

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.

Adirondack Park Agency

NOTICE OF ADOPTION

Emergency Projects

I.D. No. APA-05-15-00006-A
Filing No. 451
Filing Date: 2015-06-02
Effective Date: 2015-06-17

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

Action taken: Amendment of sections 572.22, 588.8; and addition of section 572.15 to Title 9 NYCRR.

Statutory authority: Executive Law, sections 804(9), 809(14) and (15)

Subject: Emergency projects.

Purpose: The primary of the proposed rule is to define when jurisdictional land use and development constitutes an emergency project.

Text of final rule: A new section 572.15 is added to 9 NYCRR to read as follows:

Section 572.15 Emergency Projects.

(a) *General.* This section provides the procedural requirements for the issuance of an emergency certification or an emergency recovery authorization for a project undertaken to address an emergency. No other requirements of this Subtitle shall apply to an emergency project. It is within the agency's discretion to determine whether a specific event or conditions constitutes an emergency and whether proposed land use or development is an emergency project.

(b) *Definitions used in this section.*

(1) *Emergency means:* (i) a specific event or condition that presents an immediate threat to life or property; or (ii) a specific storm event or calamity that has been declared to be an emergency by federal or state officials.

(2) *Emergency project means* land use or development that is immediately necessary for the protection of life or property and that would otherwise require a permit, order, or variance.

(3) *Emergency certification means* a written determination by the agency that an emergency exists or has existed and that an emergency project may be undertaken or has been undertaken to prepare for or mitigate the emergency.

(4) *Emergency recovery authorization means* a written determination by the agency authorizing an emergency project that is necessary for repair, remediation or recovery from an emergency as defined in subdivision (b)(1) of this section and that is not covered by an emergency certification.

(c) *Emergency Certification Procedures.* (1) To obtain an emergency certification, a project sponsor shall: (i) notify the agency with sufficient information to allow for an agency determination whether an emergency as defined in paragraphs (b)(1)(i) and (ii) of this section exists or existed and whether the project is an emergency project as defined in subdivision (b)(2) of this section; and (ii) obtain an emergency certification prior to undertaking an emergency project or as soon thereafter as practicable.

(2) The agency shall issue an emergency certification upon a determination that: (i) an emergency exists or existed; and (ii) the emergency project is limited in scope to the land use and development necessary to prepare for or mitigate the emergency. The agency shall have two business days from receipt of sufficient information to issue an emergency certification.

(3) The emergency certification shall include a description of the land use and development comprising the emergency project, and may include conditions to limit the timing and duration of the emergency project and its impact on any of the natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources of the Park.

(4) An emergency certification may only be issued by the executive director, deputy director – regulatory programs, and such other agency staff as the executive director shall designate in writing.

(d) *Emergency Recovery Authorization Procedures.* (1) A project sponsor proposing an emergency project under this subdivision shall notify the agency prior to undertaking the emergency project and provide the agency with the following information:

(i) a brief statement identifying the emergency, as defined in paragraph(b)(1) of this section that created the need for the emergency project;

(ii) a description of the proposed land use and development and why it is necessary for repair, remediation or recovery from an emergency;

(iii) documentation of existing conditions;

(iv) a location map;

(v) actions proposed to be taken to minimize environmental impacts; and

(vi) any additional information requested by the agency necessary for the issuance of an emergency recovery authorization.

(2) The agency shall issue an emergency recovery authorization for an emergency project upon a determination that: (i) the emergency project is directly related to an emergency as defined in paragraph (b)(1) of this section; (ii) the emergency project is limited in scope to the land use and development necessary to repair, remediate or recover from the emergency; and (iii) the emergency project will cause the least change, modification, disturbance, or damage to the environment as practicable. The agency shall have 5 business days to respond to a request for an emergency recovery authorization upon receipt of sufficient information.

(3) The emergency recovery authorization shall include a description of the land use and development comprising the emergency project and may include conditions to limit the timing and duration of the emergency project and its impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources of the Park.

(4) An emergency recovery authorization may only be issued by the executive director, deputy director – regulatory programs and such other agency staff as the executive director shall designate in writing.

(e) *Limitations.* (1) *The agency may modify or rescind an emergency certification or emergency recovery authorization if new information demonstrates that an emergency does not, or no longer, exists or that the emergency project is not, or no longer, necessary or appropriate.*

(2) *Any person who undertakes land use or development that otherwise would require a permit or variance from the Agency that is not described in an emergency certification or emergency recovery authorization issued to such person pursuant to this section may be subject to enforcement action.*

Subdivision (a) of section 572.22 of 9 NYCRR is amended to read as follows:

(a) Appeals of actions taken by *agency staff* [the deputy director – regulatory programs]. (1) Any project sponsor or variance applicant may appeal the following actions of the deputy director-regulatory programs to the agency:

(i) determinations whether a project or variance application is complete, and the contents of requests for additional information;

(ii) conditions precedent to the issuance of, and conditions imposed in, permits issued pursuant to the authority delegated in section 572.11 of this Part;

(iii) determinations pursuant to section 572.19(b) of this Part whether a request to amend a permit or variance involves a material change;

(iv) denial or conditional approval of requests to amend permits or variances, or requests to renew permits; *or*

(v) any other action with respect to a project or a variance pursuant to delegated authority.

(2) *Any person may appeal any determination made pursuant to section 572.15 of this Part declining to issue an emergency certification or emergency recovery authorization.*

Section 588.8 of 9 NYCRR is amended to read as follows:

This Title includes all regulations of the Adirondack Park Agency effective as of *June 17, 2015* [September 25, 2013].

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 572.15(b)(1), (d)(2) and 588.8.

Text of rule and any required statements and analyses may be obtained from: Jennifer McAleese Hubbard, Senior Attorney, Adirondack Park Agency, 1133 Rt. 86, Ray Brook, New York 12977, (518) 891-4050, email: APARuleMaking@apa.ny.gov

Revised Regulatory Impact Statement

A revised RIS is not required because the changes to the proposed rule are minor in nature and do not necessitate revision to the previously published RIS. The first change to the proposed rule deleted the word “natural” from the definition of emergency. The second change corrected a grammatical error. The final change is an amendment to 9 NYCRR § 588.8 updating the effective date of the Agency’s regulations.

Revised Regulatory Flexibility Analysis

A Statement in Lieu of Regulatory Flexibility Analysis was previously published. The two minor changes to the Rule, nor the amendment to 9 NYCRR § 588.8, do not necessitate the need for a revised Statement in Lieu of Regulatory Flexibility Analysis, nor does the Rule, as adopted, now require a Regulatory Flexibility Analysis. The Rule, as adopted, does not impose additional reporting, record keeping or other compliance requirements on small businesses and local governments.

Revised Rural Area Flexibility Analysis

A Statement in Lieu of Rural Area Flexibility Analysis was previously published. The two minor changes to the Rule, nor the amendment to 9 NYCRR § 588.8, do not necessitate the need for a revised Statement in Lieu of Rural Area Flexibility Analysis, nor does the Rule, as adopted, now require a Rural Area Flexibility Analysis. The Rule has the same effect whether the area is considered rural or not and the proposed rules impose no additional reporting, record keeping or other compliance requirements on small businesses, or on public or private entities in rural areas.

Revised Job Impact Statement

A Statement in Lieu of Job Impact Statement was previously published. The two minor changes to the Rule, nor the amendment to 9 NYCRR § 588.8, do not necessitate the need for a revised Statement in Lieu of Job Impact Statement, nor does the Rule, as adopted, now require a Job Impact Statement. The Rule, as adopted, is not expected to create any substantial adverse impact upon jobs and employment opportunities in the Adirondack Park.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

Assessment of Public Comment on Proposed Emergency Project Regulations

May 6, 2015

Staff assessment of public comment

Public comment on the proposed rule was limited to three commenters. The focus of the comments was primarily on how the proposed rule would be implemented by the Adirondack Park Agency (APA). Two municipal leaders from Essex County praised APA’s coordination during past emergencies, and asked about how the proposed rule might affect that. The Adirondack Council supported the rule overall, but made suggestions to ensure that environmental concerns would be adequately taken into account, and asked how APA would address any abuses of the rule. Staff do not believe that the comments raise issues that require changes to the proposed rule. A summary of specific comments and staff’s response follows.

Public hearing comments

1. Randall Douglas, Chairman, Essex County Board of Supervisors and Supervisor, Town of Jay.

Mr. Douglas stated that one concern is that, in an emergency, the need to act is immediate and there may not be time to do more than reach out to APA by telephone prior to taking steps to protect our properties and people.

Staff response:

Obtaining an emergency certification beforehand or providing telephone notice is recommended, but it is not required. The proposed rule does not require any prior notification to APA before a response action is taken to protect life or property. An emergency certification may be obtained before or after the response action is undertaken.

Mr. Douglas asked what would happen if APA and the town differ as to the nature or scope of a response action taken by the town to protect life or property in an emergency?

Staff response:

The proposed rule does not alter APA’s commitment to work closely with municipalities with respect to response actions taken during emergencies. APA recognizes the need for split-second decision-making by municipalities in emergencies, and the rule conforms to APA’s goal of ensuring that response actions are what is reasonably necessary to address the emergency, and not substantially more than what is needed.

Mr. Douglas noted that FEMA only reimburses costs incurred by municipalities, and that FEMA’s processing of reimbursement requests takes a long time, placing a financial burden on municipalities. In connection with emergency recovery authorizations, he asked APA to work with municipalities to take into account the financial burden the FEMA process places on them when deciding how quickly recovery authorization work must be done.

Staff response:

APA does and will continue to take into account all of the challenges faced by municipalities that are recovering from an emergency when working with municipalities with respect to recovery activities.

Mr. Douglas also added that he appreciated APA working with the DEC and DOT to streamline the application for emergency projects so Towns do not have to duplicate everything to the different agencies.

2. William Ferebee, Vice Chairman, Essex County Board of Supervisors, and Supervisor, Town of Keene.

Mr. Ferebee stated that in order for this process to work it is going to take education for them as supervisors, their DPW’s and highway departments, to know what to do in case of emergencies.

Mr. Ferebee asked if it will take a declared state of emergency to apply for emergency certifications and emergency recovery authorizations?

Staff response:

There are two types of emergencies that the rule applies to: (i) a specific event or condition that presents an immediate threat to life or property; or (ii) a specific storm event or natural calamity that has been declared to be an emergency by federal or state officials.

Mr. Ferebee asked how the Agency will make the public aware of what they should do in the case of an emergency on their property and what will APA do if people take emergency actions and are unaware of APA’s rule?

Staff response:

Staff are developing a flyer describing the proposed rule that can be shared with municipalities and property owners. In an emergency, staff will be prepared to advise property owners of the procedure and requirements to obtain an emergency certification and, if necessary, an emergency recovery authorization. Generally, property owners already call APA for advice if they believe an emergency exists and they need to take action. If time allows, that is the prudent course for property owners to take. The rule seeks to ensure that property owners do have a genuine emergency and that what is done in response is limited to what is needed to abate the emergency.

Mr. Ferebee asked who makes the decision whether the town has exceeded what is allowed by the rule for emergency response actions?

Staff response:

As noted above, APA is committed to working with municipalities with respect to response actions taken to address emergencies. Procedurally, the Deputy Director for Regulatory Programs makes that determination. His determination can be appealed to the Agency if the municipality disagrees with the determination that was made.

Mr. Ferebee agreed with Mr. Douglas that streamlining the application for emergency projects would lessen the burden on local governments.

Written public comment

The Agency received one public comment letter from the Adirondack Council (attached). Staff offer the following responses to the Council's specific comments:

1. Comment on "Emergency Certification" - The issuance of an emergency certification as defined in Section 572.15(c)(3) should be expanded to include some sort of notification by the APA when emergency project work has or will occur in highly sensitive areas that may need additional mitigation work or post-emergency remediation. If emergency projects will not require prior approval, applicants should be notified in some manner if those projects are occurring in areas that will clearly need additional post-response attention once lives and property are secured and safe.

Staff response:

Response work under an emergency certification will likely involve shoreline and/or wetlands, so there will always be the potential that post-response remediation will be necessary and APA will make that point clear in the certification. APA will coordinate with other agencies and with the municipalities and/or property owners involved to obtain any necessary post-response remediation work. The proposed Emergency Recovery Authorization may be used for these purposes.

2. Comment on "Emergency Recovery Authorization Procedures": As defined in 572.15(d)(v), should be expanded to include not only actions that need to be taken to minimize environmental impacts, but also post-response recommendation that address any large scale environmental impacts that occur as a result of the emergency work. These recommendations do not need to be binding but should serve at least as an educational component to the Authorization.

Staff response:

One of the primary uses of emergency recovery authorizations will be to remediate environmental impacts related to an emergency action that was undertaken. "Minimization of impacts" in 572.15(d)(1)(v) relates to limiting the impacts of any remediation work as it is undertaken.

3. Comment on "Limitations": Section 572.15(e)(2) needs to clarify what enforcement action would occur if work is conducted that would have otherwise needed a permit or variance or fails to meet the criteria as an approved emergency project. After-the-fact approval places a higher burden on the staff to ensure that work that would fall outside the emergency regulation definitions is appropriately handled.

Staff response:

This section is intended to provide notice that abuses of the "emergency project" rule may be subject to enforcement action. As a practical matter, staff expect that most issues that arise involving an emergency will be resolved cooperatively. Whether and when enforcement action is appropriate will depend on the specific facts and circumstances of a given situation. Any exercise of enforcement authority will be consistent with existing APA enforcement guidelines and practice.

Department of Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Employer Reporting — Definition of Full Day Worked for Certain Employees Who Contract for Other Than a 5 Day Standard Work Week

I.D. No. AAC-24-15-00004-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 315.3(b)(4) of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11, 34, 311 and 334

Subject: Employer reporting — definition of full day worked for certain employees who contract for other than a 5 day standard work week.

Purpose: To define full day worked for certain employees who contract for other than a 5 day standard work week.

Text of proposed rule: Section 315.3(b)(4) is amended to read as follows:

(ii) A full day worked shall be any day on which the employee performs paid service for at least the standard number of hours required for the position in which such service is rendered. In no event shall less than six hours be considered to be a full day. *For full time employees performing services pursuant to a collective bargaining agreement or contract that provides for other than a five day standard work week paid at straight time, an employer may report them at full time per their payroll cycle, provided the cumulative number of hours equal at least 120 hours a month. A full day worked for such employees shall be a minimum of six hours of accumulated time worked and paid at the straight time rate. The minimum number of hours which shall be reported as days worked, for the purpose of reporting preliminary credit, for a full year of service credit for such employees is 1,560 hours.*

(vii) [In the case of an officer serving in an elective office, as to that office an employer may consider such factors as the official duties of the office, and the need to be available to the public, outside normal working hours, for the purpose of reporting days worked.

(viii) In establishing the number of days worked for elected/appointed officials, a record of their activities for a sample month is an acceptable alternative for the maintenance of an actual time record. If an employer adopts the sample month procedure, a sample month for each elected and/or appointed officer must be submitted to the governing board. The governing board shall review the sample month record submitted and establish the standard work day (minimum of six hours per day) for the position, and the number of days worked to be reported.

(ix) A full day worked for employees of the New York State Legislature shall be a minimum of six hours of accumulated time worked and the total number of days worked by such employees for the purpose of employer reporting shall be determined based on the cumulative number of hours worked in a calendar year. The number of hours which shall be reported as days worked, for the purpose of reporting preliminary credit, for a full year of service credit for employees of the State Legislature is 1,560 hours.

Text of proposed rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

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 is a consensus rulemaking proposed for the sole purpose of defining a full day worked for certain full time employees. This amendment relates to the definition of a full day worked for certain full time employees and it has been determined that no person is likely to object to the adoption of the rule as written.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reporting Requirements for Elected and Appointed Officials

I.D. No. AAC-24-15-00005-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 315.4 of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11 and 311

Subject: Reporting requirements for elected and appointed officials.

Purpose: To update the reporting requirements for elected and appointed officials.

Text of proposed rule: § 315.4 Additional reporting requirements for elected or appointed officials [of] who work for a participating employer of the Retirement System and are required to be reported to the Retirement System.

(a) Record of Work Activities.

(i) Except as otherwise provided in this subdivision, [an] any elected or appointed official who is not paid hourly or does not participate in an employer's time keeping system that consists of a daily record of actual time worked and time charged to accruals, shall record his or her work activities for a period of three consecutive months. *The elected or ap-*

pointed official should extend the period of his or her record of work activities by the amount of time utilized for vacations, illness, holidays or other reasons during the three-month period. [Such requirement shall not apply to any elected or appointed official who is not a member of the Retirement System nor to any elected or appointed official whose employer maintains a daily record of actual time worked.] *The record of work activities must represent months that are not unusually slow or busy. If a position is seasonal in nature, the record of work activities should be kept for an extended period of up to twelve months to capture an accurate account of work activities*

In recording the description of work activities, such elected or appointed official shall include the start and end time of each activity performed. The elected or appointed official may also include [time] activities performed outside the normal working hours that require his or her attention to attend to official duties, including responding to an emergency, attending an employer sponsored event or meeting with or responding to members of the public on matters of official business. *During a period that an elected or appointed official is required to be on-call, he or she may only record the time actually spent performing a work-related activity. The elected or appointed official may not include activities that would not be considered work-related such as attending electoral or campaign events, socializing after town board meetings or attending a candidates' forum.*

The elected or appointed official's initial three-month record of work activities shall be completed within 150 days of [taking] commencing a new or subsequent term of office, or upon joining the Retirement System, on or after August 12, 2009. The elected or appointed official must sign the record of work activities attesting to its accuracy and submit it [and shall be submitted by such official] to the secretary or clerk of the governing board within [180 days of taking office] 30 days of completion. [Such record of activities shall be accepted by such secretary or clerk as submitted without alteration thereof. An elected or appointed official who has prepared a record of activities pursuant to this subdivision for a previous term, may certify in writing to the governing board within 180 days of taking office that his or her duties, responsibilities and hours have not substantially or materially changed. A record of work activities and any certification based upon such record shall not be valid for more than eight years from the date of the taking of office for which the record of activities was initially maintained.] Each such record of work activities and any subsequent recertification shall be retained by the employer for a period of at least [ten] thirty years and full and complete copies thereof shall be provided to the State Comptroller upon his or her request. *A record of work activities shall not be valid for more than eight years from the date it was initially maintained. If the hours worked have not substantially or materially increased or decreased during the eight year period, the elected or appointed official may certify to such in writing to the governing board in lieu of maintaining a new record of work activities. The elected or appointed official must submit this certification to the governing board within 180 days of taking a subsequent term of office. . If the hours worked have substantially increased or decreased during the eight year period, the elected and appointed official must prepare, sign and submit a new record of activities.*

(ii) In the event the elected or appointed official or the employer determines the initial recording of work activities for a period of three consecutive months is not representative of the average number of hours worked by the elected or appointed official, he or she [may] must record work activities during the same calendar year for an alternative period of three consecutive months which is representative of the average number of hours worked by such official. Such [alternate] record of work activities shall be signed by such elected or appointed official and submitted to the secretary or clerk of the governing board within thirty days of the completion of the record.

The failure of an elected or appointed official to record, sign and submit a record of work activities within the required time frame shall result in the suspension of service crediting and Retirement System membership benefits. The suspension of service crediting will remain in effect until such time as the elected or appointed official completes a record of work activities that complies with the requirements of this regulation and submits it to the secretary or clerk of the governing board. The record of work activities must be submitted to the secretary or clerk prior to the elected or appointed official ending service in that title.

(b) Completion of the Standard Work Day and Reporting Resolution.

In addition to the reporting requirements set forth in subpart 315.3 of this Part, and for the sole purpose of reporting days worked to the Retirement System, the governing board of a participating employer of an elected or appointed official shall establish, by resolution, a standard work day for each elective or appointive office or position using the *Standard Work Day and Reporting Resolution form provided by the Retirement System or a form or format approved by the Retirement System. Such Standard Work Day and Reporting Resolution shall indicate (i) the title of the*

position; (ii) the first and last name of the elected or appointed official holding the position; (iii) the last four digits of the Social Security Number of each elected or appointed official; (iv) the Registration Number of each elected or appointed official; (v) the number of hours prescribed as a standard work day equal to no fewer than six hours nor more than eight hours for each such elective or appointed office or position; [(ii)] (vi) the full month, day and year of the commencement and expiration of the term for each such office or position. ; (iii)] For each elected or appointed official who is not paid hourly or does not participate in an employer's time keeping system that consists of a daily record of actual time worked and time charged to accruals and who has submitted a record of work activities pursuant to paragraph (i) of subdivision (a) of this section, the employer shall indicate the average number of days worked per month in the Resolution. In the event that the [employer maintains an actual daily record of time worked for the elected or appointed official or that the] official [holding the office] has not recorded and submitted to the secretary or clerk of the governing board his or her record of work activities for a period of three consecutive months the employer shall so indicate in the Resolution]; and (iv) for each elected and appointed official who has submitted a record of work activities pursuant to paragraph (i) of subdivision (a) of this section, the total number of days per month to be reported based on such record of work activities].

The governing board shall determine whether activities listed on the record of work activities are official duties of the position. Activities that do not consist of official duties as described in paragraph (i) of subdivision (a) of this section are to be excluded from the calculation of the average number of days worked per month to be listed on the Standard Workday and Reporting Resolution [For the purpose of determining days worked, no fewer than six hours nor more than eight hours shall be established as a full-time standard work day.] Such Standard Work Day and Reporting Resolution [resolution] shall be adopted [no later than] at the first regular meeting held after a record of work activities has been submitted [180 days following commencement of the term of office and shall be applicable to employers whose elected and appointed officials are members of the Retirement system and are reported to the Retirement System by the employer]. In the event an elected or appointed official submits [an alternate] a new record of work activities pursuant to Paragraph (ii) subdivision (a) of this section, the governing board [may] must pass an additional resolution for that individual amending the [maximum total number of] average number of days worked per month [that will be reported for such official] based on such record of work activities [and directing the appropriate personnel to submit an adjustment report amending the number of days previously reported to the Retirement System].

(c) Standard Work Day and Reporting Resolution: Filing and Posting Requirements.

The Standard Work Day and Reporting Resolution [resolution] required by subdivision (b) of this section shall be prominently posted on the employer's website for a minimum of thirty days or, in the event the employer does not maintain a website available to the public, such [resolution] Standard Work Day and Reporting Resolution shall be posted on the official sign-board or at the main entrance to the office of the clerk for the municipality or similar office of the employer for a minimum of thirty days]. *After the thirty day posting period, the Standard Work Day and Reporting Resolution shall be made available either through the website or upon request. The elected or appointed official's Social Security Number (last four digits) and Registration Number must be omitted from the copy of the Standard Work Day and Reporting Resolution that is publicly posted. A certified copy of the Standard Work Day and Reporting Resolution [] and an affidavit of posting shall be filed by the secretary or clerk of the governing board with the Office of the State Comptroller within [45] 15 days [of the adoption of the resolution] after the public posting period has ended. The failure of the governing board to adopt such Standard Work Day and Reporting Resolution [resolution] shall result in the suspension of service crediting and Retirement System membership benefits for the elected or appointed official until such time as the [resolution] Standard Work Day and Reporting Resolution is adopted, posted and filed with the Comptroller. In the event the governing board submits an additional Standard Work Day and Reporting Resolution [resolution] amending the [maximum total] average number of days worked per month [that will be reported] for an elected or an appointed official pursuant to subdivision (b) of this section, such additional [resolution] Standard Work Day and Reporting Resolution shall be subject to the posting and filing requirements set forth in this subdivision.*

(d) Reporting Days Worked on the Monthly (Quarterly/Semi-Annual/Annual) Report.

Once a Standard Work Day and Reporting Resolution is passed, the average number of days worked per month listed on the Standard Work Day and Reporting Resolution must be provided to the individual(s) responsible for reporting days worked to the Retirement System on the

employer's behalf. These individual(s) must ensure that the days worked reported on the Standard Work Day and Reporting Resolution are accurately converted to correspond with the official's payroll frequency and recorded on the report submitted to the Retirement System.

In the event that the report submitted to the Retirement System does not reflect the average days worked per month documented on a Standard Work Day and Reporting Resolution, then retroactive adjustments must be submitted for the period covered by the corresponding record of work activities.

A record of work activities submitted by an elected or appointed official, pursuant to section 315.4, should be used as the basis for his or her days worked reported for prior terms served in the same title, if no record of work activities was submitted for the prior terms.

Text of proposed rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

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 is a consensus rulemaking proposed for the sole purpose of clarifying and updating the additional reporting requirements for elected and appointed officials. This amendment relates to clarifying the additional reporting requirements for elected and appointed officials and it has been determined that no person is likely to object to the adoption of the rule as written.

Office of Children and Family Services

NOTICE OF ADOPTION

Implementation of the Federal Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183)

I.D. No. CFS-11-15-00011-A

Filing No. 449

Filing Date: 2015-06-02

Effective Date: 2015-09-01

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

Action taken: Addition of section 441.25; and amendment of sections 428.3, 428.5, 428.6, 428.9, 430.11, 430.12, 431.8, 443.2 and 443.3 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f); and L. 1997, ch. 436

Subject: Implementation of the federal Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183).

Purpose: Implementation of the federal Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183).

Substance of final rule: The additions of 18 NYCRR 428.3(i) and 428.6(d) and the amendment to 18 NYCRR 430.12(c)(2)(i)(a) require that the Family Assessment and Service Plan be developed in consultation with a child in foster care who is 14 years of age or older, and at the option of the child, with up to two members of the "case planning team" who are chosen by the child and who are neither the child's foster parent(s), case manager, case planner nor caseworker. The agency with case management responsibility would have the ability to reject an individual selected by the child to be on the case planning team if there is good cause to believe that the individual would not act in the child's best interests. One individual selected by the child could be designated as the child's advisor and could advocate with respect to the application of reasonable and prudent parenting.

The amendments to 18 NYCRR 428.5(c) and 428.9(c) address the P.L. 113-183 requirements to what the agency must document for submission at each permanency hearing where APPLA is the requested permanency planning goal. This includes a demonstration of intensive, ongoing and unsuccessful efforts to secure an alternative permanency plan to APPLA.

The amendment to 18 NYCRR 428.6(c) requires that a case plan for a

child in foster care who is 14 years or older include a document that describes the rights of the child concerning such matters as education, documents and the "right to stay safe and avoid exploitation". In addition, the case plan must contain an acknowledgment executed by the child that the child was provided with a copy of the rights and that the rights were explained to the child. Also for a child in foster care who has attained 14 years of age, the case plan must include a written description of the programs and services which will help the child prepare for the transition from foster care to successful adulthood.

The amendment to 18 NYCRR 428.9(b)(1) requires that each child in foster care 14 years of age or older be a participant in their case consultation, as well as the two members of the case planning team that were chosen by the child, if applicable.

The amendment to 18 NYCRR 430.11(c)(4) expands the relative identification and notification requirements involving a child removed from home to include all parents of a sibling of the child where such parent has legal custody of such sibling.

The amendments to 18 NYCRR 430.12(c)(2)(i)(d) address the requirement that the child's service plan address the steps taken by the authorized agency to see that the child's foster parents or child care facility are following the reasonable and prudent parent standard and to ascertain whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities, including consulting with the child.

The amendment of 18 NYCRR 430.12(f)(1)(i) raises the age for establishing the permanency goal of another planned living arrangement (APPLA) from 14 to 16 years of age.

The amendment to 18 NYCRR 430.12(k) changes the age at which the child receives a copy of any consumer report on them from ages 16 and over to ages 14 and over. The child must continue to receive these reports until the child is discharged from foster care.

The amendment to 18 NYCRR 430.12(1) adds additional documents to the medical and educational records that children in foster care are required to receive when they are discharged from foster care. The regulation applies to children who have been in foster care for six or more months and who are leaving foster care by reason of attaining the age of 18 years or older. Agencies are required to provide each youth exiting foster care at age 18 or older with an official or certified copy of their United States birth certificate, social security card, medical records, health insurance information and state issued ID card (or driver's license), if eligible to receive such documentation.

The amendments to 18 NYCRR 431.8(b)(3) and 431.8(h) address protocols for locating and responding to children who run away from foster care; including determining and documenting in the child's case record the primary reasons that contributed to the child running away or otherwise being absent without consent, and responding to those factors in the child's current and subsequent foster care placements. Upon return to care, the child will also have to be screened for sex trafficking as defined in Federal law. In addition, the regulations implement the requirement that agencies report the absence immediately, and in no case later than 24 hours after receiving information on missing or abducted children or youth, to the law enforcement authorities for entry in to the National Crime Information Center (NCIC) database of the Federal Bureau of Investigation, and to the National Center for Missing and Exploited Children (NMEC). This standard applies to all children in foster care and to children for whom the social services district has an open services case or supervisory responsibility, which includes children who have not been removed from their home.

The amendment to 18 NYCRR 431.8 (3)(iii) implements the requirement that an agency who receives information that a child in foster care or whom the social services district has an open services case or supervisory responsibility of, has been identified as a sex trafficking victim, as defined by applicable federal law, must immediately and in no case later than 24 hours after receiving the information report the child to law enforcement.

The addition of 18 NYCRR 441.25 addresses the new reasonable and prudent parent standard requirements that must be applied by foster parents and child care facility staff. They include the knowledge and skills relating to the reasonable and prudent parent standard for the participation of the foster child in age or developmentally appropriate activities. The regulation requires that each child care facility have on-site presence of at least one person who is designated to be the caregiver authorized to apply the reasonable and prudent standard to decisions involving the foster child's participation in these activities.

The amendment to 18 NYCRR 443.2(e) (1) reflects the training requirement of the reasonable and prudent parent standard for foster parents. The training must include knowledge and skills relating to the child's developmental stages of cognitive, emotional, physical and behavioral capabilities and the skills relating to decision making.

The amendment to 18 NYCRR 443.3(b)(1) adds to the agreement a foster parent must execute to include the foster parent will apply the reasonable and prudent parent standard referenced in the new 18 NYCRR 441.25.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 428.5, 428.6 and 431.8.

Text of rule and any required statements and analyses may be obtained from: Public Information Office, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 473-7793, email: info@ocfs.ny.gov

Revised Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its powers and duties pursuant to the provisions of the SSL.

Section 34(3)(f) of the SSL requires the Commissioner of OCFS to establish regulations for the administration of public assistance and care within the State.

2. Legislative objectives:

The regulations implement Federal statutory changes to Title IV-E of the Social Security Act (SSA) due to the enactment of the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183) on September 29, 2014. The Act's intent is to prevent child sex trafficking and to improve the lives of youth in foster care. In addition to adding requirements regarding the identification, documentation, and response to child sex trafficking victims, or those at risk of becoming victims, within the child welfare system, this law affects many different areas of child welfare; including empowering children age 14 and older in the development of their own case plan and transition plan for a successful adulthood, encouraging the placement of children in foster care with siblings, improving another planned permanent living arrangement as a permanency option locating and responding to children who run away from foster care, and supporting normalcy for children in foster care and congregate care.

OCFS is the single state agency responsible for the administration of the Title IV-E foster care, adoption assistance and kinship guardianship assistance programs in New York, along with local departments of social services. The Act's amendments to Title IV-E of the SSA require amendments to New York's Title IV-E State Plan. OCFS is responsible for the preparation and submission of Title IV-E State Plan amendments.

3. Needs and benefits:

The regulations implement P.L. 113-183 by making conforming changes to New York State regulations. The amendments are necessary for New York to continue to have a compliant Title IV-E State Plan which is a condition for New York to receive federal funding for foster care, adoption assistance and the administration of those programs. New York State through an amendment to its Title IV-E State Plan will have to demonstrate to the federal Department of Health and Human Services that it has implemented the various provisions of the Act by the effective date of the individual provisions. The provisions addressed by the regulations must be in effect by September 29, 2015 in order for New York to continue to have a compliant Title IV-E State Plan. The regulations will take effect on September 1, 2015 to correspond to the effective date of statutory changes to the Family Court Act enacted by Part L of Chapter 56 of the Laws of 2015 that implemented several requirements of the Act.

The regulations will enhance permanency of children in foster care by expanding the involvement of the children in permanency planning and in the preparation for final discharge.

4. Costs:

Approximately \$571 million of Title IV-E funding is at risk if New York State fails to comply with the new requirements of the federal Preventing Sex Trafficking and Strengthening Families Act.

An estimated State operation cost of approximately \$1.6 million in personal and non-personal services is anticipated for the implementation of the regulations to comply with the federal Act. This estimate covers the cost of:

- Modifications to CONNECTIONS, Data Warehouse Database, and the Juvenile Justice Information System (JJIS).
- Additional personnel for the Bureau of Research, and Bureau of Policy Analysis needed to implement the necessary changes including mandated federal reporting requirements.
- Modifying existing training materials and the creation of new training tools and modules.

An estimated \$5.6 million in statewide expenditures could be realized by the local departments of social services to implement the requirements of the Preventing Sex Trafficking and Strengthening Families Act. This includes, but is not limited to:

- Additional data entry needs due to federally mandated reporting requirements.
- Providing consumer reports to youth in foster care, age 14 and 15, and resolving any inaccuracies in the reports.
- Providing youth age 18 years and older, who are being discharged to their own care and who have been in foster care for at least six months, with either a driver's license or non-driver's identification card; and

- The cost associated with the implementation of reasonable and prudent parent standard due to the increase in activity participation by children and youth in foster care.

The costs identified for local departments of social services would be supported out of the Foster Care Block Grant.

5. Local government mandates:

As mandated by federal law, the regulations impose additional mandates on social services districts. The regulations expand the content of the training of certified and approved foster parents on how to apply the reasonable and prudent parent standard to decisions involving the child's participation in age or developmentally appropriate activities. The regulations expand current standards relating to children in foster care who are absent from their placement without permission. The social services district or voluntary authorized agency will be required to complete a screening of the child upon return to determine if the child is a possible sex trafficking victim. In addition, social services districts or voluntary authorized agencies will be required to notify law enforcement authorities immediately, and in no case later than 24 hours of receiving information that a child in the placement, care or supervision of the social services district is missing, and/or identified as being a sex trafficking victim, as defined by applicable federal law. Children who are missing must be entered by law enforcement into the National Crime Information Center database of the Federal Bureau of Investigation and the social services district or voluntary authorized agency must make a report to the National Center for Missing and Exploited Children.

Within 30 days of the removal of a child from his or her home, the social services district will be expressly required to notify all parents of a sibling of the child where such parent has legal custody of such sibling. When a child, 16 or older, has a permanency goal of APPLA the agency with case planning responsibility will be required to demonstrate the intensive, ongoing and unsuccessful efforts to secure an alternative permanency plan. The child's permanency plan will have to address the steps taken by the agency to see that the child's foster parents or child care facility are following the reasonable and prudent parent standard and to ascertain whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities. In addition, the agency will be required to provide to any child in foster care who is 14 years of age or older a document that describes the rights of the child concerning such matters as education, documents and the "right to stay safe and avoid exploitation", and document receipt of such list in the child's case record. Also, for a child in foster care who has attained 14 years of age, the case plan must include a written description of the programs and services which will help the child prepare for the transition from foster care to successful adulthood. Social services districts will be required to provide all children in foster care upon attaining the age of 14 with a copy of any consumer reports on them and continue to provide them until the child is discharged from foster care. When a youth who has been in foster care for six or more months and exits foster care because of attaining age 18 or older, the agency will be required to provide the youth with an official or certified copy of their United State birth certificate, social security card, Medical records, health insurance information and state issued ID card (or driver's license), if the child is eligible to receive such documents.

6. Paperwork:

The requirements imposed by the regulations will be recorded in CONNECTIONS.

7. Duplication:

The regulations do not duplicate other state or federal requirements.

8. Alternatives:

No alternative approaches to implementing the changes to regulation were considered. These amendments are adopted to implement the Federal law P.L. 113-183.

9. Federal standards:

The regulations comply with applicable federal standards. Implementation is required for New York to maintain compliance with federal Title IV-E standards. Failure to do so would jeopardize continued receipt of federal funding for foster care, adoption assistance and kinship guardianship assistance.

10. Compliance schedule:

Compliance with the regulations must begin effective September 1, 2015.

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

Changes made to the last published rule do not necessitate revisions to the previously published regulatory flexibility analysis, rural area flexibility analysis and job impact statement.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Office of Children and Family Services (OCFS) received comments from the organization representing child caring agencies in New York State, two voluntary authorized agencies, a provider of services to trafficked youth and families and the New York City Administration for Children's Services. Comments are organized by category and addressed accordingly.

A. Bill of Rights [18 NYCRR 428.6(c)]

A question was asked whether OCFS will be issuing a new document or an addition to the bill of rights from the 2014 Information letter issued by OCFS to comply with the requirements of the federal Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183).

OCFS will be issuing a new policy release on this subject. The regulation was not changed.

A question was asked whether OCFS will issue a more age-appropriate version of the bill of rights for staff to be able to use with younger children or those who would struggle to read or understand the document as it is currently written.

OCFS will consider this comment in regard to its future policy release. The regulation was not changed.

A comment was made that OCFS should develop a parallel Bill of Responsibilities for older youth.

OCFS will review the recommendation. The regulation was not changed.

B. Children Absent without Consent [18 NYCRR 431.8]

A comment was made that OCFS should provide clearer language and definition of "absent without consent" because AWOL can be misleading and perhaps inappropriate. A suggestion was also made that OCFS provide further guidance to staff who will need to determine and document the primary factors that contributed towards a child running away or being absent without consent.

OCFS will provide the recommended guidance in a future policy release. The regulation was not changed.

A comment was made that the timeframes regarding when information must be reported should be clarified and consistent for all categories of youth.

OCFS will make a clarification to the regulation to apply the same standard in the proposed regulation for sex trafficked youth to all of the categories of youth referenced in the regulation. The revision will not expand the time period for which notification must be made.

A request for clarification was made on whether the agency should report the child to law enforcement as though reporting a complaint, or whether they are supposed to report knowledge of a missing child's status as a trafficking victim as additional information to law enforcement.

OCFS will review the request in regard to future policy releases. The regulation reflects the standards set forth in the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183). The regulation was not changed.

A comment was made that voluntary authorized agencies should be able to exercise sound judgment, based on presenting information to determine when it is appropriate to report the absence of a child from foster care to the National Center for Missing and Exploited Children.

OCFS will address this comment in a future policy release. The regulation reflects the standards set forth in the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183). The regulation was not changed.

A comment was made that staff of agencies should be provided with further guidance on determining and documenting the primary factors as to why a foster child is absent without consent.

OCFS will consider this comment in regard to future policy releases. The regulation was not changed.

A question was asked whether voluntary authorized agencies will be provided with an appropriate screening tool to determine whether the child was a sex trafficking victim.

OCFS will address this issue in a future policy release. The regulation was not changed.

A comment was made that voluntary authorized agencies will need more guidance in terms of reporting requirements and will need to understand the liability they will be exposed to around identifying and treating victims of sex trafficking.

OCFS will address this comment in a future policy release. The regulation was not changed.

C. The Reasonable and Prudent Parenting Standard [18 NYCRR 428.5, 441.25, 443.2 and 443.3]

A comment was made that the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183) addresses the issue of liability for caregivers when a child participates in an approved activity and the caregiver approving the activity acts in accordance with the reasonable and prudent parent standard and that the proposed regulations did not address the subject.

OCFS will address the subject of liability in future policy releases. OCFS is waiting for guidance from the federal Department of Health and Human Services on this subject and once it received, OCFS will pass on such guidance. The regulations were not changed.

A question was asked whether caregivers are required or recommended to document the decision-making process that goes into applying the reasonable and prudent parenting standard and how caregivers will be protected against various liability concerns inherent in applying the standard.

OCFS will address this question in a future policy release. The regulations were not changed.

A comment was made that additional language should be added regarding "normalcy" and what that looks like in practice. In addition, it was commented that clarity is needed on the applicability of the reasonable and prudent parent standard because it only tends to be referenced when the goal is another planned permanent living arrangement (APPLA).

OCFS will address this comment in a future policy release. The regulations were not changed.

A comment was made that in order to make the reasonable and prudent parent standard a reality, it will need to be incorporated into the home finding certification process.

This issue will be addressed through training. The regulations were not changed.

A comment was made that foster care agencies will need some funding for training direct care/residential staff, as well as case planners and foster parents, unless the social services district will be offering the requisite training to its contractors.

Training will be addressed in the implementation of the provisions of the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183). The regulations were not changed.

A comment was made that that foster parents, designated facility caregivers, and agency staff will need more clarity around what is "age or developmentally appropriate" for children and youth and recommend listing examples of activities for each age group, starting with the kinds of activities that inspired legislative change.

OCFS will address this comment in a future policy release. The regulations were not changed.

D. Case Planning/Service Plan Review [18 NYCRR 428.6(c) and 428.9]

A comment was made that the new standards in proposed 18 NYCRR 428.3(i) should be repeated in 18 NYCRR 428.6, and that the standards should be revised to authorize the foster child's case planner to also be able to reject an individual selected by the child to be part of the child's case planning team.

OCFS will repeat the language of 18 NYCRR 428.3(i) in 18 NYCRR 428.6(c). OCFS will not make the other recommended change that the case planner be authorized to reject the individual selected by the foster child because such a change would not conform to the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183). However, OCFS will address the ability of the case planner to provide input to the case manager in the selection process in a future policy release.

A comment was made that in the proposed 18 NYCRR 428.6(c) there was a misspelled word.

The misspelling was corrected.

A comment was made that additional amendments should be made to 18 NYCRR 428.9 regarding participation at case consultations.

OCFS will address the issue in a future policy release. The regulation was not changed.

E. Another Planned Permanent Living Arrangement (APPLA) [18 NYCRR 428.5(c), 428.9(c), 430.12(c) and 430.12(f)]

A comment was made that the word "facility" in 18 NYCRR 428.5(c)(13)(ii) should be changed to "designated official for a child care facility".

OCFS cannot make the requested change because of the mandates of the Preventing Sex Trafficking and Strengthening Families Act (PL 113-183), but will make a minor grammatical correction to this section of the regulation.

The comment was made that the word "ensure" in 18 NYCRR 430.12(c) was too strong of a word to use in regard to evaluating the reasonable and prudent parent standard provided for the child.

The proposed regulation reflects the required federal standard set forth in the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183). The regulation was not changed.

A comment was made that youth need to be protected – especially when adults may have conflicting viewpoints about permanency.

OCFS will consider this comment when developing future policy releases. The regulations were not changed.

F. Required documentation [18 NYCRR 430.12(l)]

A comment was made that guidance should be provided on what is expected in circumstances where the youth refuses to consent to remain in care before such documents become available.

OCFS will address this issue in a future policy release. The regulation was not changed.

G. Training and Placement Information [18 NYCRR 441.25 and 443.2(e)]

A comment was made recommending that a new regulation under 18 NYCRR Part 441 be added to address children in congregate foster care settings in addition to the proposed 18 NYCRR 441.25, including the training for the "designated official" who will be making the same type of decisions.

The issue of children in congregate foster care settings is adequately addressed in proposed 18 NYCRR 441.25. Training issues will be dealt with by implementation of the provisions of the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183). The regulations were not changed.

A comment was made that the work of identifying family members should begin immediately with the social services district and not be left entirely for contract agencies.

This is a contracting issue that voluntary authorized agencies should address with their social services districts. The regulations were not changed.

A comment was made that voluntary authorized agencies have received no targeted training to help staff identify and work with victims of trafficking, so training is necessary.

Training will be addressed as part of the implementation of the provisions of the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183). The regulations were not changed.

NOTICE OF ADOPTION

Implementation of Legislation for Destitute Children Re-Entering Foster Care

I.D. No. CFS-12-15-00010-A

Filing No. 450

Filing Date: 2015-06-02

Effective Date: 2015-06-17

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

Action taken: Amendment of sections 420.1, 421.1, 422.1, 427.2, 428.2, 430.10, 430.11, 431.17, 431.18, 436.1, 436.5, 441.2, 441.22, 443.1, 443.7 and 628.3 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f); L. 2012, ch. 3

Subject: Implementation of legislation for destitute children re-entering foster care.

Purpose: Implementation of legislation for destitute children re-entering foster care.

Text or summary was published in the March 25, 2015 issue of the Register, I.D. No. CFS-12-15-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Public Information Office, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 473-7793, email: info@ocfs.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Board of Commissioner of Pilots

NOTICE OF ADOPTION

Supplementary Fees--Port of New York

I.D. No. COP-15-15-00014-A

Filing No. 443

Filing Date: 2015-06-01

Effective Date: 2015-06-01

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

Action taken: Amendment of section 55.1 of Title 21 NYCRR.

Statutory authority: Navigation Law, section 95

Subject: Supplementary fees--Port of New York.

Purpose: Establishes rates and charges for pilotage in the Port of New York.

Text or summary was published in the April 15, 2015 issue of the Register, I.D. No. COP-15-15-00014-P.

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

Text of rule and any required statements and analyses may be obtained from: Frank W. Keane, Board of Commissioner of Pilots of the State of New York, 17 Battery Place, Suite 1230, New York, NY 10004, (212) 425-5027, email: FWKeane@bdcommpilotsny.org

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.

Department of Corrections and Community Supervision

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Procedures for Implementing Standards of Inmate Behavior; Superintendent's Hearing; Method of Determination; Juvenile Separation

I.D. No. CCS-24-15-00012-P

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

Proposed Action: Amendment of section 254.6; and addition of new Part 321 to Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Procedures for implementing standards of inmate behavior; superintendent's hearing; method of determination; juvenile separation.

Purpose: Set forth when an inmate's age and intellectual capacity is considered in disciplinary cases. Juvenile disciplinary housing.

Text of proposed rule: Amend section 254.6(a)(4) of 7NYCRR as follows:

(4) When applicable, the information identified in subparagraphs (b)(1)(i), (ii), (iv), (v), and (2)(i), (ii), (iii), and subdivision (h) of this section, derived from the department's electronic databases, shall automatically appear on a computer generated hearing record sheet that shall be provided to the hearing officer for use at the hearing.

Amend section 254.6(b)(2)(i) of 7NYCRR:

(i) the incident occurred while the inmate was assigned to the special needs unit (SNU) at Wende, [Arthurkill] Clinton, Woodbourne, Bedford Hills or Sullivan Correctional Facilities, as indicated on the hearing record sheet;

Add a new section 254.6(b)(2)(iii) and re-number the old section 254.6(b)(2)(iii) to 254.6(b)(2)(iv) to 7NYCRR:

(iii) the incident occurred while the inmate was assigned to the correctional alternative rehabilitation program (CAR) at Sullivan Correctional Facility, as indicated on the hearing record sheet; or

(iv) it appears to the hearing officer, based on the inmate's testimony, demeanor, the circumstances of the alleged offense or any other reason, that the inmate may have been intellectually impaired at the time of the incident or may be intellectually impaired at the time of the hearing.

Add a new section 254.6(h) to 7NYCRR:

(h) *Juveniles. When an inmate is under the age of 18 at the time of the incident, as indicated on the hearing record sheet, the hearing officer shall consider the inmate's age as a mitigating factor. The written statement of the disposition of the charges, if any, shall, in accordance with section 254.7(a)(5) of this Part, reflect how the inmate's age affected the disposition.*

Add a new Part 321 to read as follows:

PART 321

JUVENILE SEPARATION UNITS

Section 321.1 Disciplinary confinement of juvenile inmates.

An inmate under the age of eighteen years of age who receives a disciplinary confinement penalty in accordance with section 253.7 or 254.7 of this Title shall serve that penalty in a juvenile separation unit (JSU) as defined in section 321.2 of this Part.

Section 321.2 Juvenile separation unit.

A JSU is a separate housing location within a correctional facility designed for inmates under eighteen years of age who, due to their behavior, would otherwise be serving a disciplinary confinement penalty in a SHU or in another housing unit. The unit is designed to meet the educational and other needs of the inmates, while maintaining adequate safety and security on the unit, with a goal of expediting their transition back to general population and encouraging their interactions with others. Although a JSU is not operated as a disciplinary housing unit, in light of the security concerns associated with the behaviors that resulted in their confinement and other penalties, inmates on the unit may be subject to limitations on the quantity and type of property they are permitted to have in their cells and may receive access to programs that are more restrictive than those afforded general population inmates in order to maintain security and order on the unit. An inmate housed in a JSU shall be offered six hours of out-of-cell time on weekdays, excluding holidays. The out-of-cell time shall consist of a minimum of four hours of education and other appropriate programming, and weather permitting, two hours of outside exercise. A minimum of two hours of out-of-cell outside exercise shall also be offered on weekends and holidays, weather permitting. An inmate can be denied out-of-cell activities described in this section, if the commissioner or his or designee determines that the inmate's participation in such activities presents an imminent risk of danger to the inmate or to others.

Text of proposed rule and any required statements and analyses may be obtained from: Kevin P. Bruen, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus - Building 2, (518) 457-4951, email: Rules@Doccs.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.

Regulatory Impact Statement

Statutory Authority

Section 112 of Correction Law assigns to the Commissioner the superintendence, management and control of all inmates confined within correctional facilities, including all matters relating to their discipline.

Legislative Objectives

By setting forth in regulations when an inmate's age and intellectual capacity is to be considered as a mitigating factor in Tier III inmate disciplinary cases and where and under what conditions inmates under the age of eighteen are to be confined for disciplinary violations, the proposal accords with the public policy objective of having rules and of regulation in place for the management, control, and discipline of inmates.

Needs and Benefits

The proposal advances the current Department policy of considering an inmate's age as a mitigating factor in Tier III inmate disciplinary cases, where the inmate is under the age of 18 at the time of the incident. The Legislature has set 18 as the age of majority in New York State. It also advances the current Department policy of considering an inmate's intellectual capacity in Tier III inmate disciplinary cases under certain circumstances. The proposal also sets forth the where and under what conditions an inmate under the age of 18 is to be confined.

Costs

The projected costs of the rule, including responses to a, b, and c are set forth below:

a) Costs to regulated parties for the implementation of and continuing compliance with the rule – There are no outside regulated parties associated with this proposal, it applies only to the internal operation of Department correctional facilities and the inmates located therein.

b) Costs to the agency, the state and local governments for the implementation and continuation of the rule – There are no additional costs associated with the implementation and continuation of this proposal regarding the method of determining Tier III inmate disciplinary cases as such determinations already includes a consideration of a number of factors. As the juvenile separation units have already been constructed, there is no additional cost associated with the construction. As the inmates in the juvenile separation units are currently housed elsewhere, there will be a partial offset from the reallocation of existing resources. Any new staffing and other operational costs were already allocated to the Department in fiscal year 2014 and 2015.

c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based – The cost analysis is based upon current Department practice and experience.

Local Government Mandates

This proposal imposes no program, service, duty or responsibility upon any county, city, town, village, school district or other special district. It applies only to the internal management of correctional facilities and the inmates located therein.

Paperwork

The proposal would add only minimum additional reporting requirements internal to the agency.

Duplication

There is no overlap or conflict with any other legal requirements of the state or federal government.

Alternatives

There are no significant alternatives to be considered.

Federal Standards

There are no federal government standards applicable to this proposal.

Compliance Schedule

Compliance with this proposal is expected upon adoption.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. This proposal sets forth when an inmate's age and intellectual capacity is to be considered as a mitigating factor in Tier III inmate disciplinary cases and also sets forth the where and under what conditions an inmate under the age of 18 is to be confined.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal sets forth when an inmate's age and intellectual capacity is to be considered as a mitigating factor in Tier III inmate disciplinary cases and also sets forth the where and under what conditions an inmate under the age of 18 is to be confined.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal sets forth when an inmate's age and intellectual capacity is to be considered as a mitigating factor in Tier III inmate disciplinary cases and also sets forth the where and under what conditions an inmate under the age of 18 is to be confined.

**Department of Economic
Development**

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Empire State Film Production Tax Credit Program
I.D. No. EDV-24-15-00002-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 rulemaking to amend section 170.2(a) of Title 5 NYCRR.

Statutory authority: L. 2004, ch. 60

Subject: Empire State Film Production Tax Credit Program.

Purpose: Correcting a passage relating to the process for submitting an application to the Program.

Text of proposed rule: As used in this regulation, the following terms shall have the following meanings:

(a) "Authorized applicant" means a qualified film production company that is scheduled to begin principal and ongoing photography on a qualified film [prior to] after submitting a complete initial application to the department and intends to shoot a portion of principal and ongoing photography on a stage at a qualified film production facility on a set or sets.

Text of proposed rule and any required statements and analyses may be obtained from: Thomas Regan, New York State Department of Economic Development, 625 Broadway, 8th Floor, Albany, NY 12207, (518) 292-5123, email: Thomas.Regan@esd.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

The proposed rule corrects a typographical error in the definition of "authorized applicant" stating that principal photography on a qualified film produced by an authorized applicant is to be scheduled to begin prior to the submission of an initial application by the authorized applicant. The amendment, clarifying that principal photography is to be scheduled to begin after the submission of an initial application by an authorized applicant, is technical in nature. Furthermore, the amendment reflects the existing practice of the New York State Department of Economic Development and renders the definition of "authorized applicant" consistent with the schedule for submitting an initial application described in section 170.4 of Title 5 of the New York Codes, Rules and Regulations. Accordingly, no person is likely to object to the proposed rule.

Job Impact Statement

The proposed rule makes a technical change to the definition of "authorized applicant" for the Empire State Film Production Tax Credit Program, providing that applicants must be scheduled to begin principal photography on a qualified film after submitting an initial application. This corrects an error requiring that such principal photography be scheduled prior to an applicant submitting an initial application to the program. Because it is evident from the technical nature of the rulemaking that it will have no impact on job and employment opportunities, no further affirmative 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.

State Board of Elections

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Political Campaign Contribution Limits

I.D. No. SBE-24-15-00007-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 repeal section 6214.0; and add new section 6214.0 to Title 9 NYCRR.

Statutory authority: Election Law, section 14-114(1)(c)

Subject: Political Campaign Contribution Limits.

Purpose: Adjust contribution limits to reflect the consumer price index.

Text of proposed rule: Section 6214.0 of Subtitle V of Title 9 of the NYCRR is repealed. A new Section 6214.0 of Subtitle V of Title 9 of the NYCRR shall read as follows:

§ 6214.0 Campaign Contribution Limits.

The following limits will apply to campaign contributions until such time as the State Board of Elections adjusts the limits to reflect changes in the consumer price index:

Previous Limit	Current Limit	Office/Election
\$6,500.00	\$7,000.00	State senate primary Statewide primary minimum NYC citywide primary minimum
\$19,700.00	\$21,100.00	Statewide primary maximum NYC citywide primary maximum
\$41,100.00	\$44,000.00	Statewide general NYC citywide general
\$10,300.00	\$11,000.00	State senate general
\$4,100.00	\$4,400.00	State assembly primary State assembly general
\$102,300.00	\$109,600.00	Party committees

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen O'Keefe, New York State Board of Elections, 40 N. Pearl Street, Suite 5, Albany, NY 12207, (518) 474-2063, email: kathleen.okeefe@elections.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

No person is likely to object to this proposed rule because it adjusts the political contribution limits to reflect the consumer price index as required by State law.

Job Impact Statement

- Nature of impact: This proposed rule adjusts the limits for political campaign contributions to reflect the consumer price index and will have no impact on jobs and employment opportunities.
- Categories and numbers affected: This proposed rule has no negative effects on any category.
- Regions of adverse impact: This proposed rule has no adverse impact on any region.
- Minimizing adverse impact: This proposed rule has no adverse impact.
- (If Applicable) Self-employment opportunities: Not applicable.
- (If Applicable) Initial review of the rule, pursuant to SAPA section 207 as amended by L.2012, ch. 462: Not applicable.

**Department of Environmental
Conservation**

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

**Rule Making to Implement Environmental Conservation Law
Section 17-0826-a**

I.D. No. ENV-24-15-00013-P

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

Proposed Action: Amendment of Parts 621 and 750 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(3)(b), 3-0301(1)(b), (t), (2)(m), 17-0303(3), 17-0803, 17-0804 and 17-0826-a

Subject: Rule making to implement Environmental Conservation Law section 17-0826-a.

Purpose: To implement the reporting, notification and recordkeeping requirements of Environmental Conservation Law section 17-0826-a.

Substance of proposed rule (Full text is posted at the following State website: <http://www.dec.ny.gov/65.html>): The proposed rule would revise provisions of 6 NYCRR Part 750 to implement the reporting, notification and record keeping requirements of ECL section 17-0826-a, known as the Sewage Pollution Right to Know Act (SPRTK). Under SPRTK, publicly owned treatment works (POTWs) and operators of publicly owned sewer systems (POSSs) are required to report untreated and partially treated sewage discharges to the New York State Department of Environmental Conservation (DEC) and the local health department, or if there is none, the New York State Department of Health, within two hours of discovery of the discharge. However, partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit does not need to be reported. SPRTK specifies the necessary minimum content of these two hour reports to the extent the information is knowable with existing systems and models. Furthermore, SPRTK requires POTWs and operators of POSSs to notify the chief elected official, or authorized designee, of the municipality in which the discharge occurred and the chief elected official, or authorized designee, of any adjoining municipality of untreated and partially treated sewage discharges within four hours of discovery of the discharge. For discharges that may present a threat to public health, the same notification must also be provided to the general public within the same four hour time frame through appropriate electronic media as determined by DEC. The rule making provisions to implement SPRTK are summarized below.

750-1.1

Subdivision (f) of Section 750-1.1 would be amended to reference State Pollutant Discharge Elimination System (SPDES) registrations which would be the new regulatory mechanism for POSSs.

750-1.2

New definitions would be added to Section 750-1.2 to clarify the scope and meaning of the proposed rule. Paragraph (20) of Subdivision (a) would define the term 'Combined Sewer Overflow (CSO)' and Paragraph (21) of Subdivision (a) would define the term 'Combined Sewer System (CSS).' SPRTK reporting and notification requirements apply to CSO discharges from CSSs to the extent these discharges are knowable with existing systems and models, so it is necessary to define these terms for the regulated community. The term 'Publicly Owned Sewer System (POSS)' would be defined in Paragraph (70) of Subdivision (a). Under the proposed definition, a 'POSS' would mean "a sewer system owned by a municipality and which discharges to a POTW owned by another municipality." The existing definition of 'municipality' in current 6 NYCRR section 750-1.2(a)(51) would apply to the new definition of 'POSS' and continue to apply to the current definition of 'POTW' which would remain unchanged. Thus, both POTWs and POSSs would include systems that are owned by a "county, town, city, village, district corporation, special improvement district, sewer authority or agency thereof." The new definition of 'POSS,' however, would distinguish POSSs from POTWs because POTWs are defined to include sewers that discharge to the POTW only if those sewers are owned by the same municipality that owns the POTW. Finally, Paragraphs (63) and (96) of Subdivision (a) would define the terms 'partially treated sewage' and 'untreated sewage' to specify the type of waste that would be addressed by the proposed rule. The new definition of 'partially treated sewage' would replace the existing definition of 'partially treated' since Part 750 only uses the term 'partially treated' when referring to sewage. The new definition for 'partially treated sewage' is at least as stringent as the previous definition of 'partially treated' and aligns with the intent of SPRTK to require prompt reporting and notification by POTWs and POSSs of discovered sewage discharges when the discharged sewage has not been fully treated at the treatment plant of a sewage treatment works. Other paragraphs in Subdivision (a) would be renumbered to accommodate the new definitions in this section.

750-1.22

The proposed rule would add a new Section 750-1.22 to establish a SPDES registration program for POSSs and obligate owners and operators of these facilities to comply with specified reporting and notification requirements in amended Section 750-2.7. New Section 750-1.22 would require owners of existing POSSs to register the facility with DEC within 30 days from the effective date of the proposed rule. This section would also obligate owners of POSSs to obtain DEC approval and a new or amended registration before commencing construction of a new or modified POSS. Furthermore, this section would require owners of POSSs to notify DEC 30 days prior to a transfer in ownership or operation of the fa-

cility; establish registration procedures regarding POSSs; obligate owners and operators of POSSs to properly operate and maintain their facilities; and provide DEC with express authority to inspect POSSs and their records. Finally, this section would require owners and operators of POSSs to comply with two hour reporting, four hour notification, and five-day written incident reporting obligations set forth in amended Section 750-2.7. Current Section 750-1.22 and subsequent sections of Subpart 750-1 would be renumbered to accommodate this new section.

750-2.6

Subdivisions (a) and (b) of Section 750-2.6 would be amended to specify that this section applies to SPDES permittees that are not POTWs. POSSs are only required to obtain SPDES registrations, not permits. Thus, the revisions would make clear that the special reporting requirements in Section 750-2.6 continue to apply to non-POTW SPDES permittees (such as commercial and industrial facilities), but that this section does not address POTWs or POSSs.

750-2.7

Subdivision (b) of Section 750-2.7 would be amended to implement the new reporting and notification obligations that apply to owners and operators of POTWs and POSSs.

Amended Subdivision (b), Paragraph (1) would continue to limit the two hour reporting obligation for non-POTW SPDES permittees to discharges that would affect bathing areas during the bathing season, shellfishing or public drinking water intakes. A small number of minor revisions would be made to this paragraph and Subparagraphs (i) through (v) to eliminate obsolete language and to clarify that the content of two hour reports filed by non-POTW SPDES permittees would be the same as that for POTWs and POSSs.

Amended Subdivision (b), Subparagraph (2)(i) would require owners and operators of POTWs and POSSs to report untreated and partially treated sewage discharges to DEC and the local health department, or if there is none, the New York State Department of Health, within two hours of discovery of the discharge. However, the proposed rule would not require that partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit be reported. This provision would also require owners and operators of POTWs and POSSs to make a report for each day that the discharge continues after the date the initial report is made, except that on the day the discharge terminates, a report documenting termination of the previously reported discharge may be made in lieu of the discharge report. Clauses (a) through (e) of this subparagraph would set forth the necessary content of the reports to the extent the information is knowable with existing systems and models.

Amended Subdivision (b), Clause (2)(ii)(a) would implement SPRTK's four hour notification requirement with respect to municipalities. This provision would require owners and operators of POTWs and POSSs to notify the chief elected official, or authorized designee, of the municipality in which the discharge occurred and the chief elected official, or authorized designee, of any adjoining municipality of untreated and partially treated sewage discharges within four hours of discovery of the discharge. However, this notification would not apply to partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. Owners and operators of POTWs and POSSs would also be required to continue notifying these municipalities each day that the discharge continues after the date the initial notification is made until the discharge terminates, except that on the day the discharge ceases, a notification that the discharge has terminated may be made in lieu of the discharge notification for that day. For purposes of this clause, a 'municipality' would mean "a city, town or village" and an 'adjoining municipality' would mean "any municipality that is directly adjacent to the municipality in which the discharge occurred."

Amended Subdivision (b), Clause (2)(ii)(b) would implement SPRTK's four hour notification requirement for the general public. This provision would obligate owners and operators of POTWs and POSSs to notify the general public within four hours of discovery of discharges of untreated and partially treated sewage to surface water by using appropriate electronic media as determined by DEC, except that this notification would not be required for partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. Like municipal notifications, owners and operators of POTWs and POSSs would be required to make notifications to the general public for each day that the discharge continues and a termination notice may be made in lieu of a discharge notification on the day the discharge concludes. However, as with the initial notification to the general public, the daily public notifications would be limited to surface water discharges in contrast to municipal notifications which would apply to all untreated and partially treated sewage discharges.

Amended Subdivision (b), Subparagraph (2)(iii) would provide that "[f]or combined sewer overflows for which real-time telemetered discharge monitoring and detection does not exist, owners and operators of

POTWs and POSSs shall make reasonable efforts to expeditiously issue advisories through appropriate electronic media to the general public when, based on actual rainfall data and predictive models, enough rain has fallen that combined sewer overflows are likely of enough volume to cause potential health concerns for people who may come in contact with the water.” Under this subparagraph, these advisories may be made on a waterbody basis rather than by individual combined sewer overflow points.

Subdivision (c) would be amended to eliminate 24 hour oral reporting by POTW SPDES permittees of those discharges that would now be covered by the new two hour reporting. The other existing 24 hour oral reporting requirements for POTWs that are not affected by SPRTK would be left unchanged. Furthermore, the current 24 hour oral reporting requirements for non-POTW SPDES permittees are not impacted by SPRTK and would remain the same.

Subdivision (d) would be amended to extend the requirement to file a five-day written incident report to owners and operators of POSSs; provide that these reports must be submitted to DEC (rather than the regional water engineer); and require that such reports be submitted on a form prescribed by DEC. Furthermore, this subdivision would now provide that DEC may waive the requirement for a five-day written incident report for both SPDES permittees and POSSs in situations where applicable reporting requirements have been satisfied.

750-2.10

New Subdivision (j) would be added to Section 750-2.10 to provide that owners of new or modified POSSs must comply with the registration requirements of section 750.1.22 before construction and connection to any existing POTW or POSS.

Other Revisions

Various United States Environmental Protection Agency guidance documents and federal regulations are listed as references in current Section 750-1.24. The proposed rule would renumber this section to be Section 750-1.25. Consequently, the proposed rule would also amend the various provisions throughout Subpart 750-1, Subpart 750-2, and Part 621 that cross reference this section to denote the proper renumbered section. In addition, the Table of Contents for Subpart 750-1 would be amended to reflect the addition of new Section 750-1.22 and renumbering of subsequent sections of this subpart. Furthermore, the Table of Contents for Subpart 750-2 would be amended to modify the heading language for Sections 750-2.6 and 750-2.7 to clarify the scope of the rule making. This heading language would also be amended at the locations where these sections appear in the regulations.

Text of proposed rule and any required statements and analyses may be obtained from: Robert J. Simson, New York State Department of Environmental Conservation, 625 Broadway, 4th Floor, Albany, N.Y. 12233-3505, (518) 402-8271, email: sprtkcomments@dec.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.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Summary of Regulatory Impact Statement

1. ‘Statutory authority.’ The rule is authorized by Environmental Conservation Law (ECL) section 17-0826-a, known as the Sewage Pollution Right to Know Act (SPRTK), which took effect on May 1, 2013 and expressly directs the Department of Environmental Conservation (DEC) to promulgate regulations that are necessary to implement this statute (ECL section 17-0826-a (2), (4)).

SPRTK requires publicly owned treatment works (POTWs) and operators of publicly owned sewer systems (POSSs) to report untreated and partially treated sewage discharges to DEC and the local health department, or if there is none, the New York State Department of Health (NYSDOH) within two hours of discovery. However, partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit does not have to be reported. Under existing regulations, two hour reporting is limited to discharges by State Pollutant Discharge Elimination System (SPDES) permittees (consisting primarily of POTWs, commercial businesses and industrial facilities) that would affect bathing areas during the bathing season, shellfishing or public drinking water intakes. Therefore, it is necessary to revise the regulations to be consistent with the new expansive two hour reporting obligation. SPRTK also requires POTWs and operators of POSSs to notify the chief elected official of the municipality where the discharge occurred and adjoining municipalities of untreated and partially treated sewage discharges within four hours of discovering the discharge. The general public must also be notified within the same four hour time frame of any discharges that may present a public health threat. The proposed rule would implement these new four hour notification obligations through language that aligns with the statute.

A ‘POSS’ would be defined as “a sewer system owned by a municipality and which discharges to a POTW owned by another municipality” because under current regulations those sewer systems that discharge to a POTW owned by the same municipality are considered part of the POTW and are covered by the SPDES permit for the POTW. The proposed rule would require owners of POSSs to register their facilities and notify DEC of a change in facility ownership or operation. Furthermore, owners and operators of POSSs would be obligated to properly operate and maintain their facilities; file five day written incident reports; and allow DEC to conduct inspections and copy records. In addition to the specific statutory authority pursuant to ECL section 3-0301(2)(m) to effectuate the purposes of the ECL and authority to promulgate regulations with respect to the SPDES program in ECL sections 17-0303(3), 17-0803 and 17-0804.

2. ‘Legislative objectives.’ The proposed rule accords with the public policy objectives that the Legislature sought to advance by enacting SPRTK. One public policy objective of the Legislature was to protect the public health and the environment. Untreated and partially treated sewage contains pathogens that can cause acute illnesses. The proposed rule would help protect the public health and environment by obligating owners and operators of POTWs and POSSs to report untreated and partially treated sewage discharges to DEC and health authorities within two hours of discovery and for each day until the discharge terminates, irrespective of the area impacted by the discharge. The proposed rule would also require that within four hours of discovery, owners and operators of POTWs and POSSs notify affected municipalities of these discharges and further notify the general public of any such discharges to surface water through appropriate electronic media as determined by DEC. These notifications would continue each day until the discharge terminates, so that municipalities may respond and the public may avoid exposure. Furthermore, the proposed rule accords with the legislative objective to bring POSSs into the SPDES regulatory program by requiring SPDES registrations for POSSs.

The proposed rule does not obligate municipalities to upgrade the infrastructure of POTWs and POSSs or install monitoring equipment because SPRTK expressly limits reporting and notification requirements to discharges that are “knowable with existing systems and models” (ECL section 17-0826-a (1)). The proposed rule, however, does require owners and operators of POTWs and POSSs in specified situations to make reasonable efforts to expeditiously issue CSO advisories to the general public through appropriate electronic media on a waterbody basis.

3. ‘Needs and benefits.’ The purpose of the rule is to implement ECL section 17-0826-a which is intended to facilitate prompt responses to untreated and partially treated sewage discharges by state and local authorities and inform the public of these discharges so that they may avoid exposure. Sewage discharge reports may be used by DEC to make decisions regarding the closing of shellfish lands and prohibiting shellfish activities. DEC may also use reported information to take enforcement action against wastewater utilities, seeking penalties and permanent corrective measures. Furthermore, NYSDOH and local health departments may use reported information to assess the potential impact on public and private water supplies and to make determinations about regulating bathing beaches.

The rule is necessary to implement SPRTK’s two hour reporting and four hour notification requirements and to establish a SPDES registration program for POSSs. The proposed rule would benefit the public health and the environment by obligating owners and operators of POTWs and POSSs to report and disclose untreated and partially treated sewage discharges.

4. ‘Costs.’ Some municipalities that have POTWs or POSSs (or their contractors) may need to upgrade their computer systems at a cost of approximately \$1,000 to comply with the proposed rule’s two hour reporting and four hour notification provisions. Moreover, some municipalities may need to spend a de minimis amount for employee services to comply with the rule. Local health departments are expected to bear similar expenses to those associated with reporting of discharges. Furthermore, DEC will need to incur expenses to develop the electronic media to be used by owners and operators of POTWs and POSSs to notify the general public of untreated and partially treated sewage discharges. DEC has selected the NY-ALERT system maintained by the State Office of Emergency Management (SOEM) to implement the reporting and notification requirements of the proposed rule. The necessary upgrade to the NY-ALERT system is expected to cost DEC approximately \$50,000. This estimate was supplied by Buffalo Computer Graphics, the NY-ALERT consultant for SOEM. Moreover, NYS Information Technology Services estimates that DEC will need to spend approximately \$125,000 to upgrade its own computer systems so that it may post reported information expeditiously to its website as required by SPRTK.

5. ‘Local government mandates.’ The proposed rule would require owners and operators of POTWs and POSSs to report untreated and partially

treated sewage discharges to DEC and health authorities within two hours of discovery, irrespective of the area impacted by the discharge, except partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. POTWs and POSSs would include systems that are owned by “a county, town, city, village, district corporation, special improvement district, sewer authority or agency thereof.”

The proposed rule would also obligate owners and operators of POTWs and POSSs to notify the chief elected official of the municipality where the discharge occurred and adjoining municipalities of untreated and partially treated sewage discharges within four hours of discovery and provide that these entities must also notify the general public of any such discharges to surface water within the same four hour time frame through appropriate electronic media as determined by DEC. As with the two hour reporting requirement, these four hour notifications would not apply to partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. For purposes of the municipal notification provision, the proposed rule would define ‘municipality’ to mean “a city, town or village,” and define an ‘adjoining municipality’ to be “any municipality that is directly adjacent to the municipality in which the discharge occurred.” Furthermore, the proposed rule would require owners of POSSs to register their facilities and notify DEC of a change in facility ownership or operation. Finally, owners and operators of POSSs would be obligated to file five day written incident reports; properly operate and maintain their facilities; and allow DEC to conduct inspections and copy records.

6. ‘Paperwork.’ It is anticipated that the NY-ALERT system or another suitable electronic system will be used by owners and operators of POTWs and POSSs to satisfy both the two hour reporting and four hour notification requirements of the proposed rule. SPDES registrations for POSSs, five day written incident reports, and notifications of a change in POSS ownership or operation would need to be completed on forms prescribed by or acceptable to DEC. The reporting, notification and paperwork requirements of the proposed rule are necessary to implement SPRTK which expressly mandates two hour reporting and four hour notification requirements and establishes POSSs as a new group of regulated entities.

7. ‘Duplication.’ Under existing regulations, SPDES permittees are only required to report untreated and partially treated sewage discharges to DEC and the local health department within two hours of discovery if the discharge would affect a bathing area during the bathing season, shellfishing or a public drinking water intake, whereas untreated and partially treated sewage discharges affecting other areas must be reported to DEC, in most instances, within twenty-four hours of discovery (6 NYCRR section 750-2.7(b), (c)). Under the proposed rule, two hour reporting by owners and operators of POTWs and POSSs generally applies to all untreated and partially treated sewage discharges that have been discovered, irrespective of the area impacted by the discharge. The proposed rule would prevent duplication by eliminating 24 hour reporting by POTW SPDES permittees of those discharges currently described in 6 NYCRR section 750-2.7(c) that would now be covered by the new two hour reporting.

8. ‘Alternatives.’ DEC considered requiring owners of POSSs to obtain SPDES permits rather than registrations for their facilities. This alternative was rejected because SPDES registrations are sufficient to implement SPRTK’s reporting and notification requirements for POSSs. DEC also considered requiring municipalities to develop their own systems to comply with SPRTK. This alternative was also rejected due to the many benefits of NY-ALERT. NY-ALERT will be easy for owners and operators of POTWs and POSSs to use and will allow them to satisfy all of SPRTK’s reporting and notification obligations for an incident at the same time through a common system. By using NY-ALERT, DEC will be able to track discharges, control computer system security, maintain data quality and satisfy its statutory obligations efficiently. NY-ALERT will also save municipalities the expense of developing their own systems. If DEC switches from NY-ALERT to another electronic system in the future, it will seek a system that provides similar attributes.

9. ‘Federal standards.’ The proposed rule would exceed federal standards for the same or similar subject areas. The proposed rule would extend the requirement to file five day written incident reports to owners and operators of POSSs which are not currently subject to federal or state five day reporting obligations (40 CFR section 122.41(l)(6); 6 NYCRR section 750-2.7(d)). Furthermore, there is no requirement under federal law that owners and operators of POTWs and POSSs report untreated and partially treated sewage discharges to the government within two hours of discovery or that they notify the municipality where the discharge occurred, adjoining municipalities, or the general public of discharges within four hours of discovery. Federal law also does not provide for expeditious issuance of CSO advisories by owners and operators of POTWs and POSSs. Finally, owners of POSSs are not required by federal law to obtain SPDES registrations for POSSs or inform the government of a change in

facility ownership or operation. The rule exceeds federal standards because SPRTK mandates the specific reporting and notification requirements imposed by this rule.

10. ‘Compliance schedule.’ The rule takes effect upon filing of the rule with the secretary of state and publication of the notice of adoption in the State Register. Regulated entities will be able to comply with the rule as soon as it takes effect.

Regulatory Flexibility Analysis

1. ‘Effect of Rule.’ All counties, towns, cities, villages, district corporations, special improvement districts, sewer authorities and agencies thereof in the state that own or operate a publicly owned treatment works (POTW) or a publicly owned sewer system (POSS) would be subject to the requirements of this rule. There are approximately 620 POTWs that would be affected, and the Department of Environmental Conservation (DEC) estimates that there are approximately 300 POSSs that would be affected. The rule would extend regulatory oversight to POSSs as DEC does not currently regulate POSSs through its SPDES program. Cities, towns and villages that have POTWs or POSSs or that adjoin these entities would be beneficially affected by the rule as they would benefit from the notification requirements imposed by the rule. No small businesses would be affected by this rule.

2. ‘Compliance Requirements.’ The rule would require owners and operators of POTWs and POSSs to report untreated and partially treated sewage discharges to the DEC and the local health department, or if there is none, the New York State Department of Health within two hours of discovery. Partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit would not have to be reported. Owners and operators of POTWs and POSSs would also be required to continue reporting for each day after the initial report is made until the discharge terminates, except that on the day the discharge terminates, a report documenting termination of the previously reported discharge may be made in lieu of the discharge report. The current definition of ‘municipality’ in the existing regulations (6 NYCRR section 750-1.2(a)(51)) would apply to the proposed definition of ‘POSS’ and continue to apply to the definition of ‘POTW’ which would be left unchanged. Thus, both POTWs and POSSs would include systems that are owned by a “county, town, city, village, district corporation, special improvement district, sewer authority or agency thereof.” The proposed rule, however, would distinguish a POSS from a POTW by defining a POSS as “a sewer system owned by a municipality and which discharges to a POTW owned by another municipality.” In contrast, a POTW does not include a municipally owned sewer system unless the sewer system that discharges to the POTW is owned by the same municipality. The proposed rule would also describe the necessary content of two hour reports to the extent knowable with existing systems and models as prescribed by Environmental Conservation Law (ECL) section 17-0826-a(1), (a)–(f).

Furthermore, the proposed rule would obligate owners and operators of POTWs and POSSs to notify the chief elected official, or authorized designee, of the municipality where the discharge occurred and the chief elected official, or authorized designee, of any adjoining municipality of untreated and partially treated sewage discharges within four hours of discovery. Owners and operators of POTWs and POSSs would also be required to continue notifying these municipalities each day that the discharge continues after the date the initial notification is made until the discharge terminates, except that on the day the discharge terminates, a notification that the discharge has terminated may be made in lieu of the discharge notification for that day. The municipal notification requirement would not apply to partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. For purposes of the municipal notification requirement, a ‘municipality’ would be limited to mean “a city, town or village” and an ‘adjoining municipality’ would mean “a municipality (i.e., city, town or village) that is directly adjacent to the municipality in which the discharge occurred.”

In addition, the rule would require owners and operators of POTWs and POSSs to notify the general public within four hours of discovery of discharges of untreated and partially treated sewage to surface water through appropriate electronic media as determined by DEC, except that no notification is required for partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. Like municipal notifications, owners and operators of POTWs and POSSs would be required to make notifications to the general public for each day that the discharge continues and a termination notice may be made in lieu of a discharge notification on the day the discharge concludes. However, as with the initial public notification, the daily public notifications would be limited to surface water discharges unlike the municipal notifications which would apply to all untreated and partially treated sewage discharges.

The proposed rule does not require POTWs or POSS to upgrade their infrastructure or install monitoring equipment. However, for combined sewer overflows for which real-time telemetered discharge monitoring and detection does not exist, the proposed rule would require owners and

operators of POTWs and POSSs to make reasonable efforts to expeditiously issue advisories through appropriate electronic media to the general public when, based on actual rainfall data and predictive models, enough rain has fallen that combined sewer overflows are likely of enough volume to cause potential health concerns for people who may come in contact with the water. These advisories may be made on a waterbody basis rather than by individual combined sewer overflow points.

Under the proposed rule, owners of POSSs would need to obtain State Pollutant Discharge Elimination System (SPDES) registrations for these facilities and notify DEC of a change in facility ownership or operation. Furthermore, owners and operators of POSSs would be required to properly operate and maintain their facilities; file five day written incident reports (as currently required for POTW SPDES permittees and other SPDES permittees); and allow DEC to conduct inspections and copy records.

3. 'Professional Services.' Municipalities that own POTWs and POSSs may need to employ professional services to comply with the rule if existing employees are not sufficient to handle these duties. The services needed under the proposed rule would consist of two hour reporting and four hour notification of untreated and partially treated sewage discharges by owners and operators of POTWs and POSSs; continued reporting and notification by owners and operators of POTWs and POSSs for each day after the initial report or notification is made until the discharge terminates; expeditious advisories to the public by owners and operators of POTWs and POSSs regarding certain combined sewer overflows; filing five day written incident reports by owners and operators of POSSs (as currently required for POTW SPDES permittees and other SPDES permittees); registering of POSSs; and notifying DEC of a change in ownership or operation of POSSs.

4. 'Compliance Costs.' There may be some initial capital costs to municipalities (or their contractors) to comply with the rule. These costs would consist of upgrades to computer systems to meet the two hour reporting and four hour notification requirements if existing computer systems are not adequate. It is estimated that the cost to a municipality (or its contractor) to upgrade its computer system to comply with the rule would be a single expenditure of about \$1,000. Approximately 140 smaller municipalities in rural areas (or their contractors) would need to upgrade their computer systems to comply with the rule. It may also be necessary for some municipalities to hire additional employees or to extend the work hours of current employees on an annual basis to comply with the rule if existing staff are unable to handle these duties during current work hours. The pay rate of a qualified employee to handle the duties associated with the rule is estimated to be \$34.80 to \$60.85 per hour.

There are approximately 620 permitted POTWs and 300 identified POSSs statewide. DEC estimates that 890 municipalities own a single POTW or POSS and that the remaining 30 POTWs and POSSs are owned by municipalities that own more than one of these facilities. DEC anticipates that each POTW and POSS will have, on average, two (2) reportable events per year at a de minimis cost for reporting and record keeping and that 570 of these POTWs and POSSs will be located in smaller rural municipalities. DEC based the above labor costs on use of an alert system that will notify DEC, NYSDOH, local health departments, elected officials, adjoining municipalities, and the general public. The Sewage Pollution Right to Know Act (ECL § 17-0826-a), however, only mandates use of the alert system selected by DEC to satisfy the four hour public notification requirement. Labor costs will be higher if the facility contacts the other necessary parties individually or if the facility experiences a significantly higher number of reportable events. The initial capital costs and continuing compliance costs described above are not expected to vary based upon the type and/or size of the local government bearing these costs.

5. 'Economic and Technological Feasibility.' Compliance with the rule is expected to be feasible for local governments both economically and technologically. It is expected that local governments will have the ability to finance the costs associated with the rule. Two hour reporting to DEC and health authorities under the proposed rule would be accomplished by electronic entry of information into the NY-ALERT system which will forward the entered information to DEC and health authorities. The NY-ALERT system will also accommodate four hour notification to the chief elected official of the municipality where the discharge occurred, adjoining municipalities and the general public. The NY-ALERT system will not be technologically complex to use and will not require substantial upgrades to the existing computer systems of local governments. If DEC switches to a system other than NY-ALERT in the future, it will seek a system that provides similar attributes.

6. 'Minimizing Adverse Impact.' The rule is designed to minimize adverse economic impacts to local governments within the context of the statutory mandate. The time frames for two hour reporting and four hour notification in the rule match the time frames set forth in the enabling statute (Environmental Conservation Law (ECL) section 17-0826-a). There

are not expected to be any significant costs to local governments to comply with the rule. It is expected that local governments will be able to use existing computer systems to comply with the rule without needing substantial upgrades to these systems. The approaches for minimizing adverse economic impact suggested in SAPA section 202-b(1) and other similar approaches were considered, but ECL section 17-0826-a does not provide for exemptions from coverage, or for differing compliance or reporting requirements or timetables, based upon the resources of the local government. Therefore, no such approaches are contained in the proposed rule. Nevertheless, the rule is written and will be implemented in a manner that minimizes adverse economic impacts to local governments within the parameters of the statutory authority.

7. 'Small Business and Local Government Participation.' DEC has complied with SAPA section 202(b)(6) by assuring that small businesses and local governments have had an opportunity to participate in the rule making process. This occurred through posting notice of the proposed rule making on the DEC website; maintaining a public website informing public and private interests of the impact of the rule; and through interaction with owners and operators of POTWs and POSSs, environmental groups, and others. DEC also held Water Management Advisory Committee (WMAC) meetings on the rule which were attended by various stakeholders. Furthermore, the proposed rule will be published in the State Register and the public will be provided with an opportunity to comment on the proposed rule.

8. 'For Rules That Either Establish or Modify a Violation or Penalties Associated With a Violation.' The entities regulated by the proposed rule will have the ability to satisfy the requirements of the rule and thereby prevent the imposition of penalties as soon as the rule takes effect. No cure period or opportunity for ameliorative action beyond the language already contained in the proposed rule is necessary to provide regulated entities with the ability to immediately comply with the rule.

Rural Area Flexibility Analysis

1. 'Types and estimated numbers of rural areas.' The rule would apply to all towns and villages in rural areas throughout the state that have publicly owned treatment works (POTWs) or publicly owned sewer systems (POSSs) or that adjoin communities that have POTWs or POSSs.

2. 'Reporting, recordkeeping and other compliance requirements; and professional services.' The rule would require owners and operators of POTWs and POSSs to report untreated and partially treated sewage discharges to the New York State Department of Environmental Conservation (DEC) and the local health department, or if there is none, the New York State Department of Health within two hours of discovery, except partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit would not have to be reported. Owners and operators of POTWs and POSSs would also need to continue reporting for each day after the initial report is made until the discharge terminates, except that on the day the discharge terminates, a report documenting termination of the previously reported discharge may be made in lieu of the discharge report. The definition of 'municipality' in the existing regulations (6 NYCRR section 750-1.2(a)(51)) would apply to the proposed definition of 'POSS' and continue to apply to the definition of 'POTW' which would be left unchanged. Thus, both POTWs and POSSs would include systems that are owned by a "county, town, city, village, district corporation, special improvement district, sewer authority or agency thereof." The proposed rule, however, would distinguish a POSS from a POTW by defining a POSS as "a sewer system owned by a municipality and which discharges to a POTW owned by another municipality." In contrast, a POTW does not include a municipally owned sewer system unless the sewer system that discharges to the POTW is owned by the same municipality. The proposed rule would also describe the necessary content of two hour reports to the extent knowable with existing systems and models as prescribed by Environmental Conservation Law (ECL) section 17-0826-a(1), (a)-(f).

Furthermore, the proposed rule would obligate owners and operators of POTWs and POSSs to notify the chief elected official, or authorized designee, of the municipality where the discharge occurred and the chief elected official, or authorized designee, of any adjoining municipality of untreated and partially treated sewage discharges within four hours of discovery. Owners and operators of POTWs and POSSs would also be required to continue notifying these municipalities each day that the discharge continues after the date the initial notification is made until the discharge terminates, except that on the day the discharge terminates, a notification that the discharge has terminated may be made in lieu of the discharge notification for that day. The municipal notification requirement would not apply to partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. For purposes of the municipal notification requirement, a 'municipality' would be limited to mean "a city, town or village" and an 'adjoining municipality' would mean "a municipality (i.e., city, town or village) that is directly adjacent to the municipality in which the discharge occurred."

In addition, the rule would require owners and operators of POTWs and POSSs to notify the general public within four hours of discovery of discharges of untreated and partially treated sewage to surface water through appropriate electronic media as determined by DEC, except that no notification is required for partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. Like municipal notifications, owners and operators of POTWs and POSSs would be required to make notifications to the general public for each day that the discharge continues and a termination notice may be made in lieu of a discharge notification on the day the discharge concludes. However, as with the initial public notification, the daily public notifications would be limited to surface water discharges unlike the municipal notifications which would apply to all untreated and partially treated sewage discharges.

The proposed rule does not require POTWs or POSS to upgrade their infrastructure or install monitoring equipment. However, for combined sewer overflows for which real-time telemetered discharge monitoring and detection does not exist, the proposed rule would require owners and operators of POTWs and POSSs to make reasonable efforts to expeditiously issue advisories through appropriate electronic media to the general public when, based on actual rainfall data and predictive models, enough rain has fallen that combined sewer overflows are likely of enough volume to cause potential health concerns for people who may come in contact with the water. These advisories may be made on a waterbody basis rather than by individual combined sewer overflow points.

Finally, the proposed rule would establish a State Pollutant Discharge Elimination System (SPDES) registration program for POSSs; require owners and operators of POSSs to properly operate and maintain their facilities; obligate owners and operators of POSSs to file five day written incident reports (as currently required for POTW SPDES permittees and other SPDES permittees); direct owners of POSSs to notify DEC of a change in ownership or operation of their facilities; and provide that DEC has authority to inspect POSSs and copy records. It may be necessary for municipalities in rural areas to employ professional services to carry out the responsibilities associated with the proposed rule if existing staff are insufficient to handle these duties.

3. 'Costs.' There may be some initial capital costs to municipalities or their contractors (including those in rural areas) to comply with the rule. These costs would consist of upgrades to computer systems to comply with two hour reporting and four hour notification requirements if existing computer systems are not adequate. It is estimated that the cost to a municipality (or its contractor) to upgrade its computer system to comply with the rule would be a single expenditure of about \$1,000. Approximately 140 municipalities (or their contractors) will need to upgrade their computer systems to comply with the rule, all of which are located in rural areas. It may also be necessary for some municipalities to hire additional employees or to extend the work hours of current employees on an annual basis to comply with the rule if existing staff are unable to handle these duties during current work hours. The proposed rule would impose two hour reporting and four hour notification requirements on owners and operators of POTWs and POSSs; establish a State Pollutant Discharge Elimination System (SPDES) registration program for POSSs; and obligate owners of POSSs to notify DEC of a change in ownership or operation of the facility. The pay rate of an employee to handle the duties associated with the rule is estimated to be \$34.80 to \$60.85 per hour.

There are approximately 620 permitted POTWs and 300 identified POSSs statewide. DEC estimates that 890 municipalities own a single POTW or POSS and that the remaining 30 POTWs and POSSs are owned by municipalities that own more than one of these facilities. DEC anticipates that each POTW and POSS will have, on average, two (2) reportable events per year at a de minimis cost for reporting and record keeping and that 570 of these POTWs and POSSs will be located in rural areas. DEC based the above labor costs on use of an alert system that will notify DEC, NYSDOH, local health departments, elected officials, adjoining municipalities, and the general public. The Sewage Pollution Right to Know Act (ECL § 17-0826-a), however, only mandates use of the alert system selected by DEC to satisfy the four hour public notification requirement. Labor costs will be higher if the facility contacts the other necessary parties individually or if the facility experiences a significantly higher number of reportable events. There are not expected to be any significant variations in initial capital costs and annual costs for municipalities in rural areas.

4. 'Minimizing adverse impact.' There are no adverse environmental, public health or other impacts to rural areas associated with the rule. The rule would impose the same compliance, reporting and notification requirements (and associated time frames) upon all owners and operators of POTWs and POSSs statewide. The rule is being carried out in this manner because the enabling legislation, ECL section 17-0826-a, does not distinguish between POTWs and POSSs located in rural areas and those located elsewhere. The approaches suggested by SAPA section 202-bb(2) and other similar approaches were considered, but the statutory authority

does not provide for exemptions and imposes the same requirements and timetables on all POTWs and POSSs throughout the state irrespective of their location.

5. 'Rural area participation.' DEC complied with SAPA section 202-bb(7) by providing public and private interests in rural areas with the opportunity to participate in the rule making process. This occurred through posting notice of the proposed rulemaking on the DEC website; maintaining a public website informing public and private interests of the impact of the rule; and through interaction with owners and operators of POTWs and POSSs, environmental groups, and others. The Department also held Water Management Advisory Committee (WMAC) meetings on the rule which were attended by various stakeholders. Furthermore, notice of the proposed rule will be published in the State Register and the public will be provided with an opportunity to comment on the proposed rule.

Job Impact Statement

The rule will not have any substantial adverse impact on jobs or employment opportunities as apparent from the rule's nature and purpose. The rule reiterates and implements the requirements set forth in ECL section 17-0826-a (the Sewage Pollution Right to Know Act) and establishes a SPDES registration program for publicly owned sewer systems. As evident from its subject matter, the rule will not have any adverse impact on jobs or employment opportunities as the new requirements will not hinder jobs or employment opportunities, but rather could necessitate the hiring of additional personnel or the extension of work hours for current employees to meet the requirements of the rule.

Department of Financial Services

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. DFS-24-15-00003-E

Filing No. 444

Filing Date: 2015-06-01

Effective Date: 2015-06-04

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

Action taken: Addition of new Part 419 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: The legislature required the registration of mortgage loan servicers as part of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") to help address the existing foreclosure crisis in the state. By registering servicers and requiring that servicers engage in the business of mortgage loan servicing in compliance with rules and regulations adopted by the Superintendent, the legislature intended to help ensure that servicers conduct their business in a manner acceptable to the Department. However, since the passage of the Mortgage Lending Reform Law, foreclosures continue to pose a significant threat to New York homeowners. The Department continues to receive complaints from homeowners and housing advocates that mortgage loan servicers' response to delinquencies and their efforts at loss mitigation are inadequate. These rules are intended to provide clear guidance to mortgage loan servicers as to the procedures and standards they should follow with respect to loan delinquencies. The rules impose a duty of fair dealing on loan servicers in their communications, transactions and other dealings with borrowers. In addition, the rule sets standards with respect to the handling of loan delinquencies and loss mitigation. The rule further requires specific reporting on the status of delinquent loans with the Department so that it has the information necessary to assess loan servicers' performance.

In addition to addressing the pressing issue of mortgage loan delinquencies and loss mitigation, the rule addresses other areas of significant concern to homeowners, including the handling of borrower complaints and inquiries, the payment of taxes and insurance, crediting of payments and handling of late payments, payoff balances and servicer fees. The rule also sets forth prohibited practices such as engaging in deceptive practices or placing homeowners' insurance on property when the servicer has reason to know that the homeowner has an effective policy for such insurance.

Subject: Business conduct of mortgage loan servicers.

Purpose: To implement the purpose and provisions of the Mortgage Lending Reform Law of 2008 with respect to mortgage loan servicers.

Substance of emergency rule: Section 419.1 contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including "Servicer", "Qualified Written Request" and "Loan Modification".

Section 419.2 establishes a duty of fair dealing for Servicers in connection with their transactions with borrowers, which includes a duty to pursue loss mitigation with the borrower as set forth in Section 419.11.

Section 419.3 requires compliance with other State and Federal laws relating to mortgage loan servicing, including Banking Law Article 12-D, RESPA, and the Truth-in-Lending Act.

Section 419.4 describes the requirements and procedures for handling to consumer complaints and inquiries.

Section 419.5 describes the requirements for a servicer making payments of taxes or insurance premiums for borrowers.

Section 419.6 describes requirements for crediting payments from borrowers and handling late payments.

Section 419.7 describes the requirements of an annual account statement which must be provided to borrowers in plain language showing the unpaid principal balance at the end of the preceding 12-month period, the interest paid during that period and the amounts deposited into and disbursed from escrow. The section also describes the Servicer's obligations with respect to providing a payment history when requested by the borrower or borrower's representative.

Section 419.8 requires a late payment notice be sent to a borrower no later than 17 days after the payment remains unpaid.

Section 419.9 describes the required provision of a payoff statement that contains a clear, understandable and accurate statement of the total amount that is required to pay off the mortgage loan as of a specified date.

Section 419.10 sets forth the requirements relating to fees permitted to be collected by Servicers and also requires Servicers to maintain and update at least semi-annually a schedule of standard or common fees on their website.

Section 419.11 sets forth the Servicer's obligations with respect to handling of loan delinquencies and loss mitigation, including an obligation to make reasonable and good faith efforts to pursue appropriate loss mitigation options, including loan modifications. This Section includes requirements relating to procedures and protocols for handling loss mitigation, providing borrowers with information regarding the Servicer's loss mitigation process, decision-making and available counseling programs and resources.

Section 419.12 describes the quarterly reports that the Superintendent may require Servicers to submit to the Superintendent, including information relating to the aggregate number of mortgages serviced by the Servicer, the number of mortgages in default, information relating to loss mitigation activities, and information relating to mortgage modifications.

Section 419.13 describes the books and records that Servicers are required to maintain as well as other reports the Superintendent may require Servicers to file in order to determine whether the Servicer is complying with applicable laws and regulations. These include books and records regarding loan payments received, communications with borrowers, financial reports and audited financial statements.

Section 419.14 sets forth the activities prohibited by the regulation, including engaging in misrepresentations or material omissions and placing insurance on a mortgage property without written notice when the Servicer has reason to know the homeowner has an effective policy in place.

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 August 29, 2015.

Text of rule and any required statements and analyses may be obtained from: Hadas A. Jacobi, NYS Department of Financial Services, 1 State Street, New York, NY 10004, (212) 480-5890, email: hadas.jacobi@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2) (b-1) and 595-b.)

Subsection (1) of Section 590 of the Banking Law was amended by the Mortgage Lending Reform Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i).)

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent. The registration requirements do not apply to an "exempt organization," licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations. The functions and powers of the banking board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89.

New Paragraph (d) was added to Subsection (5) of Section 590 by the Mortgage Lending Reform Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be promulgated by the Banking Board or prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Mortgage Lending Reform Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Mortgage Lending Reform Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Mortgage Lending Reform Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Mortgage Lending Reform Law to extend the Superintendent's examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Mortgage Lending Reform Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Mortgage Lending Reform Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for mortgage loan servicer registration and branch applications are established in accordance with Banking Law Section 18-a.

2. Legislative Objectives.

The Mortgage Lending Reform Law was intended to address various problems related to residential mortgage loans in this State. The law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there had previously been no general regulation of servicers by the state or the Federal government.

The Mortgage Lending Reform Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The new law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Banking Board and the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, addresses the first component of the mortgage servicing statute by setting standards and procedures for ap-

plications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as setting financial responsibility standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. This part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Collectively, the provisions of Part 418 and 419 implement the intent of the Legislature to register and supervise mortgage loan servicers.

3. Needs and Benefits.

The Mortgage Lending Reform Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry, particularly with respect to servicing and foreclosure. It addressed a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Until July 1, 2009, when the mortgage loan servicer registration provisions first became effective, the Department regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also act as agents for owners of mortgages in negotiations relating to loss mitigation when a mortgage becomes delinquent. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; erroneously force-placing insurance when borrowers already have insurance; and failing to engage in prompt and appropriate loss mitigation efforts.

More than 2,000,000 loans on residential one-to-four family properties are being serviced in New York. Of these over 9% were seriously delinquent as of the first quarter of 2012. Despite various initiatives adopted at the state level and the creation of federal programs such as Making Home Affordable to encourage loan modifications and help at risk homeowners, the number of loans modified, have not kept pace with the number of foreclosures. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

As noted above, Part 418, initially adopted on an emergency basis on July 1 2009, relates to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It was intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers. It also provided for the suspension, revocation and termination of licenses involved in wrongdoing and establishes minimum financial standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers and establishes certain consumer protections for homeowners whose residential mortgage loans are being serviced. These regulations provide standards and procedures for servicers to follow in their course of dealings with borrowers, including the handling of borrower complaints and inquiries, payment of taxes and insurance premiums, crediting of borrower payments, provision of annual statements of the borrower's account, authorized fees, late charges and handling of loan delinquencies and loss mitigation. Part 419 also identifies practices that are prohibited and imposes certain reporting and record-keeping requirements to enable the Superintendent to determine the servicer's compliance with applicable laws, its financial condition and the status of its servicing portfolio.

Since the adoption of Part 418, 67 entities have been approved for registration or have pending applications and nearly 400 entities have

indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements.

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and are required to comply with the conduct of business and consumer protection rules applicable to mortgage loan servicers.

These regulations will improve accountability and the quality of service in the mortgage loan industry and will help promote alternatives to foreclosure in the state.

4. Costs.

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and should assist in decreasing the number of foreclosures in this state.

The regulations will not result in any fiscal implications to the State. The Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local Government Mandates.

None.

6. Paperwork.

Part 419 requires mortgage loan servicers to keep books and records related to its servicing for a period of three years and to produce quarterly reports and financial statements as well as annual and other reports requested by the Superintendent. It is anticipated that the quarterly reporting relating to mortgage loan servicing will be done electronically and would therefore be virtually paperless. The other recordkeeping and reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations. The various federal laws that touch upon aspects of mortgage loan servicing are noted in Section 9 "Federal Standards" below.

8. Alternatives.

The Mortgage Lending Reform Law required the registration of mortgage loan servicers and empowered the Superintendent to prescribe rules and regulations to guide the business of mortgage servicing. The purpose of the regulation is to carry out this statutory mandate to register mortgage loan servicers and regulate the manner in which they conduct business. The Department circulated a proposed draft of Part 419 and received comments from and met with industry and consumer groups. The current Part 419 reflects the input received. The alternative to these regulations is to do nothing or to wait for the newly created federal bureau of

consumer protection to promulgate national rules, which could take years, may not happen at all or may not address all the practices covered by the rule. Thus, neither of those alternatives would effectuate the intent of the legislature to address the current foreclosure crisis, help at-risk homeowners vis-à-vis their loan servicers and ensure that mortgage loan servicers engage in fair and appropriate servicing practices.

9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies, and there are no comprehensive federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan.

Additionally, the newly created Bureau of Consumer Financial Protection established by the Dodd-Frank Act may soon propose additional regulations for mortgage loan servicers.

10. Compliance Schedule.

Similar emergency regulations first became effective on October 1, 2010.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The rule will not have any impact on local governments. The Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") requires all mortgage loan servicers, whether registered or exempt from registration under the law, to service mortgage loans in accordance with the rules and regulations promulgated by the Banking Board or Superintendent. The functions and powers of the Banking Board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89. Of the 67 entities which have been approved for registration or have pending applications and the nearly 400 entities which have indicated that they are exempt from the registration requirements, it is estimated that very few are small businesses.

2. Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers who are not a bank, mortgage banker, mortgage broker or other exempt organizations (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "Mortgage Loan Servicer Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, sets for the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting of borrower payments, late payments, account statements, delinquencies and loss mitigation, fees and recordkeeping.

3. Professional Services:

None.

4. Compliance Costs:

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply

with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publishes quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

Compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

5. Economic and Technological Feasibility:

For the reasons noted in Section 4 above, the rule should impose no adverse economic or technological burden on mortgage loan servicers that are small businesses.

6. Minimizing Adverse Impacts:

As noted in Section 1 above, most servicers are not small businesses. Many of the requirements contained in the rule derive from federal or state laws, existing servicer guidelines utilized by Fannie Mae and Freddie Mac and best industry practices.

Moreover, the ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, help borrowers at risk of foreclosure and decrease the number of foreclosures in this state.

7. Small Business and Local Government Participation:

The Department distributed a draft of proposed Part 419 to industry representatives, received industry comments on the proposed rule and met with industry representatives in person. The Department likewise distributed a draft of proposed Part 419 to consumer groups, received their comments on the proposed rule and met with consumer representatives to discuss the proposed rule in person. The rule reflects the input received from both industry and consumer groups.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas: Since the adoption of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), which required mortgage loan servicers to be registered with the Department unless exempted under the law, 67 entities have pending applications or have been approved for registration and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements. Only one of the non-exempt entities applying for registration is located in New York and operating in a rural area. Of the exempt organizations, all of which are required to comply with the conduct of business contained in Part 419, approximately 400 are located in New York, including several in rural areas. However, the overwhelming majority of exempt organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

Reporting, Recordkeeping, and Other Compliance Requirements; and Professional Services: The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers that are not a bank, mortgage banker, mortgage broker or other exempt organization (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2010, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Costs: The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from federal or state laws, current federal loan modification programs, servicing guidelines utilized by Fannie Mae and Freddie Mac or servicers' own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Of the 67 entities that have been approved for registration or that have pending applications, only one is located in a rural area of New York State. Of the few exempt organizations located in rural areas of New York, virtually all are banks or credit unions. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

Minimizing Adverse Impact: As noted in the "Costs" section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas. In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loan servicers that service not more than 12 mortgage loans or more than \$5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

Rural Area Participation: The Department issued a draft of Part 419 in December 2009 and held meetings with and received comments from industry and consumer groups following the release of the draft rule. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers and its work in the area of foreclosure prevention. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the application, exemption and approval procedures for registration as a mortgage loan servicer, as well as financial responsibility requirements for applicants, registrants and exempted persons.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation

procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Compliance with Part 419 is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. The vast majority of mortgage loan servicers are sophisticated financial entities that service millions, if not billions, of dollars in loans and have the experience, resources and systems to comply with the requirements of the rule. Moreover, many of the requirements of the rule reflect derive from federal or state laws and reflect existing best industry practices.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Patient Access of Laboratory Test Results

I.D. No. HLT-24-15-00006-P

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

Proposed Action: Amendment of Parts 34 and 58 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 576 and 587

Subject: Patient Access of Laboratory Test Results.

Purpose: To give patients a right to access medical records directly from clinical laboratories, including completed laboratory test reports.

Text of proposed rule: Section 58-1.8 is amended as follows:

58-1.8 Results of tests to be reported only to physicians or other authorized persons. No person shall report the result of any test, examination or analysis of a specimen submitted for evidence of human disease or medical condition except to a physician, his agent, or other person authorized by law to employ the results thereof in the conduct of his practice or in the fulfillment of his official duties. [Reports shall not be issued to the patients concerned except with the written consent of the physician or other authorized person, except that information concerning blood type and Rh factor may be provided in writing to the individual whose blood was tested without the consent of the individual's physician.] *Upon request by a patient or the patient's personal representative, clinical laboratories may provide a patient access to completed test reports that can be identified as belonging to that patient as provided in section 34-2.11 of this Title.*

Section 58-1.9 is amended as follows:

58-1.9 Testing to be done on premises except in certain instances. All specimens accepted by a laboratory for specified tests shall be tested on its premises. However, specimens for infrequently performed tests or those not included within specialties or subspecialties stated on its permit or those requiring specialized equipment and skill may be forwarded to and accepted by another laboratory under permit issued by the commissioner or to a laboratory which is operated by a government agency or a non-profit research institution or to any other laboratory approved by the department. The reports of the results of such tests shall be sent by the testing laboratory to the forwarding laboratory, except that the forwarding laboratory may authorize the testing laboratory to send the report [directly to the physician or other authorized person who requested the test] *as provided in section 58-1.8 of this Part*, in which event the testing laboratory shall send a duplicate of the said report to the forwarding laboratory. Where the results of a test have been reported to it by the testing laboratory, the forwarding laboratory shall send a transcript of such report [to the physician or other authorized person who requested the test] *as provided in section 58-1.8 of this Part* and shall indicate thereon the name of the laboratory actually performing the test. [In no event shall any report of the result of any test or transcript thereof be sent to the patient concerned except with the written consent of the physician or other authorized person who requested the test.]

Subdivision (a) of section 58-8.4 is amended as follows:

(a) No clinical laboratory shall notify a physician or other person legally authorized to receive the result that an HIV test is positive solely on the basis of HIV antibody screening, except that a clinical laboratory may report a preliminary finding of HIV infection [pursuant to the written request of a physician or other person legally authorized to receive the test results] *as provided in section 58-1.8 of this Part*. Results for specimens found non-reactive by HIV antibody screening may be reported to the

physician who ordered the testing or other person legally authorized to receive the result.

Subdivision (b) of section 34-2.11 is amended as follows:

(b) A clinical laboratory shall not communicate to a patient of a referring health services purveyor the results of a clinical laboratory test, including, but not limited to, a Pap smear. A clinical laboratory shall not prepare such communication for the health services purveyor to send, or otherwise facilitate the preparation or sending of such communication by the health services purveyor. Such communication or its facilitation shall be deemed consideration given for referral of specimens for performance of clinical laboratory services and is prohibited, except that:

(1) a clinical laboratory may communicate [to] in writing to the patient (by mail or electronically) an accurate and complete account of the result of the laboratory test along with information required to be included in a report of test results pursuant to Subpart 58-1 of this Title under the following circumstances:

[(i)] the referring health services purveyor authorized by law to order and use the results of laboratory tests has provided affirmative written authorization (on paper or electronically), which specifically names the patient;]

[(ii)] (i) the laboratory test results have already been, or are simultaneously being communicated to the referring health services purveyor authorized by law to order and use the results of laboratory tests;

[(iii)] (ii) the clinical laboratory advises the patient that the referring health services purveyor authorized by law to order and use the results of laboratory tests has received or is receiving the test results;

[(iv)] (iii) the clinical laboratory shall include, in the communication to the patient, a clear statement, presented in a prominent manner, to the effect that the communication should not be viewed as medical advice and is not meant to replace direct communication with a physician or other health service purveyor;

[(v)] (iv) the clinical laboratory directs the patient's inquiries regarding the meaning or interpretation of the test results to the referring health services purveyor; and

[(vi)] (v) the communication to the patient does not include any information which would be consideration given for referral of specimens, including, but not limited to, medical advice specifically directed at the patient concerning the patient's condition, including diagnosis or treatment of the patient's condition.

Text of proposed 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

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

Statutory Authority:

Public Health Law (PHL) Sections 576 and 587 set forth the duties and powers of the department related to the operation of clinical laboratories and their business practices. PHL Sections 576 and 587 also include authority for the adoption of regulations guiding the operation of clinical laboratories and blood banks including, but not limited to, laboratory reporting.

Legislative Objectives:

The legislature enacted New York State PHL Article 5, Title V, to promote the public health, safety and welfare by requiring the licensure of clinical laboratories and blood banks, by establishing minimum qualifications for directors, and by requiring that the performance of all procedures employed by clinical laboratories and blood banks meet minimum standards accepted and approved by the department. PHL Sections 576 and 587 authorize the Department to promulgate regulations providing guidance relative to the proper operations of a clinical laboratory. Regulations reflect the complexity of laboratory test methods and cover all phases of laboratory testing, including the reporting of laboratory test results. PHL Article 5, Title VI relates to business practices, ethics and consumer protections.

10 NYCRR Subparts 58-1 (Clinical Laboratories), 58-8 (HIV Testing) and 34-2 (Laboratory Business Practices) currently state that laboratory test results cannot be reported directly to the patient unless written authorization is first provided by the physician or authorized person. These requirements are described in 10 NYCRR § 58-1.8 (Results of tests to be reported only to physicians or other authorized persons); 10 NYCRR § 58-1.9 (Testing to be done on premises except in certain instances); 10 NYCRR § 58-8.4 (HIV results reporting requirements); and 10 NYCRR § 34-2.11 (Recall letters and reporting of test results).

Needs and Benefits:

The right to access personal health information, including laboratory results, is a powerful tool towards allowing patients to track their health

progress, become engaged decision makers with the guidance of health care professionals and comply with important treatment plans. On February 6, 2014, the Federal Department of Health and Human Services (HHS) published amendments to 42 CFR Part 493 and 45 CFR Part 164 that allow patients to access their test results directly from a laboratory (see <http://www.gpo.gov/fdsys/pkg/FR-2014-02-06/pdf/2014-02280.pdf>). The new Federal rule became effective on April 7, 2014, with a compliance date of October 6, 2014. Stakeholders who commented on the amendments felt that federal regulations were a barrier that prevented patients from having an active role in their personal health care decisions and that the amendments would empower patients to take an active role in managing their health and health care. While patients historically have had the right under the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA Privacy Rules) to access their own health records, the rule had excluded access to laboratory test results. The February 6th amendments removed the exclusion in 45 CFR § 164.524(a)(1) and amended CLIA regulations at 42 CFR § 493.1291(l) to specify that "Upon request by a patient (or the patient's personal representative), the laboratory may provide patients, their personal representatives, and those persons specified under 45 CFR 164.524(c)(3)(ii), as applicable, with access to completed test reports that, using the laboratory's authentication process, can be identified as belonging to that patient." Although the use of the word "may" in 42 CFR 493.1291(l) does not require a clinical laboratory to provide a patient access to their completed test report, HHS emphasized that it is important to read the amended CLIA regulation in concert with the changes to the HIPAA Privacy Rule at 45 CFR Part 164. When taken together, the amendments will require HIPAA covered laboratories to provide individuals, upon request, with access to their laboratory test reports. A laboratory, as a health care provider, is only a HIPAA covered entity if it conducts one or more covered transactions electronically, such as transmitting health care claims or equivalent encounter information to a health plan, requesting prior authorization from a health plan for a health care item or service it wishes to provide to an individual with coverage under the plan, or sending an eligibility inquiry to a health plan to confirm an individual's coverage under that plan. As described by HHS, these amendments will result in the preemption of a number of state laws that prohibit a laboratory from releasing a test report directly to the individual or that prohibit the release without the ordering provider's consent because the state laws now would be contrary to the access provision of the HIPAA Privacy Rule mandating direct access by the individual. Therefore, 10 NYCRR § 58-1.8, 10 NYCRR § 58-1.9, 10 NYCRR § 58-8.4 and 10 NYCRR § 34-2.11 are being amended to be consistent with the new federal rules.

Costs:

Costs to Private Regulated Parties:

HHS indicated that data were not available to calculate the estimated costs and benefits that will result from their amendments. HHS provided an analysis of the potential impact based upon available information and certain assumptions. It was determined that impacted laboratories may require additional resources to ensure patients receive test reports when requested and patients will benefit from having direct access to their laboratory test results. It should be noted that HIPAA covered entities will already have procedures in place for responding to requests for records. Clinical laboratories will incur costs to implement processes to allow patients access to their test reports as a consequence of the amendments to the federal rules. Under HIPAA privacy rules, HIPAA covered entities will be allowed to impose on the individual a reasonable, cost-based fee for providing access to their test results, including the cost of supplies for and labor of copying the requested information. Although clinical laboratories will incur costs to implement processes to allow patients access to their test reports as a consequence of the amendments to the federal rules, the amendments to 10 NYCRR § 58-1.8, 10 NYCRR § 58-1.9, 10 NYCRR § 58-8.4 and 10 NYCRR § 34-2.11 are simply making the State regulations consistent with the new federal rules.

Costs for Implementation and Administration of the Rule:

Costs to State Government:

No new costs would be incurred by state government.

Costs to the Department:

No new costs would be incurred by the Department of Health.

Costs to Local Government:

To the extent that local governments operate clinical laboratories they may incur the same costs as private regulated parties.

Local Government Mandates:

The proposed regulation complies with federal policy and will impose new mandates on any clinical laboratory operated by a county, city, town or village government.

Paperwork:

There will be an increase in paperwork attributable to activities related to providing patients with direct access to test results. The increase will be dependent upon the number of requests received by a laboratory and if a

laboratory uses paper- or electronic-based systems for the reporting of test results.

Duplication:

These rules do not duplicate any other law, rule or regulation.

Alternatives:

There are no viable alternatives to this regulatory proposal. This proposal conforms state regulations to federal regulations.

Federal Standards:

The amendments to 10 NYCRR § 58-1.8, § 58-8.4, and § 34-2.11 are being made to be consistent with recent changes in the Code of Federal Regulations (CFR), specifically 42 CFR Part 493 and 45 CFR Part 164. In the absence of these amendments, New York State regulations would be contrary to the access provision of the HIPAA Privacy Rule mandating direct access by the individual.

Compliance Schedule:

The amended regulations will become effective upon publication of a Notice of Adoption in the New York State Register. Clinical laboratories regulated by New York State (NYS) are aware of the amended federal rule which became effective on April 7, 2014. Clinical laboratories were also notified by the Department in February 2014 that steps would be taken to amend NYS regulations to be consistent with the Federal amendments. Consequently, regulated parties will be able to comply with changes to 10 NYCRR § 58-1.8 as of their effective date.

Regulatory Flexibility Analysis

Effect of Rule:

In July 2014, the Department's Clinical Laboratory Evaluation Program (CLEP) issued permits to 933 clinical laboratories. Of these, 372 are located out of State and do not qualify as small businesses. Of the remaining 561 laboratories located in New York State, 51 are governmental laboratories, and 166 are estimated to be small businesses.

Compliance Requirements:

The proposed rules will not result in any additional burden beyond those that are incurred as a consequence of the changes to the federal rule. Impacted clinical laboratories that are small businesses or governmental laboratories will need to develop mechanisms to provide patients access to laboratory test results. HHS projected a laboratory would incur a one-time burden of 2 to 9 hours to identify the applicable legal obligations and to develop the processes and procedures for handling patient requests for access to test reports.

Professional Services:

The proposed rules will not result in any additional burden beyond those that are incurred as a consequence of the changes to the federal rule. HHS projected a laboratory would incur a one-time burden of 2 to 9 hours to identify the applicable legal obligations and to develop the processes and procedures for handling patient requests for access to test reports. Additionally, HHS assumed an hourly rate for a management-level employee to be \$50.06.

Compliance Costs:

The proposed rules will not result in any additional costs beyond those that are incurred as a consequence of the changes to the federal rule. HHS indicated that data were not available to calculate the estimated costs and benefits that will result from their amendments. HHS provided an analysis of the potential impact based upon available information and certain assumptions. It was determined that impacted laboratories may require additional resources to ensure patients receive test reports when requested and patients will benefit from having direct access to their laboratory test results. It should be noted that HIPAA covered entities will already have procedures in place for responding to requests for records and HIPAA privacy rules currently permit HIPAA covered entities to charge an individual reasonable cost-based fee for providing access to health information.

Economic and Technological Feasibility:

The proposed regulations will not present economic or technological difficulties to any small businesses and local governments affected by these amendments. The technical infrastructure for reporting laboratory test results is already in place.

Minimizing Adverse Impact:

The changes to the federal rules conflict with state regulations that prohibit a laboratory from releasing a test report directly to the individual or that prohibit the release without the ordering provider's consent. Therefore, the Department of Health did not consider alternate, less stringent compliance requirements, or regulatory exceptions for facilities operated as small businesses or by local government.

Small Business and Local Government Participation:

Clinical laboratories designated as a small business or governmental laboratories by New York State (NYS) are aware of the amended federal rule which became effective on April 7, 2014. Clinical laboratories were also notified by the Department in February 2014 that steps would be taken to amend NYS regulations to be consistent with the federal rules. Discussions on this topic have also been held with Greater New York Hospital Association and the College of American Pathologists.

Rural Area Flexibility Analysis

Types and estimated numbers of rural areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<http://quickfacts.census.gov>). Approximately 87 clinical laboratories are located in rural areas.

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

Compliance Requirements:

The proposed rules will not result in any additional burden beyond those that are incurred as a consequence of the changes to the federal rule. Impacted clinical laboratories that are in rural areas will need to develop mechanisms to provide patients access to laboratory test results. HHS projected a laboratory would incur a one-time burden of 2 to 9 hours to identify the applicable legal obligations and to develop the processes and procedures for handling patient requests for access to test reports.

Professional Services:

The proposed rule will not result in any additional burden beyond those that are incurred as a consequence of the changes to the federal rule. HHS projected a laboratory would incur a one-time burden of 2 to 9 hours to identify the applicable legal obligations and to develop the processes and procedures for handling patient requests for access to test reports. Additionally, HHS assumed an hourly rate for a management-level employee to be \$50.06.

Costs:

The proposed rules will not result in any additional costs beyond those that are incurred as a consequence of the changes to the federal rule. HHS indicated that data were not available to calculate the estimated costs and benefits that will result from their amendments. HHS provided an analysis of the potential impact based upon available information and certain assumptions. It was determined that impacted laboratories may require additional resources to ensure patients receive test reports when requested and patients will benefit from having direct access to their laboratory test results. It should be noted that HIPAA covered entities will already have procedures in place for responding to requests for records and HIPAA privacy rules currently permit HIPAA covered entities to charge an individual reasonable cost-based fee for providing access to health information.

Minimizing Adverse Impact:

The changes to the federal rules conflict with state regulations that prohibit a laboratory from releasing a test report directly to the individual or that prohibit the release without the ordering provider's consent. Therefore, the Department of Health did not consider alternate, less stringent compliance requirements, or regulatory exceptions for rural facilities.

Rural Area Participation:

Clinical laboratories located in rural areas are aware of the amended federal rule which became effective on April 7, 2014. Clinical laboratories were also notified by the Department in February 2014 that steps would be taken to amend NYS regulations to be consistent with the Federal amendments. Discussions on this topic have also been held with Greater New York Hospital Association and the College of American Pathologists.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Access to Records of the Office of Mental Health**I.D. No.** OMH-24-15-00001-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 rulemaking to amend section 510.5 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 5.09; Public Officers Law (Freedom of Information Law), art. 6

Subject: Public Access to Records of the Office of Mental Health.

Purpose: Make a technical correction regarding the agency's records access officer.

Text of proposed rule: Subdivision (a) of section 510.5 of Title 14 NYCRR is amended to read as follows:

(a) The records access officer of the Office of Mental Health's (OMH) central office [is the public information officer, whose address] *shall be a lawyer in the office of counsel, designated by the Commissioner. The address for the records access officer is 44 Holland Avenue, Albany, New York 12229. The records access officer of each OMH operated psychiatric center is the facility director or his or her designee, who may be contacted at the business address of the applicable psychiatric center.*

Text of proposed rule and any required statements and analyses may be obtained from: Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: regs@omh.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 proposal is being filed as a Consensus rule on the grounds that it is non-controversial and makes a minor technical correction.

It is the policy of the Office of Mental Health (OMH) to grant ready access to its records to the public, consistent with the Freedom of Information Law. OMH's regulations at 14 NYCRR Part 510 set forth the criteria regarding the designation and duties of records access officers and the procedures regarding requesting, granting, denying and appealing access to records. Existing regulations state that OMH's Public Information Officer serves as its records access officer, but that information is out of date. This consensus rule making provides consistency with regulations of the Committee on Open Government and clarifies that OMH's records access officer is a lawyer in the Office of Counsel, who is designated by the Commissioner to serve in that capacity. No other changes with respect to the address of the records access officer, or the process by which a member of the public may request access to records, are being made as a result of this proposal. As this technical change serves to correct outdated information in existing regulations, this non-controversial amendment is appropriately filed as a consensus rule.

Statutory Authority: Section 7.09 of the Mental Hygiene Law grant the Commissioner of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction. Article 6 of the Public Officers Law (Freedom of Information Law) establishes the criteria under which the public may access the records related to the process of governmental decision making.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the purpose of the amendment is to make a technical change to correct

outdated provisions regarding the designation of the Office of Mental Health's records access officer. It is evident from the rule making that there will be no adverse impact on jobs and employment opportunities.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Rehearing of the March 31, 2015 Order Dismissing Appeal and Denying Other Relief**I.D. No.** PSC-24-15-00008-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 requesting rehearing, from PUSH Buffalo, Inc., of the March 31, 2015 Order Dismissing Appeal and Denying Other Relief.

Statutory authority: Public Service Law, sections 22, 64, 65(1), (2), (3), (5), 66(1), (2), (5), (8), (9), (10) and (12)

Subject: Petition for rehearing of the March 31, 2015 Order Dismissing Appeal and Denying Other Relief.

Purpose: To consider Petition for rehearing of the March 31, 2015 Order Dismissing Appeal and Denying Other Relief.

Substance of proposed rule: The Public Service Commission is considering a Petition filed on April 28, 2015, from PUSH Buffalo, Inc., requesting rehearing of the March 31, 2015 Order Dismissing Appeal and Denying Other Relief in Case 13-G-0136. The petition requests rehearing and/or reconsideration of the decision to deny PUSH Buffalo's appeal from a ruling of an Administrative Law Judge that denied PUSH Buffalo's request for intervenor funding in Case 13-G-0136. PUSH Buffalo asks that the Commission rehear or reconsider the determination that that Commission lacks statutory authority to grant intervenor funding in rate cases.

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.

(13-G-0136SP4)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petitions for Rehearing of the April 20, 2015 Order Continuing and Expanding the Standby Rate Exemption**I.D. No.** PSC-24-15-00009-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 two Petitions requesting rehearing, from Durst Organization, Inc. and the Utilities, of the April 20, 2015 Order Continuing and Expanding the Standby Rate Exemption.

Statutory authority: Public Service Law, sections 22, 64, 65(1), (2), (3), (5), 66(1), (2), (5), (8), (9), (10) and (12)

Subject: Petitions for rehearing of the April 20, 2015 Order Continuing and Expanding the Standby Rate Exemption.

Purpose: To consider Petitions for rehearing of the April 20, 2015 Order Continuing and Expanding the Standby Rate Exemption.

Substance of proposed rule: The Public Service Commission is considering two Petitions filed on May 20, 2015, from Durst Organization, Inc. (Durst) and Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, New York State Gas & Electric Corporation, Rochester Gas and Electric Corporation, (collectively, the Utilities), requesting rehearing of the April 20, 2015 Order Continuing and Expanding the Standby Rate Exemption in Case 14-E-0488. Although both petitions request rehearing of the decision to make the standby rate exemption available to larger, new facilities, Durst asks that pre-existing facilities be eligible for the exemption while the utilities maintain larger facilities should be ineligible. 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-E-0488SP2)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Refinancing Proposed by Sithe/Independence Power Partners, L.P.

I.D. No. PSC-24-15-00010-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 Sithe/Independence Power Partners' proposed refinancing increasing its authorized financing limit from \$2.175 billion to \$8.280 billion.

Statutory authority: Public Service Law, sections 69 and 82

Subject: Refinancing proposed by Sithe/Independence Power Partners, L.P.

Purpose: To consider refinancing proposed by Sithe/Independence Power Partners, L.P.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Sithe/Independence Power Partners, L.P. on May 27, 2015, requesting approval, pursuant to Public Service Law (PSL) Sections 69 and 82, of the proposed refinancing that would increase its authorized financing limit from \$2.175 billion to \$8.280 billion. 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. (15-M-0297SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

To Consider Adopting the Recommendations of the Staff Report on Addressing Energy Affordability for Low Income Programs

I.D. No. PSC-24-15-00011-P

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

Proposed Action: The Public Service Commission is considering whether to accept, deny or modify, in whole or part, the Low Income Report filed by Staff to address energy affordability for low income customers.

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

Subject: To consider adopting the recommendations of the Staff Report on addressing energy affordability for low income programs.

Purpose: To consider the Staff Report on, and recommendations of, best practices for implementing utility low income programs.

Substance of proposed rule: The Commission is considering the recommendations set forth in the June 1, 2015 New York State Department of Public Service Report entitled "14-M-0565 Low Income Staff Report". In particular, the Commission is considering the adoption of utility low income programs that ensure low income customers are not overly burdened by their energy bills. In addition, these programs will be considered for the ability to be designed and administered on a uniform basis across utilities. The Commission may adopt, reject, or modify, in whole or in part, the proposed recommendations 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-0565SP1)

Department of State

**REGULATORY IMPACT
STATEMENT,
REGULATORY FLEXIBILITY
ANALYSIS, RURAL AREA
FLEXIBILITY ANALYSIS
AND/OR
JOB IMPACT STATEMENT**

Personal Protective Equipment

I.D. No. DOS-22-15-00007-E

This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement pertain(s) to a notice of Emergency rule making, I.D. No. DOS-22-15-00007-E, printed in the *State Register* on June 3, 2015.

Regulatory Impact Statement

1. Statutory Authority:

New York Executive Law § 91 and New York General Business Law ("GBL") §§ 402(5); 404 and 405(2). Section 91 of the Executive Law authorizes the Secretary of State to: "adopt and promulgate such

rules which shall regulate and control the exercise of the powers of the department of state.” In addition, Sections 401(5) and 404 of the GBL authorize the Secretary of State to promulgate rules specifically relating to the appearance enhancement industry.

2. Legislative Objectives:

Article 27 of the GBL was enacted, inter alia, to provide a system of licensure of appearance enhancement businesses and operators that would allow for the greatest possible flexibility in the establishment of regulated services, while establishing protective measures. Consistent with this legislative intent, the Department is empowered to issue regulations that accomplish these purposes.

3. Needs and Benefits:

This rule is needed to implement provisions of the GBL, specifically sections 404 and 404-b. The Department finds that these regulations which clarify existing requirements relating to availability of personal protective equipment will further the legislative intent of Section 404-b of the GBL.

4. Costs:

a. Costs to Regulated Parties:

Businesses which offer nail care services will be required pursuant to this rule to have available gloves, respirators and sufficient eye protection for practitioners. The Department estimates the following costs to businesses: 1) a box of 100 disposable nitrile gloves will cost approximately \$15.00; 2) a box of 20 approved respirators will cost approximately \$15.00; and 3) sufficient eye protection will cost approximately \$3.00 per employee.

b. Costs to the Department of State, the State, and Local Governments:

The Department does not anticipate any additional costs to implement the rule.

5. Local Government Mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

This rule does not impose any new paperwork requirement.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is needed to protect the general welfare of approximately 162,000 individuals who practice nail specialty services.

9. Federal Standards:

The proposed rulemaking is necessary to implement the provisions of existing law and standards.

10. Compliance Schedule:

As stated in the emergency rule, this rule will be effective June 15, 2015.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule requires the provision and use of personal protective equipment. Businesses that offer nail care services will be required to provide such equipment as provided for by this rule to nail care providers without cost. There are approximately 26,753 appearance enhancement businesses and 7,764 area renters in New York State that may be subject to this rule.

2. Compliance requirements:

The rule implements statutory requirements established under Section 404-b of Article 27 of the General Business Law. Owners subject to this rule will be required to provide gloves, respirators and sufficient eye protection to practitioners. The rule does not impose reporting or recordkeeping on owners.

3. Professional services:

The Department does not anticipate the need for professional services.

4. Compliance costs:

The Department estimates the following costs to businesses: 1) a box of 100 disposable nitrile gloves will cost approximately \$15.00; 2) a box of

20 approved respirators will cost approximately \$15.00; and 3) sufficient eye protection will cost approximately \$3.00 per employee.

5. Economic and technological feasibility:

This proposal is economically and technically feasible. Based on the Department’s cost estimates and that the personal protective equipment provided for by this rule is readily available in retail stores and through online purchasing, businesses should have no difficulty complying with this rule.

6. Minimizing adverse impact:

The Department did not identify any feasible alternatives that would achieve the results of the proposed rule and also be less restrictive and less burdensome in terms of compliance. The Department has consulted with Department of Labor, Department of Health, and several advocacy and business groups and finds this rule is necessary to clarify and implement existing law relating to the provision and availability of personal protective equipment.

7. Small business and local government participation:

The Department, in conjunction with other state agencies, has consulted with small business interests that may be affected by this rule. In addition, the Department has conducted significant outreach to inform the public regarding this rule, including posting this rule on the Department’s website and participating in a public forum detailing, inter alia, the purpose of this rule. Publication of the rule in the State Register will provide further notice of the proposed rulemaking to all interested parties. Additional comments will be received and entertained during the public comment period associated with this rulemaking.

8. Compliance:

As stated in the emergency rule, this rule is effective June 15, 2015.

9. Cure period:

The Department is not providing for a cure period prior to enforcement of these regulations. The Department finds that the implementation of existing law relating to personal protective equipment requires emergency action and should be enforced without delay. Further, as this rule does not take effect until June 15, 2015, the Department believes that those impacted by this rule will have adequate time to comply.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule will apply to appearance enhancement businesses that are licensed pursuant to Article 27 of the General Business Law. There are approximately 26,753 appearance enhancement businesses and 7,764 area renters across New York State that may be subject to this rule. Licensed owners throughout the state, including those in rural areas, are responsible for complying with this rule.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

The rule implements statutory requirements established under Section 404-b of Article 27 of the General Business Law. The rule does not impose reporting or recordkeeping on owners. Further, there are no additional professional services required as a result of this regulation. No different or additional requirements are applicable exclusively to rural areas of the state.

3. Costs:

The Department estimates the following costs to businesses: 1) a box of 100 disposable nitrile gloves will cost approximately \$15.00; 2) a box of 20 approved respirators will cost approximately \$15.00; and 3) sufficient eye protection will cost approximately \$3.00 per employee.

4. Minimizing adverse impact:

The proposed rulemaking will implement existing law relating to provision and use of personal protective equipment for nail care providers throughout the state, including rural areas. The Department has consulted with Department of Labor, Department of Health as well as several advocacy groups, but did not identify any feasible alternatives that would achieve the results of the proposed rules and also be less restrictive and less burdensome in terms of compliance.

5. Rural area participation:

No significant comments have been received regarding this rulemaking. Publication of the Notice in the State Register will provide notice to all interested parties, including those in rural areas. Additional comments received on this rulemaking will be considered and assessed during imminent Proposed Rule Making process on this matter.

Job Impact Statement

1. Nature of impact:

This rulemaking applies to all appearance enhancement owners and practitioners who offer nail care services. Pursuant to this rule, owners are required to provide at no cost and operators are required to use gloves, respirators and eye protection while offering certain services. Though the rule is intended to implement existing law, the Department finds that it will also improve the wellbeing of those working in the nail care industry, and as such the rule will have a positive impact on jobs and employment opportunities.

2. Categories and numbers affected:

There are approximately 30,000 owners which would potentially be subject to this rulemaking. Further, there are approximately 162,000 licensees who offer services specified by this rule.

3. Regions of adverse impact:

The proposed rulemaking will not have any disproportionate regional adverse impact on jobs or lawful employment opportunities.

4. Minimizing adverse impact:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is immediately needed to clarify and implement existing law through rules regarding availability and use of personal protective equipment. The Department has consulted with Department of Labor, Department of Health and several advocacy groups, but did not identify any alternatives that would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance.

**REGULATORY IMPACT
STATEMENT,
REGULATORY FLEXIBILITY
ANALYSIS, RURAL AREA
FLEXIBILITY ANALYSIS
AND/OR
JOB IMPACT STATEMENT**

Mandatory Public Posting of Notices of Violations

I.D. No. DOS-22-15-00008-E

This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement pertain(s) to a notice of Emergency rule making, I.D. No. DOS-22-15-00008-E, printed in the *State Register* on June 3, 2015.

Regulatory Impact Statement

1. Statutory Authority:

New York Executive Law § 91 and New York General Business Law (“GBL”) §§ 402(5); 404 and 405(2). Section 91 of the Executive Law authorizes the Secretary of State to: “adopt and promulgate such rules which shall regulate and control the exercise of the powers of the department of state.” In addition, Sections 401(5) and 404 of the GBL authorize the Secretary of State to promulgate rules specifically relating to the appearance enhancement industry. Sections 401; 410(2) and 412 prohibit providing appearance enhancement services without an appropriate license.

2. Legislative Objectives:

Article 27 of the GBL was enacted; inter alia, to provide a system of licensure of appearance enhancement businesses and operators that would allow for the greatest possible flexibility in the establishment of regulated services, while establishing measures to protect members of the public, including those who work in the industry. Consistent with this legislative intent, the Department is empowered to issue regulations that accomplish these purposes.

3. Needs and Benefits:

This rule is needed to provide greater public awareness regarding unlawful and potentially dangerous activities. Mandating public posting of findings of unlicensed activities and Notices of Violations will benefit the public by providing notice that the services that they may be receiving are being performed in contravention of law.

4. Costs:

a. Costs to Regulated Parties:

The Department does not anticipate any costs to regulated parties. The Department will provide Notices of Violations to parties who are impacted by this regulation. The Department anticipates that some unlicensed businesses and operators will suffer some loss of business, however the intent of the regulation is to curb unlawful activity; accordingly, the Department finds any loss of business associated with unlawful activity to be appropriate.

b. Costs to the Department of State, the State, and Local Governments:

The Department does not anticipate any additional costs to imple-

ment the rule. Existing staff will manage issuing Notices of Violations. Further, the Department has sufficient funds to produce Notice of Violation forms.

5. Local Government Mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

This rule does not impose any new paperwork requirement. The Department will be issuing the Notices required pursuant to this rule. Affected entities are only required to post the same publically.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is needed to protect the general welfare of the public who seek appearance enhancement services. Requiring public posting will allow consumers to make informed decisions regarding the services that they may be receiving.

9. Federal Standards:

The proposed addition does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule:

As stated in the emergency rule, this rule will be effective immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule requires public postings of Notices of Violations issued by the Department of State. The Department believes that the rule will provide greater public awareness of unlawful and potentially dangerous activities. Specifically, the rule will require persons and businesses who operate without a license and who have been served with a Notice of Violation to post the same. The rule applies to businesses that offer appearance enhancement services as well as to persons who engage in the following practices: nail specialty, waxing, natural hair styling, esthetics or cosmetology. Given that this rule applies to persons and businesses who are already operating unlawfully, the Department is not able to accurately estimate the number that will be affected by this rule.

2. Compliance requirements:

This rule requires that unlicensed persons and businesses subject to an administrative proceeding, commenced by the Department seeking an order directing the cessation of unlicensed activities, publically post a Notice of Violation in a manner which will inform the public of the same.

3. Professional services:

The Department does not anticipate the need for professional services.

4. Compliance costs:

The rule itself will not impose any cost on affected parties. The Department will provide appropriate notices for posting. The Department believes that once such notices are issued, previously unlicensed persons and businesses will seek an appropriate license. Pursuant to Article 27 of the General Business Law, the cost to obtain an appropriate license (depending on whether an examination is required) ranges from \$45.00 to \$60.00. Such costs do not include other fees, such as any education requirements or other business filings, which may be required.

5. Economic and technological feasibility:

The rule itself requires that unlicensed persons and business subject to a pending administrative hearing publically post notices of the same for the public benefit. Inasmuch as the notices will be produced and provided by the Department, complying with this rule is both economically and technically feasible.

6. Minimizing adverse impact:

The Department did not identify any feasible alternatives which would achieve the results of the proposed rule and, at the same time, be less restrictive and less burdensome in terms of compliance. The Department has consulted with Department of Labor, Department of Health, and several advocacy groups and finds this rule necessary for the wellbeing of the public who seek appearance enhancement services.

7. Small business and local government participation:

The Department, in conjunction with other state agencies, has consulted with small business interests which may be affected by this rule. In addition, the Department has conducted significant outreach to inform the public regarding this rule, including posting this rule on the Department’s website and participating in a public forum detailing, inter alia, the purpose

of this rule. Publication of the rule in the State Register will provide further notice of the proposed rulemaking to all interested parties. Additional comments will be received and entertained during the public comment period associated with this rulemaking.

8. Compliance:

As stated in the emergency rule, this rule is effective immediately.

9. Cure period:

The Department is not providing for a cure period prior to enforcement of these regulations. The Department finds that immediate posting of unlawful activity will help protect the public and as such a cure period is not appropriate.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule will apply to all unlicensed persons and business operating in the State of New York in rural and urban areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

The rule requires unlicensed persons and businesses subject to a pending administrative proceeding seeking the cessation of unlicensed activity to post such notices so that they can be viewed by the public which may be seeking appearance enhancement services. No professional services are required to comply with this rule. No different or additional requirements are applicable exclusively to rural areas of the state.

3. Costs:

The rule itself will not impose any cost on affected parties. The Department will provide appropriate notices for posting. The Department believes that once such notices are issued, previously unlicensed persons and businesses will seek an appropriate license. Pursuant to Article 27 of the General Business Law the cost to obtain an appropriate license (depending on whether an examination is required) ranges from \$45.00 to \$60.00. Such costs do not include other fees such as any education requirements or other business filings which may be required.

4. Minimizing adverse impact:

The proposed rulemaking will improve the safety and wellbeing of the general public throughout the state, including rural areas that seek appearance enhancement services. The Department has consulted with Department of Labor, Department of Health, and several advocacy groups, but did not identify any feasible alternatives which would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance.

5. Rural area participation:

No significant comments have been received regarding this rulemaking. Publication of the Notice in the State Register will provide notice to all interested parties, including those in rural areas. Additional comments received on this rulemaking will be considered and assessed during imminent Proposed Rule Making process on this matter.

Job Impact Statement

1. Nature of impact:

This rulemaking requires that unlicensed businesses and operators publically post Notices of Violations seeking the cessation of unlicensed activity. Inasmuch as the group affected by this rule is operating in violation of law, this rulemaking will not impact lawful business activities. The Department anticipates that some unlicensed businesses and operators will suffer some loss of business; however, the intent of the regulation is to curb unlawful activity. Accordingly, the Department finds any loss of business associated with unlawful activity to be appropriate.

2. Categories and numbers affected:

This rulemaking will affect all unlicensed persons and businesses operating in the state. Given the nature of the activities affected by this rule, the Department cannot estimate the number of unlawful operators and businesses in the state.

3. Regions of adverse impact:

The proposed rulemaking will not have any disproportionate regional adverse impact on jobs or lawful employment opportunities.

4. Minimizing adverse impact:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is immediately needed to protect the general welfare of the public that seeks appearance enhancement services. The Department consulted with Department of Labor, Department of Health, and several advocacy groups but did not identify any alternatives which would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance.

**REGULATORY IMPACT
STATEMENT,
REGULATORY FLEXIBILITY
ANALYSIS, RURAL AREA
FLEXIBILITY ANALYSIS
AND/OR
JOB IMPACT STATEMENT**

Posting Requirements

I.D. No. DOS-22-15-00009-E

This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement pertain(s) to a notice of Emergency rule making, I.D. No. DOS-22-15-00009-E, printed in the *State Register* on June 3, 2015.

Regulatory Impact Statement

1. Statutory Authority:

New York Executive Law § 91 and New York General Business Law (“GBL”) §§ 402(5); 404 and 405(2). Section 91 of the Executive Law authorizes the Secretary of State to: “adopt and promulgate such rules which shall regulate and control the exercise of the powers of the department of state.” In addition, Sections 401(5) and 404 of the GBL authorize the Secretary of State to promulgate rules specifically relating to the appearance enhancement industry.

2. Legislative Objectives:

Article 27 of the GBL was enacted, inter alia, to provide a system of licensure of appearance enhancement businesses and operators that would allow for the greatest possible flexibility in the establishment of regulated services, while establishing measures to protect members of the public, including those who work in the industry. Consistent with this legislative intent, the Department is empowered to issue regulations that accomplish these purposes.

3. Needs and Benefits:

Notwithstanding existing laws and regulations, a number of businesses have taken unfair advantage of a significant number of licensed nail care specialists who contribute to the community and economy. The ease with which such businesses have been able to deprive their workers with fair wages and other rights, is attributed in part, to failing to educate the workers and the public. To help ensure that nail care specialists are better protected, the Department is requiring that business owners post a bill of rights sign in an area easily seen by consumers and nail care specialists. The Department finds that greater public awareness regarding such unlawful activity should reduce potential abuses by unscrupulous business owners.

4. Costs:

a. Costs to Regulated Parties:

The Department does not anticipate any additional costs to business owners. The Department will provide the required signs and posting of the same should not increase costs to businesses.

b. Costs to the Department of State, the State, and Local Governments:

The Department does not anticipate additional costs to the state or local governments. The Department’s current budget will cover the costs associated with providing the required signage to businesses.

5. Local Government Mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

This rule requires owners to publically post signs that will be provided by the Department.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is needed to protect the general welfare of approximately 162,000 practitioners who offer nail specialty services.

9. Federal Standards:

There are no minimum standards established by the federal government for the same or similar subject areas.

10. Compliance Schedule:

As stated in the emergency rule, this rule will be effective immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule requires public posting of a practitioner’s bill of rights sign in any business which offers nail care services. The Department finds that public posting of a bill of rights sign will help ensure that the nail care providers, who are often vulnerable to abuses, are aware of their rights, as well as the public they serve. The Department finds that greater public awareness regarding unfair wage practices will help reduce potential abuses by unscrupulous business owners. There are 26,753 appearance enhancement businesses and 7,764 area renters in New York State which may be subject to this rule.

2. Compliance requirements:

Owners subject to this rule will be required to post a sign provided by the Department in an area viewable by nail care specialists and the public.

3. Professional services:

The Department does not anticipate the need for professional services.

4. Compliance costs:

The Department does not anticipate that there will be any costs associated with complying with this rule.

5. Economic and technological feasibility:

This proposal is economically and technically feasible.

6. Minimizing adverse impact:

The Department did not identify any feasible alternatives which would achieve the results of the proposed rule and at the same time be less restrictive and less burdensome in terms of compliance. The Department has consulted with Department of Labor, Department of Health, and several advocacy and business groups and finds this rule is necessary for the wellbeing of all practitioners who offer nail specialty services.

7. Small business and local government participation:

The Department, in conjunction with other state agencies, has consulted with small business interests which may be affected by this rule. In addition, the Department has conducted significant outreach to inform the public regarding this rule, including posting this rule on the Department’s website and participating in a public forum detailing, inter alia, the purpose of this rule. Publication of the rule in the State Register will provide further notice of the proposed rulemaking to all interested parties. Additional comments will be received and entertained during the public comment period associated with this rulemaking.

8. Compliance:

As stated in the emergency rule, this rule is effective immediately.

9. Cure period:

The Department is not providing for a cure period prior to enforcement of these regulations. The Department finds that posting information regarding workers’ rights is a matter of publicity which those subject to this rule can easily comply with. As the Department is providing the required signs to those impacted by this rule, the Department finds that a cure period is not appropriate.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule will apply to appearance enhancement businesses that are licensed pursuant to Article 27 of the General Business Law. There are 26,753 appearance enhancement businesses and 7,764 area renters across New York State that may be subject to this rule. Licensed owners throughout the state, including those in rural areas, are responsible for complying with this rule.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

The rule requires owners who offer nail care services to post a sign regarding a practitioner’s bill of rights. The rule does not impose other reporting or recordkeeping on owners. Further, there are no additional professional services required as a result of this regulation. No different or additional requirements are applicable exclusively to rural areas of the state.

3. Costs:

The Department does not anticipate that there will be any costs associated with complying with this rule.

4. Minimizing adverse impact:

The proposed rulemaking will improve the safety and wellbeing of nail care providers throughout the state, including rural areas. The Department has consulted with Department of Labor, Department of Health, and several advocacy groups, but did not identify any feasible alternatives that would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance.

5. Rural area participation:

No significant comments have been received regarding this rulemaking. Publication of the Notice in the State Register will provide notice to all interested parties, including those in rural areas. Additional comments received on this rulemaking will be considered and assessed during imminent Proposed Rule Making process on this matter.

Job Impact Statement

1. Nature of impact:

This rulemaking applies to all appearance enhancement owners who offer nail care services. Pursuant to this rule, owners are required to post a bill of rights in an area viewable by nail care specialists and the public. The Department finds that posting of such rights will help reduce wage abuse by unscrupulous business owners. Inasmuch as this rule is intended to protect the wellbeing of those working in the nail care industry, the Department believes this rule will have a positive impact on jobs and employment opportunities. Specifically, by providing better protections to these types of workers, the Department finds that more people may seek employment in this field.

2. Categories and numbers affected:

There are approximately 30,000 owners who would potentially be subject to this rulemaking. Further, there are approximately 162,000 licensees who offer services specified by this rule and who would benefit from the information provided by this public posting.

3. Regions of adverse impact:

The proposed rulemaking will not have any disproportionate regional adverse impact on jobs or lawful employment opportunities.

4. Minimizing adverse impact:

The Department considered not proposing the instant rulemaking. It was determined, however, this rule is immediately needed to protect the general welfare of nail care practitioners, who may not know their rights. The Department has consulted with Department of Labor, Department of Health, and several advocacy groups but did not identify any alternatives that would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance.

**REGULATORY IMPACT
STATEMENT,
REGULATORY FLEXIBILITY
ANALYSIS, RURAL AREA
FLEXIBILITY ANALYSIS
AND/OR
JOB IMPACT STATEMENT**

Rules Relating to Insurance and Bond Requirements

I.D. No. DOS-22-15-00010-E

This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement pertain(s) to a notice of Emergency rule making, I.D. No. DOS-22-15-00010-E, printed in the *State Register* on June 3, 2015.

Regulatory Impact Statement

1. Statutory Authority:

New York Executive Law § 91 and New York General Business Law (“GBL”) §§ 402(5); 404 and 405(2). Section 91 of the Executive Law authorizes the Secretary of State to: “adopt and promulgate such rules which shall regulate and control the exercise of the powers of the department of state.” In addition, Sections 401(5) and 404 of the GBL authorize the Secretary of State to promulgate rules specifically relating to the appearance enhancement industry. Section 405(2) requires an appearance enhancement licensee to be bonded or insured.

2. Legislative Objectives:

Article 27 of the GBL was enacted, inter alia, to provide a system of licensure of appearance enhancement businesses and operators that would allow for the greatest possible flexibility in the establishment of regulated services, while establishing measures to protect members of the public, including those who work in the industry. Consistent

with this legislative intent, the Department is empowered to issue regulations that accomplish these purposes.

3. Needs and Benefits:

It has come to the attention of the Department that a number of appearance enhancement businesses may be engaging in exploitive practices to deprive practitioners and workers of wages due. Practitioners providing nail services to the public have been particularly impacted. While the regulations of the Department, in accord with statutory mandate, have long required bonding or insurance for the protection of the public welfare, the Department finds that new and more particularized bonding and insurance requirements are needed to help ensure that employees who provide nail specialty services receive the wages and benefits they have earned.

After consulting with the Department of Labor and advocacy groups, it was determined that this regulation is needed to help protect the wellbeing of practitioners and workers who provide nail specialty services to the public.

4. Costs:

a. Costs to Regulated Parties:

Prior regulatory requirements were primarily concerned with liability coverage, whether by bond or insurance. The majority of appearance enhancement business owners satisfied their obligations by obtaining an insurance policy in the required amount of \$25,000 per occurrence and \$75,000 in the aggregate. This rulemaking maintains such liability requirement and adds a new requirement that the business' payment of wages and remuneration legally due employees and providers of appearance enhancement services be guaranteed in amounts keyed to the number of individuals employed by the business owner. Therefore, the cost to the regulated parties is the cost of acquiring the wage guarantee.

The Department is informed that for purchasers in good credit standing, the cost of acquiring a "wage bond" is likely to be 2 - 4% of the amount of the bond. Thus, a surety bond in the amount of \$25,000 (1 - 4 employees) would range between \$500 and \$1,000. Businesses employing more individuals are required to maintain greater coverage. Bond amounts and cost of acquisition are as follows: \$40,000 for 5 -10 individuals, \$800 -\$1,600; \$75,000 for 11 - 25 individuals, \$1,500 - \$3,000, and \$125,000 for 26 or more individuals, \$2,500 - \$5,000.

b. Costs to the Department of State, the State, and Local Governments:

The Department does not anticipate any additional costs to implement the rule. Existing staff will manage new filing requirements.

5. Local Government Mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The rule requires a licensee to file its bond with the Secretary and to notify the Secretary of the bond's impending cancellation.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is immediately needed to protect the general welfare of a significant population of practitioners who have been deprived of legally due wages.

9. Federal Standards:

The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule:

As stated in the emergency rule itself, compliance will be required by July 1, 2015.

Regulatory Flexibility Analysis

1. Effect of rule:

In addition to continuing the requirement that appearance enhancement business owners acquire and maintain liability insurance, this rulemaking

requires appearance enhancement business owners to acquire and maintain a guarantee by a surety or insurer for the business' payment of wages and remuneration legally due. The rule will protect appearance enhancement practitioners and workers from the exploitive and pernicious practice of wage theft. There are approximately 26,753 appearance enhancement businesses and 7,764 area renters in New York State that may be subject to this rule. Compliance is required depending upon the numbers of persons employed.

2. Compliance requirements:

Prior regulatory requirements provided that appearance enhancement business owners provide liability coverage, whether by bond or insurance, in the amount or \$25,000 per occurrence and \$75,000 in the aggregate. This rulemaking maintains such liability requirement, and adds a new requirement that the business' payment of wages legally due employees and providers of appearance enhancement services be guaranteed in amounts keyed to the number of individuals employed by the business owner. The rule requires a licensee to file its bond with the Secretary and to notify the Secretary of the bond's impending cancellation. Additionally, the rule maintains the current requirement to have evidence of such coverage at the licensed business premises.

3. Professional services:

The Department does not anticipate the need for professional services.

4. Compliance costs:

The Department is informed that for purchasers in good credit standing, the cost of acquiring a "wage bond" is likely to be 2 -4% of the amount of the bond. Thus, a surety bond in the amount of \$25,000 (1 - 4 employees) would range between \$500 and \$1,000. Businesses employing more individuals are required to maintain greater coverage. Bond amounts and cost of acquisition are as follows: \$40,000 for 5 -10 individuals, \$800 -\$1,600; \$75,000 for 11 - 25 individuals, \$1,500 - \$3,000, and \$125,000 for 26 or more individuals, \$2,500 - \$5,000.

5. Economic and technological feasibility:

The amount of coverage required and thus, the cost of acquiring such coverage, has been keyed to the relative size of the business. The smallest business identified, one that employees 1-5 individuals, may expend as little as \$500 to comply. Accordingly, the Department believes it is both economically and technically feasible to comply with this rule.

6. Minimizing adverse impact:

The Department did not identify any alternatives that would achieve the results of the proposed rule and at the same time be less restrictive and less burdensome in terms of compliance. The Department has consulted with Department of Labor as well as several advocacy groups and finds this rule is necessary for the wellbeing of those who engage in appearance enhancement practices.

7. Small business and local government participation:

The Department, in conjunction with other state agencies, has consulted with small business interests that may be affected by this rule. The Korean American Nail Salon Association of New York, which represents a significant number of nail salon owners, was consulted as part of the Department's efforts. Although this particular proposal was not presented, the group was, generally, supportive and amenable to the changes discussed.

8. Compliance:

As stated in the emergency rule, itself, compliance will be required by July 1, 2015.

9. Cure period:

The Department is not providing for a cure period prior to enforcement of these regulations. The Department finds that protecting the wages of workers is a significant public concern. In addition, as this rule is not effective until July 1, 2015, the Department believes that those employers impacted by this rule will have sufficient time to comply. Accordingly, the Department finds that a cure period is not appropriate.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule will apply to appearance enhancement businesses that are licensed pursuant to Article 27 of the General Business Law. There are approximately 26,753 appearance enhancement businesses and 7,764 area renters across New York State that may be subject to this rule. Licensed owners are responsible for complying with this rule.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

Prior regulatory requirements provided that appearance enhancement business owners provide liability coverage, whether by bond or insurance, in the amount or \$25,000 per occurrence and \$75,000 in the aggregate. This rulemaking maintains such liability requirement, and adds a new requirement that the business' payment of wages and remuneration legally due employees and providers of appearance enhancement services be guaranteed in amounts keyed to the number of individuals employed by the business owner. The rule requires a licensee to file its bond with the Secretary and to notify the Secretary of the bond's impending cancellation. Additionally, the rule maintains the current requirement to have evidence

of such coverage at the licensed business premises. No different or additional compliance requirements apply to businesses located in rural areas.

3. Costs:

The Department is informed that for purchasers in good credit standing, the cost of acquiring a “wage bond” is likely to be 2 -4% of the amount of the bond. Thus, a surety bond in the amount of \$25,000 (1 – 4 employees) would range between \$500 and \$1,000. Businesses employing more individuals are required to maintain greater coverage. Bond amounts and cost of acquisition are as follows: \$40,000 for 5 -10 individuals, \$800 - \$1,600; \$75,000 for 11 – 25 individuals, \$1,500 - \$3,000, and \$125,000 for 26 or more individuals, \$2,500 - \$5,000.

4. Minimizing adverse impact:

The Department has consulted with Department of Labor, and several advocacy groups, but did not identify any alternatives that would achieve the results of the proposed rules and also be less restrictive and less burdensome in terms of compliance. Businesses in rural areas will not be impacted any more or less than businesses in other areas.

5. Rural area participation:

The Department, in conjunction with other state agencies, has consulted with business interests that may be affected by this rule. Publication of this rule in the New York State Register will provide notice to those in rural areas and afford everyone an opportunity to comment. The Department has also posted a copy of this rule on the Department’s website, which will provide additional opportunity for rural area participation.

Job Impact Statement

1. Nature of impact:

This rulemaking will help to insure the payment of wages lawfully due and owing to appearance enhancement practitioners and workers. Inasmuch as this rulemaking will help protect workers, the Department believes that it will have a positive impact on jobs and employment opportunities. Specifically, more workers may seek employment in this industry if they know that their wages will now be guaranteed.

2. Categories and numbers affected:

There are approximately 26,753 appearance enhancement businesses and 7,764 area renters in New York State that may be subject to this rule.

3. Regions of adverse impact:

The proposed rulemaking will not have any disproportionate regional adverse impact on jobs or employment opportunities.

4. Minimizing adverse impact:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is immediately needed to protect the general welfare of a significant population of individuals who have been deprived of legally due wages. The Department has consulted with Department of Labor and several advocacy groups, but did not identify any alternatives which would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance.