

# 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.

price, quantity of goods, property or services delivered or rendered, in such form and supported by such other substantiating documentation as the Comptroller or individual State agency may reasonably require.

(h) Receipt of an invoice means:

(1) the date on which a proper invoice is actually received in the designated payment office; *or, with regard to electronic invoices, the date on which a proper invoice is received by the Statewide Financial System, or the next succeeding business day if a proper invoice is received by the Statewide Financial System after 5:00 p.m. Eastern Time or on a Saturday, Sunday or legal holiday;*

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

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

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

## **Consensus Rule Making Determination**

This is a consensus rulemaking proposed for the sole purpose of updating the language of the regulation to reflect current operational practices related to the payment of invoices by the Statewide Financial System. This amendment relates to the electronic payment of invoices and it has been determined that no person is likely to object to the adoption of the rule as written.

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## Department of Audit and Control

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

#### **Prompt Payment Processing**

**I.D. No.** AAC-18-15-00003-P

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

**Proposed Action:** This is a consensus rule making to amend section 18.1(g), (f) and (h) of Title 2 NYCRR.

**Statutory authority:** Finance Law, section 179-m

**Subject:** Prompt payment processing.

**Purpose:** To include electronic invoices and the processing of e-invoices within the procedures for calculating prompt payment interest.

**Text of proposed rule:** § 18.1 Definitions

As used in this Part, the following terms shall have the following meanings unless otherwise specified:

(e) Designated payment office means: *i*) the office designated by the State agency to which a proper invoice is to be submitted by a contractor; *or ii*) *the Statewide Financial System for the processing of electronic invoices.*

(f) Payment date means the date on which a check for payment pursuant to a contract is dated, or, if the contractor elects to receive payment by means of electronic funds transfer, the date a transaction for electronic funds transfer is initiated by the [central accounting system] *Statewide Financial System.*

(g) Proper invoice means a written *or electronic* request for a contract payment that is submitted by a contractor setting forth the description,

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## Department of Environmental Conservation

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### NOTICE OF ADOPTION

#### **Revised Closed Season for the Harvest and Landing of Lobster from Lobster Management Area 4 and Mandatory V-notch Rule**

**I.D. No.** ENV-07-15-00002-A

**Filing No.** 330

**Filing Date:** 2015-04-17

**Effective Date:** 2015-05-06

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

**Action taken:** Amendment of Part 44 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 3-0301, 13-0105 and 13-0329

**Subject:** Revised closed season for the harvest and landing of lobster from Lobster Management Area 4 and mandatory V-notch rule.

**Purpose:** To implement ASMFC American Lobster Fishery Management Plan Addendum XVII and allow the lobster stock to rebuild.

**Text or summary was published** in the February 18, 2015 issue of the Register, I.D. No. ENV-07-15-00002-EP.

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

**Text of rule and any required statements and analyses may be obtained from:** Kim McKown, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0454, email: kim.mckown@dec.ny.gov

**Additional matter required by statute:** Pursuant to the State Environmental Quality Review Act, a short environmental assessment form is on file with the department.

**Initial Review of Rule**

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

**Assessment of Public Comment**

The agency received no public comment.

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## Department of Financial Services

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### EMERGENCY RULE MAKING

#### Title Insurance Agents, Affiliated Relationships, and Title Insurance Business

**I.D. No.** DFS-29-14-00014-E

**Filing No.** 323

**Filing Date:** 2015-04-20

**Effective Date:** 2015-04-20

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; 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 June 18, 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 agency received no public comment.

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

#### **Title Insurance Rates, Expenses and Charges**

**I.D. No.** DFS-18-15-00009-P

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

**Proposed Action:** Addition of Part 227 (Regulation 208) to Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202, 301 and 302; Insurance Law, sections 301, 2110, 2119, 2303, 2304, 2315 and 6409; arts. 23 and 24

**Subject:** Title Insurance Rates, Expenses and Charges.

**Purpose:** To insure proper, non-excessive rates, compliance with Insurance Law 6409(d), and reasonable charges for ancillary services.

**Substance of proposed rule (Full text is posted at the following State website: <http://www.dfs.ny.gov/insurance/rpro>):** This rule interprets and implements Insurance Law section 6409(d) by delineating certain expenditures that, when provided by title insurance corporations or title

insurance agents to “current or prospective customers” as an inducement for title insurance business, are prohibited by the Insurance Law. The rule mandates new reporting requirements to exclude all prohibited expenditures from the rates, thereby ensuring that these expenditures do not contribute to excessive rates. The rule further sets parameters with respect to ancillary charges, ensuring that title insurance corporations and title insurance agents do not charge consumers in New York improper and excessive closing costs.

Section 227.0 sets forth the purpose of the rule.

Section 227.1 provides definitions applicable to the rule.

Section 227.2 sets forth certain categories of expenses, including meals, entertainment, travel, and gifts that the Department of Financial Services considers to be violative of Insurance Law section 6409(d) when made as inducements for title insurance business to or on behalf of those persons who order title insurance policies on behalf of their clients.

Section 227.3 provides a framework for reporting expenses so that only proper expenditures are included in the title insurance rate. The rule provides that prohibited expenditures may not be reported in response to the annual data call, nor included for rate making purposes. This section requires title insurers to eliminate any prohibited expenditures from the expenses reported to the statistical agent as expenses in connection with New York policies. It further requires that, to the extent any prohibited expenditures have been included in schedules that have been reported in the past ten years, those schedules must be restated without the prohibited expenditures and resubmitted to the statistical agent. After the statistical agent collects and compiles the data, the rate service organization is required to make a new submission to the Superintendent that reflects the exclusion of the prohibited expenses in the calculation of the rate. This section also requires all licensed title insurance corporations to provide to its appointed title insurance agents, revenue and expenses schedules in connection with the annual data call. It requires all licensed title insurance agents, unless their revenue and expenses are reported by an employer or affiliated entity, to submit revenue and expense schedules in connection with the annual data call, and ensure that prohibited expenditures are excluded. It further requires the title insurance corporations to compile the schedules and submit them to the statistical agent. In addition, the section requires each licensed title insurance corporation to file with the Superintendent individual annual premium and expense reports.

Section 227.4 provides that expenses allocated by a title insurance corporation to New York may not exceed the percent of premium written in New York by that insurer, compared to nationwide premiums written, and that prohibited expenditures may not be allocated to New York. To the extent that a title insurance corporation’s past reported allocated expenses exceed that insurer’s percent of premiums written in New York, or include prohibited expenditures, those schedules must be restated, resubmitted, and included in the new rate submission.

Section 227.5 provides parameters for ancillary closing costs including maximum charges for Patriot, bankruptcy, and municipal searches. The regulation provides for a flat fee to be charged for certain services, including escrow services and recording of closing documents. The regulation also prohibits the payment of gratuities and pick up fees to closers.

Section 227.6 requires that at least once every three years a filing must be made demonstrating that the title insurance corporation’s or rate service organization’s title insurance rates comply with Article 23 (i.e., they are not excessive, inadequate or discriminatory).

**Text of proposed rule and any required statements and analyses may be obtained from:** Ellen R. Buxbaum, Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5383, email: TitleInsReg@dfs.ny.gov

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

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

#### **Regulatory Impact Statement**

1. Statutory Authority: The Superintendent’s authority to promulgate this rule derives from Financial Services Law (“FSL”) sections 202, 301, and 302 and Insurance Law sections 301, 2110, 2119, 2303, 2304, 2306, 2315, and 6409(d) and Articles 23 and 24.

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

FSL section 301 authorizes the Superintendent to take such action as the Superintendent deems necessary to protect and educate users of financial products and services.

FSL section 302 and Insurance 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 applicable law and to prescribe regulations interpreting those laws.

Insurance Law section 2110 provides that the Superintendent may revoke, suspend, or refuse to renew the license of a title insurance pro-

ducer based on a determination, among other things, that the title insurance producer has demonstrated untrustworthiness.

Insurance Law section 2119 permits title insurance agents to charge fees for certain ancillary services not encompassed within the premium provided that the fees are disclosed in a written memorandum.

Article 23 of the Insurance Law authorizes the Superintendent to regulate property/casualty insurance rates, including title insurance rates.

Insurance Law section 2303 provides that rates subject to Article 23 shall not be excessive, inadequate, unfairly discriminatory, destructive of competition or detrimental to the solvency of insurers.

Insurance Law section 2304 provides standards for rate making.

Insurance Law section 2306 permits title insurers to file rates with the Superintendent through a rate service organization.

Insurance Law section 2315 directs insurers to file statistical reports with the Superintendent and permits the Superintendent to authorize a statistical agent on behalf of the Superintendent.

Article 24 of the Insurance Law prohibits practices in the insurance industry that constitute unfair methods of competition or unfair or deceptive acts or practices.

Insurance Law section 6409(d) contains specific prohibitions against rebating or paying inducements for title insurance business and provides that title insurance rates shall reflect the anti-inducement prohibition.

2. Legislative Objectives: This regulation provides guidance to the title insurance industry by interpreting and implementing Insurance Law section 6409(d) and delineating certain expenditures that, when provided to "current or prospective customers" as an inducement for title insurance business, are prohibited by the Insurance Law. Despite language in Insurance Law section 6409(d) prohibiting title insurers and anyone working for or on their behalf from giving inducements for title insurance business, the practice persists. The Department's investigation of the title insurance industry revealed that each year millions of dollars are spent on inducements provided to attorneys and other real estate professionals who order title insurance on behalf of their clients, in the guise of meals, entertainments, gifts, vacations, free CLE classes and the like, in exchange for title insurance business. Title insurers report these expenses in expense schedules submitted in response to the statistical agent's annual data call. The expenses are then included in the calculation of the rates, resulting in consumers paying higher, excessive rates.

The regulation provides new reporting requirements, including requiring insurers to restate and resubmit schedules that include prohibited expenditures, requiring agents to submit revenue and expense schedules, requiring insurers to collect and compile agent data and submit schedules to the Department's statistical agent, and requiring every rate service organization or title insurer that submits its own rate filing to make a submission to the Superintendent, within 90 days of the effective date of the regulation, which reflects the exclusion of prohibited expenditures, supported by data and actuarial support.

The regulation further establishes maximum allowable charges for ancillary searches and services in connection with real estate closings. The Department's investigation of the title insurance industry found that certain agents and insurers markup ancillary charges excessively. Charging onerous fees constitutes untrustworthiness on the part of agents, and unfair and deceptive acts and practices by both insurers and agents. The regulation also prohibits the payment of gratuities and pick up fees that consumers are asked to pay to closers.

Lastly, the regulation requires that every three years, a rate service organization and any title insurance corporation that submits its own rate filing shall make a filing verifying that rates comply with Article 23.

3. Needs and Benefits: Consumers generally are unfamiliar with title insurance, as it is purchased once for the duration of the ownership of the real property. They usually rely upon the advice of real estate professionals, including attorneys or real estate agents, who order the policy on their behalf. Consumers typically pay any invoice presented at the closing because they lack the sophistication to challenge the invoice, and fear risking a delay in the closing in order to obtain clarification. The Department's investigation revealed industry-wide practices that violate Insurance Law section 6409(d) and contribute to excessive rates and others that constitute untrustworthiness and deceptive acts and practices. This rule is necessary in order to a) ensure that title insurers and title insurance agents comply with the Insurance Law, b) level the playing field so that a title insurer or agent is not selected based on which entity can provide the most lavish inducements, c) help ensure that title insurance rates are not excessive, and d) eliminate unreasonable and excessive markups of ancillary charges. This rule provides to consumers protection against excessive rates and unreasonable closing costs. The benefit to the public resulting from the Department's ensuring that rates are not excessive and that improper expenditures, in violation of the Insurance Law, are not made by title insurers or title insurance agents, and significantly reducing excessively high closing costs, including exorbitant ancillary charges, outweigh the costs of complying with the requirements of the regulation.

4. Costs: The regulation imposes requirements on title insurers to restate any expense schedule, submitted in the past ten years, which includes prohibited expenditures. Since not all insurers' expense schedules include prohibited expenditures, the cost impact of restating expense schedules will vary from insurer to insurer, depending on the extent to which the schedules must be restated. Moreover, all insurers have already provided to the Department, in the course of the investigation, detailed breakdowns of their expenditures for most of the years that must be restated. Accordingly, the additional expense of restating the schedules should not be significant. The insurers will be charged assessments, by the entity designated as the Department's statistical agent, for the expense of collecting and compiling all restated schedules. The amount of the assessment will be determined by the amount of work involved.

Although title insurance agents have been requested to submit expense schedules beginning with the 2009 data call, not all have complied. Recently enacted legislation requires title insurance agents to be licensed, and this regulation mandates that, unless their revenue and expenses are reported by an employer or affiliated entity, title insurance agents must file revenue and expense schedules in connection with the annual data call. Compliance with the regulation's reporting requirements should not cause any title insurance agent to incur substantial costs. Many title insurance agents have been reporting for the past five years and are familiar with the schedules. Accordingly, their continued reporting costs should be minimal. Title insurance agents that have failed to submit schedules may incur costs, but since the data is required for other purposes and the categories of expenses are known, compliance costs relating to the regulation's reporting requirements should not be substantial, although costs will vary depending on the title insurance agent's volume of business and expense. The rule requires any title insurance agent who is appointed by more than one insurer to file schedules with each insurer and also compile one annual expense schedule and one annual revenue schedule. Preparing the combined annual schedules should only entail a minimal amount of time and thus should not impose any significant cost. Insurers are required to continue providing, collecting, and compiling the agents' schedules, and will not incur additional costs. They will incur a ministerial cost to report to the Department those agents who do not comply.

The regulation also imposes maximum charges for ancillary services--searches and services that are not included in the title insurance premium--based on a moderate percent markup of out-of-pocket expense, and disallows the payment of gratuities and pick up fees to closers. Title insurers and title insurance agents may lose revenue, commensurate with the extent of their current markups. In addition, closers will have to be compensated by means other than gratuities and pick up fees.

Every three years, an insurer must submit to the Superintendent a verification that its rates remain in accordance with Article 23's standards. If the insurer uses the rates of a rate service organization, the submission will be made by the rate service organization and the cost will be borne by the title insurers. The cost of making such filings will vary, depending upon the amount of premium written and the amount of work required to prepare the submission.

The cost to the Department will be minimal because existing personnel are largely available to verify and ensure compliance with this rule. There are no costs to any other state government agency or local government.

5. Local Government Mandates: The rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This regulation will require a one-time restatement of certain expense schedules by any title insurer that included prohibited expenditures in previously submitted schedules. It will also require that title insurers submit certain expense schedules with additional, greater detail. The regulation requires each licensed title insurance agent, unless its revenue and expenses are reported by an employer or affiliated entity, to submit revenue and expense schedules in response to the annual agent data call. It will require a submission verifying that the rate, excluding improper expenditures, is not excessive. The regulation requires licensed title insurers to submit annual revenue and expense schedules to the Superintendent. The regulation requires that at least once every three years, the insurer or rate service organization submit a filing to the Superintendent demonstrating that title insurance rates comply with Article 23.

7. Duplication: This rule does not duplicate any other existing state rule.

8. Alternatives: The Department has determined that there are no other viable alternatives to this rule. The Department's investigation and public hearing revealed that title insurers and title insurance agents have been violating the Insurance Law with respect to inducements for title insurance business; this rule clarifies those categories of expenditures that are prohibited when provided to "current and prospective customers" as inducements for title insurance business and requires that prohibited expenditures be excluded from title insurance rates. With regard to charges for ancillary searches and services, parameters are necessary to ensure that

consumers do not pay exorbitantly excessive fees that are not commensurate with the cost to the insurer or agent or the service provided.

9. Federal Standards: The Real Estate Settlement Procedures Act ("RESPA"), 12 USC § 2607, prohibits giving or receiving any "fee, kickback, or thing of value" for referring any business that is part of a real estate transaction involving a federal mortgage loan. It does not provide any guidelines regarding the type of expenditures considered to be inducements. Moreover, RESPA relates only to federal mortgage loans and residential transactions. 12 USC § 2616 states that RESPA does not affect compliance with any state law so long as it is not inconsistent with RESPA. A state law providing greater consumer protection will not be deemed to be inconsistent with RESPA. This regulation is more inclusive than RESPA, as it covers both federal and state bank loans, and residential and commercial transactions, thereby providing greater protection to consumers. As such, this regulation is not inconsistent with RESPA.

10. Compliance Schedule: The provisions relating to prohibited expenditures and caps on ancillary charges go into effect as soon as the regulation is effective. The reporting requirements go into effect 60 – 90 days after the effective date of the rule.

#### **Regulatory Flexibility Analysis**

1. Effect of rule: This rule affects title insurance corporations and title insurance agents in New York State by providing guidance in connection with the Insurance Law's prohibition on providing consideration or any valuable thing as an inducement for title insurance business and mandating certain reporting requirements. It also imposes maximum allowable charges for certain ancillary searches and services and prohibits certain payments to closers.

No title insurance corporation subject to the rule falls within the definition of "small business", as set forth in section 102(8) of the State Administrative Procedures Act ("SAPA"), because no insurance corporation is both independently owned and operated and has fewer than 100 employees. There are currently approximately 2,200 title insurance agents doing business in New York.

A recently enacted law requires title insurance agents to be licensed by the State. The licensing process is currently ongoing and once all title insurance agents have applied for and obtained licenses, the Department of Financial Services ("Department") will have a record of the exact number of title insurance agents. Although it is unknown how many title insurance agents fall within the statutory definition of "small business", as set forth in SAPA section 102(8), it is understood that a majority of title insurance agents are small businesses.

The section of the regulation that provides guidance to the title insurance industry by interpreting and implementing Insurance Law section 6409(d) and delineating certain expenditures that, when provided to "current or prospective customers" as an inducement for title insurance business, are prohibited by the Insurance Law applies to all title insurers and title insurance agents. The impact of insurers and agents complying with the law as a result of this guidance will help level the playing field and, in fact, may help small businesses compete for title insurance business based on merit and not based on which company can pay for the most lavish inducements, a practice in which many small businesses cannot, and do not, participate.

The requirement that all title insurance agents must properly report both revenue and expenses should not impose a significant burden since many title insurance agents have submitted expense schedules, beginning with the 2009 annual data call, are familiar with the schedules, and should be equipped to provide the requested data. To the extent that a title insurance agent has not previously submitted an expense schedule, that agent may incur some additional costs, which should not be significant. The section of the regulation that imposes maximum charges for ancillary searches and services will result in some decrease in revenue to some title insurance agents, depending on how much of a markup they currently charge. The rule also prohibits the payment of gratuities and pick up fees to closers, who also fall within SAPA's definition of a small business. Closers are paid a minimal fee by either the title insurer or title insurance agent who engages them to attend the closing. The bulk of the closer's payment comes from gratuities and pick up fees, which are paid to the closer by the purchaser and seller as remuneration for the closer performing routine closing responsibilities. These payments add hundreds of dollars to consumers' already over-high closing costs. It is the intent of this regulation to lower payments to closers to more reasonable levels, commensurate with the work performed at the closing. The benefit to the consumer, whose burden of excessively high closing costs will be diminished, outweighs any burden to small businesses whose revenue will decrease.

This rule does not affect or impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance costs or requirements on any local government.

2. Compliance requirements: Newly enacted legislation requires title insurance agents to be licensed by the State. This rule requires title insurance corporations to continue to provide, collect, and compile their agents'

revenue and expense schedules and submit the compiled schedules to the entity designated as the Department's statistical agent. It also mandates that every licensed title insurance agent, unless its revenue and expenses are reported by an employer or affiliated entity, must report its revenue and expenses in schedules submitted in response to the annual agent data call. The rule also requires title insurance agents and title insurance corporations to comply with the permissible caps on amounts that can be charged for ancillary searches and services.

3. Professional services: This rule does not require any small business to use any professional services in order to comply.

4. Compliance costs: The rule will result in reductions in revenue from ancillary searches and services to title insurance corporations and title insurance agents. The financial burden to these entities is offset by the benefit to consumers who, for too long, have been paying excessive fees for these searches and services. The rule may impose increased costs for recordkeeping and reporting on some small businesses but those costs should not be substantial inasmuch as many of the agents have been reporting for the past five years and are familiar with the schedules. Accordingly, those agents should be able to comply with no, or minimal, additional cost. Title insurance agents that have failed to submit schedules may incur additional costs. However, since the data is required for other purposes and the categories of expenses are known, the reporting costs should not be substantial. Indeed, many of the smaller businesses do not incur the types of expenditures that this rule addresses and, accordingly, compliance with some of the reporting requirements should not impose any additional cost on those small businesses. In addition, many of the smaller businesses do not mark-up ancillary searches as much as larger ones do and, accordingly, the impact on small businesses should not be significant.

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

6. Minimizing adverse impact: This rule applies equally to all title insurers and title insurance agents. As a result of the guidance provided by this rule, the anticipated result of industry-wide compliance with the Insurance Law's prohibition on expenditures made as inducements for title insurance business, will benefit small businesses as they often are not in a position to provide these types of inducements and will result in leveling the playing field for small businesses who previously could not compete for certain title insurance business.

7. Small business and local government participation: Small businesses and local governments will have an opportunity to participate in the rule making process when the rule is published in the State Register.

#### **Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: Title insurance corporations and title insurance agents do business in every county of New York State, including rural areas as defined in section 102(10) of the State Administrative Procedure Act. The Department of Financial Services ("Department") believes that no title insurer has an office in any rural area; however, title insurance agents are located in every county including rural areas. The proposed regulation will apply to all title insurers and title insurance agents, including those located in rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: This rule will require all title insurance corporations and title insurance agents to report their expenses in greater detail than in previous years. The reporting requirements are set forth in the rule. Although title insurance agents have been requested to submit expense schedules, beginning with the 2009 annual data call, this rule requires all licensed title insurance agents, including any located in a rural area, to submit detailed expense and revenue schedules in connection with the annual data call, unless their revenue and expenses are reported by an employer or affiliated entity. It is not anticipated, however, that title insurance agents in rural areas, or elsewhere, will have to engage professional services in order to comply with this regulation.

The regulation also requires that the rate service organization or any title insurance corporation that files its own rates make a filing every three years verifying that the rates comply with Article 23 of the Insurance Law. The cost of this filing will be borne by the title insurers and not title insurance agents so there should be no impact on businesses located in rural areas.

3. Costs: Any costs associated with compliance with this regulation will be related to the reporting requirement of the regulation. Many title insurance agents have submitted expense schedules, beginning with the 2009 data call, and are familiar with the schedules. There should be no additional costs to these agents as a result of the rule. To the extent that an agent has not previously submitted an expense schedule, some additional costs may be incurred. However, inasmuch as the data is used for other purposes and the categories of expenses are known, any additional cost incurred by any title insurance agent located in a rural area should not be significant. The public benefit of ensuring that rates are not excessive,

including ensuring that improper inducements for title insurance business are not made, outweighs any minimal cost that might be incurred to comply with this regulation.

4. Minimizing adverse impact: This rule applies equally to all title insurance corporations and title insurance agents whether located in rural or non-rural areas. However, the guidelines with regard to the Insurance Law’s prohibition on expenditures given as inducements will actually benefit small businesses, including those in rural areas, who previously could not provide lavish inducements and thus could not compete for certain business. Although some agents’ revenues will be reduced as a result of the maximum allowable charges for ancillary searches and services, the Department’s investigation showed that extensive markups on ancillary searches, for the most part, do not occur in Zone 1 counties, which include the vast majority of the state’s rural counties. Accordingly, there should be minimal adverse effect in these areas.

5. Rural area participation: This notice is intended to provide entities in rural and non-rural areas with the opportunity to participate in the rule making process. Interested parties will have an opportunity to participate in the rule making process when the rule is published in the State Register.

**Job Impact Statement**

The Department of Financial Services believes that this rule will not have any negative impact on jobs or employment opportunities, including self-employment opportunities. Although it is anticipated that some title insurance corporations’ and title insurance agents’ revenues from ancillary charges will be reduced, the guidance that the rule provides in connection with the prohibition on expenditures given as inducements for title insurance business should have the effect of leveling the playing field, thereby allowing more and smaller agents to compete for business, which will ultimately have a positive effect on jobs and employment. The reporting requirements will not have any impact on jobs or employment opportunities. The rule should result in lower title insurance rates for New York consumers.

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## Office of General Services

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

**Federal Surplus Property Program**

**I.D. No.** GNS-18-15-00001-P

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

**Proposed Action:** This is a consensus rule making to amend section 298.6 of Title 9 NYCRR.

**Statutory authority:** Executive Law, section 200; Education Law, section 3712; 40 U.S.C., section 549; 41 CFR 102-37

**Subject:** Federal Surplus Property Program.

**Purpose:** To conform the State Plan of Operation with requirements of Federal Management Regulations (FMR) 102-37.465.

**Text of proposed rule:** § 298.6 Terms and conditions on donable property.

(a)(1) The SASP will require each eligible donee, as a condition of eligibility, to file with the agency the appropriate application, a certification of eligibility and an agreement to abide by certain terms and conditions as set forth by the GSA. Each form must be signed by the chief executive officer of the donee, agreeing to these requirements prior to the donation of any surplus property.

(2) In addition, the certification of eligibility and terms and conditions will be printed on the reverse side of each, executed to cover each donation transaction and signed by an authorized representative of the donee (forms CS 403 and CS 404).

(3) The following periods of restriction are established by the SASP on all items of property with a unit acquisition cost of \$5,000 or more, and on all passenger vehicles:

(i) passenger vehicles[-]18 months from the date the property is placed in use;

(ii) items with a unit acquisition cost of \$5,000 or more -18 months from the date the property is placed in use;

(iii) aircraft (except combat type) and vessels (50 feet or more in length) - 60 months from the date the property is placed in use. Donation of noncombat aircraft and vessels of 50’ or more in length shall be subject to the requirements of a Conditional Transfer Document (CTD);

(iv) aircraft (combat type) restricted in perpetuity. Donation of combat-type aircraft shall be subject to the requirements of a conditional transfer document (form CS 408).

(4) The SASP will impose or reinforce any and all conditions involving special handling or use limitations set by the GSA due to the characteristics of the property regardless of the unit acquisition cost.

[(5) The SASP may reduce the period of restriction on items of property falling within the provisions of subparagraphs (3)(i)-(ii) of this subdivision at the time of donation for good and sufficient reasons, such as the condition of the property, or the proposed use (secondary, cannibalization, etc.).]

[(6)](5) The SASP, at its discretion, and when considered appropriate, may impose [such] *additional* terms, conditions, reservations and restrictions as it deems reasonable on the use of donable property [other than items with a unit acquisition cost of \$5,000 or more, and passenger motor vehicles] *beyond what GSA and the FMR requires.*

[(7)](6) The SASP will impose on all donees the statutory requirement that all items donated must be placed into use or, if the property ceases to be used for a full year and the property is still usable, the property must be returned to the SASP or otherwise transferred as the SASP shall direct.

(b)(1) The SASP [may] *must seek GSA’s approval* to amend, modify, or grant releases of, any term, condition, reservation or restriction it has imposed on donated items of personal property [in accordance with the standards prescribed in subpart 4 of this subsection, provided that the circumstances pertinent to each situation have been affirmatively demonstrated to the prior satisfaction of SASP and made a matter of public record.] *which is mandated by GSA or the FMR. The SASP may amend, modify, or grant release of, any item, any “additional” conditions, reservations or restrictions which the SASP has imposed above and beyond what GSA or the FMR requires.*

[(2) The GSA standards for amending the terms, conditions, require that:

(i) at a minimum of 12 months from the date of being placed into use, the trade-in will result in increased utilization value to the donee,

(ii) the trade-in is on a one-for-one basis only (one donated item being traded for one like item having similar use potential) and

(iii) the item being acquired has an estimated market value at least equal to the estimated market value of the item being traded in.]

(c) Restrictions on Property. The SASP may amend or grant releases, during the period of restriction, from [the] *any “additional” SASP imposed* terms, conditions, reservations or restrictions [it] *the SASP* has imposed on donated property, in accordance with the following standards, provided that the conditions pertinent to each situation have been affirmatively demonstrated to the satisfaction of the SASP, and have been made a matter of public record[.]:

(1) Secondary Utilization or Cannibalization. Secondary utilization or cannibalization may be accomplished, provided that:

(i) disassembly of the item, for use of its component parts for secondary use or repair and maintenance of a similar item, has greater potential benefit than utilization of the item in its existing form;

(ii) components with a single item acquisition cost of \$5,000 or more will remain under the restrictions imposed by the transfer document. Components with a single item acquisition cost of less than \$5,000 will be released from the restrictions imposed by the transfer document. All components, regardless of acquisition cost will continue to be used or be otherwise disposed of in accordance with applicable law and regulations;

(iii) a written report of such action is made by the donee to the SASP, including a list of all components, resulting from the secondary utilization or cannibalization.

**Text of proposed rule and any required statements and analyses may be obtained from:** Arthur K. Posluszny, NYS Office of General Services, 41st fl Corning Tower, The Governor Nelson A. Rockefeller ESP, Albany, 12242, (518) 474-0571, email: arthur.posluszny@ogs.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 rule is being proposed as a consensus rule because, in accordance with State Administrative Procedure Act § 102(11)(b), no person is likely to object to its adoption because it merely conforms the New York State Plan of Operation (State Plan) for federal surplus property to the requirements of Federal Management Regulations (FMR) § 102-37.465. There was no discretion in developing the text for these regulations since they were required to mirror the provisions of the FMR.

**Job Impact Statement**

The Office of General Services (“OGS”) projects there will be no substantial adverse impact on jobs or employment opportunities in the

State of New York as a result of this rule. The subject regulations are simply being made in response to a review conducted by the General Services Administration, Federal Acquisition Service, Personal Property Management Division, pursuant to Federal Management Regulations (FMR) § 102-37.465. During such review, recommended as well as required changes to the New York State Plan were provided in a report provided to OGS. Since nothing in the proposed regulations will increase or decrease the number of jobs in New York State, have an adverse impact on any specific region in New York State, and no adverse impact is anticipated on jobs in New York State, no further steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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## Department of Health

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### NOTICE OF ADOPTION

#### Emergency Medical Services

**I.D. No.** HLT-37-14-00003-A

**Filing No.** 325

**Filing Date:** 2015-04-21

**Effective Date:** 2015-05-06

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

**Action taken:** Amendment of Part 800 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 3002

**Subject:** Emergency Medical Services.

**Purpose:** To clarify terminology, eliminate vagueness, address legal statutes/crimes and incorporate modern professional, ethical and moral standards.

**Text or summary was published** in the September 17, 2014 issue of the Register, I.D. No. HLT-37-14-00003-P.

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

**Revised rule making(s) were previously published in the State Register** on February 11, 2015.

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

#### Assessment of Public Comment

Public comments were submitted to the NYS Department of Health (DOH) in response to the proposed changes to Title 10 NYCRR Part 800. Many of the comments were the same or similar. These comments and the Department of Health's responses are summarized below:

1. COMMENT: Received a letter from the "Legal Action Center", located in New York City, in support of the proposed changes to the Part 800 regulations.

RESPONSE: No response necessary.

2. COMMENT: Concern that Part 800.15(c)(1)(ii) as written implies that any person on the scene of a medical emergency may cancel a valid Do Not Resuscitate (DNR) order.

RESPONSE: This language has not been amended and is specifically contained in PHL Article 29-CCC, section 2994-ee.

3. COMMENT: Concerns that the proposed definition of Patient Abandonment (Part 800.3(ao)) does not allow for the retreat of certified EMS providers in the event that the scene is not safe.

RESPONSE: Included in both the current and proposed regulations, Part 800.15(a)(2) requires certified EMS providers to comply with the State approved protocols developed by State and/or Regional Emergency Medical Advisory Committees pursuant to sections 3002-a and 3004-a of Article 30. The approved protocols are called Statewide Basic Life Support Adult and Pediatric Treatment Protocols for EMT and AEMT ([http://www.health.ny.gov/professionals/ems/pdf/2008-11-19\\_bls\\_protocols](http://www.health.ny.gov/professionals/ems/pdf/2008-11-19_bls_protocols)).

The very first protocol, General Approach to Prehospital Patient Management, Section I (A) requires that all certified EMS providers "assess the scene for safety".

4. COMMENT: Concerns that the proposed definition of "Patient Abandonment" (Part 800.3(ao)) imposes a duty to act on an "off duty" EMT.

RESPONSE: The definition of "Patient Abandonment" only applies to

an individual, whether on or off duty, that willfully terminates patient care once initiated. This definition is in no way conflicting with any part of Article 30, section 3013.

5. COMMENT: Concerns that adding the word "treat" to the definition of "Primary Territory" (Part 800.3(v)) would prohibit an ambulance service, absent from being dispatched or having a mutual aid agreement in place from stopping to render emergency medical assistance should it occur in the course of routine travel.

RESPONSE: The addition of the word "treat" does not substantially change the definition of "Primary Territory". Adding the word "treat" was intended to clarify the regulation. At present, it is assumed that when an ambulance responds within its primary territory, the patient will not only be transported, but also provided prehospital medical treatment.

6. COMMENT: Received a letter with extensive comments about the following:

a) "Primary Territory" (Part 800.3(v)) would prohibit an ambulance service, absent from being dispatched or having a mutual aid agreement in place from stopping to render emergency medical assistance should it occur in the course of routine travel.

b) "Continuous Practice" (Part 800.3(w)) as defined includes the term, "active" and it is not quantifiable.

c) "Criminal Offense" (Part 800.3(ak)) as defined includes the term "agency" and it is unclear as to which agency the regulation is referring to. Further, a comment that the term "exceptional circumstances" is too broad. Lastly the phrase "any jurisdiction" could include jurisdictions outside of the United States.

d) "Incompetence" (Part 800.3(al)) comments indicating that a skill of knowledge either exists or does not and the phrase "one or more" is not necessary.

e) "Negligence" (Part 800.3(am)) should be removed.

f) "Non-Criminal Offenses" (Part 800.3(an)) concerns that the definition is vague.

g) "Patient Abandonment" (Part 800.3(ao)) comment that the definition does not indicate whether the patient requires or accepts emergency medical treatment.

h) "Patient Abuse" (Part 800.3(ap)) comments about the definition.

i) Patient Contact" (Part 800.3(aq)) comment that the EMS provider should not be required to provide emergency medical treatment to someone who does not require care.

RESPONSE: The following is a response to each element in the letter:

a) "Primary Territory" (Part 800.3(v)). The addition of the word "treat" does not substantially change the definition of "Primary Territory". Adding the word "treat" was intended to clarify the regulation. At present, it is assumed that when an ambulance responds within its primary territory, the patient will not only be transported, but also provided prehospital medical treatment.

b) "Continuous Practice" (Part 800.3(w)) the term "active" is not intended to be quantifiable. It is intended to describe an individual who is actively responding to and treating patients requiring prehospital medical care.

c) The term "exceptional circumstances" is included to afford the Department necessary flexibility to address criminal offenses outside of the enumerated offenses. The term agency refers to the Department, as it is the entity that is promulgating and applying the regulations. Lastly, the phrase "any jurisdiction" means precisely that, and could include a jurisdiction outside the United States.

d) "Incompetence" (Part 800.3(al)). This definition is consistent with similar regulations for other health care professionals.

e) "Negligence" (Part 800.3(am)) The Department disagrees that this definition should be removed.

f) The Department disagrees that the definition of "non-criminal offense" is vague. It specifically includes types of entities and offenses.

g) "Patient Abandonment" (Part 800.3(ao)). This definition includes the term "patient". Therefore it only refers to willful termination of patient contact prior to delivering the patient for medical evaluation and/or treatment. It does not address an individual that is not a "patient".

h) "Patient Abuse" (Part 800.3(ap)). This definition is consistent with similar regulations for other health care professionals.

i) Patient Contact" (Part 800.3(aq)). There is no requirement that an EMS provider should provide emergency medical treatment to someone who does not require care.

### NOTICE OF ADOPTION

#### Opioid Overdose Programs

**I.D. No.** HLT-08-15-00005-A

**Filing No.** 326

**Filing Date:** 2015-04-21

**Effective Date:** 2015-05-06

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

**Action taken:** Amendment of section 80.138 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 3309

**Subject:** Opioid Overdose Programs.

**Purpose:** Modification of the rule consistent with new statutory language and with the emergency nature of opioid overdose response.

**Text or summary was published** in the February 25, 2015 issue of the Register, I.D. No. HLT-08-15-00005-P.

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

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

#### Assessment of Public Comment

The Department received two comments on the Proposed Rule Making from currently registered opioid overdose prevention programs. The commenters asked whether clinical directors and affiliated prescribers of opioid overdose prevention programs may be subject to liability for prescribing opioid antagonists.

The Department interprets “opioid overdose prevention program” in Public Health Law § 3309(4) to include a clinical director or affiliated prescriber of such program. Thus, clinical directors and affiliated prescribers, acting reasonably and in good faith in compliance with Public Health Law § 3309, would not be subject to criminal, civil or administrative liability solely by reason of prescribing opioid antagonists or any other acts within the scope of 10 NYCRR § 80.138.

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

#### Computed Tomography (CT) Quality Assurance

**I.D. No.** HLT-18-15-00008-P

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

**Proposed Action:** Amendment of section 16.25; and addition of section 16.59 to Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 225

**Subject:** Computed Tomography (CT) Quality Assurance.

**Purpose:** To protect the public from the adverse effects of ionizing radiation.

**Substance of proposed rule (Full text is posted at the following State website: [www.health.ny.gov](http://www.health.ny.gov)):** The regulatory proposal would revise Part 16 of 10 NYCRR as described in more detail below. Section 16.59 is added to cover radiation safety and quality assurance on Computed Tomography (CT) equipment. Section 16.59 (a) of the proposed regulation specifies a number of definitions used to describe CT systems and their operations. The next four sections, respectively, describe: physical and system requirements (16.59(b)); patient communication and viewing requirements (16.59(c)); CT system calibration requirements (16.59(d)); and quality assurance testing requirements (16.59(e)). Part 16.59(f) contains requirements for operations including a requirement for accreditation. One of the requirements is accreditation by a nationally recognized accrediting body that is acceptable to the Department. Currently the American College of Radiology (ACR), the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) or the Intersocietal Accreditation Commission (IAC) are considered acceptable to the Department. This is consistent with the accrediting bodies that CMS accepts. This accreditation requires the registered facility to have one of these three organizations perform a review that includes the physical layout of the facility, policy and procedures, quality assurance and image assessment. The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) required the Center for Medicare and Medicaid Services (CMS) to designate accrediting bodies for imaging centers that perform CT (as well as certain other imaging studies). Accreditation is now a requirement under CMS regulation for all non-hospital providers to receive the technical component payment, and these three organizations (ACR, JCAHO, and IAC) are approved by CMS.

Section 16.25 is that subsection of Part 16 that requires the recording or reporting of medical misadministrations. This part is amended to include an additional reporting requirement for CT misadministrations when the wrong patient is scanned, when the wrong part of the body is scanned or when there is damage to an organ or organ system including erythema and/or hair loss.

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

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

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

#### Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council is authorized by § 225(4) of the Public Health Law (PHL) to establish, amend and repeal provisions of the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. PHL §§ 225(5)(p) & (q) and 201(1)(r) authorize SSC regulations to protect the public from the adverse effects of ionizing radiation. These statutory provisions authorize the Department, pursuant to 10 NYCRR Part 16, to license or register health care providers to use radioactive materials or ionizing radiation emitting equipment on patients.

The federal Atomic Energy Act of 1954, (the Act), (codified at 42 USC §§ 2021 et. seq.) authorizes the U.S. Nuclear Regulatory Commission (NRC) to regulate the use of radioactive materials. The Act also authorizes “Agreement States” to regulate the use of radioactive materials in lieu of the NRC, provided that the “Agreement State” promulgates regulations that are comparable to or exceed NRC’s regulatory standards. New York State is an “Agreement State” within the meaning of the Act. New York’s regulatory standards for the use of radioactive materials in 10 NYCRR Part 16 must therefore meet or exceed comparable NRC regulatory standards. The Act governs only the use of radioactive materials: it does not apply to x-rays or radiation therapy equipment that emit only x-rays.

Legislative Objectives:

The legislative intent of PHL Sections 225(5)(p) & (q) and 201(1)(r) is to protect the public from the adverse effects of ionizing radiation. Establishing regulations to ensure safe and effective clinical uses of radiation producing equipment is consistent with this legislative objective.

Needs and Benefits:

DOH’s regulations are designed to require the delivery of quality care while protecting people and the environment from the harmful effects of radiation. In recent years, technology and equipment used for diagnostic medical imaging has become significantly more complex. Computed Tomography delivers high quality imaging that is of significant benefit to patients and for this reason it represents the dominant imaging modality. However, it also represents the largest contributor to an increase in population radiation exposure based on reports from the National Council on Radiation Protection and Measurements. The usage of CT scans has more than tripled in the past decade and currently there are about 80 million CT scans in the US each year.

The problems that have been documented with CT scans in the past several years reflect a lack of quality assurance and/or a lack of administrative controls which these regulations seek to implement. These regulations seek to ensure high quality CT imaging that is appropriate with respect to professional bodies such as the American College of Radiology’s (ACR) recommendations on appropriateness criteria. These regulations will implement Quality Assurance (QA) requirements that are already being voluntarily implemented by a majority of facilities in New York State.

Currently the only provisions in the State Sanitary Code that apply are general quality assurance regulations that do not adequately describe the operations or quality assurance requirements for the use of CT equipment.

Costs:

The Department estimates that many regulated parties that use Computed Tomography will not incur any additional costs to comply with the proposed addition of 10 NYCRR § 16.59. There are approximately 440 facilities that are registered with the DOH that operate one or more CT scanners for diagnostic purposes on human beings. Approximately 75% of these sites already have been accredited by bodies currently accepted by Centers for Medicare and Medicaid Services (CMS), (American College of Radiology, Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and IAC). The initial costs of this accreditation vary based on which of the three organizations are used, however the ACR is the most popular and in general the least expensive for a facility that only has a single CT scanner. The costs of a three year accreditation from the ACR will average \$7550, which includes: (i) the typical fees for a consulting physicist (average of \$1750); (ii) a \$2500 accreditation fee from the ACR; and (iii) \$3300 for the purchase of an ACR phantom if the facility does not already have one. Facilities that already have the ACR phantom (or for reaccreditation) will not need to purchase another phantom.

The other proposed additions in 10 NYCRR § 16.59 will impose little or no cost to regulated parties because existing facility staff can comply with the new quality assurance requirements.

Local Government Mandates:

There are fourteen hospitals that fall under this category, including three State University hospitals, a Department operated hospital and ten hospitals operated by public benefit corporations. Of these fourteen hospitals, ten are already accredited in CT scanning. The remaining four hospitals would incur additional costs to comply with the new regulatory

requirement to be certified in CT (approximately \$9,500 for each three year period). No other additional costs are associated with implementation of these requirements. Registrants and licensees, including the hospitals operated by state and local governments, are currently required to retain all quality assurance documents for review by the Department. The additional records and filing is estimated to be a small incremental amount. Affected parties will need to complete an application for accreditation initially and every three years thereafter.

#### Paperwork:

DOH regulations (10 NYCRR Part 16) require registrants and licensees to maintain a variety of records relating to the use of ionizing radiation for review by the Department. The Department estimates that licensees and registrants may have a small amount of additional documentation to create, maintain or file. Affected parties will have to complete an application for CT accreditation. The accrediting bodies are transitioning to an online application process to minimize time and effort for regulated parties seeking accreditation.

The proposed regulations will not affect registration documents issued by the Department to current registrants. The Department plans to provide updated QA guidance when these regulations are adopted.

#### Duplication:

There is no duplication of the proposed regulatory requirements by any federal, state or local agency for licensees, registrants or authorized users subject to 10 NYCRR Part 16. New York State entered into an agreement with the federal government on October 15, 1962 by which the federal government discontinued its regulatory authority over the use of radioactive materials and New York assumed such authority. The Atomic Energy Act does not govern use of x-ray emitting equipment.

#### Alternatives:

One alternative to adopting these regulations is to take no action and maintain the existing structure that relies on DOH guidance and voluntary compliance. However, while rapid advances in CT technology have produced better healthcare outcomes in many cases, there has been a downside to this increased use – particularly, patients experiencing radiation burns as a result of the improper use of CT scans. The New York Times and the Los Angeles Times have both reported on CT-related medical problems that were caused by the failures of both regulators and medical personnel. The scientific press also has numerous articles documenting overutilization of CT and quality assurance failures. The general population and the scientific community are aware that New York State currently lacks adequate quality assurance regulations and monitoring. The development of these proposed regulations, after consultation with radiologists, physicists and several professional organizations including the Hospital Association of New York State and the New York State Radiological Society, is intended to minimize future CT-related medical events in New York State. New York is not the only state to strengthen its regulation of this area: Texas and California have adopted regulations governing CT quality assurance (California) and reporting of events and monitoring of patient dose (Texas).

As a result, there are no suitable alternatives to the proposed addition of 10 NYCRR § 16.59. There are no alternative requirements that would meet the objectives of implementing appropriate Quality Assurance on CT scanners.

#### Federal Standards:

These proposed revisions to 10 NYCRR § 16.59 do not conflict with any federal regulations. Existing federal regulations relate only to the manufacture and distribution of radiation producing equipment and not to its operations.

#### Compliance Schedule:

The proposed regulatory amendments will be effective upon publication of the Notice of Adoption in the State Register, except for the requirements in proposed 10 NYCRR § 16.59(f)(5) relating to accreditation in computed tomography. Proposed 10 NYCRR § 16.59(f)(5) requires that registrants apply for accreditation by one of the previously mentioned organizations and that such accreditation becomes effective within one year of the effective date of the proposed regulation.

#### **Regulatory Flexibility Analysis**

##### Effect on Small Business:

The Department has issued registrations to approximately 440 facilities for the use of Computed Tomography equipment of which an estimated 230 are small business. Specifically these are private practice or group practice physicians who own and operate their own CT scanner. Some of these registrants would be affected by the proposed revisions to 10 NYCRR § 16.59, in particular the requirement for accreditation may affect some businesses. However, as of January 1, 2012, the Centers for Medicare and Medicaid Services (CMS) required that all non-hospital providers of the technical component of CT imaging must meet the accreditation requirements in Section 135 (a) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). Therefore the majority of small business, private practice physicians have or are in the process of obtaining accreditation for CT.

#### Compliance Requirements:

Licensees and applicants will need to become familiar with the new requirements and modify their quality assurance policies and procedures accordingly. Those who are not currently accredited will need to do so within 12 months of the effective date of the rule.

#### Professional Services:

The majority of large facilities have in-house staff who will conduct the required QA and small facilities either contract with the manufacturer of the equipment or professional medical physicists that perform quality assurance testing for CT. The average cost for professional service for the accreditation component of these regulations ranges from \$1550 to \$1950 per CT, depending on location. This service would be required every three years.

#### Compliance Costs:

The amortized annual cost is estimated to be approximately \$2500 per year for accreditation (based on a three-year accreditation cost of \$7550). However, approximately 75% of the facilities are currently accredited; therefore this regulation will not impose an additional cost. There are no capital costs mandated by this regulation directly, however, one of the three accrediting bodies requires the use of their own phantom at a cost of \$3300.

#### Economic and Technological Feasibility:

There are no capital costs or new technology required to comply with the proposed rule. Facilities that use the ACR as the accrediting body must have or purchase an ACR CT phantom. The use of some type of phantom is the industry standard for CT testing and evaluation.

#### Minimizing Adverse Impact:

Facilities will have 12 months to become accredited. This will allow a facility adequate time to select the accreditation body of their choice, complete an application and budget funds for the accreditation fee.

#### Small Business and Local Government Participation:

A copy of the draft proposed rule was sent via email to individuals representing the Healthcare Association of New York State (HANYS), the New York state chapter of the ACR, physicists throughout the state, the NYS Society of Radiological Sciences and other interested parties including private practice physicians. The majority of the comments were technical clarifications that have been incorporated in the currently proposed regulations. The Department is developing guidance to assist the affected facilities in implementing and complying with the new requirements.

#### **Rural Area Flexibility Analysis**

##### Types and Estimated Numbers of Rural Areas:

There are 106 affected facilities with approximately 120 CT units located in 40 of the 43 rural counties in New York State. Including the total from 11 other counties that have a population of 200,000 or greater, and towns with population densities of 150 persons or fewer per square mile, brings the total to 309 registrants and 426 CT scanners. The statewide totals were 436 registrants and 596 CT scanners for facilities outside of New York City.

##### Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

A misadministration involving a CT-scan must be reported to the Department in writing within 15 days of occurrence. CT misadministrations are distinguished from events involving other diagnostic imaging modalities because of the greater risk associated with the radiation dose and contrast agents used in CTs. No additional professional service costs are anticipated for already accredited facilities. Facilities will be required to maintain records of quality assurance test results and accreditation documents for review by the Department's inspectors. Compliance with the recordkeeping requirements will require only a minor incremental amount of time and effort for affected facilities.

##### Costs:

The cost to comply with the accreditation requirement will be an initial \$7550 every three years. This will be a new cost to approximately 25% of the facilities that will be subject to the proposed 10 NYCRR § 16.59, because 75% of the facilities are either currently accredited or have an application for accreditation pending. Facilities that are currently accredited or have an application pending have done so for a number of reasons. However the main reason facilities have pursued accreditation is to meet the 2012 CMS requirements for Medicare Part B payments.

##### Minimizing Adverse Impact:

Facilities will have 12 months to become accredited. This will allow a facility adequate time to select the accreditation body of their choice, complete an application and budget funds for the accreditation fee.

##### Rural Area Participation:

A copy of the proposed regulations was sent via e-mail to members of the New York State chapter of the American College of Radiology and to members of the American Association of Physicists in Medicine for review. The only comments received back were of a technical nature requiring clarification of the proposal. No comments were received objecting to the cost of accreditation.

**Job Impact Statement**

Nature of Impact:  
It is anticipated that no jobs will be adversely affected by this rule. Diagnostic imaging providers in New York will need to become familiar with, and implement the new regulatory requirements set forth in the proposed 10 NYCRR § 16.59. The Department does not expect that the new regulatory requirements would significantly change the training or experience requirements of radiological technologists or physicians. The Department anticipates that few if any persons will be adversely affected. Facility staff, specifically those designated as the radiation safety officer, medical physicist, radiological technologist especially CT technologists will need to become familiar with the new requirements.

Categories and Numbers Affected:  
There are approximately 440 facilities with a total of about 600 CT units that would be subject to the rule. The registered facilities include 150 hospitals or their satellite facilities with approximately 300 of the CT units. The other 300 registrants (typically with only 1 CT at each site) represent individual or group practice physicians.

Regions of Adverse Impact:  
No areas will be adversely affected.  
Minimizing Adverse Impact:  
There are no alternatives to the proposed regulations. The Department will revise guidance to assist all licensees, including those in rural areas, with implementation of the proposed regulations.

Self-Employment Opportunities:  
The rule is expected to have minimal impact on self-employment opportunities since the majority of providers that will be affected by the rule are not sole proprietorships.

**Action taken:** On 4/16/15, the PSC adopted an order requiring the natural gas local distribution companies to implement specific enhancements to their gas safety public education programs.

**Statutory authority:** Public Service Law, sections 65 and 66

**Subject:** Implementing specific enhancements to their gas safety public education programs.

**Purpose:** To implement specific enhancements to their gas safety public education programs.

**Substance of final rule:** The Commission, on April 16, 2015, adopted an order requiring New York State Gas & Electric Corporation, Niagara Mohawk Power Corporation, d/b/a National Grid, Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., Conning Natural Gas Corporation, Keyspan East Corp., d/b/a Brooklyn Union L.I., National Fuel Gas Distribution Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, St. Lawrence Gas Company, Inc., Brooklyn Union Gas Company, Valley Energy, Inc., Bath Electric, Gas Water Systems, Fillmore Gas Company, Reserve Gas Company, and Woodhull Municipal Gas Company (companies) to implement specific enhancements to their gas safety public education programs, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(11-G-0565SA2)

**Department of Motor Vehicles**

**NOTICE OF ADOPTION**

**Signs Displayed by Dealers**

**I.D. No.** MTV-09-15-00002-A  
**Filing No.** 324  
**Filing Date:** 2015-04-21  
**Effective Date:** 2015-05-06

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

**Action taken:** Amendment of section 78.26(d)(1) of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 415(9)(d)

**Subject:** Signs displayed by dealers.

**Purpose:** Gives dealers more flexibility in the display of required signage.

**Text or summary was published** in the March 4, 2015 issue of the Register, I.D. No. MTV-09-15-00002-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Denying Fishers Island Water Works Corporation to Defer Certain Extraordinary Costs**

**I.D. No.** PSC-30-14-00019-A  
**Filing Date:** 2015-04-16  
**Effective Date:** 2015-04-16

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

**Action taken:** On 4/16/15, the PSC adopted an order denying Fishers Island Water Works Corporation's request to defer certain extraordinary costs totaling \$39,297.

**Statutory authority:** Public Service Law, section 89-c(3)

**Subject:** Denying Fishers Island Water Works Corporation to defer certain extraordinary costs.

**Purpose:** To deny Fishers Island Water Works Corporation to defer certain extraordinary costs.

**Substance of final rule:** The Commission, on April 16, 2015, adopted an order denying Fishers Island Water Works Corporation's request to defer certain extraordinary costs totaling \$39,297, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(14-W-0262SA1)

**Public Service Commission**

**NOTICE OF ADOPTION**

**Implementing Specific Enhancements to Their Gas Safety Public Education Programs**

**I.D. No.** PSC-26-14-00015-A  
**Filing Date:** 2015-04-20  
**Effective Date:** 2015-04-20

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

## NOTICE OF ADOPTION

**Denying Fishers Island Telephone Corporation to Defer Certain Extraordinary Costs****I.D. No.** PSC-30-14-00020-A**Filing Date:** 2015-04-16**Effective Date:** 2015-04-16

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

**Action taken:** On 4/16/15, the PSC adopted an order denying Fishers Island Telephone Corporation's request to defer certain extraordinary costs totaling \$44,043.

**Statutory authority:** Public Service Law, section 95(2)

**Subject:** Denying Fishers Island Telephone Corporation to defer certain extraordinary costs.

**Purpose:** To deny Fishers Island Telephone Corporation to defer certain extraordinary costs.

**Substance of final rule:** The Commission, on April 16, 2015, adopted an order denying Fishers Island Telephone Corporation's request to defer certain extraordinary costs totaling \$44,043, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(14-C-0260SA1)

## NOTICE OF ADOPTION

**Denying Fishers Island Electric Corporation to Defer Certain Extraordinary Costs****I.D. No.** PSC-30-14-00021-A**Filing Date:** 2015-04-16**Effective Date:** 2015-04-16

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

**Action taken:** On 4/16/15, the PSC adopted an order denying Fishers Island Electric Corporation's request to defer certain extraordinary costs totaling \$39,575.

**Statutory authority:** Public Service Law, section 66(9)

**Subject:** Denying Fishers Island Electric Corporation to defer certain extraordinary costs.

**Purpose:** To deny Fishers Island Electric Corporation to defer certain extraordinary costs.

**Substance of final rule:** The Commission, on April 16, 2015, adopted an order denying Fishers Island Electric Corporation's request to defer certain extraordinary costs totaling \$39,575, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(14-E-0261SA1)

## NOTICE OF ADOPTION

**Approval of Forever Wild's Petition to Enter into a Loan Agreement****I.D. No.** PSC-34-14-00006-A**Filing Date:** 2015-04-17**Effective Date:** 2015-04-17

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

**Action taken:** On 4/16/15, the PSC adopted an order approving Forever Wild Water Company, Inc.'s (Forever Wild) request to enter into a loan agreement.

**Statutory authority:** Public Service Law, section 89-f

**Subject:** Approval of Forever Wild's petition to enter into a loan agreement.

**Purpose:** To approve Forever Wild's petition to enter into a loan agreement.

**Substance of final rule:** The Commission, on April 16, 2015, adopted an order approving Forever Wild Water Company's petition to enter into a loan agreement with Champlain National Bank for not more than \$411,000 of aggregate principal amount of long-term debt to cover the cost of a new water storage tank and supervisory control and data acquisition system, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(14-W-0307SA1)

## NOTICE OF ADOPTION

**Approval for Fishers Island to Increase Annual Revenues by \$115,652 or 19.4%****I.D. No.** PSC-35-14-00008-A**Filing Date:** 2015-04-17**Effective Date:** 2015-04-17

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

**Action taken:** On 4/16/15, the PSC adopted an order approving Fishers Island Water Works Corporation's (Fishers Island) request to increase annual revenues by \$115,652 or 19.4%.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10)(a), (b), (e) and (f)

**Subject:** Approval for Fishers Island to increase annual revenues by \$115,652 or 19.4%.

**Purpose:** To approve Fishers Island's request to increase annual revenues by \$115,652, or 19.4%.

**Substance of final rule:** The Commission, on April 16, 2015, adopted an order allowing Fishers Island Water Works Corporation to amend PSC 2-Water, to provide for an increase in annual revenues by \$115,652 or 19.4%, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(14-W-0322SA1)

## NOTICE OF ADOPTION

**Allowing the Continuation of Exemptions from Standby Rates for Beneficial Forms of Distributed Generation****I.D. No.** PSC-46-14-00009-A**Filing Date:** 2015-04-20**Effective Date:** 2015-04-20

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

**Action taken:** On 4/16/15, the PSC adopted an order continuing the exemptions from standby rates for beneficial forms of distributed generation, as well as small, efficient combined heat and power projects to become effective.

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

**Subject:** Allowing the continuation of exemptions from standby rates for beneficial forms of distributed generation.

**Purpose:** To allow the continuation of exemptions from standby rates for beneficial forms of distributed generation.

**Substance of final rule:** The Commission, on April 16, 2015, adopted an order extending the exemptions from standby rates for beneficial forms of distributed generation, and certain combined heat and power projects, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(14-E-0488SA1)

## NOTICE OF ADOPTION

**Grandfathering from the Substitution of Volumetric for Monetary Crediting Under Remote Net Metering****I.D. No.** PSC-52-14-00021-A**Filing Date:** 2015-04-17**Effective Date:** 2015-04-17

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

**Action taken:** On 4/16/15, the PSC adopted an order granting rehearing, in part, to clarify the process for obtaining grandfathering from the substitution of volumetric for monetary crediting at non-demand remote net metered locations.

**Statutory authority:** Public Service Law, section 66-j

**Subject:** Grandfathering from the substitution of volumetric for monetary crediting under remote net metering.

**Purpose:** To establish the process for grandfathering from the substitution of volumetric for monetary crediting under remote net metering.

**Substance of final rule:** The Commission, on April 16, 2015, adopted an order granting rehearing, in part, to clarify the process for obtaining grandfathering from the substitution of volumetric for monetary crediting at non-demand remote net metered locations. Grandfathered net metered facilities may retain monetary crediting for a minimum period of 25 years subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(14-E-0422SA1)

## NOTICE OF ADOPTION

**Granting Rehearing and Clarification of Commission Order Issued December 12, 2014****I.D. No.** PSC-05-15-00003-A**Filing Date:** 2015-04-20**Effective Date:** 2015-04-20

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

**Action taken:** On 4/16/15, the PSC adopted an order granting rehearing and clarification of its order establishing Brooklyn/Queens Demand Management Program, issued December 12, 2014.

**Statutory authority:** Public Service Law, sections 22, 65(1), 66(1), (2) and (12)(a)

**Subject:** Granting rehearing and clarification of Commission order issued December 12, 2014.

**Purpose:** To grant rehearing and clarification of Commission order issued December 12, 2014.

**Substance of final rule:** The Commission, on April 16, 2015, adopted an order granting the petition filed by Consolidated Edison Company of New York, Inc. (Con Edison) for rehearing and clarification of the Commission's December 12, 2014 order establishing Brooklyn/Queens Demand Management Program (BQDM), and determined that Con Edison need not meet its Reliability Performance Mechanism in order to achieve additional earnings under the BQDM, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(14-E-0302SA2)

## NOTICE OF ADOPTION

**Allowing Con Edison's Filing Concerning Demand Response Programs to Become Effective****I.D. No.** PSC-06-15-00004-A**Filing Date:** 2015-04-20**Effective Date:** 2015-04-20

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

**Action taken:** On 4/16/15, the PSC adopted an order approving the tariff revisions filed by Consolidated Edison Company of New York, Inc. concerning changes to its Demand Response Programs regarding pledge reductions, with modifications, to become effective.

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

**Subject:** Allowing Con Edison's filing concerning Demand Response Programs to become effective.

**Purpose:** To allow Con Edison's filing concerning Demand Response Programs to become effective.

**Substance of final rule:** The Commission, on April 16, 2015, adopted an order approving tariff revisions filed by Consolidated Edison Company of New York, Inc. concerning changes to its Demand Response Programs regarding pledge reductions, with modifications, subject to terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(13-E-0573SA5)

**NOTICE OF ADOPTION****Approval of a Loan, an Ownership Transfer and Continued Lightened Regulation****I.D. No.** PSC-08-15-00008-A**Filing Date:** 2015-04-17**Effective Date:** 2015-04-17

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

**Action taken:** On 4/16/15, the PSC adopted an order approving CCI Roseton LLC's petition to enter into a loan agreement, a review of ownership transfer and lightened regulation.

**Statutory authority:** Public Service Law, sections 2(12), (13), 5(1)(b), 69 and 70

**Subject:** Approval of a loan, an ownership transfer and continued lightened regulation.

**Purpose:** To approve a loan, an ownership transfer and continued lightened regulation.

**Substance of final rule:** The Commission, on April 16, 2015, adopted an order approving CCI Roseton LLC's petition for authorization to enter into a loan agreement, up to a maximum of \$350 million, and approved the transfer of ownership interests in CCI Roseton LLC, the owner of the Roseton Generating Station located in Newburgh, New York, from CCI U.S. Asset Holdings LLC to Roseton Holdings LLC, and confirmed that lightened regulation will continue after the transfer, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(15-E-0041SA1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****National Grid's Electric Economic Development Programs****I.D. No.** PSC-18-15-00004-P

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

**Proposed Action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, proposed modifications to electric Economic Development Programs filed by Niagara Mohawk Power Corporation d/b/a National Grid.

**Statutory authority:** Public Service Law, sections 4, 5 and 66

**Subject:** National Grid's electric Economic Development Programs.

**Purpose:** To revise the economic development assistance to qualified businesses.

**Substance of proposed rule:** The Public Service Commission is considering whether to adopt, modify or reject a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid requesting approval to modify two of its electric Economic Development Programs. The request was filed as part of the utility's Economic Development Grant Programs Annual Report on October 1, 2014. The modifications proposed would i) increase the maximum grant level of the Building Ready Upstate from \$30,000 to \$125,000 program and ii) add language to the Main Street Revitalization program to clarify that funding for mixed-use projects may be appropriately scaled based on the proportion of commercial versus residential square footage and/or construction costs. The Commission may adopt, reject or modify the petition and address any 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.

(12-E-0201SP7)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Con Edison's Report on Its 2014 Performance Under the Electric Service Reliability Performance Mechanism****I.D. No.** PSC-18-15-00005-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 adopt, modify or reject, in whole or in part, Con Edison's Report on its 2014 performance under the Electric Service Reliability Performance Mechanism.

**Statutory authority:** Public Service Law, sections 65(1), 66(1) and (2)

**Subject:** Con Edison's Report on its 2014 performance under the Electric Service Reliability Performance Mechanism.

**Purpose:** Con Edison's Report on its 2014 performance under the Electric Service Reliability Performance Mechanism.

**Substance of proposed rule:** The Public Service Commission (Commission) is considering whether to adopt, modify or reject, in whole or in part, Consolidated Edison Company of New York, Inc.'s (Con Edison or Company) Report on its 2014 performance under the Electric Service Reliability Performance Mechanism (RPM). Con Edison states that a revenue adjustment of \$5 million should be imposed on the Company for its failure to meet its network average outage duration metric. The Company claims that it met all the remaining performance targets for 2014.

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

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

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

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

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

(13-E-0030SP9)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Proposed Targeted Demand Management (TDM) Program and REV Demonstration Projects Cost Recovery and Incentive Mechanisms****I.D. No.** PSC-18-15-00006-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 a petition by Consolidated Edison Company of New York, Inc. to establish a Targeted Demand Management program and to establish incentive and cost recovery mechanisms for its proposed program and REV Demonstration Projects.

**Statutory authority:** Public Service Law, sections 65 and 66

**Subject:** Proposed Targeted Demand Management (TDM) Program and REV Demonstration Projects Cost Recovery and Incentive Mechanisms.

**Purpose:** To effectuate the TDM Program and to establish incentives and cost recovery for the TDM program and REV Demonstration Projects.

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## Department of State

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### EMERGENCY RULE MAKING

#### Addition of Provisions Relating to “Sparkling Devices” to the State Uniform Fire Prevention and Building Code

**I.D. No.** DOS-05-15-00007-E

**Filing No.** 317

**Filing Date:** 2015-04-17

**Effective Date:** 2015-04-17

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

**Action taken:** Addition of section 1228.3 to Title 19 NYCRR.

**Statutory authority:** Executive Law, section 377(1)

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

**Specific reasons underlying the finding of necessity:** This rule is re-adopted as an emergency measure to preserve public safety, for the following reasons:

(1) Chapter 477 of the Laws of 2014 amended sections 270.00 and 405.00 of the Penal Law to authorize any city or county outside of New York City to adopt a local law making a certain category of fireworks (viz., “sparkling devices”) legal in such city or county. Chapter 477 of the Laws of 2014 became effective on December 21, 2014, and cities and counties outside New York City are now free to adopt local laws that legalize sparkling devices.

(2) Prior to the initial emergency adoption of this rule, the State Uniform Fire Prevention and Building Code (the Uniform Code) had no provisions expressly applicable to sparkling devices.

(3) This rule amends the Uniform Code by adding (i) requirements applicable to buildings and structures where sparkling devices may be manufactured, stored, sold or used and (ii) additional requirements related to the use of sparkling devices intended to reduce the risk of fire in buildings and structures resulting from the use of sparkling devices. This rule preserves public safety by reducing the risk of deaths, injuries, and property damage resulting from the use of sparkling devices.

(4) This rule was initially adopted by the State Fire Prevention and Building Code Council (the Code Council) as an emergency measure on January 15, 2015. At its meeting held on January 15, 2015, Code Council determined that adopting this rule on an emergency basis was required to preserve public safety because (i) Chapter 477 of the Laws of 2014 authorizes cities and counties outside New York City to legalize sparking devices; (ii) it was, therefore, necessary to add provisions to the Uniform Code relating to buildings and structures where sparkling devices will be manufactured, stored, sold and/or used; and (iii) it was necessary to add such provisions to the Uniform Code as quickly as possible because Chapter 477 of the Laws of 2014 authorizes cities and counties outside New York City to adopt local laws legalize sparkling devices at any time after December 21, 2014.

(5) The initial emergency adoption of this rule will expire on April 19, 2015. If the initial emergency adoption of this rule is allowed to expire, the Uniform Code will cease to have any provisions expressly applicable to sparkling devices. However, cities and counties outside New York City will continue to be authorized to adopt local laws legalizing sparkling devices.

(6) Continuing this rule on an emergency basis is necessary to assure that the provisions of this rule will continue in effect after April 19, 2015 (the date on which the original emergency adoption of this rule otherwise would have expired).

**Subject:** Addition of provisions relating to “sparkling devices” to the State Uniform Fire Prevention and Building Code.

**Purpose:** The purpose of this rule is to amend the Uniform Code to provide additional requirements applicable to buildings and structures where “sparkling devices” are manufactured, stored or used. This rule also adds other restrictions on the use of “sparkling devices” intended to minimize the danger of fire in buildings and structures.

**Substance of emergency rule:** This rule amends the State Uniform Fire Prevention and Building Code (the Uniform Code) by adding a new section 1228.3 to Part 1228 of Title 19 of the NYCRR. The provisions of new section 1228.3 apply to the possession, manufacture, storage, handling, sale, and use of sparkling devices. Any building or structure where spar-

**Substance of proposed rule:** The Public Service Commission is considering a petition by Consolidated Edison Company of New York, Inc. to effectuate a Targeted Demand Management (TDM) program, and establish incentive and cost-recovery mechanisms for both the TDM program and for its REV Demonstration Projects pursuant to the February 26, 2015, Commission Order in Case 14-M-0101. The Company requests authorization to spend \$60 million over two years on its proposed TDM program, and recover costs of both the TDM program and its REV Demonstration Projects through the Monthly Adjustment Clause. The Company also proposes 150 basis points in additional earning opportunities incremental to its approved return on equity for enhanced earning on the costs incurred through the TDM program and REV Demonstration Projects. The proposed filing does not have an effective date. The Commission may approve, modify or reject, in whole or in part, the Company’s petition. The Commission may also consider other related matters.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: [elaine.agresta@dps.ny.gov](mailto: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](mailto: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-0229SP1)

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

#### **National Grid’s Economic Development Programs**

**I.D. No.** PSC-18-15-00007-P

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

**Proposed Action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a new gas Economic Development Program proposed by Niagara Mohawk Power Corporation d/b/a National Grid.

**Statutory authority:** Public Service Law, sections 4, 5 and 66

**Subject:** National Grid’s Economic Development Programs.

**Purpose:** To authorize a new economic development program for National Grid’s natural gas service territory.

**Substance of proposed rule:** The Public Service Commission is considering whether to adopt, modify or reject a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid requesting approval of a new gas Economic Development Program. The request was filed as part of the utility’s Economic Development Grant Programs Annual Report on October 1, 2014. The proposed program would be a gas version of the existing electric Manufacturing Productivity Program which provides matching grants for productivity assistance and growth projects designed to use excess capacity. The Commission may adopt, reject or modify the petition and address any 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](mailto: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](mailto: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.

(12-G-0202SP5)

ling devices are manufactured, stored, handled, sold or used shall be subject to the provisions of new section 1228.3 and to all other provisions of the Uniform Code applicable to such building or structure.

In this rule, the term "sparkling devices" has the meaning ascribed to that term by section 270.00(1)(a)(vi) of the Penal Law (as amended by Chapter 477 of the Laws of 2014), and shall include "ground-based or hand-held devices" and "novelties."

The provisions of Section 1228.3 are in addition to, and not in limitation of, (1) all other provisions of the Uniform Code applicable to any building or structure where sparkling devices are manufactured, stored, handled, sold or used and (2) all other statutes, rules, regulations, local laws, and ordinances applicable to the possession, manufacture, storage, handling, sale and/or use of sparkling devices, including but not limited to sections 270.00 and 405.00 of the Penal Law; section 392-j of the General Business Law; section 156-h of the Executive Law; Part 225 of Title 9 of the NYCRR; Part 39 of Title 12 of the NYCRR (Industrial Code Rule 39); and local laws, ordinances or regulations relating to operating permits as contemplated by 19 NYCRR Section 1203.3(g).

Nothing in Section 1228.3 shall be construed as permitting the possession, manufacture, handling, sale and/or use of sparkling devices in violation of any other law, statute, rule, regulation, local law or ordinance applicable to the possession, manufacture, storage, handling, sale and/or use of sparkling devices.

Nothing in Section 1228.3 shall be construed as permitting the possession, manufacture, handling, sale and/or use of sparkling devices in any jurisdiction where the possession, manufacture, handling, sale and/or use of sparking devices has not been made legal in accordance with the provisions of section 405.00 of the Penal Law.

Section 1228.3 prohibits the use of any sparkling device inside any building or structure unless (i) such sparkling device is listed for indoor use and (ii) the use of such sparkling device inside such building or structure has been approved.

Section 1228.3 prohibits the use of any sparkling device within 10 feet of any building or structure unless (i) such sparkling device is listed for indoor use or for use within 10 feet of a building or structure and (ii) the use of such sparkling device within 10 feet of such building or structure has been approved.

Section 1228.3 prohibits constructing retail displays of sparkling devices or offering sparkling devices for sale, upon highways, sidewalks or public property or in a Group A or E occupancy.

Sparkling devices displayed for retail sale shall not be made readily accessible to the public.

A minimum of one pressurized-water portable fire extinguisher complying with section 906 of the 2010 FCNYS shall be located not more than 15 feet (4572 mm) and not less than 10 feet (3048 mm) from each area where sparkling devices are stored or displayed for retail sale.

"No Smoking" signs complying with section 310 of the 2010 FCNYS shall be conspicuously posted in each area where sparkling devices are stored or displayed for retail sale.

The code enforcement official is authorized to limit the quantity of sparkling devices permitted at a given location. In particular, but not by way of limitation, the code enforcement official is authorized to limit the quantity of sparkling devices permitted to be kept or stored at any one- or two-family dwelling, townhouse, or any building or structure containing any Group R occupancy.

No person or entity shall conduct a sparkling device display unless such person or entity shall have designated a person as the person in charge of such sparkling device display. The person in charge of a sparkling device display shall be not less than 21 years of age; shall demonstrate knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; and at the time of such sparkling device display shall not be under the influence of alcohol or drugs that impair sensory or motor skills. Whenever in the opinion of the code enforcement official or the operator a hazardous condition exists, the sparkling device display shall be discontinued immediately until such time as the dangerous situation is corrected.

The code enforcement official is authorized to require any sparkling device display or any other use of sparkling devices to be supervised at any time by the code enforcement official in order to determine compliance with all safety and fire regulations.

Sparkling devices that are being manufactured, stored, handled, stored or used in violation of any provision of Section 1228.3 or in violation of any other applicable provision of the Uniform Code may be removed and disposed of in an appropriate manner, at the expense of the owner of the sparkling devices. In a jurisdiction where the possession of sparkling devices has been made legal in accordance with the provisions of section 405.00 of the Penal Law, the code enforcement official is authorized to remove and dispose of the sparkling devices. In other jurisdictions, the sparkling devices shall be removed and disposed of by a police officer, peace officer, or other person authorized by law to do so.

Accidents involving the use of sparkling devices that result in death, personal injury or property damage shall be reported to the code enforcement official immediately.

Manufacturers of sparkling devices shall maintain records of chemicals, chemical compounds and mixtures required by the U.S. Department of Labor regulations set forth in 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS.

The manufacture, assembly, and testing of sparkling devices, and facilities where the manufacture, assembly and/or testing of sparkling devices occur, shall comply with the requirements of this subdivision and NFPA 495 or NFPA 1124. Emergency plans, emergency drills, employee training and hazard communication shall conform to the provisions of new section and Sections 404, 405, 406 and 407 of the 2010 FCNYS. Detailed Hazardous Materials Management Plans (HMMP) and Hazardous Materials Inventory Statements (HMIS) complying with the requirements of Section 407 of the 2010 FCNYS shall be prepared and submitted to the local emergency planning committee, the code enforcement official, and the local fire department. A copy of the required HMMP and HMIS shall be maintained on site and furnished to the code enforcement official on request. Workers who handle or dispose of sparkling devices shall be trained in the hazards of the materials and processes in which they are to be engaged and with the safety rules governing such materials and processes. Approved emergency procedures shall be formulated for each facility where sparkling devices are manufactured, assembled and/or tested. Such procedures shall include personal instruction in any emergency that may be anticipated. All personnel shall be made aware of an emergency warning signal.

Whenever in the opinion of the code enforcement official or the operator a hazardous condition exists, the use of sparkling devices shall be discontinued immediately until such time as the dangerous situation is corrected.

The storage or temporary storage of sparkling devices shall comply with the applicable requirements of NFPA 1124 and, in addition, shall be subject to the provisions of subdivision (f) of new section 1228.3.

**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. DOS-05-15-00007-EP, Issue of February 4, 2015. The emergency rule will expire June 15, 2015.

**Text of rule and any required statements and analyses may be obtained from:** Mark Blanke, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Mark.Blanke@dos.ny.gov

**Additional matter required by statute:** (1) Effective Date

This rule was initially adopted as an emergency measure by the State Fire Prevention and Building Code Council (the Code Council) on January 15, 2015. The Notice of Emergency Adoption and Proposed Rule Making relating to the initial emergency adoption was filed on January 20, 2015 and the initial emergency adoption of this rule became effective on that date.

This is an emergency re-adoption of this rule. This emergency re-adoption of this rule shall be effective immediately on the date of filing of the Notice of Emergency Adoption, rather than 90 days after publication of this Notice of Emergency Adoption.

At its January 15, 2015 meeting, the Code Council found and determined that making the initial emergency adoption of this rule effective immediately on the date of filing of the Notice of Emergency Adoption and Proposed Rule Making relating to such initial emergency adoption, as authorized by section 378 (15)(a)(i) of the Executive Law, was required to protect health, safety and security because (1) the amendments of sections 270.00 and 405.00 of the Penal Law made by Chapter 477 of the Laws of 2014 authorize any city or county outside of New York City to elect to make sparkling devices legal in such city or county; (2) at that time, the State Uniform Fire Prevention and Building Code (the Uniform Code) did not have provisions expressly applicable to sparkling devices; (3) the possibility existed that cities or counties could adopt local laws legalizing sparkling devices sooner than ninety (90) days after the filing of the Notice of Emergency Adoption and Proposed Rule Making relating to the initial emergency adoption of this rule; and (4) this rule reduces the risk of deaths, injuries, and property damage resulting from the use of sparkling devices by providing additional requirements applicable to buildings and structures where sparkling devices may be manufactured, stored, sold or used and by providing additional requirements related to the use of sparkling devices intended to reduce the risk of fire in buildings and structures resulting from the use of sparkling devices.

For the same reasons, the Secretary of State has found that making this emergency re-adoption of this rule effective immediately upon the filing of the Notice of Emergency Adoption relating to such re-adoption, rather than 90 days after the publication of such Notice of Emergency Adoption, to be required to protect health, safety and security.

**(2) Approval**

Pursuant to Section 377(1) of the Executive Law, the Secretary of State has reviewed the amendment of the Uniform Code implemented by the initial emergency adoption of this rule and continued by this emergency re-adoption of this rule, the Secretary of State finds that said amendment effectuates the purposes of Article 18 of the Executive Law, and the Secretary of State approves said amendment.

**Regulatory Impact Statement****1. STATUTORY AUTHORITY.**

Executive Law § 377(1) authorizes the State Fire Prevention and Building Code Council (the Code Council) to amend the provisions of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) from time to time. This rule was originally adopted by the Code Council as an emergency measure to amend the Uniform Code to provide additional requirements applicable to buildings and structures where a particular category of fireworks (viz., “sparkling devices”) are manufactured, stored or used and to add other restrictions on the use of sparkling devices intended to minimize the danger of fire in buildings and structures.

The original emergency adoption of this rule will expire on April 19, 2015. Executive Law § 376(5) authorizes the Secretary of State to do all things necessary or desirable to further and effectuate the general purposes and specific objectives of Article 18 of the Executive Law. The Secretary of State has determined that this emergency re-adoption of this rule is necessary and desirable to further and effectuate the general purposes and specific objectives of Article 18, including the specific objectives described in the “Legislative Objections” section of this Regulatory Impact Statement.

**2. LEGISLATIVE OBJECTIVES.**

Executive Law § 378(1) directs that the Uniform Code shall address standards for the construction of “all buildings or classes of buildings, or the installation of equipment therein, including standards for materials to be used in connection therewith, and standards for safety and sanitary conditions.”

Executive Law § 371(2)(b) provides that it shall be the public policy of this State “to provide for the promulgation of a uniform code addressing building construction and fire prevention in order to provide a basic minimum level of protection to all people of the state from hazards of fire and inadequate building construction. . . .”

Prior to the effective date of Chapter 477 of the Laws of 2014, only persons who obtained a special permit were allowed to possess, sell or use fireworks of any type. Sections 270.00 and 405.00 of the Penal Law, as amended by Chapter 477 of the Laws of 2014, provide, in substance, that except in cities having a population in excess of 1,000,000, a city or a county may adopt enact a local law legalizing “sparkling devices” within such city or county.

In light of the general prohibition against the possession, sale, and use of fireworks that existed prior to the effective date of Chapter 477 of the Laws of 2014, the Uniform Code had few, if any, provisions relating specifically to fireworks. The initial emergency adoption of this rule fulfilled the legislative objectives set forth in Executive Law § 378(1) and Executive Law § 371(2)(b) by amending the Uniform Code to add (1) additional requirements applicable to buildings and structures where sparkling devices are manufactured, stored or used and (2) additional requirements applicable to the use of sparkling devices intended to minimize the danger of fire in buildings and structures. This emergency re-adoption of this rule fulfills those same objective and the objectives of Executive Law § 376(5) by assuring that the provisions added by the initial emergency adoption will remain in effect after April 19, 2015 (the date on which the initial emergency adoption otherwise would have expired).

**3. NEEDS AND BENEFITS.**

Sparkling devices contain pyrotechnic compositions and could present an additional risk of fire, particularly if sparkling devices are manufactured, stored or used improperly.

The 2010 edition of the Fire Code of New York State (the 2010 FCNYS) is one of the publications that currently make up the Uniform Code. The 2010 FCNYS is based on the 2006 edition of the International Fire Code (the 2006 IFC), a model code published by the International Code Council. The 2006 IFC contains an entire chapter devoted to explosives and fireworks. Because of the general prohibition against all types of fireworks in this State, the 2010 FCNYS contains only an abbreviated version of the 2006 IFC’s explosives and fireworks chapter.

This rule adds those provisions in the 2006 IFC’s explosives and fireworks chapter which are currently missing from the 2010 FCNYS and which, in the opinion of the Department of State (DOS) and the Code Council, are required to address the additional fire and safety concerns posed by the potential legalization of sparkling devices in this State (or in certain cities and counties in this State).

**4. COSTS.**

It is anticipated that regulated parties will not incur any significant costs to comply with this rule initially and no significant costs to continue to comply with this rule.

For the most part, this rule will impose no significant requirements on buildings or structures where sparkling devices will be manufactured, stored, sold or used over and above those requirements imposed on such buildings or structures by other already existing provisions of the Uniform Code or by other already existing laws, statutes, rules, and regulations. Rather, this rule serves more as a clarification that those other already existing requirements will apply to buildings and structures where previously prohibited activities (the manufacture, storage, sale or use of sparkling devices) will occur. For example, Section 1228.3(k) provides that manufacturers of sparkling devices must maintain records of chemicals, chemical compounds and mixtures required by the U.S. Department of Labor regulations set forth in 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS. This provision does not add to the current requirements under 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS. Rather, this provision simply clarifies that the requirements already in existence 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS apply to the newly-legalized activity of manufacturing sparkling devices.

Similarly, Section 1228.3(l) clarifies that certain requirements that already exist under Section 3305 of the 2010 FCNYS apply to the manufacture, assembly, and testing of sparkling devices, and facilities where the manufacture, assembly and/or testing of sparkling devices occur.

Other provisions added by this rule restrict the use of sparkling devices in ways intended to reduce fire caused by sparkling devices; it is anticipated that these provisions will impose little or no costs on regulated parties. For example, Section 1228.3(d) restricts the use of sparking devices in or within 10 feet of buildings and structures; Section 1228.3(e) prohibits the sale of sparkling devices on highways, sidewalks or public property and in assembly occupancies and in educational occupancies; Section 1228.3(f) authorizes the code enforcement official to limit the amount of sparkling devices in any location; Section 1228.3(h) authorizes the code enforcement official to supervise sparkling device displays and other uses of sparkling devices; Section 1228.3(i) authorizes the removal and disposal of sparkling devices manufactured, stored, sold or used in violation of the Uniform Code; Section 1228.3(m) authorizes the code enforcement official to discontinue the use of sparkling devices when a hazardous conditions exists; and Section 1228.3(n) prohibits keeping or storing any sparkling devices at any place of habitation or within 100 feet thereof.

Other provisions added by this rule impose certain new obligations on regulated parties; however, DOS anticipates that the cost of complying with these new obligations will be minimal. For example:

Section 1228.3(e) requires places where retail sales of sparkling devices take place to have fire extinguishers and “no smoking” signs. DOS estimates that the cost of a fire extinguisher will be \$35 and that the annual cost of testing and maintaining a fire extinguisher will be \$10. DOS estimates that the cost of obtaining and posting a “no smoking” sign will be \$17.

Section 1228.3(g) provides that sparkling device displays must be conducted under the supervision of a person with knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; if a person chooses to conduct a sparkling device display, but is unwilling or unqualified to supervise the display, he or she will be required to engage the services of a person with the required knowledge of the applicable safety precautions.

Section 1228.3(j) requires regulated parties to report accidents that result in death, personal injury or property damage to the code enforcement official.

Section 1228.3(n) provides that the storage of sparkling devices shall comply with the applicable requirements of NFPA 1124.

There are no costs to DOS for the implementation of this rule. The Department is not required to develop any additional regulations or develop any programs to implement this rule.

There are no costs to the State of New York or to local governments for the implementation of the provisions added by this rule, except as follows:

First, the State and all local governments are subject to the Uniform Code. If the State or any local government chooses to manufacture, store, sell or use sparkling devices, the State or such local government will have to comply with this rule to the same degree as any other regulated party.

Second, since this rule adds provisions to the Uniform Code, the authorities responsible for administering and enforcing the Uniform Code will have additional items to verify in the process of reviewing building permit applications, conducting construction inspections, and (where applicable) conducting periodic fire safety and property maintenance inspections. However, the need to verify compliance with this rule should not have a significant impact on the already existing permitting and inspection processes.

**5. PAPERWORK.**

Section 1228.3(j) requires regulated parties to report accidents that result in death, personal injury or property damage to the code enforcement official.

#### 6. LOCAL GOVERNMENT MANDATES.

This rule does not impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, except as follows:

First, if any county, city, town, village, school district, fire district or other special district chooses to manufacture, store, sell or use sparkling devices, such county, city, town, village, school district, fire district or other special district will have to comply with this rule to the same degree as any other regulated party.

Second, cities, towns and villages (and sometimes counties) are charged by Executive Law section 381 with the responsibility of administering and enforcing the Uniform Code. Since this rule adds provisions to the Uniform Code, the aforementioned local governments will be responsible for administering and enforcing the requirements of this rule along with all other provisions of the Uniform Code.

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

#### 7. DUPLICATION.

As discussed in the "Costs" section of this Regulatory Impact Statement, this rule clarifies that certain Federal and State requirements already in existence apply to newly legalized activities (the manufacture, storage, sale, and use of sparkling devices) and to buildings and structures where those activities will occur. However, DOS believes that such clarification is appropriate because, without the emergency re-adoption of this rule, the Uniform Code will cease to have any provisions expressly addressing sparkling devices.

The rule does not otherwise duplicate any existing Federal or State requirement.

#### 8. ALTERNATIVES.

The alternative of adding no new provisions expressly dealing with sparkling devices was considered. However, since the recent amendments to the Penal Law will legalize sparkling devices in cities and counties that so elect, DOS determined that the re-adoption of a rule both clarifying that certain requirements already in existence will apply to buildings where this newly legalized activity will occur and adding certain new restrictions on the use of the newly legalized devices, was more appropriate.

The alternative of incorporating all of the currently omitted provisions in the 2006 IFC's chapter on explosives and fireworks was considered. However, since the recent amendments to the Penal Law legalize one category of fireworks, DOS determined that adding only those provisions appropriate for sparkling devices was more appropriate.

#### 9. FEDERAL STANDARDS.

There are no standards of the Federal Government which address the subject matter of the rule. The United States Consumer Product Safety Commission, the United States Department of Labor, and the United States Department of Transportation regulate fireworks, but do not address building code-related topics.

#### 10. COMPLIANCE SCHEDULE.

DOS anticipates that regulated parties will be able to comply with this rule immediately.

### *Regulatory Flexibility Analysis*

#### 1. EFFECT OF RULE:

Section 270.00 of the Penal Law, as amended by Chapter 477 of the Laws of 2014, defines "fireworks" as including certain categories of devices, including "sparkling devices." Section 405.00 of the Penal Law, as amended by Chapter 477 of the Laws of 2014, permits cities and counties outside New York City to provide that "sparkling devices" will be legal in such city or county. This filing re-adopts a rule that was initially adopted by the State Fire Prevention and Building Code Council (the Code Council) on an emergency basis on January 15, 2015. The Notice of Emergency Adoption and Proposed Rule Making relating to the initial emergency adoption of this rule was filed on January 20, 2015, and the initial emergency adoption of this rule became effective on that date. This rule amends the State Fire Prevention and Building Code to provide additional requirements applicable to buildings and structures where "sparkling devices" are manufactured, stored or used. This rule also adds other restrictions on the use of "sparkling devices" intended to minimize the danger of fire in buildings and structures.

This rule will affect any small business or local government that owns a building or structure in which sparkling devices will be manufactured, stored, sold or used. The number of small businesses and local governments that will be affected will depend on the number of cities and counties that choose to make sparkling devices legal and on the number of small businesses in those cities and counties that choose to manufacture, store, sell or use sparkling devices. The Department of State is not able to estimate the number of small businesses and local governments that will be so affected.

Since this rule adds provisions to the Uniform Code, each local government that is responsible for administering and enforcing the Uniform Code

will be affected by this rule. The Department of State estimates that approximately 1,600 local governments (mostly cities, towns and villages, as well as several counties) are responsible for administering and enforcing the Uniform Code.

#### 2. COMPLIANCE REQUIREMENTS:

19 NYCRR Section 1228.3(e) requires places where retail sales of sparkling devices take place to have fire extinguishers and "no smoking" signs.

19 NYCRR Section 1228.3(g) requires sparkling device displays to be conducted under the supervision of a person with knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; if a person chooses to conduct a sparkling device display, but is unwilling or unqualified to supervise the display, he or she will be required to engage the services of a person with the required knowledge of the applicable safety precautions.

19 NYCRR Section 1228.3(n) provides that the storage of sparkling devices shall comply with the applicable requirements of NFPA 1124.

19 NYCRR Section 1228.3(j) requires regulated parties to report accidents that result in death, personal injury or property damage to the code enforcement official. No other reporting or record keeping requirements are imposed upon regulated parties by the rule. (Note: 19 NYCRR Section 1228.3(k) provides that manufacturers of sparkling devices must maintain records of chemicals, chemical compounds and mixtures required by the U.S. Department of Labor regulations set forth in 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS. This provision does not add to the current requirements under 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS. Rather, this provision simply clarifies that the requirements already in existence under 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS apply to the newly-legalized activity of manufacturing sparkling devices.)

Since this rule amends the Uniform Code, local governments that administer and enforce the Uniform Code will be required to check for compliance with this rule when reviewing applications for building permits, when performing construction inspections, and when performing periodic fire safety and property maintenance inspections.

#### 3. PROFESSIONAL SERVICES:

No professional services will be required to comply with the rule.

#### 4. COMPLIANCE COSTS:

For the owner of a building where retail sales of sparkling devices will occur, the initial capital costs of complying with the rule will include the cost of purchasing and installing the fire extinguishers and "no smoking" signs. The Department of State estimates that the cost of purchasing and installing a fire extinguisher will be \$35 and the cost of purchasing and installing a "no smoking" sign will be \$17. Such costs are not likely to vary for small businesses or local governments of different types and differing sizes.

For the owner of a building where retail sales of sparkling devices will occur, the annual costs of complying with this rule will include the cost of testing and maintaining the fire extinguishers. The Department of State estimates that the annual cost of testing and maintaining a fire extinguisher will be \$10. Such costs are not likely to vary for small businesses or local governments of different types and differing sizes.

A person who conducts a sparkling device display must either have knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; or designate a person who has such knowledge to supervise the display. The qualifications to supervise a display are minimal: such person must be at least 21 years of age; and demonstrate knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; and at the time of such sparkling device display must not be under the influence of alcohol or drugs that impair sensory or motor skills. Therefore, the Department of State anticipates that in most cases, the person conducting the display will be qualified to act as the person in charge. The Department of State also anticipates that even where a third party is designated as the person in charge, the fee, if any, charged by such person will be minimal in most cases.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

It is economically and technologically feasible for regulated parties to comply with the rule. No substantial capital expenditures are imposed and no new technology need be developed for compliance.

#### 6. MINIMIZING ADVERSE IMPACT:

Prior to the enactment of Chapter 477 of the Laws of 2014, all fireworks were, for the most part, illegal in this State (exceptions were made for fireworks used pursuant to a permit issued under section 405.00 of the Penal Law). As a result of Chapter 477 of the Laws of 2014, sparkling devices will be legal in cities and counties that elect to legalize such devices.

The 2010 edition of the Fire Code of New York State (the 2010 FCNYS) is one of the publications that currently make up the Uniform Code. The 2010 FCNYS is based on the 2006 edition of the International Fire Code (the 2006 IFC), a model code published by the International Code Council. The 2006 IFC contains an entire chapter devoted to explosives and fireworks. Because of the general prohibition against all

types of fireworks in this State, the 2010 FCNYS contains only an abbreviated version of the 2006 IFC's explosives and fireworks chapter.

This rule adds those provisions in the 2006 IFC's explosives and fireworks chapter which are currently missing from the 2010 FCNYS and which, in the opinion of the Department of State and the Code Council, are required to address the additional fire and safety concerns posed by the potential legalization of sparkling devices in this State (or in certain cities and counties in this State).

The alternative of incorporating all of the currently omitted provisions in the 2006 IFC's chapter on explosives and fireworks was considered. However, since the recent amendments to the Penal Law legalize one category of fireworks, the Department of State determined that adding only those provisions appropriate for sparkling devices was more appropriate.

The establishment of differing compliance requirements or timetables with respect to buildings owned or operated by small businesses or local governments was not considered because the fire and safety-related requirements to be imposed by this rule apply without regard to the identity of the owner of the building or structure where sparkling devices are to be manufactured, stored, sold or used.

Providing exemptions from coverage by the rule was not considered because such exemptions would endanger public safety.

#### 7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department of State notified interested parties throughout the State of the proposed adoption of this rule by means of notices posted on the Department's website and notices published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

#### 8. VIOLATIONS AND PENALTIES ASSOCIATED WITH VIOLATIONS:

This rule does not establish or modify a violation and this rule does not establish or modify penalties associated with a violation. Therefore, for the purposes of Chapter 524 of the Laws of 2011 and subdivision 1-a of section 202-b of the State Administrative Procedure Act, this rule is not required to include a cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement.

#### *Rural Area Flexibility Analysis*

##### 1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

Section 270.00 of the Penal Law, as amended by Chapter 477 of the Laws of 2014, defines "fireworks" as including certain categories of devices, including "sparkling devices." Section 405.00 of the Penal Law, as amended by Chapter 477 of the Laws of 2014, permits cities and counties outside New York City to provide that "sparkling devices" will be legal in such city or county. This filing re-adopts a rule that was initially adopted by the State Fire Prevention and Building Code Council (the Code Council) on an emergency basis on January 15, 2015. The Notice of Emergency Adoption and Proposed Rule Making relating to the initial emergency adoption of this rule was filed on January 20, 2015, and the initial emergency adoption of this rule became effective on that date. This rule amends the State Fire Prevention and Building Code to provide additional requirements applicable to buildings and structures where "sparkling devices" are manufactured, stored or used. This rule also adds other restrictions on the use of "sparkling devices" intended to minimize the danger of fire in buildings and structures. Since the Uniform Code applies in all areas of the State (other than New York City), this rule will apply in all rural areas of the State.

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

19 NYCRR Section 1228.3(e) requires places where retail sales of sparkling devices take place to have fire extinguishers and "no smoking" signs.

19 NYCRR Section 1228.3(g) requires that sparkling device displays be conducted under the supervision of a person with knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; if a person chooses to conduct a sparkling device display but is unwilling or unqualified to supervise the display, he or she will be required to engage the services of a person with the required knowledge of the applicable safety precautions.

19 NYCRR Section 1228.3(n) provides that the storage of sparkling devices shall comply with the applicable requirements of NFPA 1124.

19 NYCRR Section 1228.3(j) requires regulated parties to report accidents that result in death, personal injury or property damage to the code enforcement official. No other reporting or record keeping requirements are imposed upon regulated parties by the rule. (Note: 19 NYCRR Section 1228.3(k) provides that manufacturers of sparkling devices must maintain records of chemicals, chemical compounds and mixtures required by the U.S. Department of Labor regulations set forth in 29 CFR Part 1910.1200

and Section 407 of the 2010 FCNYS. This provision does not add to the current requirements under 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS. Rather, this provision simply clarifies that the requirements already in existence under 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS apply to the newly-legalized activity of manufacturing sparkling devices.)

##### 3. COMPLIANCE COSTS.

For the owner of a building where retail sales of sparkling devices will occur, the initial capital costs of complying with the rule will include the cost of purchasing and installing the fire extinguishers and "no smoking" signs. The Department of State estimates that the cost of purchasing and installing a fire extinguisher will be \$35 and the cost of purchasing and installing a "no smoking" sign will be \$17. Such costs are not likely to vary for small businesses or local governments of different types and differing sizes.

For the owner of a building where retail sales of sparkling devices will occur, the annual costs of complying with this rule will include the cost of testing and maintaining the fire extinguishers. The Department of State estimates that the annual cost of testing and maintaining a fire extinguisher will be \$10. Such costs are not likely to vary for small businesses or local governments of different types and differing sizes.

A person who conducts a sparkling device display must either have knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; or designate a person who has such knowledge to supervise the display. The qualifications to supervise a display are minimal: such person must be at least 21 years of age; must demonstrate knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; and at the time of such sparkling device display must not be under the influence of alcohol or drugs that impair sensory or motor skills. Therefore, the Department of State anticipates that in most cases, the person conducting the display will be qualified to act as the person in charge. The Department of State also anticipates that even where a third party is designated as the person in charge, the fee, if any, charged by such person will be minimal in most cases.

##### 4. MINIMIZING ADVERSE IMPACT.

Prior to the enactment of Chapter 477 of the Laws of 2014, all fireworks were, for the most part, illegal in this State (exceptions were made for fireworks used pursuant to a permit issued under section 405.00 of the Penal Law). As a result of Chapter 477 of the Laws of 2014, sparkling devices will be legal in cities and counties that elect to legalize such devices.

The 2010 edition of the Fire Code of New York State (the 2010 FCNYS) is one of the publications that currently make up the Uniform Code. The 2010 FCNYS is based on the 2006 edition of the International Fire Code (the 2006 IFC), a model code published by the International Code Council. The 2006 IFC contains an entire chapter devoted to explosives and fireworks. Because of the general prohibition against all types of fireworks in this State, the 2010 FCNYS contains only an abbreviated version of the 2006 IFC's explosives and fireworks chapter.

This rule adds those provisions in the 2006 IFC's explosives and fireworks chapter which are currently missing from the 2010 FCNYS and which, in the opinion of the Department of State and the Code Council, are required to address the additional fire and safety concerns posed by the potential legalization of sparkling devices in this State (or in certain cities and counties in this State).

The alternative of incorporating all of the currently omitted provisions in the 2006 IFC's chapter on explosives and fireworks was considered. However, since the recent amendments to the Penal Law legalize one category of fireworks, the Department of State determined that adding only those provisions appropriate for sparkling devices was more appropriate.

The establishment of differing compliance requirements or timetables with respect to buildings and operations in rural areas was not considered because the fire and safety-related requirements to be imposed by this rule apply without regard to the location of the building or structure where sparkling devices are to be manufactured, stored, sold or used.

Providing exemptions from coverage by the rule was not considered because such exemptions would endanger public safety.

##### 5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State of the proposed adoption of this rule by means of notices posted on the Department's website and notices published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

#### **Job Impact Statement**

This is an emergency re-adoption of a rule initially adopted as an emergency measure. The Notice of Emergency Adoption and Proposed Rule Making relating to the initial emergency adoption was filed on January 20, 2015 and was published in the State Register on February 4, 2015.

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a “substantial adverse impact on jobs and employment opportunities” (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

This rule amends the State Uniform Fire Prevention and Building Code (the Uniform Code) to provide additional requirements applicable to buildings and structures where sparking devices are manufactured, stored or used. This rule also adds other restrictions on the use of sparking devices intended to minimize the danger of fire in buildings and structures.

For the most part, this rule imposes no significant requirements on buildings or structures where sparking devices will be manufactured, stored, sold or used over and above those requirements imposed on such buildings or structures by other already existing provisions of the Uniform Code or by other already existing laws, statutes, rules, and regulations. Rather, this rule serves more as a clarification that those other already existing requirements will apply to buildings and structures where previously prohibited activities (the manufacture, storage, sale or use of sparking devices) will occur.

Other provisions added by this rule restrict the use of sparking devices in ways intended to reduce fire caused by sparking devices; it is anticipated that these provisions will impose little or no costs on regulated parties.

Other provisions added by this rule impose certain new obligations on regulated parties; however, the Department of State anticipates that the cost of complying with these new obligations will be minimal. For example, Section 1228.3(e) requires places where retail sales of sparking devices take place to have fire extinguishers and “no smoking” signs. The Department of State estimates that the cost of a fire extinguisher will be \$35 and that the annual cost of testing and maintaining a fire extinguisher will be \$10. The Department of State estimates that the cost of obtaining and posting a “no smoking” sign will be \$17.

Therefore, this rule should have no substantial adverse impact on the cost of buildings or structures where sparking devices will be manufactured, stored, sold or used. As apparent from the nature and purpose of this rule, it should have no substantial adverse impact on jobs and employment opportunities related to the manufacture, storage, sale or use of sparking devices.

## NOTICE OF ADOPTION

### Regulations Relating to Review of Original Applications

**I.D. No.** DOS-09-15-00001-A

**Filing No.** 327

**Filing Date:** 2015-04-21

**Effective Date:** 2015-05-06

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

**Action taken:** Addition of section 160.13 to Title 19 NYCRR.

**Statutory authority:** General Business Law, section 402(5)

**Subject:** Regulations relating to review of original applications.

**Purpose:** To clarify the Department’s review procedures for new applicants seeking licensure pursuant to art. 27 of the General Business Law.

**Text of final rule:** Section 160.13 is added to Title 19 of the NYCRR to read as follows:

*160.13 Original applications.*

*In determining qualifications and fitness of an applicant for original licensure pursuant to Article 27 of the New York General Business Law, the Secretary shall conduct a review of factors unrelated to prior criminal history, including, but not limited to:*

*(1) findings of violations related to any provision of Article 27 or any regulation adopted thereunder;*

*(2) findings of unlicensed practice of nail specialty, waxing, natural hair styling, esthetics or cosmetology;*

*(3) findings of failure to pay taxes or of tax liens; and*

*(4) findings of failure to pay child support.*

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 160.13.

**Text of rule and any required statements and analyses may be obtained from:** David A. Mossberg, NYS Dept. of State, 123 William Street, 20th FL., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

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

Changes made to the rule do not necessitate changes to the previously published RIS, RFA, RAFA, or JIS because the only change was to add a

title for the section, for purposes of conforming to the style and form of NYCRR. The change merely adds the following title to the new section: “160.13 Original applications.”

### Initial Review of Rule

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

### Assessment of Public Comment

The Department of State received two public comments regarding the proposal to add new section 160.13 to Title 19 of the NYCRR. Comments were received from the Center for Employment Opportunities and the Legal Action Center; both comments were supportive of this proposal.

## Office of Temporary and Disability Assistance

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

#### Child Support

**I.D. No.** TDA-18-15-00002-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 347.24 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f) and 111-a; and 45 CFR 303.11

**Subject:** Child Support.

**Purpose:** To reflect the revised case closure criteria as set forth in the federal Department of Health and Human Services regulation.

**Text of proposed rule:** Section 347.24 of Title 18 of the NYCRR is amended to read as follows:

§ 347.24 Case closing criteria.

(a) The Division of Child Support Enforcement within the Office of Temporary and Disability Assistance shall establish a system for case closure.

(b) In order to be eligible for closing, a child support case must meet at least one of the following criteria:

(1) there is no longer a current support order and arrears are less than \$500 or unenforceable under [State] state law;

(2) the noncustodial parent or putative father is deceased and no further action, including a levy against the estate, can be taken;

(3) paternity cannot be established because:

(i) the child is at least 21 years old in this [State] state and an action to establish paternity is barred by an applicable statute of limitations;

(ii) a genetic test or a court or administrative process has excluded the putative father as the father of the child and no other putative father of such child can be identified;

(iii) in accordance with section 347.6(a) of this Part, the child support enforcement unit has determined that it would not be in the best interests of the child to establish paternity in a case involving incest or forcible rape, or in any case where legal proceedings for adoption are pending; or

(iv) the [identify] identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the child support enforcement unit with the recipient of child support services;

(4) the noncustodial parent’s location is unknown and the child support enforcement unit has made diligent efforts using multiple sources, in accordance with section 347.7 of this Part, all of which have been unsuccessful, to locate the noncustodial parent:

(i) over a three-year period when there is sufficient information to initiate an automated locate effort; or

(ii) over a one-year period when there is not sufficient information to initiate an automated locate effort;

(5) the noncustodial parent cannot pay support for the duration of the child’s minority because the parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically verified total and permanent disability with no evidence of support potential. The child support enforcement unit must determine that no income or assets are available to the noncustodial parent which could be levied upon or attached for support;

(6) the noncustodial parent is a citizen of, and lives in, a foreign country, does not work for the Federal government or a company with headquarters or offices in the United States, and has no reachable domestic income or assets, and this [State] *state* has been unable to establish reciprocity with the country;

(7) the Division of Child Support Enforcement [within the Office of Temporary and Disability Assistance] or the child support enforcement unit has provided location-only services to the resident parent, legal guardian, attorney, or agent of a child who is not receiving public assistance;

(8) the non-public assistance recipient of child support services requests closing of their case and there is no assignment to the [State] *state* of *cash* medical support or arrears which accrued under a support order;

(9) there has been a finding of good cause or other exceptions to cooperation as set forth in section 347.5 of this Part and the appropriate unit of the social services district has determined that support enforcement may not proceed without risk of harm to the child or caretaker relative;

(10) in a non-public assistance case receiving child support services or in a non-public assistance Medicaid case when cooperation with the child support enforcement unit is not required of the recipient of *child support* services, [in which] the child support enforcement unit is unable to contact the recipient of child support services within a 60-calendar-day period despite an attempt of at least one letter sent by first class mail to the last known address;

(11) in a non-public assistance case [in receipt of] *receiving* child support services or in a non-public assistance Medicaid case when cooperation with the child support enforcement unit is not required of the recipient of *child support* services, the child support enforcement unit documents the circumstances of the [recipient of child support service's] noncooperation *of the recipient of child support services* [with the child support enforcement unit] and an action by the recipient of child support services is essential for the next step in providing child support services;[or]

(12) the child support enforcement unit documents failure by the initiating [state] *agency* to take an action which is essential for the next step in providing *child support* services[.];

(13) *the initiating agency has notified the responding agency that it has closed its case; or*

(14) *the initiating agency has notified the responding agency that its services are no longer needed.*

(c) In cases meeting the criteria in paragraphs (b)(1) through (6) and (10) through (12) of this section, the child support enforcement unit must notify the recipient of child support services, or in an [interstate] *intergovernmental* case meeting the criteria for case closing under paragraph (b)(12) of this section, the initiating [state] *agency*, in writing, 60 calendar days prior to closure of the case of the child support enforcement unit's intent to close the case. The case must be kept open if the recipient of child support services or the initiating [state] *agency* supplies information which could lead to the establishment of paternity or a support order, or enforcement of an order, or, in the instance of paragraph (b)(10) of this section, if contact is re-established with the recipient of child support services. If the case is closed, the former recipient of child support services may request at a later date that the case be reopened, if there is a change in circumstances which could lead to the establishment of paternity or a support order or enforcement of an order by completing a new application for child support services and paying any applicable application fee.

(d) The child support enforcement unit must retain all records for cases closed pursuant to this section for a minimum of three years.

**Text of proposed rule and any required statements and analyses may be obtained from:** Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, NY 12243-0001, (518) 486-7503, email: richard.rhodesjr@otda.ny.gov

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

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

#### **Regulatory Impact Statement**

##### **1. Statutory Authority:**

§ 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to carry out its powers and duties.

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

§ 111-a of the SSL requires OTDA to promulgate regulations necessary to obtain and retain approval of its child support state plan, required to be submitted to the federal Department of Health and Human Services by Title IV-D of the federal Social Security Act (the Act).

Title 45 of the Code of Federal Regulations (C.F.R.) § 303.11 sets forth the federal case closure criteria for establishing and enforcing intergovern-

mental support obligations in child support program cases receiving services under Title IV-D of the Act.

##### **2. Legislative Objectives:**

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that child support enforcement services are provided to eligible persons to ensure that, to the greatest extent possible, parents provide financial support for their children. The intent of the proposed regulatory amendments to 18 NYCRR § 347.24 is to conform the existing State regulation to federal requirements for establishing and enforcing intergovernmental support obligations in child support program cases receiving services under Title IV-D of the Act.

##### **3. Needs and Benefits:**

The proposed regulatory amendments to 18 NYCRR § 347.24 are necessary to conform the existing State regulation to federal requirements for establishing and enforcing intergovernmental support obligations in child support program cases receiving services under Title IV-D of the Act. Thus, the proposed amendments do not reflect discretion exercised by OTDA, but instead set forth federal requirements and conform 18 NYCRR § 347.24 to current federal regulations.

##### **4. Costs:**

OTDA does not anticipate that there would be any costs associated with this regulatory proposal, since the proposed regulatory amendments are intended to update State regulations to conform the existing State regulation to federal requirements.

##### **5. Local Government Mandates:**

OTDA does not anticipate that the proposed regulatory amendments would create any new mandates for local governments.

##### **6. Paperwork:**

The proposed regulatory amendments would not create any new reporting requirements or additional paperwork.

##### **7. Duplication:**

The proposed regulatory amendments would not duplicate, overlap or conflict with any existing State or federal laws or regulations.

##### **8. Alternatives:**

An alternative to the proposed regulatory amendments would be to retain the existing State regulation. However, these regulatory amendments are necessary to bring the existing State regulation into compliance with the federal case closure criteria set forth in 45 C.F.R. § 303.11.

##### **9. Federal Standards:**

The proposed regulatory amendments would not conflict with federal standards for establishing and enforcing intergovernmental support obligations in child support program cases receiving services under Title IV-D of the Act.

##### **10. Compliance Schedule:**

It is anticipated that social services districts would be in compliance with the proposed regulatory amendments on their effective date.

#### **Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required because the proposed regulatory amendments will neither have an adverse impact upon, nor impose reporting, recordkeeping, or other compliance requirements upon small businesses or local governments. These regulatory amendments are necessary to bring the existing State regulation into compliance with the federal case closure criteria set forth in 45 Code of Federal Regulations § 303.11. As it was evident from the proposed regulations that they would not have an adverse impact or impose reporting, recordkeeping, or other compliance requirements, no further measures were needed to ascertain those facts and, consequently, none were taken.

#### **Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not required because the proposed regulatory amendments would neither have an adverse impact upon, nor impose reporting, recordkeeping, or other compliance requirements upon public or private entities in rural areas. These regulatory amendments are necessary to bring the existing State regulation into compliance with the federal case closure criteria set forth in 45 Code of Federal Regulations § 303.11. As it was evident from the proposed regulations that they would not have an adverse impact or impose reporting, recordkeeping, or other compliance requirements, no further measures were needed to ascertain those facts and, consequently, none were taken.

#### **Job Impact Statement**

A Job Impact Statement is not required for the proposed regulatory amendments. It is apparent from the nature and the purpose of the proposed regulatory amendments that they would not have a substantial adverse impact on jobs and employment opportunities in either the public sector or the private sector in New York State, nor would the jobs of the Child Support Enforcement Unit personnel representing the local social services

districts be impacted by the proposed regulatory amendments. Thus, the proposed regulatory amendments would not have any adverse impact on jobs and employment opportunities in New York State.