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.

Education Department

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Requirements for Medical Physics Education Programs and Eligibility for Limited Permits in Specialty Areas of Medical Physics

I.D. No. EDU-10-15-00003-P

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

Proposed Action: Amendment of sections 52.31, 79-8.5 and 79-8.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 8701, 8705 and 8706

Subject: Requirements for medical physics education programs and eligibility for limited permits in specialty areas of medical physics.

Purpose: To reflect changes in national accreditation requirements for medical physics education programs and repeal obsolete provisions.

Text of proposed rule: 1. Subdivision (b) of section 52.31 of the Regulations of the Commissioner of Education is amended, effective June 3, 2015, to read as follows:

§ 52.31 Medical physics.

(a) …

(b) In addition to meeting all applicable provisions of this Part, to be registered as a program recognized as leading to licensure in a specialty of medical physics as defined in section 8701 of the Education Law, the program shall be offered by a college or university accredited by an acceptable accrediting agency or an equivalent institution, as determined by the department, and shall be a master's or doctoral degree program in medical physics, physics, another physical science, mathematics, engineering or an equivalent field, containing at least 10 semester hours, or the equivalent, of coursework which includes but is not limited to: radiation protection, radiation biology, dosimetry, instrumentation, and *the clinical applications thereof and/or* a supervised clinical experience, as such coursework and experience pertain to such medical physics specialty.

2. Paragraph (2) of subdivision (a) of section 79-8.5 of the Regulations of the Commissioner of Education is amended, effective June 3, 2015, to read as follows:

§ 79-8.5 Limited permits.

(a) The following persons shall be eligible for a limited permit in a specialty area of medical physics:

(1) …

(2) a student who is enrolled in a graduate program at the master's degree level or above approved by the department. *Such permit shall only be required for students participating in clinical practice as defined in section 8701(1) of the Education Law.*

3. Section 79-8.6 of the Regulations of the Commissioner of Education is repealed, effective June 3, 2015.

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

Data, views or arguments may be submitted to: Office of the Professions, Office of the Deputy Commissioner, State Education Department, State Education Building 2M, 89 Washington Ave., Albany, NY 12234, (518) 486-1765, email: opdepcom@nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Section 8701 of the Education Law defines the terms relating to the practice of medical physics.

Section 8705 of the Education Law establishes the requirements for licensure as a medical physicist and authorizes standards for such licensure to be included in regulations promulgated by the Commissioner of Education.

Section 8706 of the Education Law establishes the limited permit requirements for applicants seeking licensure as medical physicists.

2. LEGISLATIVE OBJECTIVES:

Currently, under section 52.31(b) of the Regulations of the Commissioner of Education, a supervised clinical experience is a required component of a medical physics education program. Additionally, pursuant to section 8706(1)(b) of the Education Law, a medical physics student enrolled in a graduate or post-graduate curriculum approved by the Department is eligible to obtain a limited permit from the Department in order to meet the clinical experience requirements for licensure.

The purpose of the proposed amendments to sections 52.31 and 79-8.5 of the Regulations of the Commissioner of Education is to revise the regulations to reflect recent changes in the national accreditation requirements for medical physics education programs.

The proposed amendments to sections 52.31(b) and 79-8.5(a)(2) are applicable to master's or doctoral degree programs, offered by a college or university accredited by an acceptable accrediting agency or an equivalent institution, as determined by the Department, where such programs are either: registered by the Department; accredited by an acceptable accrediting agency; or otherwise determined by the Department to be equivalent

to such registered or accredited programs. The proposed amendments are also applicable to master's or doctoral degree programs, other than those registered, accredited, or substantially equivalent programs described above, offered by a college or university accredited by an acceptable accrediting agency or an equivalent institution, as determined by the Department, in medical physics, physics, another physical science, mathematics, engineering, or an equivalent field, which incorporated or was supplemented by education and/or experience in radiation protection, radiation biology, dosimetry, instrumentation, and clinical applications thereof, as such education and experience pertain to the specialty area for which the applicant seeks licensure. In addition, these proposed amendments are applicable to students enrolled in any of the aforementioned programs who seek licensure as medical physicists. The proposed amendment would also repeal certain regulatory provisions relating to medical physicist licensure in section 79-8.6 of the Regulations of the Commissioner of Education, as those provisions no longer have any application.

3. NEEDS AND BENEFITS:

In January 2014, the Commission on Accreditation of Medical Physics Education Programs (CAMPEP), the nationally recognized organization that accredits education programs and residences in medical physics, changed its licensing examination qualification requirements for applicants for licensure by requiring CAMPEP accredited programs to provide access and training on medical physics related equipment, instead of requiring such programs to include activities directly related to the diagnosis and/or treatment of human aliments under section 52.31(b) of the Regulations of the Commissioner of Education. Since the access and training required of CAMPEP accredited programs is not directly related to the treatment and/or diagnosis of human aliments, students in these programs tend not to apply for limited permits from the Department, despite the fact that they are currently required to do so.

This situation has unnecessarily complicated the pathway to New York State licensure for these students. Typically, when these students apply to the Department for a residency permit, their education is deemed not to meet New York State standards because they never obtained a limited permit from the Department. This causes some of the these students to complete their residences outside of New York State, which results in some of them establishing their careers and practices in other states, instead of New York State. The proposed amendment to section 52.31(b) of the Regulations of the Commissioner of Education would revise the regulation to reflect the aforementioned changes in the national accreditation standards for medical physics education programs by requiring New York State registered medical physics education programs to offer instruction in the clinical applications of medical physics and/or a supervised clinical experience, instead of only permitting them to offer a supervised clinical experience that involves the direct treatment and/or diagnosis of patients. Clinical application instruction will appropriately require that medical physics students be educated in the clinical applications of the profession, but will not require them to engage in supervised clinical experiences that involve activities directly related to treatment and/or diagnosis of patients.

The proposed amendment to section 79-8.5(a)(2) of the Regulations of the Commissioner of Education changes the eligibility requirements for limited permits for medical physics students by clarifying that a limited permit is only required for those students who are both enrolled in a graduate program at the master's degree level or above approved by the Department and participating in clinical practice as defined in section 8701(1) of the Education Law. In addition to clarifying that a limited permit is not required for all medical physics students, the amendment leaves the limited permit option in-place for those students who may require a permit because their specific educational option warrants a supervised clinical experience that involves direct contact with patients.

4. COSTS:

(a) Costs to State government: It is anticipated that the proposed amendments will result in nominal cost savings for State government because fewer applicants for licensure as medical physicist will be required to apply to the Department for limited permits. This is expected to result in fewer limited permit applications requiring Department review and fewer limited permits that will need to be issued.

(b) Costs to local government: The proposed amendments to sections 52.31(b) and 79-8.5(a)(2) of the Regulations of the Commissioner of Education are applicable to master's or doctoral degree programs, offered by a college or university accredited by an acceptable accrediting agency or an equivalent institution, as determined by the Department, where such programs are either: registered by the Department; accredited by an acceptable accrediting agency; or otherwise determined by the Department to be equivalent to such registered or accredited programs. The proposed amendments are also applicable to master's or doctoral degree programs, other than those registered, accredited, or substantially equivalent programs described above, offered by a college or university accredited by an acceptable accrediting agency or an equivalent institution, as determined by the department, in medical physics, physics, another physical science, mathematics, engineering, or an equivalent field, which incorporated or was supplemented by education and/or experience in radiation protection, radiation biology, dosimetry, instrumentation, and clinical applications thereof, as such education and experience pertain to the specialty area for which the applicant seeks licensure. In addition, these proposed amendments are applicable to students enrolled in any of the aforementioned programs who seek licensure as medical physicists.

Local governments play no role in these education programs or the education of the students enrolled in them. As such, there will be no cost to local governments.

(c) Cost to private regulated parties: The proposed amendments do not impose any other costs on either higher education institutions or any of the education programs referenced above or the students enrolled in them.

(d) Cost to the regulatory agency: As indicated in Cost to State government above, the proposed amendments will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendments to sections 52.31(b) and 79-8.5(a)(2) are applicable to master's or doctoral degree programs, offered by a college or university accredited by an acceptable accrediting agency or an equivalent institution, as determined by the Department, where such programs are either: registered by the Department; accredited by an acceptable accrediting agency; or otherwise determined by the Department to be equivalent to such registered or accredited programs. The proposed amendments are also applicable to master's or doctoral degree programs, other than those registered, accredited, or substantially equivalent programs described above, offered by a college or university accredited by an acceptable accrediting agency or an equivalent institution, as determined by the Department, in medical physics, physics, another physical science, mathematics, engineering, or an equivalent field, which incorporated or was supplemented by education and/or experience in radiation protection, radiation biology, dosimetry, instrumentation, and clinical applications thereof, as such education and experience pertain to the specialty area for which the applicant seeks licensure. In addition, these proposed amendments are applicable to students enrolled in any of the aforementioned programs who seek licensure as medical physicists. Therefore, the proposed amendments do not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed amendments do not impose any additional reporting or recordkeeping requirements beyond those already required for higher education institutions that have one or more of the aforementioned education programs. The proposed amendments do not impose any additional reporting or recordkeeping requirements beyond those already required for the students enrolled in such programs and will eliminate the need for students, who are enrolled in registered medical physics education programs that do not include a supervised clinical experience component, to apply for limited permits.

7. DUPLICATION:

There are no other state or federal requirements on the subject matter of these proposed amendments. Therefore, the proposed amendments do not duplicate other existing state or federal requirements.

8. ALTERNATIVES:

There are no viable, significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

Since, there are no federal standards applicable to the subject matter of these proposed amendments, the proposed amendments do not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed amendments will become effective on June 3, 2015. It is anticipated that higher education institutions with programs that are subject to the requirements of the proposed amendments and the students enrolled in such programs will be able to comply with the proposed amendments by their effective date.

Regulatory Flexibility Analysis

The purpose of the proposed amendments to sections 52.31 and 79-8.5 of the Regulations of the Commissioner of Education is to revise the regulations to reflect recent changes in the national accreditation requirements for medical physics education programs. Currently, under section 52.31(b) of the Regulations of the Commissioner of Education, a supervised clinical experience is a required component of a medical physics education program. Additionally, pursuant to section 8706(1)(b) of the Education Law, a medical physics student enrolled in a graduate or postgraduate curriculum approved by the Department is eligible to obtain a limited permit from the Department in order to meet the clinical experience requirements for licensure.

However, in January 2014, the Commission on Accreditation of Medical Physics Education Programs (CAMPEP), the nationally recognized or-

ganization that accredits education programs and residences in medical physics, changed its licensing examination qualification requirements for applicants for licensure by requiring CAMPEP accredited programs to provide access and training on medical physics related equipment, instead of requiring such programs to include activities directly related to the diagnosis and/or treatment of human aliments under section 52.31(b) of the Regulations of the Commissioner of Education. Since the access and training required of CAMPEP accredited programs is not directly related to the treatment and/or diagnosis of human aliments, students in these programs tend not to apply for limited permits from the Department, despite the fact that they are currently required to do so.

This situation has unnecessarily complicated the pathway to New York State licensure for these students. Typically, when these students apply to the Department for a residency permit, their education is deemed not to meet New York State standards because they never obtained a limited permit from the Department. This causes some of the these students to complete their residences outside of New York State, which results in some of them establishing their careers and practices in other states, instead of New York State. The proposed amendment to section 52.31(b) of the Regulations of the Commissioner of Education would revise the regulation to reflect the aforementioned changes in the national accreditation standards for medical physics education programs by requiring New York State registered medical physics education programs to offer instruction in the clinical applications of medical physics and/or a supervised clinical experience, instead of only permitting them to offer a supervised clinical experience that involves the direct treatment and/or diagnosis of patients. Clinical application instruction will appropriately require that medical physics students be educated in the clinical applications of the profession, but will not require them to engage in supervised clinical experiences that involve activities directly related to treatment and/or diagnosis of patients.

The proposed amendment to section 79-8.5(a)(2) of the Regulations of the Commissioner of Education changes the eligibility requirements for limited permits for medical physics students by clarifying that a limited permit is only required for those students who are both enrolled in a graduate program at the master's degree level or above approved by the Department and participating in clinical practice as defined in section 8701(1) of the Education Law. In addition to clarifying that a limited permit is not required for all medical physics students, the amendment leaves the limited permit option in-place for those students who may require a permit because their specific educational option warrants a supervised clinical experience that involves direct contact with patients.

The proposed amendment would also repeal certain regulatory provisions relating to medical physicist licensure in section 79-8.6 of the Regulations of the Commissioner of Education, as those provisions no longer have any application.

The proposed amendments to sections 52.31(b) and 79-8.5(a)(2) are applicable to master's or doctoral degree programs, offered by a college or university accredited by an acceptable accrediting agency or an equivalent institution, as determined by the Department, where such programs are either: registered by the Department; accredited by an acceptable accrediting agency; or otherwise determined by the Department to be equivalent to such registered or accredited programs. The proposed amendments are also applicable to master's or doctoral degree programs, other than those registered, accredited, or substantially equivalent programs described above, offered by a college or university accredited by an acceptable accrediting agency or an equivalent institution, as determined by the Department, in medical physics, physics, another physical science, mathematics, engineering, or an equivalent field, which incorporated or was supplemented by education and/or experience in radiation protection, radiation biology, dosimetry, instrumentation, and clinical applications thereof, as such education and experience pertain to the specialty area for which the applicant seeks licensure. In addition, these proposed amendments are applicable to students enrolled in any of the aforementioned programs who seek licensure as medical physicists.

The proposed amendments will not impose any reporting, recordkeeping, or other compliance requirements or costs, or impose an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed amendments that it will not affect small businesses or local governments, no affirmative steps were needed to ascertain this fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

The purpose of the proposed amendments to sections 52.31 and 79-8.5 of the Regulations of the Commissioner of Education is to revise the regulations to reflect recent changes in the national accreditation requirements for medical physics education programs. Currently, under section 52.31(b) of the Regulations of the Commissioner of Education, a supervised clinical experience is a required component of a medical physics education program. Additionally, pursuant to section 8706(1)(b) of the Education Law, a medical physics student enrolled in a graduate or postgraduate curriculum approved by the Department is eligible to obtain a limited permit from the Department in order to meet the clinical experience requirements for licensure.

However, in January 2014, the Commission on Accreditation of Medical Physics Education Programs (CAMPEP), the nationally recognized organization that accredits education programs and residences in medical physics, changed its licensing examination qualification requirements for applicants for licensure by requiring CAMPEP accredited programs to provide access and training on medical physics related equipment, instead of requiring such programs to include activities directly related to the diagnosis and/or treatment of human aliments under section 52.31(b) of the Regulations of the Commissioner of Education. Since the access and training required of CAMPEP accredited programs is not directly related to the treatment and/or diagnosis of human aliments, students in these programs tend not to apply for limited permits from the Department, despite the fact that they are currently required to do so.

This situation has unnecessarily complicated the pathway to New York State licensure for these students. Typically, when these students apply to the Department for a residency permit, their education is deemed not to meet New York State standards because they never obtained a limited permit from the Department. This causes some of the these students to complete their residences outside of New York State, which results in some of them establishing their careers and practices in other states, instead of New York State. The proposed amendment to section 52.31(b) of the Regulations of the Commissioner of Education would revise the regulation to reflect the aforementioned changes in the national accreditation standards for medical physics education programs by requiring New York State registered medical physics education programs to offer instruction in the clinical applications of medical physics and/or a supervised clinical experience, instead of only permitting them to offer a supervised clinical experience that involves the direct treatment and/or diagnosis of patients. Clinical application instruction will appropriately require that medical physics students be educated in the clinical applications of the profession, but will not require them to engage in supervised clinical experiences that involve activities directly related to treatment and/or diagnosis of patients.

The proposed amendment to section 79-8.5(a)(2) of the Regulations of the Commissioner of Education changes the eligibility requirements for limited permits for medical physics students by clarifying that a limited permit is only required for those students who are both enrolled in a graduate program at the master's degree level or above approved by the Department and participating in clinical practice as defined in section 8701(1) of the Education Law. In addition to clarifying that a limited permit is not required for all medical physics students, the amendment leaves the limited permit option in-place for those students who may require a permit because their specific educational option warrants a supervised clinical experience that involves direct contact with patients.

The proposed amendment would also repeal certain regulatory provisions relating to medical physicist licensure in section 79-8.6 of the Regulations of the Commissioner of Education, as those provisions no longer have any application.

The proposed amendments to sections 52.31(b) and 79-8.5(a)(2) are applicable to master's or doctoral degree programs, offered by a college or university accredited by an acceptable accrediting agency or an equivalent institution, as determined by the Department, where such programs are either: registered by the Department; accredited by an acceptable accrediting agency; or otherwise determined by the Department to be equivalent to such registered or accredited programs. The proposed amendments are also applicable to master's or doctoral degree programs, other than those registered, accredited, or substantially equivalent programs described above, offered by a college or university accredited by an acceptable accrediting agency or an equivalent institution, as determined by the Department, in medical physics, physics, another physical science, mathematics, engineering, or an equivalent field, which incorporated or was supplemented by education and/or experience in radiation protection, radiation biology, dosimetry, instrumentation, and clinical applications thereof, as such education and experience pertain to the specialty area for which the applicant seeks licensure. In addition, these proposed amendments are applicable to students enrolled in any of the aforementioned programs who seek licensure as medical physicists. Currently, there are no Department registered education programs in rural areas. However, it is unknown as to how many, if any, of the other above-referenced programs are located in rural areas. Despite this, however, the proposed amendments neither require any of the above-referenced programs to make any changes to their respective curricula nor impose any additional educational requirements on the students enrolled in them.

The proposed amendments merely revise the regulations to reflect recent changes in the national accreditation requirements for medical physics education programs, and do not adversely impact entities in rural areas

of the State. Accordingly, no further steps were needed to ascertain the impact of the proposed amendments on entities in rural areas and none were taken.

Job Impact Statement

The purpose of the proposed amendments to sections 52.31 and 79-8.5 of the Regulations of the Commissioner of Education is to revise the regulations to reflect recent changes in the national accreditation requirements for medical physics education programs. Currently, under section 52.31(b) of the Regulations of the Commissioner of Education, a supervised clinical experience is a required component of a medical physics education program. Additionally, pursuant to section 8706(1)(b) of the Education Law, a medical physics student enrolled in a graduate or postgraduate curriculum approved by the Department is eligible to obtain a limited permit from the Department in order to meet the clinical experience requirements for licensure.

However, in January 2014, the Commission on Accreditation of Medical Physics Education Programs (CAMPEP), the nationally recognized organization that accredits education programs and residences in medical physics, changed its licensing examination qualification requirements for applicants for licensure by requiring CAMPEP accredited programs to provide access and training on medical physics related equipment, instead of requiring such programs to include activities directly related to the diagnosis and/or treatment of human aliments under section 52.31(b) of the Regulations of the Commissioner of Education. Since the access and training required of CAMPEP accredited programs is not directly related to the treatment and/or diagnosis of human aliments, students in these programs tend not to apply for limited permits from the Department, despite the fact that they are currently required to do so.

This situation has unnecessarily complicated the pathway to New York State licensure for these students. Typically, when these students apply to the Department for a residency permit, their education is deemed not to meet New York State standards because they never obtained a limited permit from the Department. This causes some of the these students to complete their residences outside of New York State, which results in some of them establishing their careers and practices in other states, instead of New York State. The proposed amendment to section 52.31(b) of the Regulations of the Commissioner of Education would revise the regulation to reflect the aforementioned changes in the national accreditation standards for medical physics education programs by requiring New York State registered medical physics education programs to offer instruction in the clinical applications of medical physics and/or a supervised clinical experience, instead of only permitting them to offer a supervised clinical experience that involves the direct treatment and/or diagnosis of patients. Clinical application instruction will appropriately require that medical physics students be educated in the clinical applications of the profession, but will not require them to engage in supervised clinical experiences that involve activities directly related to treatment and/or diagnosis of patients.

The proposed amendment to section 79-8.5(a)(2) of the Regulations of the Commissioner of Education changes the eligibility requirements for limited permits for medical physics students by clarifying that a limited permit is only required for those students who are both enrolled in a graduate program at the master's degree level or above approved by the Department and participating in clinical practice as defined in section 8701(1) of the Education Law. In addition to clarifying that a limited permit is not required for all medical physics students, the amendment leaves the limited permit option in-place for those students who may require a permit because their specific educational option warrants a supervised clinical experience that involves direct contact with patients.

The proposed amendment would also repeal certain regulatory provisions relating to medical physicist licensure in section 79-8.6 of the Regulations of the Commissioner of Education, as those provisions no longer have any application.

The proposed amendment will not have a substantial adverse impact on jobs and employment opportunities. In fact, it is anticipated that the proposed amendment will result in more medical physics students completing their education in New York State. This may increase the number of licensed medical physicists in New York State, which may also assist in addressing the perceived shortage of medical physicists. Because it is evident from the nature of the proposed amendment that it will have no adverse impact on jobs or employment opportunities attributable to its adoption or only a positive impact, no affirmative steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Continuing Education Requirements for Optometrists Certified to Use Therapeutic Pharmaceutical Agents

I.D. No. EDU-10-15-00004-P

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

Proposed Action: Amendment of section 66.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 7101 and 7101-a(7)

Subject: Continuing education requirements for optometrists certified to use therapeutic pharmaceutical agents.

Purpose: To provide more flexibility in satisfying continuing education requirements by expanding the list of acceptable study methods.

Text of proposed rule: 1. Subparagraph (i) of paragraph (1) of subdivision (b) of 66.6 of the Regulations of the Commissioner of Education is amended, effective June 3, 2015, to read as follows:

66.6 Continuing education for licensed optometrists certified to use phase one and/or phase two therapeutic pharmaceutical agents.

(a) . . .

(b) Mandatory continuing education requirement.

(1) General requirements.

(i) During each triennial registration period, meaning a registration period of three years duration, an applicant for registration shall complete at least 36 hours of formal continuing education acceptable to the department as define in paragraph (2) of this subdivision. At least [three-quarters] *27 hours* of such continuing education in a registration period shall consist of live in-person instruction in a formal course of study *and/or live instruction in a formal course of study offered through audio, audio-visual, written, on-line, and other media, during which the student must be able to communicate and interact with the instructor and other students*. Up to [one-quarter] *9 hours* of such continuing education in a registration period may [consist] *be completed through a self-study program, meaning structured study, provided by a sponsor approved pursuant to subdivision (g) of this section, that is based* [of live instruction in a formal course of study offered through] *on* audio, audio-visual, written, on-line, and other media, *and does not include live instruction, transmitted in person or otherwise*, during which the student [must be able to] *may* communicate and interact with the instructor *and other students*.

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

Data, views or arguments may be submitted to: Office of the Professions, Office of the Deputy Commissioner, State Education Department, State Education Building 2M, 89 Washington Ave., Albany, NY 12234, (518) 486-1765, email: opdepcom@nysed.gov

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.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Section 7101 of the Education Law defines the practice of optometry and authorizes standards for the use of drugs by optometrists to be included in regulations promulgated by the Commissioner of Education.

Subdivision (7) of section 7101-a of the Education Law establishes the continuing education requirements for optometrists, who are certified to use therapeutic pharmaceutical agents.

2. LEGISLATIVE OBJECTIVES:

Pursuant to Education Law § 7101-a(7), optometrists, who are certified to use therapeutic pharmaceutical agents, must complete a minimum of 36 hours of continuing education during each triennial registration period. There is no continuing education requirement for optometrists who do not have this certification. Section 66.6 of the Regulations of the Commis-

sioner of Education was added in 2007, to, inter alia, establish a standard regarding what methods of study would be acceptable to the State Education Department for continuing education purposes. Under the current regulation, 27 hours of such continuing education must consist of live in-person instruction and up to 9 hours of such continuing education may consist of live instruction in a formal course of study offered through audio, audio-visual, written, on-line, and other media during which the student must be able to communicate and interact with the instructor.

The proposed amendment provides optometrists, who are certified to use therapeutic pharmaceutical agents, with more flexibility in satisfying their continuing education requirements by expanding the list of methods of study that the State Education Department will consider acceptable for continuing education purposes. The proposed amendment requires that at least 27 hours of the required 36 hours of continuing education in a triennial registration period must consist of live in-person instruction in a formal course of study and/or live instruction in a formal course of study offered through audio, audio-visual, written, on-line, and other media, during which the student must be able to communication and interact with the instructor and other students. Webinars used for continuing education purposes will have to satisfy the same requirements as live in-person instruction in a formal course of study, which include the requirements that all courses taken to satisfy continuing education requirements must be in appropriate subject matters and offered by approved providers.

In addition, the proposed amendment permits up to 9 hours of the required continuing education to be completed through a self-study program, meaning structured study, provided by a State Education Department approved sponsor of continuing education, that is based on audio, audio-visual, written, on-line, and other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to provide optometrists, who are certified to use therapeutic pharmaceutical agents, with more flexibility in satisfying their continuing education requirements by expanding the list of methods of study that the State Education Department will consider acceptable for continuing education purposes. The expanded list of approved methods of study, includes, but is not limited to, webinars and self-study programs. Since the 2007 adoption of section 66.6, live webinars that include communication and interaction between the student and the instructor and/or other students have become the norm for most professions with continuing education requirements. The proposed amendment recognizes this development by permitting optometrists to use such webinars to satisfy some or all of their continuing education requirements.

In addition, several other professions, including, but not limited to, dentistry, ophthalmic dispensing, physical therapy, chiropractic, respiratory therapy, and massage therapy, already permit their licensees to use some form of self-study to satisfy their respective continuing education requirements. The proposed amendment will provide optometrists with the same opportunities, as the licensees in many other professions, to use self-study programs to satisfy a limited portion of their continuing education requirement.

4. COSTS:

(a) Costs to State government: The amendment will not impose any additional costs on state government.

(b) Costs to local government: None.

(c) Cost to private regulated parties: The proposed regulation will not impose any new costs.

(d) Cost to the regulatory agency: See Cost to State government above.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is applicable only to optometrists, who are certified to use therapeutic pharmaceutical agents, and provides such optometrists with more flexibility in satisfying their continuing education requirements by expanding the list of methods of study that the State Education Department will consider acceptable for continuing education purposes. It does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment does not impose any additional reporting or recordkeeping requirements beyond those already imposed by subdivision (7) of section 7101-a of the Education Law and section 66.6 of the Regulations of the Commissioner of Education.

7. DUPLICATION:

The proposed amendment does not duplicate other existing state or federal requirements.

8. ALTERNATIVES:

There are no viable, significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

Since there are no applicable federal standards for continuing education requirements for optometrists who are certified to use therapeutic pharmaceutical agents, the proposed amendment does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed amendment will become effective on June 3, 2015. It is anticipated that the regulated parties will be able to comply with the proposed amendment by the effective date so that no additional period of time will be necessary to enable the regulated parties to comply.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to provide optometrists, who are certified to use therapeutic pharmaceutical agents, with more flexibility in satisfying their continuing education requirements by expanding the list of methods of study that the State Education Department will consider acceptable for continuing education purposes. The expanded list of approved methods of study includes, but is not limited to, webinars and self-study programs.

The amendment is applicable only to optometrists, who are certified to use therapeutic pharmaceutical agents. The proposed amendments will not impose any reporting, recordkeeping, or other compliance requirements, or have any adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

The purpose of the proposed amendment is to provide optometrists, who are certified to use therapeutic pharmaceutical agents, with more flexibility in satisfying their continuing education requirements by expanding the list of methods of study that the State Education Department will consider acceptable for continuing education purposes. The expanded list of approved methods of study includes, but is not limited to, webinars and self-study programs.

The proposed amendment is applicable only to optometrists, who are certified to use therapeutic pharmaceutical agents. The proposed amendments will not impose any reporting, recordkeeping, or other compliance requirements on entities in rural areas, or, have any adverse economic impact on rural areas of New York State. Accordingly, no further steps were needed to ascertain the impact of the proposed amendment on rural areas or entities in rural areas and none were taken.

Job Impact Statement

The purpose of the proposed amendment is to provide optometrists, who are certified to use therapeutic pharmaceutical agents, with more flexibility in satisfying their continuing education requirements by expanding the list of methods of study that the State Education Department will consider acceptable for continuing education purposes. The expanded list of approved methods of study, includes, but is not limited to, webinars and self-study programs.

The proposed amendment will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that it will not affect job and employment opportunities, no 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.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Off-Premises Delivery of Prescription Medications by New York Resident Pharmacies

I.D. No. EDU-10-15-00011-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 63.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 6808 and 6810; L. 2014, ch. 413

Subject: Off-premises delivery of prescription medications by New York resident pharmacies.

Purpose: To require pharmacies to obtain patient consent before automatically delivering new or refilled prescriptions.

Text of proposed rule: 1. Clause (e) of subparagraph (ii) of paragraph (8) of subdivision (b) of section 63.6 of the Regulations of the Commissioner of Education is added, effective June 3, 2015, to read as follows:

(e) Consent for delivery. Pharmacies registered with the department, pursuant to section 6808 of the Education Law, shall not deliver a

new or refilled prescription off-premises without the consent of the patient or an individual authorized to consent on the patient's behalf.

(1) As used in this clause, an individual authorized to consent on the patient's behalf shall mean either a person explicitly designated by the patient to consent to the delivery of the patient's prescriptions off-premises, the patient's legal guardian, a person legally responsible for the patient, or a person authorized pursuant to law to consent to health care for such patient.

(2) As used in this clause, consent shall include one of the following:

(i) the patient's or authorized individual's signature of acceptance of each prescription delivered;

(ii) the pharmacy may contact the patient or other authorized individual for consent to deliver the prescription or prescriptions and must document such consent in the patient's record; or

(iii) for pharmacies that administer refill reminder and/or medication adherence programs and deliver prescriptions off-premises, if a signature is not received on each prescription, then the refill reminder program or medication adherence program shall be an OPT-IN program that is updated with patient consent every 180 days accompanied by a documented patient record review by a licensed pharmacist from the providing pharmacy and the patient before continuation of off-premises delivery of medication can occur.

(3) Pharmacy providers who deliver medication without patient or authorized individual consent shall be required to accept the return of the medication from the patient, provide that patient with credit for any charges he or she may have paid, and shall be required to destroy those medications sent without consent on delivery in accordance with state and federal law.

(4) Nothing in this clause shall be deemed to interfere with the requirements for refill reminder or medication adherence programs.

(5) Nothing in this clause is intended to apply to long-term care pharmacy dispensing and delivery.

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

Data, views or arguments may be submitted to: Office of the Professions, Office of the Deputy Commissioner, State Education Department, State Education Building 2M, 89 Washington Ave., Albany, NY 12234, (518) 486-1765, email: opdepcom@nysed.gov

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.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner to promulgate regulations in administering the admission to and the practice of the professions.

Section 6808 of the Education Law provides for the registration, operation and regulation of resident pharmacies and resident establishments.

Subdivision (2) of section 6810 of the Education Law, as amended by Chapter 413 of the Laws of 2014, requires all pharmacies registered with the Department, pursuant to section 6808 of the Education Law, to obtain consent from the patient or an individual authorized to consent on the patient's behalf, before automatically delivering new or refilled prescription medications off-premises. Specifically, subdivision (2) of section 6810 of the Education Law requires resident pharmacies to obtain consent, before delivering a new or refilled prescription medication off-premises, by either: (1) obtaining the patient's or authorized individual's signature of acceptance of each prescription delivered; (2) contacting the patient or other authorized individual for consent and then documenting such consent in the patient's record; or (3) for pharmacies that administer refill reminder or medication adherence programs and deliver off-premises, if a signature is not received on each prescription, then the refill reminder program or medication adherence program shall be an OPT-IN program that is updated with patient consent every 180 days accompanied by a documented patient record review by a licensed pharmacist from the providing pharmacy and the patient before continuation of medication delivery can occur. Subdivision (2) of section 6810 of the Education Law further imposes return of medication requirements for all resident pharmacies that deliver prescription medications off-premises without patient or authorized individual consent. If resident pharmacies deliver prescription medications off-premises without the required consent, they must accept the return of any such medication from the patient, provide that patient with credit for any charges he or she may have paid, and destroy those medications in accordance with applicable state and federal law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment implements Chapter 413 of the Laws of 2014 by establishing consent requirements for off-premises delivery of new or refilled prescription medications by New York resident pharmacies and resident establishments and return of medication requirements for resident pharmacies and resident establishments that deliver prescription medications off-premises without the required consent.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to reduce medication waste, control costs, provide consumer protection and improve patient medication compliance and adherence by prohibiting resident pharmacies and resident establishments from automatically delivering new or refilled prescription medications off-premises without the consent of the patient or an individual authorized to consent on the patient's behalf. The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 413 of the Laws of 2014.

As required by statute, the proposed amendment is also needed to establish return of medication requirements for all resident pharmacies that deliver prescription medications off-premises without patient or authorized individual consent.

4. COSTS:

(a) Costs to State government. The proposed amendment implements statutory requirements and establishes standards as directed by statute, and will not impose any additional costs on State government beyond those imposed by the statutory requirements.

(b) Costs to local government. There are no additional costs to local governments.

(c) Cost to private regulated parties. The proposed amendment does not impose any additional costs on regulated parties beyond those imposed by statute.

(d) Cost to regulatory agency. The proposed amendment does not impose any additional costs on the Department beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment implements the requirements of Chapter 413 of the Laws of 2014 and does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment imposes no new reporting requirements.

7. DUPLICATION:

The proposed amendment is necessary to implement Chapter 413 of the Laws of 2014. There are no other state or federal requirements on the subject matter of this amendment. Therefore, the proposed amendment does not duplicate other existing state or federal requirements.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 413 of the Laws of 2014. There are no viable, significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

Since there are no federal standards applicable to the subject matter of this proposed amendment, the proposed amendment does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to the requirements of Chapter 413 of the Laws of 2014, which became effective October 21, 2014. It is anticipated that resident pharmacies and resident establishments that deliver new and refilled prescription medications off-premises will be able to comply with the proposed amendment by its March 17, 2015 effective date. Therefore, no additional period of time will be necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF RULE:

The purpose of the proposed amendment is to implement Chapter 413 of the Laws of 2014, which requires pharmacies registered with the State Education Department (Department) pursuant to Education Law section 6808 to obtain consent from the patient or an individual authorized to consent on the patient's behalf before automatically delivering new or refilled prescription medications off-premises. The proposed amendment will affect all resident pharmacies registered by the Department that deliver prescription medications off-premises. The Department estimates that there are 5,044 registered pharmacies in New York State. However, the Department neither knows the exact number of resident pharmacies that deliver new and/or refilled prescription medications off-premises nor the number of such resident pharmacies that are small businesses.

2. COMPLIANCE REQUIREMENTS:

The purpose of the proposed amendment is to implement Chapter 413 of the Laws of 2014, which requires all New York pharmacies registered with the Department, pursuant to Education Law section 6808, to obtain consent from the patient or an individual authorized to consent on the patient's behalf before automatically delivering new or refilled prescription medications off-premises. The proposed amendment defines an authorized individual as either a person explicitly designated by the patient to consent to the off-premises delivery of the patient's prescriptions, the patient's legal guardian, a person legally responsible for the patient, or a person authorized, pursuant to law, to consent to health care for such patient.

Pharmacies registered pursuant to Education Law section 6808 are referred to as resident pharmacies or resident establishments. The proposed amendment imposes the same consent requirements on all resident pharmacies that deliver prescription medications off-premises. Pursuant to the proposed amendment, before delivering a new or refilled prescription medication off-premises, the resident pharmacy must obtain consent for such delivery by either: (1) obtaining the patient's or authorized individual's signature of acceptance of each prescription delivered; (2) contacting the patient or other authorized individual for consent and then documenting such consent in the patient's record; or (3) for pharmacies that administer refill reminder or medication adherence programs and deliver off-premises, if a signature is not received on each prescription, then the refill reminder program or medication adherence program shall be an OPT-IN program that is updated with patient consent every 180 days accompanied by a documented patient record review by a licensed pharmacist from the providing pharmacy and the patient before continuation of medication delivery can occur.

The proposed amendment also imposes the same return of medication requirements for all resident pharmacies that deliver prescription medications off-premises without patient or authorized individual consent. If resident pharmacies deliver prescription medications off-premises without the required consent, they must accept the return of any such medication from the patient, provide that patient with credit for any charges he or she may have paid, and destroy those medications in accordance with applicable state and federal law.

3. PROFESSIONAL SERVICES:

No professional services are expected to be required by small businesses to comply with the proposed amendment.

4. COMPLIANCE COSTS:

The proposed amendment is necessary to implement Chapter 413 of the Laws of 2014, and does not impose any additional costs on small businesses beyond those inherent in the statute.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment will not impose technological requirements or additional costs on small businesses beyond those inherent in the statute.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Chapter 413 of the Laws of 2014, which requires pharmacies registered with the Department pursuant to Education Law section 6808 to obtain consent from the patient or an individual authorized to consent on the patient's behalf before automatically delivering new or refilled prescription medications off-premises. The proposed amendment will affect all resident pharmacies registered by the Department that deliver prescription medications off-premises. The proposed amendment does not impose any additional compliance requirements or costs on small businesses beyond those inherent in the statute.

7. SMALL BUSINESS PARTICIPATION:

Copies of the proposed amendment have been provided to statewide organizations having an interest in the practice of pharmacy, for review and comments.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory requirements of Chapter 413 of the Laws of 2014, and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

(b) Local Governments:

The proposed amendment establishes consent requirements for all resident pharmacies that deliver prescription medications off-premises. It will not impose any new reporting, recordkeeping, or other compliance requirements, or have any adverse economic impact on local governments. Because it is evident from the nature of the proposed amendment that it will not adversely affect local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required, and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The purpose of the proposed amendment is to implement Chapter 413 of the Laws of 2014, which requires pharmacies registered with the State Education Department (Department) pursuant to Education Law section 6808 to obtain consent from the patient or an individual authorized to consent on the patient's behalf before automatically delivering new or refilled prescription medications off-premises. The proposed amendment will affect all resident pharmacies registered by the Department that deliver prescription medications off-premises, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square miles or less. The Department estimates that there are 5,044 resident pharmacies in New York State. However, the Department neither knows the exact number of resident pharmacies that deliver new and/or refilled prescription medications off-premises nor the number of such resident pharmacies that are located in rural areas.

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

The purpose of the proposed amendment is to implement Chapter 413 of the Laws of 2014, which requires all New York pharmacies registered with the Department pursuant to Education Law section 6808, to obtain consent from the patient or an individual authorized to consent on the patient's behalf before automatically delivering new or refilled prescription medications off-premises. The proposed amendment defines an authorized individual as either a person explicitly designated by the patient to consent to the off-premises delivery of the patient's prescriptions, the patient's legal guardian, a person legally responsible for the patient, or a person authorized, pursuant to law, to consent to health care for such patient.

Pharmacies registered pursuant to Education Law section 6808 are referred to as resident pharmacies or resident establishments. The proposed amendment imposes the same consent requirements on all resident pharmacies that deliver prescription medications off-premises. Pursuant to the proposed amendment, before delivering a new or refilled prescription medication off-premises, the resident pharmacy must obtain consent for such delivery by either: (1) obtaining the patient's or authorized individual's signature of acceptance of each prescription delivered; (2) contacting the patient or other authorized individual for consent and then documenting such consent in the patient's record; or (3) for pharmacies that administer refill reminder or medication adherence programs and deliver off-premises, if a signature is not received on each prescription, then the refill reminder program or medication adherence program shall be an OPT-IN program that is updated with patient consent every 180 days accompanied by a documented patient record review by a licensed pharmacist from the providing pharmacy and the patient before continuation of medication delivery can occur.

The proposed amendment also imposes the same return of medication requirements for all resident pharmacies that deliver prescription medications off-premises without patient or authorized individual consent. If resident pharmacies deliver prescription medications off-premises without the required consent, they must accept the return of any such medication from the patient, provide that patient with credit for any charges he or she may have paid, and destroy those medications in accordance with applicable state and federal law.

3. COSTS:

The proposed amendment is necessary to implement Chapter 413 of the Laws of 2014, and does not impose any additional costs on entities in rural areas beyond those inherent in the statute.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Chapter 413 of the Laws of 2014 and does not impose any additional compliance requirements or costs on entities in rural areas beyond those inherent in the statute. The proposed amendment makes no exception for resident pharmacies that are located in rural areas, as the statute does not permit such an exception. Therefore, it is not possible to establish differing compliance, recordkeeping, or reporting requirements or timetables or to exempt entities in rural areas from coverage by the proposed rule.

5. RURAL AREAS PARTICIPATION:

Copies of the proposed amendment have been provided to statewide organizations having an interest in the practice of pharmacy, including those having representation in rural areas, for review and comments.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the

State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory requirements of Chapter 413 of the Laws of 2014, and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The purpose of the proposed amendment is to implement Chapter 413 of the Laws of 2014, effective October 21, 2014, which requires all New York pharmacies registered with the State Education Department (Department), pursuant to section 6808 of the Education Law, to obtain consent from the patient or an individual authorized to consent on the patient's behalf before automatically delivering new or refilled prescription medications off-premises. Pharmacies registered, pursuant to section 6808 of the Education Law, are referred to as resident pharmacies or resident establishments. Specifically, pursuant to the proposed amendment, before delivering a new or refilled prescription medication off-premises, the resident pharmacy must obtain consent for such delivery by either: (1) obtaining the patient's or authorized individual's signature of acceptance of each prescription delivered; (2) contacting the patient or other authorized individual for consent and then documenting such consent in the patient's record; or (3) for pharmacies that administer refill reminder or medication adherence programs and deliver off-premises, if a signature is not received on each prescription, then the refill reminder program or medication adherence program shall be an OPT-IN program that is updated with patient consent every 180 days accompanied by a documented patient record review by a licensed pharmacist from the providing pharmacy and the patient before continuation of medication delivery can occur.

The proposed amendment also imposes return of medication requirements for all resident pharmacies that deliver prescription medications off-premises without patient or authorized individual consent. If resident pharmacies deliver prescription medications off-premises without the required consent, they must accept the return of any such medication from the patient, provide that patient with credit for any charges he or she may have paid, and destroy those medications in accordance with applicable state and federal law.

The proposed amendment will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that it will not affect job and employment opportunities, no 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.

Department of Environmental Conservation

NOTICE OF ADOPTION

Sportfish Activities and Associated Activities

I.D. No. ENV-41-14-00003-A

Filing No. 123

Filing Date: 2015-02-20

Effective Date: 2015-04-01

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

Action taken: Amendment of Parts 10, 18, 19 and 35 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 11-0303, 11-0305, 11-0317, 11-1301, 11-1303, 11-1316 and 11-1319

Subject: Sportfish activities and associated activities.

Purpose: To revise sportfishing regulations and associated activities including the commercial collection, sale and use of baitfish.

Substance of final rule: The purpose of this rule making is to amend the Department of Environmental Conservation's (department) general regulations governing sportfishing (6 NYCRR Part 10). Following biennial review of the department's fishing regulations, department staff have determined that the proposed amendments are necessary to maintain or improve the quality of the State's fisheries resources. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation. The following is a summary of the amendments to the regulations as contained in the Notice of Adoption.

Proposed changes include:

Establish a closed statewide season for sauger.

Modify the statewide regulation for muskellunge by increasing the minimum size limit to 40 inches and adjusting the season opener from the third Saturday in June to the last Saturday in May.

Provide consistency between the proposed statewide muskellunge regulation changes with the existing muskellunge regulations for specific waters including Lake Champlain and St. Lawrence County rivers and streams, as well as for both muskellunge and tiger muskellunge at Chautauqua Lake.

Increase the minimum size limit for muskellunge to 54 inches in the Niagara River, Lake Ontario and St. Lawrence River.

Increase the minimum size limit for walleye at Honeoye Lake from 15 to 18 inches.

Establish year round trout seasons, with catch and release fishing only from October 16th through March 31st, at the following streams in Western New York: Chenunda Creek, Oatka Creek, Clear Creek, Fenton Brook, Prendergast Creek, and waters in Allegany State Park.

Initiate a catch and release season for trout for sections of the Salmon River (Franklin County) and Ninemile Creek (Onondaga County), and extend the catch and release season at Fall Creek (Cayuga Lake).

Establish a special trout regulation of a daily creel limit of five fish with no more than two fish longer than 12 inches, for some waters in Herkimer, Jefferson, Lewis, Oneida, and St. Lawrence Counties, as well as for Little River and Oswegatchie River in St. Lawrence County, and Oriskany Creek in Oneida County.

Establish an all year trout season, with a 12 inch minimum size limit and daily limit of 3 fish, at Hinkley and Prospect Reservoirs in Herkimer and Oneida Counties, North Lake in Herkimer County, and for an additional section of the North Branch Saranac River in Franklin and Clinton Counties.

Establish an all year season, with a 12 inch minimum size limit and daily limit of 3 fish, for both trout and Landlocked salmon at Millsite Lake in Jefferson County.

Apply the current special trout regulation for Pine, Boottree, Town Line, Deer and Horseshoe Ponds (St. Lawrence County) to the entire set of waters that are a part of the Massawepie Easement.

Apply the current trout and salmon special regulations for the Fulton Chain of Lakes to the connected water body Old Forge Pond.

Establish a 15 inch minimum size limit for lake trout and clarify that the statewide regulations apply for other species for Owasco Outlet (Cayuga County).

Modify trout and/or salmon regulations for Star Lake and Trout Lake (St. Lawrence County) by increasing the minimum size limit for trout to 12 inches and reducing the daily creel limit to 3. Include Landlocked salmon as part of the open year round trout season at Star Lake.

Establish an open year round trout season for Sylvia Lake (St. Lawrence County) with a 12 inch minimum size limit and 3 fish daily creel limit, with ice fishing permitted.

Extend Great Lakes tributary Regulations upstream to the section of the Genesee River (Monroe County) from State Route 104 Bridge upstream to the Lower Falls.

Exempt Old Seneca Lake Inlet from the Finger Lakes tributary regulations.

Clarify, in regulation, a definition for "catch and release fishing" as well as define the limitations of handling incidental catch of untargeted species.

Several changes are for the purposes of eliminating special regulations that are no longer warranted, and where the statewide regulations can be applied:

Delete the special minimum size and daily creel limit walleye regulation for Fern Lake (Clinton County), Lake Algonquin (Hamilton County), and Franklin Falls Flow, Lower Saranac Lake and Rainbow Lake in Franklin County, and Tully Lake (Cortland and Onondaga Counties).

Eliminate the special regulations (examples being minimum size limit, daily creel limit, season length and/or method of take) for trout, landlocked salmon and/or lake trout, at several waters including Schoharie Reservoir, Susquehanna River (between Otsego and Goodyear Lakes), Launt Pond (Delaware County), Basswood Pond (Otsego County), Lake Algonquin (Hamilton County), Jennings Park Pond (Hamilton County), Hoosic River and Little Hoosic River (Rensselaer County), Hudson River (Saratoga County), North Branch Saranac River (Clinton and Franklin Counties), Clear and Wheeler Ponds (Herkimer County), Cold Brook (St. Lawrence County), and West Branch of the St. Regis River (St. Lawrence County).

Eliminate the special brown trout and landlocked salmon regulations (minimum size limit, daily creel limit and season length) at Otsego Lake.

Eliminate the 10 inch minimum size limit for black bass at Lily Pond and Pack Forest Lake in Warren County.

Eliminate the "all year – any size" special regulation for black bass at Cayuta Creek in Tioga County, and adopt a consistent minimum size limit for black bass for sections of the Schoharie Creek at 10 inches.

Eliminate the daily creel limit special regulation for sunfish and yellow perch in Cumberland Bay (Lake Champlain), as well as eliminate the prohibition on the sale of yellow perch taken from Cumberland Bay.

Eliminate the minimum size limit special regulation for lake trout in the Essex Chain of Lakes.

Eliminate the separate special regulation for trout for Ischua Creek, and apply the Cattaraugus County regulation.

Baitfish and non-game fish related proposed changes:

Prohibit the use of fish as bait in newly acquired trout waters: Fish Hole Pond and Balsam Pond in Franklin County, and Clear Pond in Washington County.

Remove the baitfish prohibition on Harlow Lake, Genesee County.

Remove all the currently listed eligible waters for the commercial collection of baitfish: in Clinton County, except Lake Champlain; in Essex County, except Lake Champlain and Lake Flower; in Franklin County, except Lake Flower, Lower Saranac Lake, Raquette River, Tupper Lake and Upper Saranac Lake; in Fulton County; in Hamilton County, except Indian Lake, Lake Pleasant and Long Lake; in Saratoga County, except the Hudson River, Lake Lonely and outlet Lake Lonely to Kayaderosseras Creek, Mohawk River and Saratoga Lake; in Warren County, except the Hudson River; and in Washington County, except the Hudson River and Lake Champlain.

Add madtoms and stonecats to the approved list of fish that may be used, collected and sold as baitfish.

Eliminate "snatching" of burbot in Scomotion Creek (Clinton County).

Eliminate smelt "dipping" in Raquette Lake.

Adjust smelt regulations for Cayuga and Owasco Lakes for consistency with five Western Finger Lakes.

Eliminate the prohibition on taking smelt and suckers with a scap or dip net in Willow Creek (Tompkins County).

Remove the allowance for snatching lake whitefish at Otsego Lake.

Gear and use of gear related proposals:

Streamline what devices may be used for ice fishing to allow for a total of seven devices that may be used to fish through the ice -statewide; as well as allow for a total of 15 devices that may be used to fish through the ice at Lake Champlain.

Eliminate the gear restrictions at Follensby Clear Pond (Franklin County) that permits ice fishing but prohibits the use of tip-ups.

With the exception of the Salmon River, permit the use of floating lures with multiple hooks with multiple hook points, on all Lake Ontario tributaries.

Clarify the definition of floating lures on Lake Ontario tributaries to: "A floating lure is a lure that floats while at rest in water with or without any weight attached to the line, leader, or lure".

Clarify that the current regulation for the Great Lake tributaries restricting the use of hooks with added weight was not intended to ban the use of small jigs.

Expand the prohibition of weight added to the line, leader, swivels, artificial fly or lures to all Lake Ontario tributaries (i.e. beyond a limited group of tributaries) from September 1 through March 31 of the following year.

Clarify the use of multiple hooks with multiple hook points on Lake Erie tributaries is legal, as well as clarify that the use of flies with up to two hook points is legal on all Great Lake tributaries.

Replace Lake Ontario tributary regulations for St. Lawrence River tributaries in Jefferson and St. Lawrence Counties with statewide terminal tackle restrictions.

Redefine the upstream limit for spearfishing on the Salmon River (Franklin County).

Clarify the description of gear (gill nets) that is allowed for, in the Finger Lakes, for the collection of alewives for personal use as bait.

Reinstate the prohibition on large landing nets (nets larger than 50 inches around the frame or with a handle longer than 20 inches) for Finger Lakes tributaries except for those sections that are specifically identified.

Several additional amendments are included, not as substantive regulation modifications, but to properly establish or clarify an earlier regulation change, better define an existing regulation (by rewording etc.), and/or address regulations that have not changed but are now redundant and covered elsewhere in the regulations including as a result of consolidation.

Better clarify the fishing hours for Great Lake Tributaries by replacing the word "night" with "one-half hour after sunset to one-half hour before sunrise".

Clarify that the purpose of the 15 inch size limit exemption on Irondequoit Creek (entire), Lindsey Creek, Skinner Creek (Oswego County and Jefferson County) and the Black River (Jefferson County) is intended to only allow for the harvest of stocked brown trout greater than 9 inches, while retaining the 15 inch minimum size limit for other species.

Eliminate the listing of pink salmon in the Great Lakes section of the regulations.

Correct a wording discrepancy in NYCRR documents to clarify that both artificial lures with multiple hooks/hook points and artificial flies may be used in the special catch-and-release sections of Chautauqua and Eighteen Mile Creek.

Eliminate redundancy in the Finger Lakes tributary regulations pertaining to seasonal angling restrictions and restrictions on night fishing.

Clarify the wording for the Whey Pond (Franklin County) special trout regulation that dates back to and references a previous regulation that has since been eliminated.

Clarify language in regulation referencing the Barge Canal in an existing Finger Lake tributary regulation.

Clarify the ending location of the special black bass regulation on the Chemung River, by correcting the wrong Route (road) number that is currently listed.

Correct a reference, for the definition of artificial flies (for Great Lakes tributaries) that directs the reader to the wrong section of the regulations.

Adjust the Finger Lakes regulations (as contained in an existing table) to clarify: which regulations apply for Honeoye Lake; that the tiger muskellunge special regulation only applies to Otisco Lake; and that the alewife prohibition only applies to Honeoye and Skaneateles Lakes.

Delete a conflicting regulation for trout for a section of Oneida Creek (Oneida County) to clarify which of two conflicting trout season regulations should apply to this section of Oneida Creek.

Delete special trout regulations that have not changed but are now redundant and covered elsewhere in the regulations including as a result of consolidation in the regulations; Crane Pond, and Upper Saranac Lake in Franklin County, Lansing Kill in Oneida County, and Stillwater Reservoir in Herkimer County.

Provide consistency with the lists of approved and identified baitfish (i.e. "Green List") by adding the previously omitted Eastern Silvery Minnow to the list of baitfish that can be commercially collected and sold (in addition to the existing listing of the Eastern Silvery Minnow on the list of baitfish that can be used as bait by anglers).

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 10.1(c)(1), (7), 10.2(h)(2), (3), 10.3(b)(22), (25), (26), (33), (45), 10.4 and 10.5(b)(10).

Text of rule and any required statements and analyses may be obtained from: Shaun Keeler, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8928, email: shaun.keeler@dec.ny.gov

Additional matter required by statute: A Programmatic Impact Statement pertaining to these actions is on file with the Department of Environmental Conservation.

Revised Regulatory Impact Statement

A revised Regulatory Impact Statement is not needed, as the original Regulatory Impact Statement, as published in the Notice of Proposed Rule Making, remains valid. It does not need to be amended.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis for Small Businesses and Local Governments statement is not needed. The original Regulatory Flexibility Analysis for Small Businesses and Local Governments statement, as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis is not needed. The original Rural Area Flexibility Analysis Statement, as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended.

Revised Job Impact Statement

A revised Job Impact Statement is not needed. The original Job Impact Statement, as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended.

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

Proposal: Increase the statewide minimum size limit for muskellunge to 40 inches and lengthen the season by three weeks, with an earlier season opening date being the last Saturday in May; increase the minimum size limit for muskellunge to 54 inches in the Niagara River, Lake Ontario and the St. Lawrence River.

Comment: In regard to the downsizing of the size limit to a minimum

40 inches for muskellunge in New York, with the St. Lawrence muskellunge population having decreased drastically because of the fish kill, the size limit for muskellunge should be left at what it currently is.

Response: A decrease in the minimum size limit for muskellunge is not being proposed for the St. Lawrence River. The proposed change is for increasing the minimum size limit from 48 to 54 inches. This should provide additional protection for muskellunge in the St. Lawrence River.

Proposal: Define the limitations of handling the incidental catch of untargeted species.

Comment: Since there are circumstances where fish must be removed from the water, the second sentence of the proposed language should be modified to "Such fish may not be handled for any purpose other than removing the hook and placing the fish back into the water."

Response: The meaning of both the suggested language modification and the currently proposed language of "Such fish may not be removed from the water or otherwise handled for any purpose other than removing the hook and placing the fish back into the water" is essentially the same. Both provide for removing fish from the water to unhook a fish. The DEC proposed language, however, better conveys the intent and desire for unhooking the fish in the water, when this is able to done.

Proposal: Increase the minimum size limit for walleye at Honeoye Lake from 15 to 18 inches.

Comment: Changing the size limit from 15 to 18 inches is going to significantly decrease the amount of fisherman traveling to Honeoye Lake to fish walleyes. The Lake's make-up makes it extremely hard to target walleye. Combine that variable with the change in size limit will considerably discourage fisherman from supporting local businesses and the boat launch which will decrease revenue for NYS.

Response: The current 15" minimum size limit was placed on Honeoye Lake walleye in 2000 to increase harvest and allow for better and more rapid growth by reducing the over abundant population. This regulation resulted in a reduction in the walleye population. However, recent survey data suggest that growth rates have not improved despite the lower population density and that harvest may be too great resulting in a lower population of walleye with associated lower catch rates. By reinstating the 18" minimum size limit for walleye in Honeoye Lake it is hoped that harvest will decline slightly thus allowing the population to grow which will eventually lead to higher catch rates of harvestable fish. This should increase the amount of interest in walleye fishing on Honeoye Lake. DEC biologists did not see any evidence that interest in walleye fishing decreased when the size limit was at 18'' prior to 2000. This change would also simplify the regulations for anglers by making the size limit for walleye consistent across all of the Finger Lakes.

Proposal: Establish a special trout regulation of a daily creel limit of five fish with no more than two fish longer than 12 inches, in Herkimer, Jefferson, Lewis, Oneida, and St. Lawrence counties; as well as Little River and Oswegatchie River (St. Lawrence County) and Oriskany Creek (Oneida County).

Comment: The daily limit of "five trout, but only 2 trout over 12 inches" in certain counties should be three or four fish over 12 inches.

Response: By stocking larger two year old brown trout, DEC has increased the catch of larger trout in the spring. Some anglers have complained that these large hatchery brown trout are so easily caught that they should be afforded additional protection over what they would receive under a standard five fish limit. DEC feels that it is important to allow anglers the opportunity to creel fish as long as fish populations remain strong. Reducing the creel limit for these larger trout will still allow some fish to be creeled, but it will also hopefully allow some of them to remain in the creek later into the season to possibly be caught multiple times before being creeled. The catch of larger trout may also be distributed among more anglers if only two over 12 inches may be kept.

Comment: Establishing a special trout regulation of a daily creel limit of five fish with no more than two fish longer than 12 inches, in Herkimer, Jefferson, Lewis, Oneida and St. Lawrence counties, as well as the Little River and Oswegatchie River (St. Lawrence County) and Oriskany Creek (Oneida County) will have a negative effect on the Adirondack fishing experience and local economy with no clear ecological benefit. The potential catch (i.e. 5 trout limit, any size) is what entices some fishermen to put in the effort it takes to fish Adirondack ponds and seek Adirondack fishing experience. The proposed regulation reduces this experience. In managing the State's trout fisheries there should be such regulations (i.e. 5 fish with no more than 2 over 12 inches) on waters near high population centers that receive a high level of fishing pressure to ensure the resource is shared by most people, but limiting regulations should not be the norm for the state.

Response: Establishing the special trout regulation of a daily creel limit of five fish with no more than two fish longer than 12 inches has largely been utilized on larger waters, including those stocked with two year old brown trout, including for reasons cited in the response to the preceding comment. In response to the comment received the Department will not apply this special regulation to all of the waters in the counties that had been identified, and will not apply this regulation to many of the small Adirondack waters, particularly those that provide for a unique Adirondack fishing experience.

Proposal: Establish a "No Kill" (Catch and Release fishing only) section of Ninemile Creek in Onondaga County.

Comment: The proposed Catch and Release section should not be established at Nine Mile Creek as kid's fish there and should have the option to eat the fish they catch.

Response: Historically, nearly the entire length of the proposed Trout No-Kill section of Nine Mile Creek has been inaccessible to the public. A recent agreement reached between NYSDEC and the private entity, which owns most of the land within this section, opened up this reach to legal angling for the first time in decades. Area trout anglers have been asking for a Trout No-Kill regulation on Nine Mile Creek for some time and this location provided the opportunity to satisfy this request without taking away any long standing trout harvest opportunities. Further, this proposed regulation only pertains to the harvest of trout and would still allow kids and other anglers to harvest other species of fish present in this reach, pursuant to Statewide Angling Regulations. This reach represents only 15% of the total trout stocked section of Nine Mile Creek between Otisco Lake and Onondaga Lake thus ample opportunities to harvest trout on this stream are still available to anglers of all ages.

Proposal: Eliminate the special regulation for Hoosic River, making it subject to the statewide trout regulation (only difference is that the special regulation provides for a 9 inch minimum size limit for trout).

Comment: The special regulation for the Hoosic River should be retained as the extended date of October 15th provides for some excellent additional fly fishing opportunity. It fished well this October and the fishery is just fine with the extended date.

Response: The season ending dates are the same for both the special regulation and the statewide regulation, that being October 15th.

Proposal: Establish a year round trout season, with catch and release fishing only from October 16 through March 31, for the waters in Allegany State Park.

Comment: Continue to keep the year round fishing as proposed, but allow for the keeping of three trout if caught in Science, Quaker or Red House Lakes. They are stocked trout and there is little evidence that they survive until April 1.

Response: The proposed special regulation for a year round trout season for the waters in Allegany State Park specifically excluded Quaker and Red House Lakes. The existing special regulation for Quaker and Red House already allows for a year round season and year round harvest (daily creel limit of 5 trout, with no more than two longer than 12 inches). Statewide regulations apply to Science Lake and due to its small size and placement on upper Quaker Run, DEC biologists feel that separate regulations for Science Lake are not justified. Trout may be stocked in the lake just prior to April 1 if conditions allow, thus there may be a short period prior to April 1 when the proposed regulation would apply before a limit of trout can be kept.

Proposal: Establish an open year-round trout (i.e. brown, rainbow, and brook trout) season for Sylvia Lake (St. Lawrence County) with a 12 inch minimum size limit and three fish daily creel limit, with ice fishing permitted.

Comment: The size regulations should be the same as neighboring Lake Bonaparte, 9 inches for trout and 18 inches for lake trout.

Response: A 12 inch minimum size limit for Sylvia is preferred because stocked trout are known to achieve this size one year after stocking. The lake currently receives 3,000 nine inch rainbow trout yearlings in the spring. No change for the minimum size for the wild lake trout has been proposed by the Department. It remains at 21 inches.

Comment: The establishment of an ice fishing season for both trout and lake trout may stress already limited trout populations in this lake. The status of the native lake trout is unknown and due to increasing numbers of bass and already increasing fishing during the spring/summer the implementation of ice fishing will be putting unneeded stress on the ecosystem of the lake which is already under stresses from increased human populations/pollution as well as invasive species. The risk of more invasives as well as increased pollution seems an unnecessary risk to native populations. Summer traffic is taking its toll on this small lake and adding another 3 to 4 months of fishing is a concern. Other concerns include: Sylvia Lake has hidden springs/weak ice, inconsistent ice depth, difficult access for emergency vehicles, pollution, human waste and garbage in ice/water, property vandalism, and break-ins. In addition, there may be hidden costs such as plowing and trash collection at the launch site.

Response: Sylvia Lake is classified as a trout water. To allow for ice fishing even for the warmwater species like rock bass and sunfish, a regulation change was needed. A 2011 survey showed a stable but slow growing wild lake trout population. The minimum size limit for lake trout will remain at 21 inches. Our current stocking policy will remain at 3,000,

nine-inch rainbow trout annually. There is very limited public access that is mostly used by the residents of the lake. Considering the access limitations, including that no snow removal is in place for the small access site, DEC does not anticipate that there will be a significant increase in angler effort, nor that there will be resulting negative impacts from the minimum increase in human presence.

Department of Financial Services

EMERGENCY RULE MAKING

Title Insurance Agents, Affiliated Relationships, and Title Insurance Business

I.D. No. DFS-29-14-00014-E
Filing No. 122
Filing Date: 2015-02-20
Effective Date: 2015-02-20

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

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

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

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

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

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

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

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

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

Substance of emergency rule: The following sections are amended:

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

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

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

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

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

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

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

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

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

Section 35.1 contains definitions for new Part 35.

Section 35.2 specifies forms for title insurance agent licensing applications.

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

Section 35.4 addresses affiliated business relationships.

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

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

Section 35.7 provides certain other minimum disclosure requirements.

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

Section 35.9 establishes record retention requirements for title insurance agents.

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

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

Consolidated Regulatory Impact Statement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Consolidated Regulatory Flexibility Analysis

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

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

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

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

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

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

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

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

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

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

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

Consolidated Rural Area Flexibility Analysis

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

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

Consolidated Job Impact Statement

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

Assessment of Public Comment

The consolidated amendments implement Part V of Chapter 57 of the Laws of 2014, which requires title insurance agents to become licensed in New York. The Department of Financial Services ("Department") published the proposal for the amendments to the rules and the new rule on July 23, 2014. The Department promulgated a revised version, which reflected some of the comments that the Department had received, on an emergency basis effective September 27, 2014, and readopted the revised version on an emergency basis on December 23, 2014.

The Department received comments from many interested parties in response to its publication of the proposed rule in the New York State Register, including from: several New York State legislators; an association representing the title insurance industry ("title association"); an association representing New York banks; the real property law section of a state bar association (the "bar"); an association of real estate providers from all segments of the residential home buying and financing industry ("real estate association"); an association of realtors; title insurance corporations; title insurance agents; and a real estate broker.

Section 35.4 of Insurance Regulation 206 - Significant and Multiple Sources of Business

Comments: Section 35.4 of Insurance Regulation 206 generated the most comments. This section provides that a title insurance corporation may not accept title insurance business referred directly or indirectly from an affiliated person unless the title insurance corporation has significant and multiple sources of business, and a title insurance agent may not accept title insurance business referred directly or indirectly from an affiliated person unless the title insurance agent has significant and multiple sources of business.

Most of the commenters objected to the significant and multiple sources requirement. These commenters included both legislators; the associations representing realtors, real estate providers, and banks; the bar; an insurer; the real estate broker; and some of the title insurance agents. Their objections fell into the following general categories:

1. the Superintendent lacks the authority to mandate such a requirement;

2. the requirement is inconsistent with the legislative intent in enacting Part V of Chapter 57 and express limits on affiliated business were rejected during the legislative process;

3. the requirement is inconsistent with the federal Real Estate Settlement Procedures Act of 1974 ("RESPA");

4. the requirement will not benefit consumers;

5. the requirement is inconsistent with sections 6701(d)(1) and (2) and 6701(e) of the federal Gramm-Leach-Bliley Act; and

6. the requirement is vague because there is no definition of the term "significant and multiple sources".

Commenters stated that disclosure to the consumer of the affiliate relationship would be sufficient to protect the public. They also stated that the public would benefit by having additional choices of title insurance agents and that competition would be encouraged. One insurer observed that these businesses may provide ancillary services at a reduced rate.

Some insurers and title insurance agents, and the title association, stated that they support the significant and multiple sources requirement. They expressed concern that a concentration of influence in entities that control real estate development, lending, and insurance would dilute consumer protections. One commenter also noted that large real estate companies used their agents to promote their title insurance business and pressure local attorneys to use their services, and that such activity by an attorney may be a breach of an attorney's fiduciary duty of undivided loyalty. One insurer expressed concern that affiliated agents may have a conflict of interest in representing both the insured and the title insurance corporation and that those interests are not always aligned.

The real estate association submitted suggested language that would substitute a "best efforts" requirement under which a title insurance corporation or title insurance agent would not be in violation of the section even though it did not have significant and multiple sources of business, provided that it made best efforts to obtain such business.

Response: The significant and multiple sources requirement in section 35.4 is a codification of long-held opinions of this Department interpreting Insurance Law section 6409(d), which is intended to prohibit certain parties involved in the real estate transaction from receiving compensation as an incentive for referring business or otherwise providing a rebate on the title insurance premium. A strict reading of the section could, in fact, preclude any kind of compensation being paid to those parties listed in the section. However, the Department recognizes that there may be legitimate circumstances where a title insurance agent may be affiliated with a law firm, lender, or other party addressed by Insurance Law section 6409(d) and that in these circumstances, such relationships should not be prohibited per se, but rather be permitted provided that the arrangement is not a sham intended to rebate commission or other compensation or intended to otherwise violate Insurance Law section 6409(d).

The Department does not believe the Department's interpretation of Insurance Law section 6409(d) is inconsistent with Part V of Chapter 57. While the Legislature made some amendments to section 6409(d), including amending the penalty provisions, the Legislature did not amend the substance of that section. Although previous versions of the bill that eventually became Part V of Chapter 57 originally included a provision modeled after Insurance Law section 2103(i), that restriction applies only with respect to the amount of insurance business that a licensee may place insuring certain affiliated persons. Insurance Law section 6409(d), and by extension, the rule, applies to affiliated persons who are involved in the transaction even though they may not be insured under the policies.

However, the Department has considered the comments received, and is considering refining and revising the significant and multiple sources requirement. The Department intends to propose a revised rule shortly and affected parties and the public will have an opportunity to address any such changes during the public comment period. The Department believes that making any changes in the emergency regulation with respect to significant and multiple sources of business at this time would only create confusion and uncertainty in the marketplace until the Department adopts final rules.

Section 20.3 of Insurance Regulation 29 – Premium Accounts

Comment: The title insurance association and title agents raised a concern with the requirements in section 20.3 of Insurance Regulation 29 governing the types of funds that may be maintained in a "premium account". The rule, which has been in place for many decades for insurance agents and brokers, discusses premium received from the insured and

return premiums, but not other monies that may be received by the licensee in a fiduciary capacity.

Response: While it may appear that those other monies could not be deposited into the premium account, Insurance Law section 2120, which is the underlying statute that section 20.3 implements, talks broadly about all funds received or collected by the licensee in a fiduciary capacity. The Department is considering clarifying and modifying this section as part of a revised proposal. However, the Department believes that making any changes in the emergency regulation now only would create confusion and uncertainty in the marketplace until the Department adopts final rules.

Section 20.6 of Insurance Regulations 9, 18, and 29 – Service Fee Agreements

Comment: The title insurance association and title agents also raised a concern regarding service fee agreements under Insurance Law section 2119. They assert that section 20.6 of Insurance Regulation 29 appears to require a licensee to obtain a written agreement before providing the services that are covered under the agreement. Title insurance agents indicate that is not always practical to obtain the written agreement before providing the services because they typically have no contact with the consumer until the closing when the services already have been performed.

Response: The Department is considering clarifying and modifying this section as part of a revised proposal. However, the Department believes that making any changes in the emergency rule now only would create confusion and uncertainty in the marketplace until the Department adopts final rules.

Section 35.1 of Insurance Regulation 206 – Definition of "Person"

Comment: The title insurance association suggested that the definition of "person" in section 35.1 of Insurance Regulation 206 should include the trustee of a trust and the fiduciary of an estate.

Response: The Department believes that the definition of "person" is broad enough to include a trustee and a fiduciary. The definition references the definition of "person" in Insurance Law section 2101(q), which means an individual or a business entity. Insurance Law section 2101(p) defines "business entity" to include any kind of legal entity.

Comments on the proposal addressed in the emergency regulation

As noted above, in response to comments received during the public comment period, the emergency rules incorporated a number of changes that clarified the proposal or eliminated unnecessary requirements. The following are comments that have been addressed in the emergency and will be included in the revised proposal:

Section 35.5 of Insurance Regulation 206 – Referral by Affiliated Persons and Required Disclosures

Comment: One comment raised a concern that section 35.5(a)(3) permitted an exception from the requirement that any compensation to an affiliated person must be based upon that person's financial or other beneficial interest in the title insurance agent when the affiliated person was licensed as a title insurance agent.

Response: While a title insurance agent generally may share commissions or other compensation regardless of the degree of work involved (except as prohibited under Insurance Law section 2128), nonetheless any such sharing is still subject to any other applicable law, including, in this case, Insurance Law section 6409(d). Accordingly, the Department removed the exception language in the emergency regulation and intends to make the same change in a revised proposal.

Section 35.7 of Insurance Regulation 206 – Other Disclosures to Applicants

Comment: Another comment that the Department addressed in promulgating the emergency regulation involved Section 35.7(b). The commenter indicated that the notice requirements regarding obtaining only a lender's title insurance policy should not be necessary on a refinancing application or where the applicant is represented by an attorney and suggested that the Department remove the requirements.

Response: The Department made those changes and removed the requirements.

Section 35.8 of Insurance Regulation 206 – Use of Title Closer

Comment: The title insurance association pointed out that in Section 35.8(a) and (b) the wording "engages or uses" appears in one place, but only the word "used" appears in other places. The title insurance association commented that the wording "engages or uses" and "used" should all be replaced with the wording "selects and engages".

Response: The Department revised subdivision (b) to include the wording "engages or uses" while retaining the word "used" in one place, as was appropriate. The Department believes that "selects and engages" is too narrow and that the broader term "engages or uses" better protects the consumer.

EMERGENCY RULE MAKING

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

I.D. No. DFS-10-15-00001-E

Filing No. 124

Filing Date: 2015-02-23

Effective Date: 2015-02-23

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

Action taken: Addition of Part 418 and Supervisory Procedures MB 109 and 110 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: Chapter 472 of the Laws of 2008, which requires mortgage loan servicers to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), went into effect on July 1, 2009. These regulations implement the registration requirement and inform servicers of the details of the registration process so as to permit applicants to prepare, submit and review applications for registrations on a timely basis.

Excluding persons servicing loans made under the Power New York Act from the mortgage loan servicer rules is necessary to facilitate the immediate implementation of such loan program so that the anticipated energy efficiency benefits can be realized without delay.

Subject: Registration and Financial Responsibility Requirements for Mortgage Loan Servicers.

Purpose: To require that persons or entities which service mortgage loans on residential real property on or after July 1, 2009 be registered with the Superintendent of Financial Services.

Substance of emergency rule: Section 418.1 summarizes the scope and application of Part 418. It notes that Sections 418.2 to 418.11 implement the requirement in Article 12-D of the Banking Law that certain mortgage loan servicers ("servicers") be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), while Sections 418.12 and 418. 13 set forth financial responsibility requirements that are applicable to both registered and exempt servicers. {Section 418.14 sets forth the transitional rules.]

Section 418.2 implements the provisions in Section 590(2)(b-1) of the Banking Law requiring registration of servicers and exempting mortgage bankers, mortgage brokers, and most banking and insurance companies, as well as their employees. Servicing loans made pursuant to the Power New York Act of 2011 is excluded. The Superintendent is authorized to approve other exemptions.

Section 418.3 contains a number of definitions of terms that are used in Part 418, including "Mortgage Loan", "Mortgage Loan Servicer", "Third Party Servicer" and "Exempted Person".

Section 418.4 describes the requirements for applying for registration as a servicer.

Section 418.5 describes the requirements for a servicer applying to open a branch office.

Section 418.6 covers the fees for application for registration as a servicer, including processing fees for applications and fingerprint processing fees.

Section 418.7 sets forth the findings that the Superintendent must make to register a servicer and the procedures to be followed upon approval of an application for registration. It also sets forth the grounds upon which the Superintendent may refuse to register an applicant and the procedure for giving notice of a denial.

Section 418.8 defines what constitutes a "change of control" of a servicer, sets forth the requirements for prior approval of a change of control, the application procedure for such approval and the standards for approval. The section also requires servicers to notify the Superintendent of changes in their directors or executive officers.

Section 418.9 sets forth the grounds for revocation of a servicer registration and authorizes the Superintendent, for good cause or where there is substantial risk of public harm, to suspend a registration for 30 days without a hearing. The section also provides for suspension of a servicer registration without notice or hearing upon non-payment of the required assessment. The Superintendent can also suspend a registration when a servicer fails to file a required report, when its surety bond is cancelled, or when it is the subject of a bankruptcy filing. If the registrant cures the deficiencies its registration can be reinstated. The section further provides

that in all other cases, suspension or revocation of a registration requires notice and a hearing.

The section also covers the right of a registrant to surrender its registration, as well as the effect of revocation, termination, suspension or surrender of a registration on the obligations of the registrant. It provides that registrations will remain in effect until surrendered, revoked, terminated or suspended.

Section 418.10 describes the power of the Superintendent to impose fines and penalties on registered servicers.

Section 418.11 sets forth the requirement that applicants demonstrate five years of servicing experience as well as suitable character and fitness.

Section 418.12 covers the financial responsibility and other requirements that apply to applicants for servicer registration, registered servicers and exempted persons (other than insured depository institutions to which Section 418.13 applies. The financial responsibility requirements include a required net worth (as defined in the section) of at least $250,000 plus 1/4 % of total loans serviced or, for a Third Party Servicer, 1/4 of 1% of New York loans serviced; (2) a corporate surety bond of at least $250,000 and (3) a Fidelity and E&O bond in an amount that is based on the volume of New York mortgage loans serviced, with a minimum of $300,000.

The Superintendent is empowered to waive, reduce or modify the financial responsibility requirements for certain servicers who service an aggregate amount of loans not exceeding $4,000,000.

Section 418.13 exempts from the otherwise applicable net worth and surety bond requirements, but not the Fidelity and E&O bond requirements, entities that are subject to the capital requirements applicable to insured depositary institutions and that are considered at least adequately capitalized.

Section 418.14 provides a transitional period for registration of mortgage loan servicers. A servicer doing business in this state on June 30, 2009 which files an application for MLS registration by July 31, 2009 will be deemed in compliance with the registration requirement until notified that its application has been denied. A person who is required to register as a servicer solely because of the changes in the provisions of the rule regarding use of third party servicers which became effective on August 23, 2011 and who files an application for registration within 30 days thereafter will not be required to register until six months from the effective date of the amendment or until the application is denied, whichever is earlier.

Section 109.1 defines a number of terms that are used in the Supervisory Procedure.

Section 109.2 contains a general description of the process for registering as a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 109.3 lists the documents to be included in an application for servicer registration, including the required fees. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent of Financial Services (formerly the Superintendent of Banks) can require additional information or an in person conference, and that the applicant can submit additional pertinent information.

Section 109.4 describes the information and documents required to be submitted as part of an application for registration as a servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, and other documents, such as fingerprint cards and background reports.

Section 110.1 defines a number of terms that are used in the Supervisory Procedure.

Section 110.2 contains a general description of the process for applying for approval of a change of control of a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 110.3 lists the documents to be included in an application for approval of a change of control of a servicer, including the required fees. It sets forth the time within which the Superintendent of Financial Services (formerly the Superintendent of Banks) must approve or disapprove an application. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent can require additional information or an in person conference, and that the applicant can submit additional pertinent information. Last, the section lists the types of changes in a servicer's operations resulting from a change of control which should be notified to the Department of Financial Services (formerly the Banking Department).

Section 110.4 describes the information and documents required to be submitted as part of an application for approval of a change of control of servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating continuing compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, a description of the acquisition and other documents regarding the applicant, such as fingerprint cards and background reports.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires May 20, 2015.

Text of rule and any required statements and analyses may be obtained from: Hadas A. Jacobi, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (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 Subprime Lending Reform Law (Ch. 472, Laws of 2008, hereinafter, the "Subprime Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers (MLS) 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 Subprime 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 of Financial Services (formerly the Superintendent of Banks). 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. (Note that under Section 89 of Part A of Chapter 62 of the Laws of 2011, the functions and powers of the banking board have been transferred to the Superintendent.)

New Paragraph (d) was added to Subsection (5) of Section 590 by the Subprime 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 prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Subprime 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 Subprime 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 Subprime 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 Subprime 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 Subprime 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 Subprime 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 MLS registration applications and for MLS branch applications are established in accordance with Banking Law Section 18-a.

2. Legislative Objectives.

The Subprime Law is intended to address various problems related to residential mortgage loans in this State. The Subprime 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 Subprime Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The 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 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.

The regulations implement the first component of the mortgage servicing statute – the registration of mortgage servicers. In doing so, the rule utilizes the authority provided to the Superintendent to set standards for the registration of such entities. For example, the rule requires that a potential loan servicer would have to provide, under Sections 418.11 to 418.13 of the proposed regulations, evidence of their character and fitness to engage in the servicing business and demonstrate to the Superintendent their financial responsibility. The rule also utilizes the authority provided by the Legislature to revoke, suspend or otherwise terminate a registration or to fine or penalize a registered mortgage loan servicer.

Consistent with this requirement, the rule authorizes the Superintendent to refuse to register an applicant if he/she shall find that the applicant lacks the requisite character and fitness, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant has been convicted of certain felonies. These are the same standards as are applicable to mortgage bankers and mortgage brokers in New York. (See Section 418.7.)

Further, in carrying out the Legislature's mandate to regulate the mortgage servicing business, Section 418.8 sets out certain application requirements for prior approval of a change in control of a registered mortgage loan servicer and notification requirements for changes in the entity's executive officers and directors. Collectively, these various provisions implement the intent of the Legislature to register and supervise mortgage loan servicers.

The Department has separately adopted emergency regulations dealing with business conduct and consumer protection requirements for MLSs. (3 NYCRR Part 419).

3. Needs and Benefits.

The Subprime Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry. It affected 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.

Previously, the Department of Financial Services (formerly the Banking 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 may act as agents for owners of mortgages in negotiations relating to modifications. 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; and erroneously force-placing insurance when borrowers already have insurance.

While minimum standards for the business conduct of servicers is the subject of another emergency regulation which has been promulgated by the Department. (3 NYCRR Part 419) Section 418.2 makes it clear that persons exempted by from the registration requirement must notify the Department that they are servicing mortgage loans and must otherwise comply with the regulations.

As noted above, these regulations relate to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It is 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.

Further, consumers in this state will also benefit under these regulations because in the event there is an allegation that a mortgage servicer is involved in wrongdoing and the Superintendent finds that there is good cause, or that there is a substantial risk of public harm, he or she can suspend such mortgage servicer for 30 days without a hearing. And in other cases, he or she can suspend or revoke such mortgage servicer's registration after notice and a hearing. Also, the requirement that servicers meet minimum financial standards and have performance and other bonds will act to ensure that consumers are protected.

As noted above, the MLS regulations are divided into two parts. The Department had separately adopted emergency regulations dealing with business conduct and consumer protection requirements for MLSs. (3 NYCRR Part 419)

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 will be required to comply with the conduct of business and consumer protection rules applicable to MLSs.

Under Section 418.2, a person servicing loans made under the Power New York Act of 2011 will not thereby be considered to be engaging in the business of servicing mortgage loans. Consequently, a person would not be subject to the rules applicable to MLSs by reason of servicing such loans.

4. Costs.

The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The amount of the application fee for MLS registration and for an MLS branch application is $3,000.

The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System are set by that body. MLSs will also incur administrative costs associated with preparing applications for registration.

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, through the timely response to consumers' inquiries, 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.

An application process has been established for potential mortgage loan servicers to apply for registration electronically through the National Mortgage Licensing System and Registry (NMLSR) - a national system, which currently facilitates the application process for mortgage brokers, bankers and loan originators. Therefore, the application process is virtually paperless; however, a limited number of documents, including fingerprints where necessary, would have to be submitted to the Department in paper form.

The specific procedures that are to be followed in order to apply for registration as a mortgage loan servicer are detailed in Supervisory Procedure MB 109.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations.

An exemption was created under Section 418.13, from the otherwise applicable net worth and surety bond requirements, for entities that are subject to the capital requirements applicable to insured depository institutions and are considered adequately capitalized.

8. Alternatives.

The purpose of the regulation is to carry out the statutory mandate to register mortgage loan servicers while at the same time avoiding overly complex and restrictive rules that would have imposed unnecessary burdens on the industry. The Department is not aware of any alternative that is available to the instant regulations. The Department also has been cognizant of the possible burdens of this regulation, and it has accordingly concluded that an exemption from the registration requirement for persons or entities that are involved in a de minimis amount of servicing would address the intent of the statute without imposing undue burdens those persons or entities.

The procedure for suspending servicers that violate certain financial responsibility or customer protection requirements, which provides a 90-day period for corrective action, during which there can be an investigation and hearing on the existence of other violations, provides flexibility to the process of enforcing compliance with the statutory requirements.

9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies. However, although not a registration process, in order for any mortgage loan servicer to service loans on behalf of certain federal instrumentalities such servicers have to demonstrate that they have specific amounts of net worth and have in place Fidelity and E&O bonds.

These regulations exceed those minimum standards, in that, a mortgage loan servicer will now have to demonstrate character and general fitness in order to be registered as a mortgage loan servicer. In light of the important role of a servicer – collecting consumers' money and acting as agents for mortgagees in foreclosure transactions – the Department believes that it is imperative that servicers be required to meet this heightened standard.

10. Compliance Schedule.

The emergency regulations will become effective on September 17, 2012. Similar emergency regulations have been in effect since July 1, 2009.

The Department expects to approve or deny applications within 90 days of the Department's receipt (through NMLSR) of a completed application.

A transitional period is provided for mortgage loan servicers which were doing business in this state on June 30, 2009 and which filed an application for registration by July 31, 2009. Such servicers will be deemed in compliance with the registration requirement until notified by the Superintendent that their application has been denied.

Additionally, the version of Part 418 adopted on an emergency basis effective August 5, 2011 requires holders of mortgage servicing rights to register as mortgage loans servicers even where they have sub-contracted servicing responsibilities to a third-party servicer. Such servicers were given until October 15, 2011 to file an application for registration.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The emergency rule will not have any impact on local governments. It is estimated that there are approximately 120 mortgage loan servicers in the state which are not mortgage bankers, mortgage brokers or exempt organizations, and which are therefore required to register under the Subprime Lending Reform Law (Ch. 472, Laws of 2008) (the "Subprime Law") Of these, it is estimated that a very few of the remaining entities will be deemed to be small businesses.

2. Compliance Requirements:

The provisions of the Subprime Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of Financial Services (formerly the Banking Department) of servicers who are not mortgage bankers, mortgage brokers or 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 Subprime Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Subprime Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. The emergency MLS Registration Regulations here adopted implement that statutory requirement by providing a procedure whereby MLSs can apply to be registered and standards and procedures for the Department to approve or deny such applications. The emergency regulations also set forth financial responsibility standards applicable to applicants for MLS registration, registered MLSs and servicers which are exempted from the registration requirement.

Additionally, the regulations set forth standards and procedures for Department action on applications for approval of change of control of an MLS. Finally, the emergency regulations set forth standards and procedures for, suspension, revocation, expiration, termination and surrender of MLS registrations, as well as for the imposition of fines and penalties on MLSs.

3. Professional Services:

None.

4. Compliance Costs:

Applicants for mortgage loan servicer registration will incur administrative costs associated with preparing applications for registration. Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations. Registration fees of $3000, plus fees for fingerprint processing and participation in the National Mortgage Licensing System and Registry (NMLS) will be required of non-exempt servicers.

5. Economic and Technological Feasibility:

The emergency rule-making should impose no adverse economic or technological burden on mortgage loan servicers who are small businesses. The NMLS is now available. This technology will benefit registrants by saving time and paperwork in submitting applications, and will assist the Department by enabling immediate tracking, monitoring and searching of registration information; thereby protecting consumers.

6. Minimizing Adverse Impacts:

The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLS, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

As noted above, most servicers are not small businesses. As regards servicers that are small businesses and not otherwise exempted, the regulations give the Superintendent of Financial Services (formerly the Superintendent of Banks) the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

7. Small Business and Local Government Participation:

Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry though its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Rural Area Flexibility Analysis

Types and Estimated Numbers. Approximately 70 mortgage loan servicers have been registered by the Department of Financial Services or have applied for registration. Very few of these entities operate in rural areas of New York State and of those, most are individuals that do a de minimus business. As discussed below, the Superintendent can modify the requirements of the regulation in such cases.

Compliance Requirements. Mortgage loan servicers in rural areas which are not mortgage bankers, mortgage brokers or exempt organizations must be registered with the Superintendent to engage in the business of mortgage loan servicing. An application process will be established requiring a MLS to apply for registration electronically and to submit additional background information and fingerprints to the Mortgage Banking unit of the Department.

MLSs are required to meet certain financial responsibility requirements based on their level of business. The regulations authorize the Superintendent of Financial Services (formerly the Superintendent of Banks) to reduce or waive the otherwise applicable financial responsibility requirements in the case of MLSs which service not more than $4,000,000 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 which those requirements might otherwise impose on entities operating in rural areas.

Costs. The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The application fee for MLS registration will be $3,000. The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System and Registry ("NMLSR") are set by that body. Applicants for mortgage loan servicer registration will also incur administrative costs associated with preparing applications for registration.

Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations.

Minimizing Adverse Impacts. The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLSR, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an online application form for servicer registration. A common form will be accepted by New York and the other participating states.

Of the servicers which operate in rural areas, it is believed that most are mortgage bankers, mortgage brokers or exempt organizations. Additionally, in the case of servicers that operate in rural areas and are not otherwise exempted, the Superintendent has the authority to reduce, waive or modify the financial responsibility requirements for individuals that do a de minimis amount of servicing.

Rural Area Participation. Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry though its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups

through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Subprime Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). This emergency regulation sets forth the application, exemption and approval procedures for registration as a Mortgage Loan servicer (MLS), as well as financial responsibility requirements for applicants, registrants and exempted persons. The regulation also establishes requirements with respect to changes of officers, directors and/or control of MLSs and provisions with respect to suspension, revocation, termination, expiration and surrender of MLS registrations.

The requirement to comply with the emergency regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. Many of the larger entities engaged in the mortgage loan servicing business are already subject to oversight by the Department of Financial Services (formerly the Banking Department) and exempt from the new registration requirement. Additionally, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

The registration process itself should not have an adverse effect on employment. The regulations require the use of the internet-based National Mortgage Licensing System and Registry, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common on-line application for servicer registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to the nature and purpose of the statutory registration requirement rather than the provisions of the emergency regulations.

Department of Health

NOTICE OF ADOPTION

Physician Assistants and Specialist Assistants

I.D. No. HLT-08-14-00001-A

Filing No. 130

Filing Date: 2015-02-24

Effective Date: 2015-03-11

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

Action taken: Amendment of Part 94 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 3308, 3701 and 3702

Subject: Physician Assistants and Specialist Assistants.

Purpose: Allows LPAs to prescribe controlled substances (including Schedule II) to patients under the care of the supervising physician.

Text of final rule: Pursuant to the authority vested in the Commissioner of Health by Sections 3308, 3701 and 3702 of the Public Health Law, and in accordance with Sections 6541 and 6542 of the Education Law, Part 94 (Physician's Assistants and Specialist's Assistants) of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

PART 94

PHYSICIAN['S] ASSISTANTS AND SPECIALIST['S] ASSISTANTS

Section 94.1 Definitions.

(a) [Registered] *Licensed* physician['s] assistant means an individual who is currently [registered] *licensed* as a physician['s] assistant by the New York State Department of Education.

(b) Registered specialist['s] assistant means an individual who is currently registered as a specialist['s] assistant by the New York State Department of Education.

(c) Hospital means an institution or facility possessing a valid operating certificate issued pursuant to article 28 of the Public Health Law and authorized to employ physician['s] assistants pursuant to part 707 of the State Hospital Code.

(d) Physician means a practitioner of medicine licensed to practice medicine pursuant to article 131 of the Education Law.

94.2 Supervision and scope of duties.

(a) A [registered] *licensed* physician['s] assistant or a registered specialist['s] assistant may perform medical services but only when under the supervision of a physician. Such supervision shall be continuous but shall not necessarily require the physical presence of the supervising physician at the time and place where the services are performed. *The licensed physician assistant or registered specialist assistant shall retain records documenting the continuous supervision by the physician who is responsible for such supervision.*

(b) Medical acts, duties and responsibilities performed by a [registered] *licensed* physician['s] assistant or registered specialist['s] assistant must:

(1) be assigned to him *or her* by the supervising physician;

(2) be within the scope of practice of the supervising physician; and

(3) be appropriate to the education, training and experience of the [registered] *licensed* physician['s] assistant or registered specialist['s] assistant.

(c) No physician may employ or supervise more than [two] *four* [registered] *licensed* physician['s] assistants and two *registered* specialist['s] assistants in his *or her* private practice.

(d) No physician may supervise more than six [registered] *licensed* physician['s] assistants or registered specialist['s] assistants or any combination thereof [employed by] *in* a hospital *setting, no matter if the licensed physician assistants or registered specialist assistants are employed or contracted by a hospital*.

(e) Prescriptions and medical orders may be [written] *issued* by a [registered] *licensed* physician['s] assistant as provided in this subdivision when assigned by the supervising physician.

(1) A [registered] *licensed* physician['s] assistant may [write]*issue* prescriptions for a patient who is under the care of the physician responsible for the supervision of the [registered] *licensed* physician['s] assistant. The prescription shall be *issued in accordance with Section 281 and Article 33 of the Public Health Law and Part 80 of this Title,* written on the *blank* form of the supervising physician and shall include the name, address and telephone number of the *supervising* physician *and the name of the licensed physician assistant.* The prescription shall also bear the name, the address, the age of the patient and the date on which the prescription was [written] *issued*.

(2) [Prescriptions for controlled substances not listed under section 80.67 of this Part shall be written on the blank form of the supervising physician and shall include all other information required by Article 28 of the Public Health Law and Part 80 of this Title.] *A licensed physician assistant, in good faith and acting within his or her lawful scope of practice, and to the extent assigned by his or her supervising physician, may prescribe controlled substances as a practitioner under Article 33 of the Public Health Law, to patients under the care of such physician responsible for his or her supervision. Licensed physician assistants may issue prescriptions for controlled substances under section 3306 of the Public Health Law provided that such prescriptions shall be issued in accordance with Section 281 and Article 33 of the Public Health Law and Part 80 of this Title.*

(3) [Registered physician's assistants may write prescriptions for those controlled substances listed under section 80.67 of this Part which are not classified as Schedule II controlled substances, provided that such prescriptions shall be written on official New York State forms issued to the physician's assistant.] *The licensed physician assistant shall sign all such prescriptions with his or her own name followed by the letters P.A. and his or her State Education Department license number, except that an electronic prescription must contain the electronic signature of the licensed physician assistant and shall include the name, address and telephone number of the supervising physician.*

(4) [The registered physician's assistant shall sign all such prescriptions by printing the name of the supervising physician, printing his/her own name and additionally signing his/her own name followed by the letters R.P.A. and his/her State Education Department registration number.] *A licensed physician assistant employed or extended privileges by a hospital may, if permissible under the bylaws, policies and procedures of the hospital, issue prescriptions for controlled substances listed under section 3306 of the Public Health Law on official New York State prescription forms issued to the hospital. Such prescriptions shall be issued in accordance with Section 281 and Article 33 of the Public Health Law and Part 80 of this Title and must include the imprinted name of the licensed physician assistant and the name of the physician responsible for his or her supervision.*

[(5) Registered physician's assistants may not write prescriptions for controlled substances listed under section 3306 of the Public Health Law as Schedule II controlled substances.

(6)] *(5)* A [registered] *licensed* physician['s] assistant employed or extended privileges by a hospital may, if permissible under the bylaws, [rules and regulations] *policies and procedures* of the hospital, write medical orders, including those for controlled substances, for inpatients under the care of the physician responsible for his supervision. Countersignature of such orders may be required if deemed necessary and appropriate by the supervising physician or the hospital, but in no event shall countersignature be required prior to execution.

(f) A physician supervising or employing a [registered] *licensed* physician['s] assistant or registered specialist['s] assistant shall remain medically responsible for the medical services performed by the [registered] *licensed* physician['s] assistant or registered specialist['s] assistant whom such physician supervises or employs.

(g) Qualified individuals may be registered as specialist['s] assistants in the following categories:

(1) Orthopedic assistant. A specialist['s] assistant registered in this category is an individual:

(i) who satisfactorily completed a program for the training of orthopedic assistants approved by the New York State Department of Education; or

(ii) who possesses equivalent education, training and experience. Training and experience while in military service which led to an orthopedic specialist, orthopedic cast room technician, or orthopedic clinic technician rating and two years of satisfactory experience as an orthopedic assistant working under the supervision of an orthopedic surgeon within the past five years; or completion of medical corps school and five years of satisfactory experience as an orthopedic assistant working under the supervision of an orthopedic surgeon within the past eight years may be considered equivalent education, training and experience for the purpose of registration in this category.

(2) Urologic assistant. A specialist['s] assistant registered in this category is an individual:

(i) who satisfactorily completed a program for the training of urologic assistants approved by the New York State Department of Education; or

(ii) who possesses equivalent education, training and experience. Training and experience while in military service which led to a urology surgical technician or urological technician or clinical specialist rating and two years of satisfactory experience as a urologic assistant working under the supervision of an urologist within the past five years; or completion of medical corps school and five years of satisfactory experience as an urologic assistant working under the supervision of an urologist within the past eight years may be considered equivalent education, training and experience for the purpose of registration in this category.

(3) Acupuncture. A specialist['s] assistant registered in this category shall be employed or supervised only by a physician authorized to administer acupuncture in accordance with the rules and regulations of the New York State Department of Education and is an individual:

(i) who satisfactorily completed a program of training in acupuncture approved by the New York State Department of Education; or

(ii) who possesses equivalent education and training acceptable to the New York State Department of Education; and

(iii) in addition to satisfying the requirements of subparagraphs (i) and (ii) of this paragraph has completed at least five years of experience in the use of acupuncture acceptable to the New York State Department of Education.

(4) Radiologic assistant. A specialist['s] assistant in this category is an individual:

(i) who is licensed as a radiologic technologist by the New York State Department of Health; and

(ii) who satisfactorily completed a program for the training of radiologic assistants approved by the New York State Education Department.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 94.2(e)(3).

Revised rule making(s) were previously published in the State Register on October 29, 2014.

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

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Transgender Related Care and Services

I.D. No. HLT-50-14-00001-A
Filing No. 129
Filing Date: 2015-02-24
Effective Date: 2015-03-11

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

Action taken: Amendment of section 505.2(l) of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 201 and 206; Social Services Law, sections 363-a and 365-a(2)

Subject: Transgender Related Care and Services.

Purpose: To authorize Medicaid coverage for transgender related care and services.

Text or summary was published in the December 17, 2014 issue of the Register, I.D. No. HLT-50-14-00001-P.

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

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

Assessment of Public Comment

Public comment was received from 91 commenters: 64 advocacy organizations; 10 lawyers or legal organizations; eight mental or physical health care professionals; one New York State agency; one New York State Senator; one New York State Assembly member; one New York City agency, and five individuals who did not indicate any affiliation. Six commenters identified themselves as a transgender individual or a family member of a transgender individual. Over 50 of the comments were virtually identical, following a template provided by an advocacy organization.

Only two commenters opposed the elimination of the current prohibition on Medicaid coverage of care, services, and supplies rendered for the purpose of, or to promote, gender reassignment. Another commenter objected at length to the current prohibition on coverage in 18 NYCRR § 505.2(l), but offered no comments on the Department's proposed amendment to the regulation. One commenter advocated that section 505.2(l) simply be repealed, without replacement. The remaining 87 commenters supported the addition of transition-related transgender care and services to the Medicaid benefit package, but suggested changes to the proposed regulation.

Comment: The majority of commenters objected to the proposed regulation restricting coverage to individuals 18 years of age or older. Specifically, commenters recommended that Medicaid cover pubertal suppressants and cross-sex hormone therapy for children and adolescents under the age of 18.

Response: It is the policy of the New York State Medicaid program to only cover drugs that are for medically accepted indications. Federal Medicaid law at 42 U.S.C. 1396r–8(k)(6) defines "medically accepted indication" to mean any use approved by the Food and Drug Administration (FDA) or supported by one or more citations in official pharmaceutical compendia listed in 42 U.S.C. 1396r-8(g)(1)(B)(i).

Pubertal suppressants are neither FDA-approved nor compendia-supported for the treatment of gender dysphoria at any age. Cross-sex hormone therapy is not FDA-approved for the treatment of gender dysphoria; however, there is compendia support for using cross-sex hormone therapy to treat gender dysphoria, but only for individuals 18 years of age and older. Because pharmaceutical treatments for gender dysphoria in children and adolescents do not meet the federal Medicaid standards for a "medically accepted indication," no changes to the proposed regulation were made as a result of these comments.

Comment: Many commenters objected to the proposed regulation specifying a minimum age of 21 for sex reassignment surgery that would result in sterilization. It was suggested that the Department is incorrectly interpreting the provisions of a federal Medicaid regulation at 42 CFR 441.253, which requires individuals to be at least 21 years of age at the time they consent to sterilization in order for the procedure to be covered by Medicaid.

Response: The Department has reviewed the provisions of 42 CFR 441.253, and considered them in conjunction with another federal Medicaid regulation specifying the criteria for coverage of hysterectomies. The Department has concluded that these regulations do not clearly indicate whether Medicaid may cover a procedure performed on an individual under 21 years of age that results in sterilization, but was not performed solely for the purpose of rendering the individual incapable of

reproducing. The Department intends to seek guidance from the Centers for Medicare and Medicaid Services on the correct interpretation of these regulations; if such procedures may be covered, the Department will revise its policy in a subsequent rulemaking.

Comment: A number of commenters objected to the exclusion of cosmetic services from the services that Medicaid will cover to treat gender dysphoria.

Response: Federal and State law limit Medicaid coverage to payment for medically necessary care, services, and supplies. For this reason, the New York State Medicaid program does not cover purely cosmetic procedures. The proposed regulation therefore distinguishes between surgical procedures that are primary to gender reassignment, and ancillary procedures directed solely at improving an individual's appearance. No changes to the proposed regulation were made as a result of these comments.

However, breast augmentation in male-to-female transitions may be primary to gender reassignment in certain limited circumstances. The Department plans to issue separate policy guidance setting forth criteria for coverage of breast augmentation, and will consider making a clarifying change to the regulation in a subsequent rulemaking.

Comment: Some commenters recommended that the Department strictly follow the standards of care recommended by the World Professional Association for Transgender Health (WPATH). Other commenters felt that the Department's policy on Medicaid coverage for transgender care and services should be even more expansive, and described the WPATH recommendations as unnecessarily burdensome. Some commenters asked that certain prerequisites to coverage of sex reassignment surgery in the proposed regulation be eliminated (being diagnosed as having gender dysphoria; receiving 12 months of hormone therapy if seeking genital surgery, unless medically contraindicated; living for 12 months in a gender role congruent with the individual's gender identity; or receiving mental health counseling, as deemed medically necessary). One commenter suggested that having the capacity to consent to the treatment should not be a prerequisite to an individual receiving care.

Response: In developing its policy, the Department reviewed standards of care recommended by professional organizations, including the WPATH, as well as those followed by commercial insurers and by the handful of other state Medicaid programs that cover transgender care and services. As the comments demonstrate, there is no universal agreement on one standard of care that should be followed. The proposed regulation sets forth a policy that will enable transgender individuals to receive medically necessary care, and that reflects the mainstream of current thinking with respect to transgender care and services. The proposed regulation also establishes reasonable prerequisites and criteria for coverage, designed to limit Medicaid payment to medically necessary care, and consistent with the Department's responsibility under section 364 of the Social Services Law to ensure that the medical care and services paid for by the Medicaid program are of the highest quality. No changes to the proposed regulation were made as a result of these comments.

Comment: A number of comments dealt with the requirement that gender reassignment surgery be supported by referral letters from two qualified, licensed health care professionals. Some commenters recommended that only one referral letter be required for breast surgery. Some commenters stated that additional types of professionals (e.g. licensed marriage and family therapists, or licensed mental health counselors) should be able to supply a referral letter.

Response: The requirement for an authoritative diagnosis of gender dysphoria is necessary to ensure that Medicaid pays only for medically necessary care. The Department is willing to consider expanding the list of referring professionals in the future, but believes the current requirement is reasonable and will not be a barrier to transgender individuals accessing necessary care. Likewise, the Department will consider adopting a policy of requiring one referral letter for breast surgery, which is consistent with the policies of a number of other health insurance payers, but will address any such change in a subsequent rulemaking.

Comment: Some commenters raised a concern about gender-specific billing edits that might result in the rejection of Medicaid claims for non-transition-related care needed by transgender individuals (e.g., prostate-related care for a transgender individual whose assigned gender at birth was male but whose gender marker has been changed to female).

Response: This issue is beyond the intended scope of the regulation, and no changes were made to the proposed regulation in response to it. However, the Department will implement system edits to ensure access to non-transition-related care for individuals who are in the process of transitioning or have completed their transition.

Comment: Some commenters recommended that the Department establish an advisory committee to oversee implementation of the proposed regulation and/or develop and mandate transgender health competency training for its Medicaid providers.

Response: These comments address issues beyond the intended scope of the regulation, and no changes were made to the proposed regulation in response to them. However, the Department will take these comments under advisement.

Office of Mental Health

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Patients Committed to the Custody of the Commissioner Pursuant to CPL Article 730

I.D. No. OMH-10-15-00002-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 rule making to amend Part 540 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 31.04; Criminal Procedure Law, art. 730.10.

Subject: Patients Committed to the Custody of the Commissioner Pursuant to Criminal Procedure Law, article 730.

Purpose: Conform regulatory provisions to statute with respect to the performance of competency reports.

Text of proposed rule: 1. New subdivisions (b), (p) and (q) are added to Section 540.2 of Title 14 NYCRR as stated below. All other subdivisions in Section 540.2 remain as written and are re-lettered accordingly.

(b) Certified psychologist means a person who has been certified and registered to practice psychology in New York State pursuant to the education law.

(p) Psychiatric examiner means a qualified psychiatrist or a certified psychologist who has been designated by a director to examine a defendant pursuant to an order of examination. In facilities in which the director is not a physician, the director may delegate this authority to the deputy director for clinical services.

(q) Qualified psychiatrist means a physician who:

(i) is a diplomate of the American Board of Psychiatry and Neurology or is eligible to be certified by that board; or

(ii) is certified by the American Osteopathic Board of Neurology and Psychiatry or is eligible to be certified by that board.

2. Subdivisions (b) and (c) of Section 540.8 are amended to read as follows:

(b) The clinical director may apply to the court for the return of a patient who is in the custody of the commissioner pursuant to a temporary order of observation, an order of commitment or an order of retention to the custody of the criminal court upon a finding that he is not an incapacitated person after consultation with the hospital forensic committee in accordance with the procedures described in section 540.9 of this Part, or after review and consideration of the report and recommendations of a [psychiatrist] *psychiatric examiner* designated in accordance with the procedures described in subdivision (c) of this section.

(c) The clinical director shall have responsibility for deciding whether the patient remains an incapacitated person or is fit to stand trial.

(1) In exercising this responsibility, the clinical director may designate a [board-certified or board-eligible psychiatrist] *psychiatric examiner* who is employed at the facility to examine the patient. The [psychiatrist] *psychiatric examiner* so designated shall prepare a report in which he or she makes a recommendation to the clinical director.

(2) The clinical director shall review and consider the recommendations of the designated [psychiatrist] *psychiatric examiner* in making a determination of whether the patient remains an incapacitated person or is fit to stand trial. The clinical director is not required to follow such recommendations.

3. Subdivisions (b), (c) and (k) of Section 540.9 of Title 14 NYCRR are amended to read as follows:

(b) When the treatment team serving a patient is of the opinion that such patient is appropriate for escorted furlough, unescorted furlough, transfer, discharge, conditional release or conversion to civil status, it shall recommend to the unit chief that an application be made to the hospital forensic committee and the clinical director. When the treatment team serving a patient is of the opinion that such patient is appropriate for return to the custody of the criminal court, it shall recommend to the unit chief that an application be made to the hospital forensic committee or to the clinical director, if he or she has designated a [psychiatrist] *psychiatric*

examiner in accordance with procedures described in section 540.8(c) of this Part. The treatment team may act on its own initiative or at the patient's request.

(c) If the unit chief, after review of the case, agrees with the opinion of the treatment team, he or she and the team psychiatrist shall execute an application. Upon completion of the application, the unit chief shall forward it to the hospital forensic committee or to the clinical director, if he or she has designated a [psychiatrist] *psychiatric examiner* in accordance with the procedures described in section 540.8(c) of this Part.

(k)(1) The clinical director shall have responsibility for deciding whether to grant an application for the conversion to civil status, granting of furlough, discharge, or conditional release of a patient. In exercising such responsibility, he or shall review the recommendations of the hospital forensic committee. The clinical director need not follow such recommendations, but shall not take action contrary to the recommendation of a majority of the committee without first consulting with a clinician who is not employed at the facility.

(2) The clinical director shall have responsibility for deciding whether to grant an application for a return to court of a patient who is no longer an incapacitated person but against whom criminal charges remain pending. In exercising such responsibility, he or she shall:

(i) review the recommendation of the hospital forensic committee if consultation is requested in accordance with section 540.8(b) of this Part. The clinical director is not required to follow such recommendations, but shall not take action contrary to the recommendation of a majority of the committee without first consulting with a clinician who is not employed at the facility; or

(ii) review the report and recommendations of the [psychiatrist] *psychiatric examiner* that he or she has designated in accordance with the procedures described in section 540.8(c) of this Part. The clinical director is not required to follow such recommendations.

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: Sue.Watson@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 filed as a Consensus rule on the grounds that it is noncontroversial and makes minor technical corrections. No person is likely to object to this proposed rule since it merely conforms the current regulations to statute.

14 NYCRR Part 540 sets forth the requirements for facilities of the Office of Mental Health to establish a mechanism to ensure clinical review of criminal order patients to determine whether or not release, change of status, the granting of a furlough or a return to court is appropriate. Subdivisions (b) and (c) of Section 540.8 specify the process by which the clinical director of the facility (defined as a facility director, when such person is a psychiatrist, or, when that is not the case, the deputy director for clinical services) may apply to the court for the return of a patient, who is in the custody of the Commissioner pursuant to a temporary order of observation, an order of commitment or an order of retention, to the custody of the criminal court upon a finding that he or she is not an incapacitated person. These provisions are intended to implement authority established in Criminal Procedure Law Sections 730.10 and 730.60. The clinical director has the responsibility for deciding whether the patient remains an incapacitated person or is fit to stand trial. Current regulations specify that the clinical director may designate a board-certified or board-eligible psychiatrist employed at the facility to examine the patient and prepare a report in which he or she makes a recommendation to the clinical director.

Under Criminal Procedure Law Section 730.10, the term "psychiatric examiner" is defined as a qualified psychiatrist or a certified psychologist who has been designated by a director to examine a defendant pursuant to an order of examination. In this respect, the language of the current implementing regulations can be read to limit authority established in statute, which was not the intent. Thus, the purpose of this amendment is to conform the language of the regulations to the law such that the director of a facility (or his/her designee) may designate a psychiatric examiner (which includes both psychiatrists and psychologists with certain credentials) to examine a patient and prepare a report to determine capacity, rather than restrict this function only to board-certified or board-eligible psychiatrists. This amendment will provide needed flexibility to facilities by expanding the pool of qualified staff who can prepare competency reports and enable individuals to be evaluated in a more expeditious manner, consistent with statutory authority.

Statutory Authority: Sections 7.09 and 31.04 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, to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for adults diagnosed with mental illness. Criminal Procedure Law Article 730.10 includes definitions with respect to fitness to proceed. Such definitions also define the titles of "psychiatric examiner" and "qualified psychiatrist." Mental Hygiene Law Section 1.03 provides the definition of "certified psychologist."

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted with this rule making. This rule conforms regulatory provisions to statute with respect to the performance of competency reports. It is apparent from the nature and purpose of the rule that it will not have an impact on jobs and employment opportunities.

Office for People with Developmental Disabilities

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Consolidated Fiscal Report Penalty Amendments

I.D. No. PDD-10-15-00005-P

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

Proposed Action: Amendment of section 635-4.4 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b) and 43.02

Subject: Consolidated Fiscal Report Penalty Amendments.

Purpose: To change requirements for imposing a penalty on providers that fail to meet filing deadlines for cost reports.

Public hearing(s) will be held at: 10:30 a.m., April 27, 2015 at Office for People with Developmental Disabilities, Counsel's Office Conference Rm., 3rd Fl., 44 Holland Ave., Albany, NY; 10:30 a.m., April 28, 2015 at Office for People with Developmental Disabilities, Counsel's Office Conference Room, 3rd Fl., 44 Holland Ave., Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: • Section 635-4.4 is amended as follows:

(a) Each provider shall submit all cost reports to OPWDD so that OPWDD receives them no later than 120 days after the last day of the reporting period.

(b) [OPWDD may grant] *A provider may apply for* one 30 day extension for filing a cost report. An application for extension shall document in writing that the provider cannot file the cost report by the *original* due date *specified in subdivision (a) of this section* [for reasons beyond its control, and shall include an explanation of such reasons]. *In the event that the provider applies for an extension, the revised due date for filing a cost report shall be 150 days after the last day of the reporting period.*

(c) If the provider fails to file a cost report on or before the *original or revised* due date, *the provider shall be subject to a reduction in reimbursement under subdivision (e) of this section.* [taking into account any granted extension, OPWDD shall send the provider a written notice of failure to file a cost report. Such notice shall give the provider an opportunity to submit, within fifteen days of receipt of such notice, the cost report or a written statement that unforeseeable factors beyond its control prevented it from filing the cost report by the due date, with detailed facts supporting the statement.]

[(1) If the provider files the cost report within the 15 day period, the provider shall not be subject to a reduction in reimbursement under this subdivision.]

[(2) If the provider submits a written statement within the 15 day period, OPWDD shall review it and notify the provider in writing of OPWDD's determination. OPWDD's determination shall be final. If OPWDD's determination is that unforeseeable circumstances beyond the provider's control prevented it from filing the cost report by the due date,

OPWDD shall also determine a revised due date for the cost report and notify the provider in writing of the revised due date.]

[(3) The provider shall be subject to a reduction in reimbursement under this subdivision:]

[(i) if it does not submit the cost report or written statement within the 15 day period; or]

[(ii) if OPWDD determines that there were no unforeseeable circumstances beyond the provider's control that prevented it from filing the cost report by the due date; or]

[(iii) if OPWDD determines that there were unforeseeable circumstances beyond the provider's control that prevented it from filing the cost report by the due date and the provider does not submit the cost report by the revised due date.]

(d) If a provider has applied for an extension, it may make a written request for a waiver of reduction in reimbursement due to unforeseeable circumstances beyond its control which will prevent it from filing the cost report by the revised due date. The application must contain detailed facts supporting the request, describe the unforeseeable circumstances and explain why the provider believes such circumstances will prevent it from filing the cost report by the revised due date.

(1) Written requests for a waiver of the reduction must be received by OPWDD within the timeframes specified in subparagraphs (i) and (ii) of this paragraph.

(i) For circumstances that occur prior to the original due date specified in subdivision (a) of this section (120 days after the last day of the reporting period), the request must be received prior to the original due date.

(ii) For circumstances that occur during the 30 day extension period, the request must be received no later than the revised due date specified in subdivision (b) of this section (150 days after the last day of the reporting period). In order to demonstrate that such circumstances occurred during the 30 day extension period, the written request must include the date of occurrence of the circumstances.

(2) OPWDD shall review the request and approve or deny the request based upon the facts and circumstances described in the application and any other relevant facts and circumstances. OPWDD shall approve the request if OPWDD determines that there are unforeseeable circumstances beyond the provider's control that will prevent the provider from filing the cost report by the revised due date. OPWDD shall deny the request if OPWDD determines that there are not unforeseeable circumstances beyond the provider's control or that such circumstances should not prevent the provider from filing the cost report by the revised due date. OPWDD shall notify the provider in writing of its approval or denial of the request. OPWDD's determination shall be final.

(3) If OPWDD denies the request for a waiver of the reduction, the provider shall be subject to a reduction in reimbursement under subdivision (e) of this section.

(4) If OPWDD approves the request for a waiver of the reduction, OPWDD shall determine a revised due date (that is beyond the 30 day extension period) and shall notify the provider in writing of the revised due date. If the provider does not submit the cost report by the revised due date, the provider shall be subject to a reduction in reimbursement under subdivision (e) this section.

[(4)] *(e)* The reduction in reimbursement shall equal two percent of the total billed but unremitted price(s), rate(s) and/or fee(s) in the [OPWDD] *payment* system*s* beginning on the first day of the month following the due date of the cost report or the revised due date [established pursuant to paragraph (c)(2) of this section] and continuing until the *next regularly scheduled payment cycle following the* last day of the month in which the cost report is received. For a provider subject to this sanction, the reduction shall apply to reimbursements for the following *services*: [ICF/DD services (]Intermediate Care Facilities for Persons with Developmental Disabilities[)], Medicaid [s]*S*ervice [c]*C*oordination, [d]*D*ay [t]*T*reatment [services], [c]*C*linic [t]*T*reatment [f]*F*acilities, and [the following] *all* HCBS waiver services[: residential habilitation services (community residential habilitation services in a community residence, residential habilitation services in an IRA, and residential habilitation services in family care), community habilitation services, day habilitation services, prevocational services, supported employment services, respite services, plan of care support services, and family education and training services].

[(d) In the event that OPWDD cannot develop the price/rate/fee for a facility or service so that it will be effective on the first day of the price/rate/fee period, because the provider did not submit a cost report or other requested data by the due date, the price/rate/fee will be the lower of the following amounts until such time as OPWDD can develop a price, rate or fee:]

[(1) the average price/rate/fee for facilities or services having similar operating characteristics; or]

[(2) the price/rate/fee in existence on the last day of the price/rate/fee period prior to the subject price/rate/fee period.]

[(e) When OPWDD develops a revised price/rate/fee for a service for which a price/rate/fee was paid in accordance with subdivision (d) of this section, the price, rate or fee developed will be effective on the first day of the month following OPWDD's receipt of the cost report. OPWDD shall, upon application by the provider within 60 days subsequent to submission of the cost report or other requested data, and based on a finding that the factor(s) causing the delay has been corrected, make the price/rate/fee retroactive to the beginning of the price/rate/fee period in question.]

(f) If the provider discovers that a cost report submitted to OPWDD is incomplete, inaccurate or incorrect [prior to receiving its new base period price, rate, or fee], the provider must submit a revised cost report. [Upon receipt of the revised cost report, OPWDD may incorporate the revised cost report data into its computation of the base period price/rate/fee without the provider having to file an appeal application.]

(g) If OPWDD determines that a cost report is incomplete, inaccurate, incorrect or otherwise unacceptable, OPWDD shall send the provider a written notice. Such notice shall give the provider an opportunity to submit, within a 30 day period from receipt of such notice, a revised cost report or additional data, or a written [statement that] request *for a waiver of reduction in reimbursement due to* unforeseeable [factors] *circumstances* beyond the provider's control *that* prevent it from filing a revised cost report or submitting additional data within the 30 day period[, with detailed facts supporting the statement]. *A request must contain detailed facts supporting it, describe the unforeseeable circumstances and explain why the provider believes such circumstances will prevent it from filing a revised cost report or additional data within 30 days.*

(1) If the provider files a revised cost report or submits additional data within the 30 day period, the provider shall not be subject to a reduction in reimbursement under this subdivision.

(2) If the provider submits a written [statement] *request* within the 30 day period, *OPWDD shall review the request and approve or deny the request based upon the facts and circumstances described in the application and any other relevant facts and circumstances. OPWDD shall approve the request if OPWDD determines that there are unforeseeable circumstances beyond the provider's control that will prevent the provider from filing a revised cost report or additional data within 30 days. OPWDD shall deny the request if OPWDD determines that there are not unforeseeable circumstances beyond the provider's control or that such circumstances should not prevent the provider from filing a revised cost report or additional data within 30 days. OPWDD shall notify the provider in writing of its approval or denial of the request. OPWDD's determination shall be final. If OPWDD approves the request, OPWDD shall set a revised due date for the revised cost report or additional data and give the provider written notice of the revised due date.* [OPWDD shall review the statement and determine whether unforeseeable circumstances beyond the provider's control prevented it from filing a revised cost report or submitting additional data within the 30 day period, and notify the provider in writing of OPWDD's determination. OPWDD's determination shall be final. If OPWDD determines that unforeseeable circumstances beyond the provider's control prevented it from filing the revised cost report or submitting the additional data within the 30 day period, OPWDD shall set a revised due date for the revised cost report or additional data and give the provider written notice of the revised due date.]

(3) The provider shall be subject to a reduction in reimbursement:

(i) if it fails to submit, within the 30 day period, a revised cost report or additional data, or a written *request* [statement]; or

(ii) OPWDD *denies the written request* [determines that there were no unforeseeable circumstances beyond the provider's control that prevented it from filing a revised cost report or submitting additional data within the 30 day period]; or

(iii) OPWDD *approves the written request* [determines that unforeseeable circumstances beyond the provider's control prevented it from filing a revised cost report or submitting additional data within the 30 day period] and the provider does not submit a revised cost report or additional data by the revised due date.

(4) A reduction in reimbursement under paragraph (3) of this subdivision shall be in accordance with [paragraph (c)(4)] *subdivision (e)* of this section, except that it shall begin on the applicable date specified in subparagraphs (i) – (iii) of this paragraph and continue until the *next regularly scheduled payment cycle following the* last day of the month in which OPWDD receives the revised cost report or additional data.

(i) If the provider fails to submit a revised cost report, additional data or a written [statement] *request* within the 30 day period, the reduction shall begin on the first day of the month following the end of the 30 day period.

(ii) If OPWDD *denies the written request* [determines that there were no unforeseeable circumstances beyond the provider's control that prevented it from filing a revised cost report or submitting additional data within the 30 day period], the reduction shall begin on the first day of the month following the end of the 30 day period.

(iii) If OPWDD *approves the written request* [determines that unforeseeable circumstances beyond the provider's control prevented it from filing a revised cost report or submitting additional data within the 30 day period] and the provider does not submit a revised cost report or data by the revised due date, the reduction shall begin on the first day of the month following the revised due date.

(h) Revised cost reports submitted under this section must be certified by the provider's chief executive officer and, if requested by OPWDD, a public accountant who meets all the requirements specified in section 635-4.3(c)(2) of this Subpart.

(i) Calendar Year 2014 Cost Reports

(1) Any provider that requests an extension and fails to submit a complete calendar year 2014 cost report by May 30, 2015, shall be subject to a penalty under this section effective June 1, 2015.

(2) Any provider that would otherwise be subject to a penalty in accordance with the regulations that were immediately in effect prior to June 1, 2015, shall be subject to such penalty.

Text of proposed rule and any required statements and analyses may be obtained from: Regulatory Affairs Unit, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue, 3rd Floor, Albany, NY 12229, (518) 474-1830, email: RAU.Unit@opwdd.ny.gov

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

Public comment will be received until: Five days after the last scheduled public hearing.

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory Authority:

a. OPWDD has the statutory authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

b. OPWDD has the statutory authority to adopt rules and regulations regarding reports and audits relating to facility utilization and costs of providing services, as stated in section 43.02(c) of the Mental Hygiene Law.

2. Legislative Objectives: The proposed amendments further the legislative objectives embodied in sections 13.09(b) and 43.02 of the Mental Hygiene Law. The proposed amendments are concerning changes to requirements for imposing a penalty on providers that fail to meet filing deadlines for annual consolidated fiscal reports (cost reports).

3. Needs and Benefits: The submission of cost reports in a timely manner is imperative so that OPWDD can properly monitor the fiscal health of providers and be made aware of situations where providers may be unable to continue to provide essential services. Consequently, access to information contained in the cost reports earlier rather than later will result in increased protection of individuals receiving services.

Existing OPWDD regulations in 14 NYCRR Section 635-4.4 require that providers file cost reports no later than 120 days after the last day of the reporting period, and allow for one 30 day extension for providers that are unable to meet the 120 day deadline. The regulations also include provisions that require OPWDD to provide written notice to the provider when the provider fails to meet the applicable deadline, and that allow a 15 day grace period for the provider to respond to the notice before being subjected to a reduction in reimbursement penalty. Lastly, the regulations allow for a waiver of the penalty if unforeseeable circumstances beyond the provider's control prevent the provider from complying with applicable deadlines.

The proposed amendments amend existing regulations to automatically impose the penalty after 120 days if the provider does not apply for a 30 day extension; and the amendments eliminate both written notice of failure to file a cost report and the 15 day grace period. Since the regulation itself provides adequate notice to providers of the required deadlines for submission of cost reports and the consequences for failure to submit the reports within such deadlines, the written notice is not necessary. Moreover, the Centers for Medicare and Medicaid Services (CMS) have taken the position that a 150 day timeframe should be the maximum timeframe allowed for submission of a cost report, unless there are unforeseeable circumstances beyond the provider's control that prevent submission by the deadline, and that the additional 15 day grace period beyond the 30 day extension in current regulations is not necessary. Consequently, CMS has directed OPWDD to pursue elimination of the 15 day grace period in existing regulations, resulting in a change in timeframe requirements for imposition of a penalty.

Since the proposed amendments eliminate the requirement that OPWDD provide notice to providers when providers fail to submit a cost report and the associated 15 day grace period, the amendments make corresponding changes to timeframe requirements for requesting a waiver of the reduction of reimbursement. Currently, providers request a waiver of the penalty during the 15 day grace period after receiving notice of failure to submit a cost report. The proposed amendments require that the request for a waiver be received by OPWDD prior to the original due date (120 days after the last day of the reporting period) or the revised due date (150 days after the last day of the reporting period), depending on when the circumstances beyond the provider's control occur that will prevent the provider from complying with the applicable deadlines. OPWDD needs to be notified of such circumstances in advance of the original/revised due date in order to have sufficient time to consider the request for waiver of the penalty and to avoid situations in which a penalty is imposed before the request for a waiver of the penalty is received.

The proposed amendments also expand the applicability of the regulations to include Home and Community Based Services (HCBS) Waiver services that have been created in recent years and that are not covered under existing regulations. These services include Intensive Behavioral services, Pathway to Employment, Community Transition Services, and Individual Directed Goods and Services. 14 NYCRR section 635-4.1 already requires providers of all HCBS services to submit cost reports As OPWDD broadens its service delivery framework, it is critical that existing penalty provisions are amended to incorporate its new services so that requirements are applied in a fair and consistent manner to all providers of services in the OPWDD system.

The proposed amendments also delete provisions addressing the consequences of late or incomplete cost reports on OPWDD's development or revision of a rate. These provisions are no longer needed in light of the rate reform undertaken by OPWDD and the Department of Health.

The proposed amendments also make other minor, non-substantive changes to provide clarification of existing requirements. For example, OPWDD provides clarification that a request for a 30 day extension results in a revised due date for filing of the cost report that is 150 days after the last day of the reporting period.

4. Costs:

a. Costs to the Agency and to the State and its local governments: OPWDD does not anticipate costs to the State as a result of the proposed amendments. The substantive amendments being proposed merely change the timeframes for when OPWDD imposes a penalty on providers that fail to file cost reports within the applicable deadlines and for requesting a waiver of such penalty; and expand applicability to providers of newer services in its system.

Local governments should incur no costs as a result of these amendments.

b. Costs to private regulated parties: There are no initial capital investment costs. The proposed amendments do not result in any additional costs to regulated parties for the same reasons stated above in this section on costs to the State. However, the change in timeframe that eliminates the 15 day grace period for imposing a reduction in reimbursement results in the penalty being imposed earlier in the process in comparison with existing regulations. Consequently, providers subject to a penalty may experience an increase in the duration of their 2% reduction in reimbursement. In addition, expansion of the penalty to newer services may increase the total amount of reduction for some providers. OPWDD expects that the potential for an increase in penalty will motivate providers to minimize or eliminate non-compliance, which in turn would result in negligible penalties, if any.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: There are no new paperwork requirements being imposed as a result of these amendments since paperwork requirements have not changed as a result of changes to the timeframe requirements for imposing a penalty and requesting a waiver, and expanding applicability to providers already covered under existing regulation.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with developmental disabilities.

8. Alternatives: OPWDD did not consider any other alternatives to the proposed regulations since such changes were required by CMS and failure to comply could jeopardize federal funding.

9. Federal Standards: The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas. The amendments bring OPWDD requirements in line with federal standards.

10. Compliance Schedule: OPWDD expects to finalize the proposed amendments effective June 1, 2015. OPWDD will be mailing a notice of the proposed amendments to providers approximately three months in advance of the effective date. There are no additional compliance activities associated with these amendments. The amendments merely change the timeframe requirements for imposing a penalty and requesting a waiver of a penalty, and expand the penalty to additional services. However,

providers of these additional services are already required by regulation to submit cost reports and compliance activities associated with submitting cost reports will not change as a result of the proposed amendments.

Regulatory Flexibility Analysis

1. Effect on small business: OPWDD has determined, through a review of the certified cost reports, that most OPWDD-funded services are provided by non-profit agencies which employ more than 100 people overall. However, some smaller agencies which employ fewer than 100 employees overall would be classified as small businesses. Currently, there are approximately 700 agencies providing services which are certified, authorized or funded by OPWDD. OPWDD is unable to estimate the portion of these providers that may be considered to be small businesses.

The proposed amendments have been reviewed by OPWDD in light of their impact on small businesses.

2. Compliance requirements: The proposed amendments do not impose any new requirements in which providers are expected to comply. The amendments merely change the timeframe requirements for imposing a penalty and requesting a waiver of a penalty and expand the penalty to additional services. However, providers of these additional services are already required by regulation to submit cost reports and compliance activities associated with submitting cost reports will not change as a result of the proposed amendments. These amendments will have no effect on local governments.

3. Professional services: Providers have to engage the services of public accountants to certify cost reports. However, there are no additional professional services required for providers as a result of these amendments, since, as stated above, the amendments merely change the timeframe requirements for imposing a penalty and requesting a waiver of the penalty, and impose the penalty on additional services. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: Since the proposed amendments do not impose any new compliance activities, no new compliance costs will be incurred as a result of these amendments. However, the change in timeframe that eliminates the 15 day grace period for imposing a reduction in reimbursement results in the penalty being imposed earlier in the process in comparison with existing regulations. Consequently, providers subject to a penalty may experience an increase in the duration of their 2% reduction in reimbursement. In addition, the proposed amendments will impose the penalty on additional services. OPWDD expects that the potential for an increase in the penalty will motivate providers to minimize or eliminate non-compliance, which in turn would result in negligible penalties, if any.

5. Economic and technological feasibility: The proposed amendments do not impose the use of any new technological processes on regulated parties.

6. Minimizing adverse economic impact: As stated above in the section on compliance costs, the proposed amendments may result in an adverse economic impact on providers subject to a penalty that receive an increase in the duration of their reduction in reimbursement due to the elimination of the 15 day grace period, or that see the penalty imposed on additional services. However, as stated earlier, OPWDD expects that the potential for an increase in penalty will motivate providers to minimize or eliminate non-compliance, and therefore the amount of penalties that will be imposed will be negligible.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. OPWDD did not consider the exemption of small businesses from the proposed regulations, since the amendments were directed by the Centers for Medicare and Medicaid (CMS) and were not intended to exclude any regulated parties. Timely submission of cost reports is imperative so that OPWDD can properly monitor the fiscal health of providers in order to be aware of situations where providers may be unable to continue to provide essential services. Consequently, access to information contained in the cost reports earlier rather than later will result in increased protection of individuals receiving services.

The proposed amendments still allow a provider to avoid the penalty if it cannot meet a cost report deadline due to unforeseeable circumstances beyond its control. If the provider cannot meet the deadline because of such circumstances, the provider can explain these circumstances to OPWDD. If OPWDD agrees with the provider, OPWDD will set a new due date for the cost report and the provider will not be subject to the penalty as long as it submits the report by the new due date.

7. Small business participation: On February 23, 2015, the proposed regulations were discussed with representatives of providers, including the New York State Association of Community and Residential Agencies (NYSACRA). Some of the members of NYSACRA have fewer than 100 employees. OPWDD will also be mailing these proposed amendments to all providers, including providers that are small businesses, three months in advance of the effective date.

8. For rules that either establish or modify a violation or penalties associated with a violation: The proposed amendments will modify penalties for failure to submit a cost report by requiring the imposition of a penalty no later than 120 days after the last day of the reporting period, or 150 days with an extension. Consequently, imposition of the penalty will occur earlier in the process in comparison with existing regulations that allow for a 15 day grace period beyond the 30 day extension. In addition, the proposed amendments will apply the penalty to all HCBS waiver services. However, the proposed rules give providers the opportunity to take ameliorative action by requesting a waiver of the reduction of reimbursement if unforeseeable circumstances beyond the provider's control will prevent the provider from complying with the deadlines in the proposed regulations. If OPWDD accepts the provider's reasons, OPWDD will determine a revised due date beyond the extension and, as stated earlier, the provider will not be subject to the penalty as long as it submits the report by the revised due date.

Rural Area Flexibility Analysis

1. Description of the types and estimation of the number of rural areas in which the rule will apply: OPWDD services are provided in every county in New York State. 44 counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

The proposed amendments have been reviewed by OPWDD in light of their impact on entities in rural areas.

2. Compliance requirements: The proposed amendments do not impose any new requirements in which providers are expected to comply. The amendments merely change the timeframe requirements for imposing a penalty and requesting a waiver of a penalty and expand the penalty to additional services. However, providers of these additional services are already required by regulation to submit cost reports and compliance activities associated with submitting cost reports will not change as a result of the proposed amendments. These amendments will have no effect on local governments.

3. Professional services: Providers have to engage the services of public accountants to certify cost reports. However, there are no additional professional services required for providers as a result of these amendments, since, as stated above, the amendments merely change the timeframe requirements for imposing a penalty and requesting a waiver of the penalty, and impose the penalty on additional services. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: Since the proposed amendments do not impose any new compliance activities, no new compliance costs will be incurred as a result of these amendments. However, the change in timeframe that eliminates the 15 day grace period for imposing a reduction in reimbursement results in the penalty being imposed earlier in the process in comparison with existing regulations. Consequently, providers subject to a penalty may experience an increase in the duration of their 2% reduction in reimbursement. In addition, the proposed amendments will impose the penalty on additional services. OPWDD expects that the potential for an increase in the penalty will motivate providers to minimize or eliminate non-compliance, which in turn would result in negligible penalties, if any.

5. Minimizing adverse impact: As stated above in the section on compliance costs, the proposed amendments may result in an adverse economic impact on providers subject to a penalty that receive an increase in the duration of their reduction in reimbursement due to the elimination of the 15 day grace period, or that see the penalty imposed on additional services. However, as stated earlier, OPWDD expects that the potential for an increase in penalty will motivate providers to minimize or eliminate non-compliance, and therefore the amount of penalties that will be imposed will be negligible.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act. OPWDD did not consider the exemption of providers in rural areas from the proposed regulations, since the amendments were directed by the Centers for Medicare and Medicaid (CMS) and were not intended to exclude any regulated parties. Timely submission of cost reports is imperative so that OPWDD can properly monitor the fiscal health of providers in order to be aware of situations where providers may be unable to continue to provide essential services. Consequently, access to information contained in the cost reports earlier rather than later will result in increased protection of individuals receiving services.

The proposed amendments still allow a provider to avoid the penalty if it cannot meet a cost report deadline due to unforeseeable circumstances beyond its control. If the provider cannot meet the deadline because of

such circumstances, the provider can explain these circumstances to OPWDD. If OPWDD agrees with the provider, OPWDD will set a new due date for the cost report and the provider will not be subject to the penalty as long as it submits the report by the new due date.

6. Rural area participation: On February 23, 2015, the proposed regulations were discussed with representatives of providers, including NYSARC, NYS Catholic Conference, and CP Association of NYS, which represent providers in rural areas. OPWDD will be mailing these proposed amendments to all providers, including providers in rural areas, three months in advance of the effective date.

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.

The proposed regulations amend current requirements for imposing a penalty on providers that fail to meet filing deadlines for annual consolidated fiscal reports (cost reports). Specifically, the amendments change the timeframe requirements for imposing a penalty and for requesting a waiver of the penalty, and expand applicability of the penalty to newer services in the OPWDD system. There are no additional compliance activities imposed by the proposed regulations since compliance activities for submitting cost reports remain the same for all providers of services, including providers of services that have been added in the proposed regulations. OPWDD expects that expanding the penalty to all HCBS services and increasing the duration of the penalty will sufficiently motivate providers to minimize or eliminate non-compliance with reporting deadlines, resulting in negligible penalties, if any. Consequently, OPWDD expects that there will be no adverse effect on jobs or employment opportunities as a result of the proposed regulations.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Amendment of Submetering Order(s) to Allow Queens Fresh Meadows LLC and Others to Terminate Electric Service for Failure to Pay

I.D. No. PSC-10-15-00006-P

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

Proposed Action: The Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Queens Fresh Meadows LLC to amend its submetering order and similar submetering orders to allow termination of electric service for failure to pay.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Amendment of submetering order(s) to allow Queens Fresh Meadows LLC and others to terminate electric service for failure to pay.

Purpose: Whether to amend Queens Fresh Meadows LLC submetering order and others to allow termination of electric service.

Substance of proposed rule: The Commission, on March 22, 2004, adopted an order approving Queens Fresh Meadows LLC to submeter electricity at 188-02 64th Avenue, Flushing, New York (2004 Submetering Order). Fresh Meadows LLC has now petitioned the Public Service Commission to modify its 2004 Submetering Order to allow Queens Fresh Meadows LLC to terminate electric service to tenants who fail to pay their submetered electric bills, subject to the requirements in 16 NYCRR Part 96, as it applies to the above order and similarly situated submeterers. The Commission will consider all matters related to the petition.

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.

(03-E-0889SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notification Concerning Tax Refunds

I.D. No. PSC-10-15-00007-P

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

Proposed Action: The PSC is considering Verizon New York Inc.'s petition seeking partial rehearing or reconsideration of its January 9, 2015 Order regarding the retention of a portion of a property tax refund related to its regulated, intrastate New York operations.

Statutory authority: Public Service Law, section 113(2)

Subject: Notification concerning tax refunds.

Purpose: To consider Verizon New York Inc.'s partial rehearing or reconsideration request regarding retention of property tax refunds.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, or grant such other and further modified relief as it deems appropriate, in response to Verizon New York Inc.'s petition for partial rehearing or reconsideration of its January 9, 2015 Order Approving Retention of Property Tax Refunds, which allowed Verizon to retain the portion of a property tax refund received that is allocable to Verizon's regulated, intrastate New York operations and any other related actions.

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

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

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

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

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

(14-C-0248SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether to Waive Policy on Test Periods in Major Rate Proceedings and Provide Authority to File Tariff Changes

I.D. No. PSC-10-15-00008-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 whether to grant, deny or modify, in whole or in part Consolidated Edison's request for waiver of Policy on Test Periods in Major Rate Proceedings and for authority to file tariff changes pursuant to 16 NYCRR Part 61.10.

Statutory authority: Public Service Law, sections 4(1), 65(1) and 66(1), (12)(a), (b) and (e)

Subject: Whether to waive Policy on Test Periods in Major Rate Proceedings and provide authority to file tariff changes.

Purpose: Whether to waive Policy on Test Periods in Major Rate Proceedings and provide authority to file tariff changes.

Substance of proposed rule: The Commission is considering whether to grant, deny or modify, in whole or in part, the request of Consolidated Edison Company of New York, Inc. (Con Edison) seeking waiver of the Statement of Policy on Test Periods in Major Rate Proceedings (Case 26821, issued November 23, 1977) and for authority to file tariff changes

pursuant to 16 NYCRR Part 61.10. The Company proposed an additional one month be added to the suspension period for the tariff amendments filed in Case 15-E-0050 so that the parties in Case 13-E-0030 may explore an extension of the current electric rate plan established in that proceeding. Should an additional month of negotiations be needed, Con Edison requests that the Commission provide appropriate waiver of the Statement of Policy on Test Periods in Major Rate Proceedings regarding the test period and other related issues so that Con Edison may file for new electric rates in 2016 to be effective January 1, 2017. In addition, the Company requests that the Commission provide it authority pursuant to 16 NYCRR Part 61.10 to allow it to file new tariff amendments during the pendency of the suspended tariff filings in Case 15-E-0050, so to allow such tariff filing(s) to become effective January 1, 2017. Con Edison also seeks to be "made whole" should there be any delay in the Commission rendering a decision on the proposed tariff amendments filed in Case 15-E-0050.

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-E-0050SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Contingency Tariffs Regarding Demand Response Issues

I.D. No. PSC-10-15-00009-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 a petition filed by the Joint Utilities requesting approval of Contingency Tariffs for addressing demand response issues.

Statutory authority: Public Service Law, sections 65(1)-(3), 66(1)-(3), (5) and (12)

Subject: Contingency Tariffs regarding demand response issues.

Purpose: To consider Contingency Tariffs regarding demand response issues.

Substance of proposed rule: The Public Service Commission is considering a petition filed by the Joint Utilities on February 23, 2015 requesting approval of Contingency Tariffs for addressing demand response issues. 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-E-0100SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notification Concerning Tax Refunds

I.D. No. PSC-10-15-00010-P

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

Proposed Action: The PSC is considering Verizon New York Inc.'s petition seeking the retention of a portion of a property tax refund received from the Town of Oyster Bay in relation to its regulated, intrastate New York operations during the 2008-2010 and 2012 tax years.

Statutory authority: Public Service Law, section 113(2)

Subject: Notification concerning tax refunds.

Purpose: To consider Verizon New York Inc.'s request to retain a portion of a property tax refund.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, Verizon New York Inc.'s request to retain the portion of a $3,300,000 property tax refund received from the Town of Oyster Bay, associated with the 2008-2010 and the 2012 tax years that is allocable to Verizon's regulated, intrastate New York operations and any other related actions. Verizon proposes to retain such tax refund in accordance with earlier Commission Orders involving previous Verizon tax refunds.

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-C-0091SP1)