purpose of the regulation is to formally set forth the process employed by the Department to carry out the statutory mandate to assess and collect the operating costs of the Banking Division from regulated entities. In light of Homestead, the Department believes that promulgating this formal regulation is necessary in order to allow it to continue to assess all of its regulated institutions in the manner deemed most appropriate by the Superintendent. Failing to formalize the Banking Division's allocation methodology would potentially leave the assessment process open to further judicial challenges.
9. Federal standards
Not applicable.
10. Compliance Schedule
The emergency regulations are effective immediately. Regulated institutions will be expected to comply with the regulation for the fiscal year beginning on April 1, 2011 and thereafter.

Regulatory Flexibility Analysis

1. Effect of the Rule:
The regulation does not have any impact on local governments.
The regulation simply codifies the methodology used by the Banking Division of the Department of Financial Services (the "Department") to assess all entities regulated by it, including those which are small businesses. The regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division.
Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities. It is expected that the effect of this change will be that larger members of the mortgage banking industry will pay an increased proportion of the total cost of regulating that industry, while the relative assessments paid by smaller industry members will be reduced.
2. Compliance Requirements:
The regulation does not change existing compliance requirements. Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the Banking Law are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division. Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.
3. Professional Services:
None.
4. Compliance Costs:
All regulated institutions are currently subject to assessment by the Banking Division. The regulation simply formalizes the Banking Division's assessment methodology. It makes only one change from the allocation methodology used by the Banking Department in the previous state fiscal years. That change affects only one of the industry groups regulated by the Banking Division. Regulatory costs assessed to the mortgage banking industry are now divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. Even within the one industry group affected by the change, additional compliance costs, if any, are expected to be minimal.
5. Economic and Technological Feasibility:
All regulated institutions are currently subject to the Banking Division's assessment requirements. The formalization of the Banking Division's assessment methodology in a regulation will not impose any additional economic or technological burden on regulated entities which are small businesses.
6. Minimizing Adverse Impacts:
Even within the mortgage banking industry, which is the one industry group affected by the change in assessment methodology, the change will not affect the total amount of the assessment. Indeed, it is anticipated that this change may slightly reduce the proportion of mortgage banking industry assessments that is paid by entities that are small businesses.
7. Small Business and Local Government Participation:
This regulation does not impact local governments.
This regulation simply codifies the methodology which the Banking Division uses for determining the just and reasonable proportion of the Banking Division's costs to be charged to and paid by each regulated institution, including regulated institutions which are small businesses. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those that are small businesses.
Thereafter, the Banking Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Banking Department changed its overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market and servicing activities. Litigation was commenced challenging this latter change, and in a recent decision, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012), the court determined that the Department should adopt a change to its assessment methodology for mortgage bankers through a formal assessment rule promulgated pursuant to the requirements of the State Administrative Procedures Act. The challenged change in methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants, including those which are small businesses.

Rural Area Flexibility Analysis

Types and Estimated Numbers: There are entities regulated by the New York State Department of Financial Services (formerly the Banking Department) located in all areas of the State, including rural areas. However, this rule simply codifies the methodology currently used by the Department to assess all entities regulated by it. The regulation does not alter that methodology, and thus it does not change the cost of assessments on regulated entities, including regulated entities located in rural areas.
Compliance Requirements: The regulation would not change the current compliance requirements associated with the assessment process.
Costs: While the regulation formalizes the assessment process, it does not change the amounts assessed to regulated entities, including those located in rural areas.
Minimizing Adverse Impacts: The regulation does not increase the total amount assessed to regulated entities by the Department. It simply codifies the methodology which the Superintendent has chosen for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution.
Rural Area Participation: This rule simply codifies the methodology which the Department currently uses for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution, including regulated institutions located in rural areas. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those located in rural areas. It followed the loss of several major banking institutions that had paid significant portions of the former Banking Department's assessments.
Thereafter, the Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Department changed this overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market income and servicing income. This latter change was challenged by a mortgage banker, and in early May, the Appellate Division determined that the latter change should have been made in conformity with the State Administrative Procedures Act. The challenged part of the methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants.

Job Impact Statement

The regulation is not expected to have an adverse effect on employment.
All institutions regulated by the Banking Division (the "Banking Division") of the Department of Financial Services are currently subject to assessment by the Department. The regulation simply formalizes the assessment methodology used by the Banking Division. It makes only one change from the allocation methodology used by the former Banking Department in the previous state fiscal years.
That change affects only one of the industry groups regulated by the Banking Division. It somewhat alters the way in which the Banking Division's costs of regulating mortgage banking industry are allocated among entities within that industry. In any case, the total amount assessed against regulated entities within that industry will remain the same.

NOTICE OF ADOPTION

Regulation of Force-Placed Insurance

I.D. No. DFS-39-13-00022-A
Filing No. 1075
Filing Date: 2014-12-19
Effective Date: 30 days after filing

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Part 227 (Regulation 202) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 301 and 302; Insurance Law, sections 301, 308, 2110, 2303, 2304, 2324 and 2403 and arts. 21, 23, 24 and 34

Subject: Regulation of force-placed insurance.

Purpose: To set forth rules regarding, among other things, the rating and placement of, and practices related to, force-placed insurance.

Substance of final rule: This rule sets forth rules for the rates for and placement of force-placed insurance and prohibits certain practices related to force-placed insurance in order to protect homeowners and investors from harm caused by excessive force-placed insurance rates, questionable business practices and relationships in the force-placed insurance industry, and inadequate notice of force-placed insurance.

Section 227.0 sets forth the purpose of the rule.

Section 227.1 provides definitions applicable to the rule.

Section 227.2 sets minimum adequate notification requirements to ensure homeowners understand their responsibility to maintain homeowners insurance, and that they may purchase voluntary homeowners insurance coverage at any time.

Section 227.3 sets the maximum amount of force-placed insurance coverage that an insurer may issue on a New York property.

Section 227.4 requires an insurer, insurance producer, or affiliate that receives correspondence related to force-placed insurance from a borrower on behalf a servicer to accept any reasonable form of written confirmation of a borrower's existing insurance coverage.

Section 227.5 requires an insurer, insurance producer, or affiliate to refund all force-placed insurance premiums for any period of overlapping insurance coverage within fifteen days of receiving evidence demonstrating that the borrower has had in place hazard insurance coverage that complies with the mortgage's requirements to maintain hazard insurance.

Section 227.6 prohibits certain practices with respect to force-placed insurance, including: the payment of commissions to servicer-affiliated insurance producers; the sharing of force-placed insurance premiums or risk with a servicer affiliate; and issuing force-placed insurance on property serviced by a servicer affiliated with the insurer.

Section 227.7 requires insurers to regularly inform the Department of loss ratios actually experienced and re-file rates when actual loss ratios are below 40 percent, and sets a permissible loss ratio for rate filings to ensure that premiums are set at a rate reasonably related to paid claims.

Section 227.8 sets forth the effective date of the rule.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 227.1(f), 227.2(b), 227.6(d) and 227.8.

Revised rule making(s) were previously published in the State Register on October 15, 2014.

Text of rule and any required statements and analyses may be obtained from: Brian Montgomery, Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2296, email: Brian.Montgomery@dfs.ny.gov

Revised Regulatory Impact Statement

No new Regulatory Impact Statement is needed. The changes to the rule are substantively similar to the previously published revised proposed rulemaking. The amendments clarify the rule and provide additional time to prepare for compliance.

Revised Regulatory Flexibility Analysis

No new Regulatory Flexibility Analysis for Small Businesses and Local Governments is needed. The changes to the rule are substantively similar to the previously published revised proposed rulemaking. The amendments clarify the rule and provide additional time to prepare for compliance.

Revised Rural Area Flexibility Analysis

No new Rural Area Flexibility Analysis is needed. The changes to the rule are substantively similar to the previously revised proposed rulemaking. The amendments clarify the rule and provide additional time to prepare for compliance.

Revised Job Impact Statement

No new Job Impact Statement is needed. The changes to the rule are substantively similar to the previously published revised proposed rulemaking. The new changes clarify the rule and provide additional time to prepare for compliance.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2017, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The New York State Department of Financial Services ("Department") received comments from a company that owns an insurer that provides force-placed insurance ("insurer"), an insurance producer and a group of affiliated insurers that provide force-placed insurance ("insurance producer"), an organization that represents banks that are engaged in the business of insurance ("bank organization"), an organization that represents more than 1,000 property/casualty insurers nationally ("property/casualty trade organization"), a statewide organization and a nationwide organization that represent mortgage lenders and servicers and other related firms ("mortgage organizations"), a statewide organization that represents banks ("state bank organization"), a state-wide coalition of over 160 members that promotes access to fair and affordable financial services ("New York consumer coalition"), and an international association of commercial insurance and employee benefits intermediaries ("commercial insurance organization") in response to its publication of the revised proposed rule in the New York State Register.

Comments on specific parts of the proposed rule are discussed below.

11 NYCRR § 227.2(c)

Comment

The insurance producer commented that at least one of its servicer customers believes that envelopes that include the text "important homeowners insurance information" in compliance with subsection 227.2(c) would violate the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692f(8), which states:

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section… (8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

Department's response

As a preliminary matter, it is not clear from the information provided in the comment that the communications required by section 227.2 would be covered by the FDCPA because the communications must be sent before a servicer assesses on a borrower any premium charge or fee related to force-placed insurance. Even assuming that the communications are covered by the FDCPA, the Department believes that compliance with subsection 227.2(c) would not violate the FDCPA. Several courts have interpreted 15 U.S.C. § 1692f(8) to permit an exception for benign language that does not reveal the contents of the envelope to pertain to debt collection. The phrase "important homeowners insurance information" does not imply that the contents of the envelope pertain to debt collection. The Department has not changed the rule to address this comment.

11 NYCRR § 227.6(d)

Comment

The commercial insurance organization commented that subsection 227.6(d) could be read to apply to all agent activity, but only to independent adjusters when acting in the adjustment of a loss for force-placed insurance.

Department's Response

The Department has revised subsection 227.6(d) to make clear that the rule applies to agents or independent adjusters only when either entity acts in the adjustment of a loss for force-placed insurance.

11 NYCRR § 227.6(f)

Comment

The insurance producer commented that subsection 227.6(f) should be revised to permit an insurer, insurance producer or affiliate to reimburse servicers or their affiliates for expenses incurred in connection with a conversion to a new force-placed insurance provider. The insurance producer maintained that such payments fit within an exception to Insurance Law § 2324 that was described in a March 3, 2009 Insurance Department Circular Letter.

Department's response

The insurance producer's comment misinterprets Insurance Law § 2324 and the March 3, 2009 Circular Letter. In fact, the Department found in a consent order with one force-placed insurer that a payment to cover the conversion of a mortgage servicer's portfolio to a new force-placed insurer violated the Insurance Law. Consequently, the Department did not change the rule to address this comment.

11 NYCRR § 227.7(a)

Comment

The New York consumer coalition commented that the Department should require an 80% minimum loss ratio.

Department's Response

The Department believes that a 62% permissible loss ratio is appropriate at this time and did not change the rule to address this comment.

Insurance Tracking

Comment

The commercial insurance organization supported the Department's revision to subsection 227.6(g) but commented that subsection 227.1(f) should be revised to exclude from the definition of insurance tracking all communication that is triggered by an irregularity that tracking activity discovers. The New York consumer coalition strongly supported the Department's revisions to the insurance tracking provisions of the proposed rule and commented that subsection 227.7(c)(3) should be revised to require additional reporting. The insurer commented that subsections 227.6(g) and 227.7(f) and the distinction between insurance tracking before and after the borrower's voluntary insurance has lapsed or been cancelled should be omitted from the final rule. The property/casualty trade organization and the bank organization commented that subsections 227.1(f), 227.6(g), 227.7(c)(3), and 227.7(f) should be removed from the final rule. The insurance producer commented that subsections 227.6(g) and 227.7(f) should be modified. The mortgage organizations and the bank organization commented that subsections 227.1(f), 227.6(g), 227.7(c)(3), and 227.7(f) should be revised. The insurer, insurance producer, bank organization and property/casualty trade organization commented that force-placed insurers should be permitted to include the expense of insurance tracking in their rates. The insurance producer and the mortgage organizations commented that the insurance tracking provisions of the proposed rule potentially or actually conflict with consent orders the Department entered into with force-placed insurers. The insurer commented that the proposed regulation would require new systems and processes to distinguish between tracking insurance before and after voluntary insurance lapses.

Department's response

The Department learned after proposing the rule that some entities were incorrectly interpreting the Department's consent orders with force-placed insurers and the proposed rule to allow the inclusion of insurance tracking expenses in force-placed insurance rates. The proposed rule's treatment of insurance tracking expenses does not conflict with the Department's consent orders with force-placed insurers because the consent orders did not address whether insurance tracking expenses were permitted in rates. The revised proposed rule clarifies that insurance tracking expenses are not permitted in force-placed insurance rates. The Department has not revised the proposed rule to omit or modify the insurance tracking provisions. However, the Department has revised the effective date of subsections 227.7(c) and 227.7(f) to allow insurers, insurance producers and affiliates time to implement changes necessary to comply with the rule.

Comment

The insurer, insurance producer, mortgage organizations, and property/casualty trade organization commented that force-placed insurers must be permitted to track insurance. The state bank organization commented that it believes the proposed rule would require a bank to track and monitor the existence of voluntary insurance.

Department's response

The rule permits an insurer, insurance producer, or affiliate to provide insurance tracking to a bank or servicer, provided that the insurer, insurance producer or affiliate does not provide tracking for a reduced fee or no separately identifiable charge. The proposed rule does not require a bank to track and monitor voluntary insurance. Consequently, the Department did not change the rule to address this comment.

New York State Gaming Commission

EMERGENCY RULE MAKING

Implementation of Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application

I.D. No. SGC-28-14-00006-E
Filing No. 1074
Filing Date: 2014-12-19
Effective Date: 2014-12-19

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Part 5300 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1305(20) and 1307(2)

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The Gaming Commission ("Commission") has determined that immediate adoption of these rules is necessary for the preservation of the general welfare. On March 31, 2014, the Gaming Facility Location Board, which the Commission established pursuant to section 109-a of the Racing, Pari-Mutuel Wagering and Breeding Law, issued a Request for Applications ("RFA") for applicants seeking a license to develop and operate a gaming facility in New York State pursuant to the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (the "Act"). The Act authorizes four upstate destination gaming resorts to enhance economic development in upstate New York, completed applications were due to the Gaming Facility Location Board by June 30, 2014. The immediate re-adoption of these rules is necessary to prescribe the form of the RFA and the information required to be submitted in response to the RFA. Standard rule making procedures would prevent the Commission from commencing the fulfillment of its statutory duties.

Subject: Implementation of rules pertaining to gaming facility request for application and gaming facility license application.

Purpose: To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

Substance of emergency rule: This addition of Part 5300 of Subtitle T of Title 9 NYCRR will add new Sections 5300.1 through 5300.5 to allow the New York State Gaming Commission ("Commission") to prescribe the form of the application for a gaming facility license.

The new Part of the Gaming Commission regulations describes the form of application for applicants seeking a gaming facility license and the information the applicant must provide. Section 5300.1 sets forth the form of the application including disclosure of identifying information, finance and capital structure of the proposed gaming facility, economic and market analysis, proposed land and design of facility space, assessment of local support and plans to address regional tourism, problem gambling, workforce development and resource management. Section 5300.2 describes the scope of background information the applicant and related parties must provide in three disclosure forms, the Gaming Facility License Application Form, the Multi-Jurisdictional Personal History Disclosure Form and the Multi-Jurisdictional Personal History Disclosure Supplemental Form. Section 5300.3 describes the process by which all applicants for a gaming facility license shall submit fingerprints as part of a background investigation. Section 5300.4 describes the applicant's duty to update its application as necessary, following submission of the application. Section 5300.5 describes the application fee and procedure for refunding a portion of such fee in certain circumstances.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. SGC-28-14-00006-EP, Issue of July 16, 2014. The emergency rule will expire February 16, 2015.

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301-7500, (518) 388-3407, email: gamingrules@gaming.ny.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the

Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1305(2) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13.

Racing Law section 1306(1) and section 1312(1) prescribe that the Gaming Facility Location Board ("Board"), which is established by the Commission, shall issue a request for applications ("RFA") for applicants seeking a license to develop and operate gaming facilities in New York State. On March 31, 2014, the Gaming Facility Location Board issued the RFA.

Racing Law section 1307(2) prescribes that the Commission regulate, among other things, the method and form of the application; the methods, procedures and form for delivery of information concerning an applicant's family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for the fingerprinting of an applicant.

2. LEGISLATIVE OBJECTIVES: This emergency rule making carries out the legislative objectives of the above-referenced statutes by implementing the requirements of Racing Law section 1307(2).

3. NEEDS AND BENEFITS: This emergency rule making is necessary to enable the Board to carry out its statutory duty of issuing the RFA for applicants seeking a license to develop and operate a gaming facility in New York State.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: Those parties who choose to seek a gaming facility license will bear some costs. There is an application fee of $1 million that is prescribed by Racing Law section 1316(8) to defray the costs of processing the application and investigating the applicant. The extent of other costs incurred by applicants will depend upon the efforts that they put into completing and submitting the application.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The rules will impose some costs on the Commission in reviewing gaming facility applications and in issuing licenses, but it is anticipated that the $1 million application fee paid by each applicant will offset such costs. The rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. PAPERWORK: The rules set forth the content of the application for a gaming facility license. The requirements apply only to those parties that choose to seek a gaming facility license.

6. LOCAL GOVERNMENT: The rules do not impose any mandatory program, service, duty, or responsibility upon local government because the licensing of gaming facilities is strictly a matter of State law.

7. DUPLICATION: The rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission is required to create these rules under Racing Law section 1307(2). Therefore, no alternatives were considered.

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York because such licensing is solely in accordance with New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that affected parties will be able to achieve compliance with the rules upon the adoption of the rules, which will occur upon filing.

Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

This emergency rule making will not have any adverse impact on small businesses, local governments, jobs or rural areas. The rules prescribe the method and form of the application for a gaming facility license; the methods, procedures and form for delivery of information concerning an applicant's family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for fingerprinting an applicant. It is not expected that any small business or local government will apply for a gaming facility license.

The rules impose no adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. It is anticipated that the opening of up to four gaming facilities in upstate New York will create new job opportunities. The rules apply uniformly throughout the State to any applicant seeking a license to develop and operate a gaming facility in the State.

The proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

Department of Health

EMERGENCY RULE MAKING

Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing

I.D. No. HLT-01-15-00001-E
Filing No. 1073
Filing Date: 2014-12-17
Effective Date: 2014-12-17

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Parts 487 and 488 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20, 20(3)(d), 34, 34(3)(f), 131-o, 460, 460-a—460-g, 461 and 461-a—461-h

Finding of necessity for emergency rule: Preservation of public safety.

Specific reasons underlying the finding of necessity: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"), in order to coordinate and improve the State's ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations, as a "state oversight agency" of some of the covered facilities, in order to assure proper coordination with the efforts of the Justice Center Chapter 501 which took effect on June 30, 2013, and the Justice Center becomes operational.

Among the facilities covered by Chapter 501 are adult homes and enriched housing programs having a capacity of eighty or more beds, and in which at least 25% (twenty-five percent) of the residents are persons with serious mental illness as defined by section 1.03(52) of the mental hygiene law, but not including an adult home which is authorized to operate 55% (fifty-five percent) or more of its total licensed capacity of beds as assisted living program beds. Given the effective date of Chapter 501, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such adult homes and enriched housing programs for an additional period likely extending several months. Absent emergency promulgation, such persons would be denied initial coordinated protections for several additional months, creating an unacceptable risk to residents. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will be implemented subsequently, as required by the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to Sections 20, 34, 131-o, 460, 460-a—460-g, 461, 461-a—461-h of the Social Services Law; and L. 1997, ch.436; and and L. 2012, ch. 501.

Subject: Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing.

Purpose: Revisions to Parts 487 and 488 in regards to the establishment of the Justice Center for Protection of People with Special Needs.

Substance of emergency rule: The Department proposes to amend 18 NYCRR Parts 487 and 488 to address the creation of the Justice Center for the Protection of Persons with Special Needs (Justice Center) pursuant to Chapter 501 of the Laws of 2012, and to conform the Department's regulations to requirements added or modified as a result of that Chapter Law. Specifically, the amendments:

- add definitions specific to facilities subject to the Justice Center of "abuse," "mistreatment," "neglect," "misappropriation of property," "reasonable cause," "reportable incident," "Justice Center," "significant incident," "custodian," "facility subject to the Justice Center," "psychological abuse," "Department," and " unlawful use or administration of a controlled substance" at sections 487.2(d)(1)-(13) and 488.2(c)(1)-13;
- amend sections 487.5 and 488.5 to add occurrences which would constitute a reportable incident to the list of occurrences which residents should not experience, and to require the operator of certain facilities to conspicuously post the telephone number of the Justice Center incident reporting hotline;
- amend sections 487.7 and 488.7 to clarify a facility's obligations regarding what incidents must be investigated, how they must be investigated and who must investigate them;

- amend sections 487.7 and 488.7 to replace outdated references to the State Commission on Quality of Care for the Mentally Disabled with references to the Justice Center;
- amend sections 487.7 and 488.7 to add a requirement addressing when reports must be provided to the Justice Center, and requiring such reports to conform to the requirements of the Justice Center;
- amend sections 487.9 and 488.9 to add a requirement for staff training in the identification of reportable incidents and facility reporting procedures, and to add a requirement for certain facilities regarding the provision of a code of conduct to employees, volunteers, and others providing services at the facility who could be expected to have resident contact;
- amend sections 487.9 and 488.9 to add a requirement that certain facilities consult the Justice Center's staff exclusion list with regard to prospective employees, volunteers, and others, and that when such person is not on the staff exclusion list, that such facilities also consult the State Central Registry, with regard to such persons. The facility must maintain documentation of such consultation. The amendments also address the hiring consequences associated with the outcome of those consultations;
- amend sections 487.9 and 488.9 to specifically include investigation of reportable incidents to the administrative obligations of facilities, and to the duties of a case manager;
- amend sections 487.9 and 488.9 to require the operator of a facility to designate an additional employee to be a designated reporter;
- amend sections 487.10 and 488.10 to add a new requirement that certain facilities provide certain information to the Justice Center, and make certain information public, at the request of the Justice Center, and to allow sharing of information between the Department and the Justice Center;
- add new sections 487.14 and 488.13 to address reporting of certain incidents; and
- add new sections 487.15 and 488.14 to address the investigation of reportable incidents involving facilities subject to the Justice Center.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 16, 2015.

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.ny.gov

Summary of Regulatory Impact Statement

The Department believes that the proposed regulatory amendments enhance the health and safety of those served by adult homes and enriched housing programs.

Adult homes and enriched housing programs subject to the Justice Center will be required to consult the Justice Center's register of substantiated category one cases of abuse or neglect as established pursuant to section 495 of the Social Services Law prior to hiring certain employees, and where the person is not on that list, the facility will also be required to check the Office of Children and Family Services' Statewide Central Registry of Child Abuse and Maltreatment. The facility could not hire a person on the Justice Center's list, but would have the discretion to hire a person who was only on Office of Children and Family Services' list. Reporting and investigation obligations for all facilities would be expanded to cover "reportable incidents" which, are slightly more inclusive than what is covered by current reporting and investigation obligations. The amendments also add specific provisions addressing reporting and investigation procedures, to require the posting the telephone number of the Justice Center's reporting hotline, and to require the case manager to be capable of reporting and investigating incidents. Those amendments should not require any significant change in current practice or impose anything beyond nominal additional expense to facilities. Requirements imposed on facilities generally are limited to an obligation to train staff in the identification and reporting of reportable incidents. With regard to facilities subject to the Justice Center, that obligation, as well as the others imposed by the regulations, are required by virtue of Chapter 501 of the Laws of 2012. The costs imposed by the amendments are expected to be minimal. In many cases, particularly with regard to the investigation requirements, the amendments generally reflect existing practice, so should neither impose any significant new costs or require any significant change in practice.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

This rule imposes some new obligations and administrative costs on regulated parties (adult homes and enriched housing programs). Some of the changes to Sections 487 and 488 apply to all adult home and enriched housing facilities; other only apply to those adult homes and enriched housing facilities which fall under the purview of the Justice Center. None of the requirements imposed by the amendments would impose different, or unique, burdens on small businesses or local governments; the requirements apply equally statewide. The costs and obligations associated with the amendments are fully described in the "Costs to Regulated Parties" section of the Regulatory Impact Statement.

Most of the five-hundred twenty-two (522) certified adult homes in New York State, including the forty-seven (47) which fall under the purview of the Justice Center, are operated by small businesses as defined in Section 102 of the State Administrative Procedure Act. Those entities would be subject to all of the above additional requirements.

Of the six (6) facilities operated by local governments, two (2) are scheduled to close within the next year. Of the four (4) remaining homes, none fall within the scope of the Justice Department required reporting facilities. Accordingly, the only additional cost imposed on those four (4) homes would be those nominal costs associated with obligations applicable to all adult homes and enriched housing facilities, as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Compliance Requirements:

As the facilities operated by local governments are not among those within the purview of the Justice Center for the Protection of Persons with Special Needs (Justice Center), the only impact upon facilities operated by local governments will be those resulting from obligations applicable to all adult homes and enriched housing facilities, as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

The four (4) affected facilities run by local governments will experience minimal additional regulatory burdens in complying with the amendment's requirements, as functions related to Justice Center activities will not cause a need for additional staff or equipment.

Those facilities which constitute small businesses would be subject to additional requirements, as they include facilities both subject to, and not subject to, the purview of the Justice Center. The scope of the impact upon any given facility depends on whether it falls within the Justice Center's purview. Such obligations and impacts are fully described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. The amendments are not expected to create a need for any additional staff or equipment for those facilities.

The Department expects that regulated parties will be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Professional Services:

No need for additional professional services is anticipated. Existing professional staff are expected to be able to assume any increase in workload resulting from the additional requirements.

Compliance Costs:

This rule imposes limited new administrative costs on regulated parties (adult homes and enriched housing programs), as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. The changes to Sections 487 and 488 add additional administrative responsibilities for those adult home and enriched housing facilities within the Justice Center's jurisdiction. None of the requirements imposed by the amendments would impose different, or unique, burdens on small businesses or local governments; the requirements apply equally statewide.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to any small businesses and local governments affected by this amendment. The infrastructure for contacting the Justice Center, and establishing an Incident Review Committee, are already in place.

Minimizing Adverse Impact:

Department efforts to consider minimizing the impact of the amendments, and its consideration of alternatives to the amendments, are discussed in the "Alternatives" section of the Regulatory Impact Statement.

These amendments will not have an adverse impact on the ability of small businesses or local governments to comply with Department requirements, as full compliance would require minimal enhancements to present hiring and follow-up practices.

Consideration was given to including a cure period to afford adult home and enriched housing programs an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the Department's ability to enforce the regulations for violations could expose this already vulnerable population to greater risk to their health and safety.

Small Business and Local Government Participation:

The Department will notify all New York State certified ACFs by a Dear Administrator Letter (DAL) informing them of this Justice Center expansion of the protection of vulnerable people. Regulated parties that are small businesses and local governments are expected to be prepared to participate in required Justice Center activities on the effective date of this amendment because the staff and infrastructure needed for performance of these are already in place.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Of the forty-seven (47) current facilities that will fall under the purview of the Justice Center for the Protection of People with Special Needs (Justice Center), six (6) are located in rural counties, as follows: Allegany County, Cayuga County, Greene County, Genesee County, Monroe County and Rensselaer County. Of the 522 adult homes and enriched housing programs statewide, including those not under the purview of the Justice Center, 160 are in rural areas.

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

Reporting, recordkeeping and other compliance requirements are addressed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Other Compliance Requirements:

Compliance requirements are discussed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Professional Services:

There are no additional professional services required to comply with the proposed amendments.

Compliance Costs:

Cost to Regulated Parties:

Compliance requirements and associated costs are discussed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Economic and Technological Feasibility:

There are no changes requiring the use of technology. The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

Minimizing Adverse Economic Impact on Rural Area:

Department efforts to consider minimizing the impact of the amendments, and its consideration of alternatives to the amendments, are discussed in the "Alternatives" section of the Regulatory Impact Statement.

Rural Area Participation:

Of the forty-seven (47) current facilities that will fall under the purview of the Justice Center, six (6) are located in rural counties, as follows: Allegany County, Cayuga County, Greene County, Genesee County, Monroe County and Rensselaer County. The Department will notify all New York State-certified adult care facilities (ACFs) by a Dear Administrator Letter (DAL) informing them of this expansion of requirements to protect people with special needs. Regulated parties in rural areas are expected to be able to participate in requirements of the Justice Center on the effective date of this amendment.

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types, reporting to the Justice Center for the Protection of People with Special Needs (Justice Center), as opposed to the Commission on the Quality of Care and Advocacy for People with Disabilities, making public certain information as directed by the Justice Center and assisting with the investigation of new reportable incidents are expected to be completed by existing facility staff. Similarly, the need for a medical examination of the patient in the course of investigating reportable incidents is similarly not appreciably different from the current practice of obtaining such examination under such circumstances. Accordingly, the amendments should not have any appreciable effect on employment as compared to current requirements.

NOTICE OF ADOPTION

Disclosure of Quality and Surveillance Related Information

I.D. No. HLT-01-14-00027-A
Filing No. 1093
Filing Date: 2014-12-22
Effective Date: 2015-01-07

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of section 400.25 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2803 and 2805-t

Subject: Disclosure of Quality and Surveillance Related Information.

Purpose: To disclose identified nursing quality indicator information upon request to any member of the public.

Text or summary was published in the January 8, 2014 issue of the Register, I.D. No. HLT-01-14-00027-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.ny.gov

Assessment of Public Comment

The comment period ended on February 24, 2014, and the Department received one comment from the New York State Nurses Association (NYSNA).

Comment:

The NYSNA expressed opposition to the regulations as proposed. NYSNA's letter identified opposition to the proposal due to concerns that the proposed regulations were not written to apply to all Article 28 facility types, that the proposed form and timeliness of data disclosure was not consistent with the statute and allowed for the possibility of misrepresentation of true staffing and inclusion of non-direct care nursing staff hours in staffing indicator counts.

Response:

In response, the Department notes that the nursing quality indicators included in the proposed regulations have been determined to be valid and reliable in hospitals and nursing homes only and that Public Health Law § 2805 t only requires reporting of data "as specified by the commissioner by rule or regulation." See also, L. 2009, ch. 422, Governor's Approval Memo No. 18 ("The bill entrusts the Commissioner of Health with ample authority and responsibility to appropriately tailor its application. . . . For example, if the Commissioner, in consultation with relevant stakeholders, determines that certain measures are not appropriate for assessing nursing care quality in diagnostic and treatment centers that offer primary care, the Commissioner may exempt or limit their disclosure in regulation. I have confirmed with the sponsors that this is their understanding of the legislation [emphasis supplied]"). The Department will propose regulations to amend section 400.25, if necessary, if it identifies additional indicators it determines to be valid and reliable for Article 28 facilities.

In regards to NYSNA's concerns about the timeliness and form of data disclosure, the Department responds that the proposed regulations were based upon the standardized definitions, measurement and reporting of National Database of Nursing Quality Indicators (NDNQI) for hospitals and the Centers for Medicare and Medicaid Services (CMS) for nursing homes allowing for comparison of nurse sensitive indicators across facilities.

Although "productive hours" is not defined in the proposed regulations, the Department intends to include the definition of this term in an update to previously published implementation guidelines for PHL section 2805-t. The definition of productive hours is derived from that used by NDNQI and is consistent with NYSNA's desire to include only those hours devoted to direct patient care in the counting of nursing hours and staff.

Higher Education Services Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Adjustments to Income

I.D. No. ESC-01-15-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: This is a consensus rule making to amend section 2202.3 of Title 8 NYCRR. This rule is proposed pursuant to [SAPA § 207(3)], 5-year Review of Existing Rules.

Statutory authority: Education Law, sections 653, 655, 661 and 663

Subject: Adjustments to income.

Purpose: To delete incorrect references.

Text of proposed rule: Subdivision (d) of section 2202.3 is amended to read as follows:

(d) For the purposes of subdivisions (a) and (b) of this section, eligible attendance shall be full-time matriculated attendance in a program of post-secondary study which is approved for receipt of Federal[-guaranteed] student loans[, State-guaranteed student loans] or Federal basic educational opportunity grant program awards, except for institutions, such as military academies, where no student charges for tuition, or room and board are made.

Text of proposed rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Consensus Rule Making Determination

This statement is being submitted pursuant to subparagraph (i) of paragraph (b) of subdivision (1) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Notice of Proposed Rule Making seeking to amend section 2202.3 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR).

It is apparent from the nature and purpose of this rule that no person is likely to object to the adoption of the rule as written. Section 2202.3(d) provides for adjustments to income for students enrolled in a program of post-secondary study which is approved for the receipt of Federal-guaranteed student loans or State-guaranteed student loans. Pursuant to federal law, the origination of Federal-guaranteed student loans ceased as of July 1, 2010 and all loans are made under the Federal Direct Student Loan program. As a result, the reference to Federal-guaranteed student loans is outdated. This rule corrects this reference. In addition, the statute does not provide for State student loans. Therefore, this rule deletes this incorrect reference.

Consistent with the definition of "consensus rule", as set forth in section 102(11) of the State Administrative Procedure Act, HESC has determined that this proposal, which deletes two incorrect references, is non-controversial and, therefore, no person is likely to object to its adoption.

Reasoned Justification for Modification of the Rule

This statement is being submitted pursuant to subdivision (3) of section 207 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Notice of Proposed Rule Making seeking to amend section 2202.3 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR).

Section 2202.3(d) provides for adjustments to income for students enrolled in a program of post-secondary study which is approved for the receipt of Federal-guaranteed student loans or State-guaranteed student loans. Pursuant to federal law, the origination of Federal-guaranteed student loans ceased as of July 1, 2010 and all loans are made under the Federal Direct Student Loan program. As a result, the reference to Federal-guaranteed student loans is outdated. This rule corrects this reference. In addition, the statute does not provide for State student loans. Therefore, this rule deletes this incorrect reference.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (Corporation) Notice of Proposed Rulemaking seeking to amend section 2201.10 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it has no impact on jobs and employment opportunities. This rule deletes an outdated and incorrect reference to Federal-guaranteed student loans, which are no longer originated. This rule also deletes an incorrect reference to State-guaranteed student loans.

The Corporation has determined that this rule will have no substantial adverse impact on any private or public sector jobs or employment opportunities and therefore a full Job Impact Statement is not necessary.

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-32-14-00007-A

Filing Date: 2014-12-23

Effective Date: 2014-12-23

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amend the Standby Rate Provisions of the Authority's Service Tariff No. 100 applicable to its New York City Governmental Customers and Service Tariff No. 200 applicable to its Westchester Governmental Customers.

Statutory authority: Public Authorities Law, sections 1005(6) and 1005 (3rd undesignated paragraph)

Subject: Rates for the Sale of Power and Energy.

Purpose: To amend the Authority's Service Tariff Nos. 100 and 200.

Substance of final rule: The New York Power Authority's ("Authority") Notice of Proposed Rulemaking published on August 13, 2014 proposed to amend the Authority's Rider A - Standby Rate provisions contained in Service Tariff No. 100 ("ST 100") applicable to the New York City Governmental Customers and Service Tariff No. 200 ("ST 200") applicable to the Westchester Governmental Customers.

Based on staff's proposed rulemaking and subsequent staff review, the proposed changes were incorporated in ST 100 and ST 200. The revised tariffs will become effective with the December 2014 billing period.

POWER AUTHORITY OF THE STATE OF NEW YORK, Karen Delince, Corporate Secretary, 123 Main St., 11-P, White Plains, NY 10601, (914) 390-8085, (914) 390-8040 (fax), secretarys.office@nypa.gov

Final rule as compared with last published rule: Nonsubstantive changes were made in ST-100 Rider A, A, C, D and ST-200 Rider A, A, C, D.

Text of rule and any required statements and analyses may be obtained from: Karen Delince, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, New York 10601, (914) 390-8085, email: secretarys.office@nypa.gov

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-32-14-00019-A
Filing Date: 2014-12-23
Effective Date: 2015-01-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amend the Authority's Schedule of Rates, Service Tariff No. 1C ("ST 1C"), for the Sale of Firm Market Power applicable to its Market Power Customers.

Statutory authority: Public Authority's Law, section 1005(6)

Subject: Rates for the Sale of Power and Energy.

Purpose: To modify the Authority's market energy charge methodology to reflect actual NYISO charges incurred by the Authority.

Substance of final rule: The New York Power Authority's ("Authority") Notice of Proposed Rulemaking published on August 13, 2014 proposed to amend the Authority's Schedule of Rates for the Sale of Firm Market Power, Service Tariff No. 1C ("ST 1C"), applicable to its market power customers.

Based on comments received from one of the Customers and staff's analysis and recommendations, revisions consistent with those recommendations were incorporated in ST 1C. The revised tariff will become effective with the January 2015 billing period.

Power Authority of the State of New York, Karen Delince, Corporate Secretary, 123 Main St., 11-P, White Plains, NY 10601, (914) 390-8085, (914) 390-8040 (fax), secretarys.office@nypa.gov

Final rule as compared with last published rule: Nonsubstantive changes were made in II, III.A.2, III.B.1, III.B.7 and III.B.9.

Text of rule and any required statements and analyses may be obtained from: Karen Delince, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, New York 10601, (914) 390-8085, email: secretarys.office@nypa.gov

Revised Regulatory Impact Statement
A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis
A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis
A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement
A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-39-14-00009-A
Filing Date: 2014-12-23
Effective Date: 2015-01-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Revision in electric rates for the City of Sherrill.

Statutory authority: Public Authorities Law, section 1005(5) and (6)

Subject: Rates for the sale of Power and Energy.

Purpose: To maintain the financial and operational integrity of the retail electric system of the City.

Text or summary was published in the October 1, 2014 issue of the Register, I.D. No. PAS-39-14-00009-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Karen Delince, Power Authority of the State of New York, 123 Main Street - 11-P, White Plains, New York 10601, (914) 390-8085, email: secretarys.office@nypa.gov

Revised Regulatory Impact Statement
A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis
A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis
A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement
A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-39-14-00010-A
Filing Date: 2014-12-23
Effective Date: 2015-01-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Revision in electric rates for the Village of Tupper Lake.

Statutory authority: Public Authorities Law, section 1005(5) and (6)

Subject: Rates for the Sale of Power and Energy.

Purpose: To maintain the financial and operational integrity of the retail electric system of the Village.

Text or summary was published in the October 1, 2014 issue of the Register, I.D. No. PAS-39-14-00010-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Karen Delince, Power Authority of the State of New York, 123 Main Street - 11-P, White Plains, New York 10601, (914) 390-8085, email: secretarys.office@nypa.gov

Revised Regulatory Impact Statement
A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis
A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis
A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement
A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Rates for the Sale of Power and Energy

I.D. No. PAS-01-15-00012-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Increase the Fixed Costs Component of the Production Rates.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the Sale of Power and Energy.

Purpose: To recover the Authority's Fixed Costs.

Substance of proposed rule: The Power Authority of the State of New York (the "Authority") proposes to increase the Fixed Costs component of the production rates for its New York City Governmental Customers ("Customers"). Under the proposal, the Authority will increase the Fixed Costs component of the production rates in 2015 by $2.6 million or 1.9%. This increase is based on the Authority's Preliminary 2015 Cost-of-Service. The new production rates will become effective with the March 2015 billing period.

Text of proposed rule and any required statements and analyses may be obtained from: Karen Delince, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, New York 10601, (914) 390-8085, email: secretarys.office@nypa.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Rates for the Sale of Power and Energy

I.D. No. PAS-01-15-00013-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Increase in Production Rates.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the Sale of Power and Energy.

Purpose: To align rates and costs.

Substance of proposed rule: The Power Authority of the State of New York (the "Authority") proposes to increase the production rates for its Westchester County Governmental Customers ("Customers"). The Authority provides electricity to 103 Customers in Westchester County, including the County of Westchester, school districts, housing authorities, cities, towns and villages. Under the proposal, the 2015 production costs will increase by 8.00% when compared with the 2014 costs. The increase, which is based on a pro forma Cost-of-Service for 2015, is largely due to expected increases in energy prices for electricity purchased from the NYISO market to serve these customers. The new production rates will become effective with the March 2015 billing period.

Text of proposed rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, New York 10601, (914) 390-8085, email: secretarys.office@nypa.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Public Service Commission

NOTICE OF ADOPTION

Approving the Establishment of an Overlay for the 631 Area Code

I.D. No. PSC-22-14-00012-A
Filing Date: 2014-12-17
Effective Date: 2014-12-17

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 12/11/14, the PSC adopted an order addressing the petition of NeuStar, Inc. by establishing an area code overlay for the 631 area code.

Statutory authority: Public Service Law, section 97(2)

Subject: Approving the establishment of an overlay for the 631 area code.

Purpose: To approve the establishment of an overlay for the 631 area code.

Substance of final rule: The Commission, on December 11, 2014, adopted an order addressing the petition of NeuStar, Inc., in its role as the North American Numbering Plan Administrator, by establishing an area code overlay for the 631 area code to provide additional numbering resources in Suffolk County, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-C-0182SA1)

NOTICE OF ADOPTION

Approving UWNR's Petition for the Use of the Sensus FlexNet 510M and 520M Radio Transceivers

I.D. No. PSC-28-14-00013-A
Filing Date: 2014-12-17
Effective Date: 2014-12-17

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 12/11/14, the PSC adopted an order approving United Water New Rochelle's (UWNR) petition for the use of the Sensus FlexNet 510M and 520M radio transceivers.

Statutory authority: Public Service Law, section 89-d(1)

Subject: Approving UWNR's petition for the use of the Sensus FlexNet 510M and 520M radio transceivers.

Purpose: To approve UWNR's petition for the use of the Sensus FlexNet 510M and 520M radio transceivers.

Substance of final rule: The Commission, on December 11, 2014, adopted an order approving United Water New Rochelle's petition to allow the Sensus FlexNet 510M and 520M to be used in New York State to monitor water flow in revenue based applications, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-W-0225SA1)

NOTICE OF ADOPTION

Approving the Transfer of Ownership Interests in LEA

I.D. No. PSC-39-14-00013-A
Filing Date: 2014-12-17
Effective Date: 2014-12-17

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 12/11/14, the PSC adopted an order approving the petition of Lockport Energy Associates, L.P. (LEA), et al. for the transfer of ownership interests and its 200 MW cogeneration facility in Lockport, New York.

Statutory authority: Public Service Law, sections 5(1)(b), 70 and 83

Subject: Approving the transfer of ownership interests in LEA.

Purpose: To approve the transfer of ownership interests in LEA.

Substance of final rule: The Commission, on December 11, 2014, adopted an order approving the petition filed by Lockport Energy Associates, L.P. (LEA), LEA A4 LLC (A4), Lockport Power Cogeneration, LLC (Lockport Power), and LEA LP IV LLC (LEA LP) to transfer indirect ownership interests from Lockport Power and LEA LP to A4, a wholly-owned indirect subsidiary of Fortistar LLC, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(14-M-0381SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

State Universal Service Fund Disbursements

I.D. No. PSC-01-15-00014-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering whether to approve, deny, or modify in whole or in part the request of Edwards Telephone Company, Inc. for disbursements from the State Universal Service Fund.

Statutory authority: Public Service Law, sections 92 and 97

Subject: State Universal Service Fund Disbursements.

Purpose: To consider Edwards Telephone Company's request for State Universal Service Fund disbursements.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, the request of Edwards Telephone Company, Inc. to receive disbursements from the State Universal Service Fund (SUSF). In Case 09-M-0527, the Commission determined that any eligible incumbent local exchange carrier seeking SUSF support must first file a rate case and have that case resolved before they begin receiving new or increased financial support. The Commission will consider this request and other related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(14-C-0403SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

NYSEG Is Seeking Waivers from Certain Regulatory Requirements Contained in an Order Issued in Case 14-G-0197 on October 6, 2014

I.D. No. PSC-01-15-00015-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering whether to approve, modify, or reject, in whole or in part, a petition filed by the New York State Electric & Gas Corp. (NYSEG), seeking waiver of certain Commission regulations in connection with a licensing proceeding.

Statutory authority: Public Service Law, sections 4(1) and 66(1)

Subject: NYSEG is seeking waivers from certain regulatory requirements contained in an Order issued in Case 14-G-0197 on October 6, 2014.

Purpose: NYSEG is seeking waivers because it cannot certify the existing propane distribution system complies with certain regulations.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to approve, modify, or reject, in whole or in part, the letter petition filed on December 5, 2014, by New York State Electric & Gas Corporation, seeking waiver of the following regulatory requirements: 16 NYCRR § 255.193; 16 NYCRR § 255.363; 16 NYCRR § 255.604; 16 NYCRR § 255.285; and 16 NYCRR § 255.507, included in Ordering Clause No. 12 of the Commission's "Order Granting Certificate of Public Convenience and Necessity and Authorizing Exercise of a New Franchise," issued and effective October 6, 2014, in a licensing proceeding under Section 68 of the Public Service Law. The Commission may address other related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(14-G-0197SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

State Universal Service Fund Disbursements

I.D. No. PSC-01-15-00016-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering whether to approve, deny, or modify in whole or in part the request of Port Byron Telephone Company, Inc. for disbursements from the State Universal Service Fund.

Statutory authority: Public Service Law, sections 92 and 97

Subject: State Universal Service Fund Disbursements.

Purpose: To consider Port Byron Telephone Company's request for State Universal Service Fund disbursements.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, the request of Port Byron Telephone Company, Inc. to receive disbursements from the State Universal Service

Fund (SUSF). In Case 09-M-0527, the Commission determined that any eligible incumbent local exchange carrier seeking SUSF support must first file a rate case and have that case resolved before they begin receiving new or increased financial support. The Commission may approve, reject or modify this request, in whole or in part. It may also consider other related matters and may grant further or different relief than that sought.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-C-0402SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Reimbursement of Costs for Construction Under 16 NYCRR 230

I.D. No. PSC-01-15-00017-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering a petition by Morning View, LLC regarding reimbursement for costs related to construction by Niagara Mohawk Power Corporation d/b/a National Grid under 16 NYCRR 230.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Reimbursement of costs for construction under 16 NYCRR 230.

Purpose: To determine proper reimbursement for costs related to trenching and construction.

Substance of proposed rule: On November 1, 2014, Morning View, LLC (Morning View), submitted a petition requesting that the Commission order Niagara Mohawk Power Corporation d/b/a National Grid (NMPC) to reimburse Morning View for trenching work completed under an agreement between Morning View and NMPC, and for legal expenses incurred in trying to collect such costs from NMPC. The Commission is considering Morning View's petition and can grant, deny or modify, in whole or in part, the requested relief. The Commission can also determine whether there is a need for clarifying its policies under 16 NYCRR 230, including but not limited to, 230.2(d) Residential Applicant-Heating.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-M-0560SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

State Universal Service Fund Disbursements

I.D. No. PSC-01-15-00018-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering whether to approve, deny, or modify in whole or in part the request of Township Telephone Company, Inc. for disbursements from the State Universal Service Fund.

Statutory authority: Public Service Law, sections 92 and 97

Subject: State Universal Service Fund Disbursements.

Purpose: To consider Township Telephone Company's request for State Universal Service Fund disbursements.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, the request of Township Telephone Company, Inc. to receive disbursements from the State Universal Service Fund (SUSF). In Case 09-M-0527, the Commission determined that any eligible incumbent local exchange carrier seeking SUSF support must first file a rate case and have that case resolved before they begin receiving new or increased financial support. The Commission may approve, reject or modify this request, in whole or in part. It may also consider other related matters and may grant further or different relief than that sought.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-C-0405SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Rule 50 – Reliability Support Services (RSS) Surcharge

I.D. No. PSC-01-15-00019-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering a proposal filed by Niagara Mohawk Power Corporation d/b/a National Grid to make a change to the rates, charges, rules, and regulations contained in its Schedule for Electric Service P.S.C. No. 220.

Statutory authority: Public Service Law, section 66(12)(b)

Subject: Rule 50 – Reliability Support Services (RSS) Surcharge.

Purpose: To make a clarifying revision to Rule 50 – Reliability Support Services (RSS) Surcharge.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff amendment filed by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid or the Company) to make a clarifying revision to Rule 50 – Reliability Support Services (RSS) Surcharge, contained in P.S.C. No. 220 – Electricity. The RSS surcharge provides for recovery from customers of costs incurred by the Company, and approved by the Commission, for third-party services to ensure that local reliability needs are met. The RSS surcharge is subject to an annual reconciliation for any over or under collections from the previous year. National Grid proposes to revise Rule 50.2.2.3 to allow for a reconciliation at the end of the contract term if less than an annual period. The proposed filing has an effective date of March 26, 2015.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-E-0550SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Pilot Community Choice Aggregation Program

I.D. No. PSC-01-15-00020-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering a petition filed by Sustainable Westchester requesting an order approving a Pilot Community Choice Aggregation Program and directing transfer by utilities of certain customer information.

Statutory authority: Public Service Law, sections 5(1)-(2), 65(1)-(3), 66(1)-(3) and (5)

Subject: Pilot Community Choice Aggregation Program.

Purpose: To consider approval of a Pilot Community Choice Program and customer information transfer.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Sustainable Westchester requesting an order approving a Pilot Community Choice Aggregation Program and directing transfer by utilities of certain customer information. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-M-0564SP1)

Workers' Compensation Board

NOTICE OF ADOPTION

Annual Assessments on Employers

I.D. No. WCB-41-14-00004-A
Filing No. 1094
Filing Date: 2014-12-23
Effective Date: 2015-01-07

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Part 318 to Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 151, 141 and 117

Subject: Annual assessments on employers.

Purpose: Process for determining, publishing and collecting assessments.

Substance of final rule: The proposed regulation adds new Part 318 to comply with Chapter 57 of the Laws of 2013 which requires the Board to streamline the manner in which it collects its administrative and special fund assessments to one that will be consistent among the various categories of payers and will be based upon active coverage.

Section 318.2 states that the assessment rate will be established by November 1st annually and apply to policies effective on or before January 1st of the next calendar year.

Section 318.3 establishes that the rate will apply to standard premium and defines the expenses to be covered by the assessment rate.

Section 318.4 states that the rate established by November 1st of each year for the succeeding calendar year shall be applied to a base of standard premium as defined below.

Standard premium is defined as follows:

(a) Carriers and State Insurance Fund – For employers securing workers' compensation coverage via a policy issued either by an authorized carrier or the State Insurance Fund, standard premium shall mean the full annual value of premiums booked for each policy written or renewed during a specific reporting period as determined on forms prescribed by the Chair.

(b) Private and Public Self-Insured Employers – Standard written premium for self-insured employers shall be determined by applying payroll by classification codes to applicable loss cost rates. Loss cost rates for self-insured employers shall be furnished by the Chair based, in whole or in part at the discretion of the Chair, upon comparable rates applicable to carrier policies which may be adjusted for administrative expenses. To the extent there are no corresponding class codes for one or more classifications of payroll, the Chair shall establish an equivalent rate.

Estimated statewide premiums shall be determined by combining the standard premium for all employers.

Section 318.5 establishes that the assessment rate shall be a percentage of standard premiums and calculated as follows:

Total estimated annual expenses as defined in 318.3, Divided By, Total estimated statewide premiums as defined in 318.4.

The estimated statewide premiums may, where appropriate, reflect projected changes in overall premium levels that may result from loss cost rate changes approved by the Department of Financial Services.

Section 318.6 establishes that rate adjustments will be addressed as follows:

(a) If the rate established for any given year results in the collection of assessments which exceed the amounts described herein, the assessment rate for the next calendar year shall be reduced accordingly. However, the assessment rate for each calendar year shall ensure that the clearing account described in section 318.7 maintains a balance of at least ten percent of the annual projected assessments.

(b) If it appears that the rate established for any given year will not produce assessment revenue sufficient to meet all estimated annual expenses as described herein, the Board may make adjustments to the existing published rate prior to the beginning of the next calendar year. Any such mid-year rate adjustments must be published at least 45 days prior to becoming effective and will apply to policies with effective dates between the effective date of the adjusted rate through December 31 of that calendar year or until the Board issues a new rate, whichever is later.

Section 318.7 establishes that all assessment monies received shall first be deposited into a clearing account established for the purpose of receiving assessments. Assessment revenue will be applied pursuant to WCL § 151(8) in accordance with each then applicable financing agreement prior to application for any other purpose. Once any and all amounts required by applicable financing agreements have been met for the year, assessments will then be applied from the clearing account, at the discretion of the Chair, to the administrative and special fund expenses described herein.

Section 318.8 establishes that assessment should be remitted as follows:

(a) The assessment rate established by the Board shall apply to all employers required to secure compensation for their employees.

(b) Until such time as the Board can establish a direct employer payment process, the remittance to the Board of all required assessments shall be as follows:

1. For those employers obtaining coverage: (a) through a policy with the State Insurance Fund; (b) through a policy with an authorized carrier; (c) through a county self-insurance plan under Article V of the WCL; or (d) through a private or public group self-insurer; such assessment amounts shall be collected from the employer and remitted to the Board by the State Insurance Fund, carrier, county plan, or self-insured group. The State Insurance Fund, carrier, county plan, or self-insured group shall complete the reports identified in section 318.9 herein, apply the applicable assessment rate as established by the Board and timely remit both the report and the corresponding payment to the Board on the schedule set forth in paragraph (c) below.

2. For those private or public employers that self-insure individually, said employers shall pay assessment amounts directly to the Board. Such employers shall complete the report identified in section 318.9 herein, apply the applicable assessment rate as established by the Board and, timely remit both the report and the corresponding payment to the Board on the schedule set forth in paragraph (c) below.

(c) Both the report identified in section 318.9 below and the required assessment payment shall be remitted to the Board in accordance with the following schedule:

Assessments related to the quarter ending March 31 postmarked on or before April 30.

Assessments related to the quarter ending June 30 postmarked on or before July 31.

Assessments related to the quarter ending September 30 postmarked on or before October 31.

Assessment related to the quarter ending December 31 postmarked on or before January 31.

(d) If the above cited due dates fall on a weekend or holiday the remittances shall be due the next following business day.

(e) In addition at any time prior to March 31, June 30, September 30, or December 31, the Board may identify any employer that has refused or neglected to pay assessments pursuant to WCL § 50(3-a)(7)(b). In such instance the Board shall calculate a charge to be imposed on such employer in addition to the assessment required herein. Such charge shall be a percentage of the standard premium as defined herein and shall range from between 10 and 30 percent based upon: 1) the length of time the employer has been delinquent in its WCL § 50(3-a)(7)(b) assessment obligations; 2) the amount of the WCL § 50(3-a)(7)(b) assessment delinquency; and 3) the amount of the insolvent group self-insurance trust's obligations that remain unmet at the time of the calculation of the surcharge, the Board shall inform the employer's current provider of coverage of the neglect or delinquency. The employer's current provider of coverage shall collect and remit such additional surcharge in the manner provided for above. All monies recovered from the payment of such charge shall be credited to: 1) the employer's unmet obligations under the WCL; and 2) the group self-insurance Trusts' unmet obligations under the WCL.

Section 318.9 describes the required reports:

(a) The assessment payment remitted quarterly shall be accompanied by reports prescribed by the Chair. Depending upon whether the remitter is a carrier, the State Insurance Fund, private or public self-insured employer, or private or public group self-insured employer, these reports may contain but not be limited to: written premium; total payroll; payroll by classification; adjustments from prior periods; etc. Annual reports prescribed by the Chair may also be required.

(b) All such prescribed reports will require an attestation by an authorized representative that all information is true, correct and complete. A payer that knowingly makes a material misrepresentation of information related to assessments shall be guilty of a Class E Felony.

(c) To the extent that a payer is also required to report the information requested by this section, or substantially similar values, to other governmental entities including but not limited to state and federal agencies, then the information reported by the payer to the Board shall be consistent with the payer's reporting to other entities. To the extent that the payer's reporting to the Board is materially inconsistent with the payer's reports to other governmental entities, then the payer shall disclose such inconsistency in the reports submitted to the Board and supply an explanation for such inconsistency.

Section 318.10 establishes that, in the event of a carrier, the State Insurance Fund, a private or public self-insured employer, or a private or public group self-insured employer's failure to remit assessment payments and reports in accordance with the requirements contained herein the Board may undertake any or all of the following collection activities with respect to the assessments:

(a) Refer the matter to the Office of the Attorney General for commencement of a collection action;

(b) Withhold any and all payments to the carrier, the State Insurance Fund, private or public self-insured employer or private or public group self-insured employer including but not limited to special fund reimbursements, until such time as all assessments have been paid in full;

(c) The failure of a private or public self-insured employer or private or public group self-insured employer to timely remit assessments and required reports shall constitute good cause for the Board to revoke said self-insurers self-insured status.

In the event that a carrier, the State Insurance Fund, a private or public self-insured employer, or a private or public group self-insured employer has underpaid an assessment as the result of inaccurate reporting, such payer shall pay all overdue assessments in full within 30 days of notification by the Board and may be subject to interest at a rate of 9% annually on the unpaid amount. Further, in the event that it is determined that the payer knew or should have known that the reported information was inaccurate an additional penalty of up to 20% of the unpaid amount may be imposed by the Board against such carrier, the State Insurance Fund, private or public self-insured employers.

Section 318.11 establishes that on an annual basis in conjunction with the November 1 publication of the assessment rate, the Board will prepare a report which supports the assessment rate established for policies effective in the succeeding calendar year. Such report shall also be prepared in the event an assessment rate modification is required pursuant to Section 318.6. Such report will include a summary of the projections or estimates made in the development of the assessment rate including the expenses covered by the rate and underlying assessment base.

Section 318.12 establishes that the Chair may conduct periodic audits on employers, self-insurers, carriers and the State Insurance Fund concerning any information or payment related to assessments.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 318.1, 318.2, 318.8, 318.9 and 318.10.

Text of rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, 328 State Street, Office of General Counsel, Schenectady, NY 12305-2318, (518) 486-9564, email: regulations@wcb.ny.gov

Revised Regulatory Impact Statement

A revised Regulatory Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text clarify that assessments are imposed against employers but often remitted to the Board by the employer's insurance carrier. This change does not affect the meaning of any statements in the document.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis for Small Business and Local Governments is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not change the meaning of any provision and therefore do not change any statements in the document. The changes to the text clarify that assessments are imposed against employers but often remitted to the Board by the employer's insurance carrier. This change does not affect the meaning of any statements in the document.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not change the meaning of any provision and therefore do not change any statements in the document. The changes to the text clarify that assessments are imposed against employers but often remitted to the Board by the employer's insurance carrier. This change does not affect the meaning of any statements in the document.

Revised Job Impact Statement

A revised Statement in Lieu of Job Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not change the meaning of any provision and therefore do not change the statement that the rule making will not have an adverse impact on jobs. The changes to the text clarify that assessments are imposed against employers but often remitted to the Board by the employer's insurance carrier. This change does not affect the meaning of any statements in the document.

Assessment of Public Comment

The 45-day public comment period with respect to Proposed Rule I.D. No. WCB411400004 commenced on October 15, 2014, and expired on December 1, 2014. The Chair and the Workers' Compensation Board (Board) accepted formal written public comments on the proposed rule through December 5, 2014.

The Chair and Board received three written comments. These comments were reviewed and assessed. The comments are discussed below.

An attorney representing self-insured employers suggested a wording change to section 318.2(a) to remove "part of the standard" to avoid unintended tax consequences. The Board accepted this change.

A Safety Group insured by the State Insurance Fund suggested the elimination of multiple methodologies in applying the rate to payers. It suggests regulations should not be made permanent until a mechanism can be established to collect directly from employers. However the Board notes that the permanent nature of these regulations do not prohibit the Board from pursuing direct employer payment. In fact, the Board is in the midst of an extensive Business Process Reengineering. This will include the collection and review of various data elements previously not available which may support a direct employer collection of assessments. The Board has complied with the intent of the legislation by establishing one rate for all categories of payers. Based on a standard methodology of premium or premium equivalent for payers, the Board is confident that this methodology is as consistent as possible. Accordingly, the Board did not make any changes in response to this comment.

A comment from an association of insurance carriers requests that the following language be added to 318.1 and 318.9: "that are imposed upon and collected from all affected employers". The Board has accepted this change.

The same commenter also suggested changing the term "payer" to "remitter." The Board has accepted this change.

The same commenter requested that the Board change the language to have employers remit directly to the Board. As noted above, the permanent nature of these regulations do not prohibit the Board from pursuing direct employer payment. In fact, the Board is in the midst of an extensive Business Process Reengineering. This will include the collection and review of various data elements previously not available which may support a direct employer collection of assessments. Accordingly no change has been made in response to this comment. But changes to the process may occur in the future.

CHANGES TO THE REGULATION:

The Regulation that is being adopted contains the following insubstantial changes from the proposed rule published in the October 15, 2014, *State Register*:

- In section 318.1, "that are imposed upon and collected from all employers" has been added to the first sentence. That sentence now reads: "The regulations contained herein are intended to support the Board in fulfilling its legislative mandate to fund administrative costs and special fund payments that are imposed upon and collected from all affected employers provided for in the Workers' Compensation Law (WCL)."
- In section 318.1, in the second sentence, "payers" has been changed to "remitters."
- In section 318.2, "part of the standard" was deleted from the phrase "part of the standard premium." The sentence now reads: "The amounts collected and remitted to the Board for assessments will not be considered premium."
- In section 318.8, subdivision (b), the phrase "that are imposed upon and collected from all affected employers" has been added. Subdivision (b) now reads: "Until such time as the Board can establish a direct employer payment process, the remittance to the Board of all required assessments that are imposed upon and collected from all affected employers shall be as follows:"
- In section 318.9, "payer" was changed to "remitter" in six places.
- In 318.10, subdivision (c), "payer" was changed to "remitter" in two places.