

# 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.

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## Office of Children and Family Services

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

#### Limited Secure Regulations

**I.D. No.** CFS-35-15-00007-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 450 to Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20, 34 and 404

**Subject:** Limited secure regulations.

**Purpose:** To establish regulations for residential facilities providing limited secure care within a social services district.

**Substance of proposed rule (Full text is posted at the following State website: <http://ocfs.ny.gov>):** The proposed regulations would add 18 NYCRR Part 450.

Proposed section 450.1 provides that Part 450 would apply to limited secure facilities operated as part of a juvenile justice close to home initiative.

Proposed section 450.2 provides definitions of terms as used in Part 450.

Proposed section 450.3 describes the approval process and the means by which a social service district or voluntary authorized agency would obtain an operating certificate for a limited secure facility from the Office of Children and Family Services (OCFS), cross-referencing to 18 NYCRR Parts 476 and 477.

Proposed section 450.4 provides standards and requirements related to the placement or transfer of a youth placed in the custody of a local social service commissioner for placement in a limited secure facility.

Proposed section 450.5 sets forth physical plant requirements for buildings used for a limited secure facility. Such buildings would be required to meet specific requirements pertaining to applicable federal, State and local laws, ordinances, rules and regulations. The proposed regulations would prescribe criteria for living spaces, personal hygiene, living area aesthetics, and physical plant suicide prevention precautions. In addition the bedroom, recreation, and food service areas and their size, content, and service capacity are specified by this section. The section also provides specific criteria pertaining to health service provision.

Proposed section 450.6 delineates the building security requirements for limited secure facilities, including:

- security of the perimeter, which would require lighting or motion sensors, and measures to prevent youth from leaving the facility without authorization,
- designated secured entries and exit points for all persons and the ability to prevent access by the general public,
- the option to use fences,
- the issuance and of numbered keys for staff only, their return at a centralized location, and a record of all key transactions; and
- the use of closed circuit video for certain parts of the facility, with the capacity to retrieve, download and review the video as necessary and maintain the video as needed for investigation of incidents reported to the Justice Center for the Protection of People with Special Needs.

Proposed section 450.7 restricts the use of restraint and room isolation, prohibits prone restraints, and requires the use of behavior support plans to address means by which restraint can be avoided or best applied as per medical, clinical, and developmental considerations. The section regulates the use of mechanical restraints, permitting their use only after all other means of intervention are attempted and failed. There would be specific time frames and standards for the actual application of the mechanical restraint, requirements regarding authorization to use mechanical restraints, medical restrictions on the use of such restraints, and requirements for reporting the use of mechanical restraints to OCFS. The section also provides standards and requirements for the use of room isolation.

Proposed section 450.8 specifies the criteria for approval of and conducting personal searches of youth and facility area searches. It also requires confiscation of any contraband found and documentation requirements.

Proposed section 450.9 identifies other applicable standards that would apply to limited secure facilities, including:

- Applicable provisions of Family Court Act;
- Section 404 of the Social Services Law (SSL);
- 18 NYCRR Part 441;
- 18 NYCRR Part 443;
- As applicable to the type of facility, 18 NYCRR Part 442, 447 or 448; and
- Section 372 of the SSL as it pertains to youth records and confidentiality.

Proposed section 450.10 provides the process for local social service districts and voluntary authorized agencies requesting waivers to regulations applicable to limited secure facilities.

**Text of proposed rule and any required statements and analyses may be obtained from:** Public Information Officer, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer NY 12144, (518) 473-7793

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

Section 34(3)(f) of the SSL requires the Commissioner of OCFS to es-

establish regulations for the administration of public assistance and care within the State.

Section 404(10) of the SSL requires OCFS to promulgate regulations governing the operation of limited secure facilities under a close to home program.

Section 462(1)(a) of the SSL requires the Commissioner of OCFS to promulgate regulations concerning standards of care and treatment provided by residential programs for children.

#### 2. Legislative objectives:

Youth in placement exhibit a wide array of needs, including physical and mental health, substance abuse and educational and vocational services. In addition, youth adjudicated as juvenile delinquents require assessments involving risk, family dynamics and issues, and the development of pro-social skills. Programs must be equipped to address identified needs of youth in order to promote success. Locating limited secure programs closer to a youth's home community provides an opportunity to support the youth in building positive relationships within their communities and family. Familial relationships and the development of beneficial community resources require support that is enhanced by professionals that reside in the area of the placement location. Professional services, culturally competent education and interventions, in addition to efforts to improve family relationships by virtue of proximity and increased likelihood of visiting, are absolutely essential for youth to maintain progress made during placement following the end of placement. The proposed regulations provide the requirements of operating, by any local social services district or voluntary agency, a limited secure facility providing residential care for youth requiring a limited secure setting within said district. The proposed regulations support SSL section 404 and the close to home initiative for juvenile delinquents requiring placement in limited secure settings.

#### 3. Needs and benefits:

Limited secure placements provide services that thoroughly assess youth needs, and provide individualized support and comfortable, safe, and therapeutic residential environments that are conducive to positive youth growth, change, and success. The proposed regulations provide the foundations for the ability to care for youth in a developmentally appropriate way in an environment where staff and youth are engaged in therapeutic programming that promote youth success.

The proposed regulations clarify and expand existing requirements given to social service districts concerning the care, protection and treatment of youth adjudicated as juvenile delinquents with a need to be placed in a limited secure setting. This includes the process for applying for operating certificates, youth placement and transfer, enhancing physical plants for safety and protection of youth and staff per the Americans with Disabilities and Prison Rape Elimination Acts, and increasing security elements. In addition, as per the proposed regulations, facility environments are to be aesthetically home-like to the extent reasonably possible, offering age and culturally appropriate activities, ample areas for food service, personal hygiene, and recreation activities. The proposed regulations would also prohibit prone restraint, restrict the use of mechanical restraints and room isolation, and provide rules for conducting youth searches.

#### 4. Costs:

The FY 2016 Executive Budget provides \$41.4M in state General Funds to continue providing services to all juvenile delinquents adjudicated by a family court in New York City as needing services or placement other than placement in a secure facility. Services include, but are not limited to: Home-Like Residential Placement, Case Coordination Services, Permanency and Discharge Planning, Aftercare Treatment Planning and Oversight, Medical and Mental Health Care, Alcohol and Substance Abuse Treatment, Education while in placement, Family Engagement and Transition Planning.

#### 5. Local government mandates:

A social service district is not required to establish a juvenile justice close to home initiative. For those districts that opt to do so, such districts must obtain prior approval from OCFS of its plan for establishing and implementing a juvenile justice close to home initiative. The initiative may, but is not required to, include placement of juvenile delinquents in limited secure settings. Those social services districts that opt to include in their close to home initiative youth who require placement in a limited secure setting would be required to comply with the proposed regulations. For those districts, the standards in the proposed regulations are necessary for the protection of the health and safety of the juvenile delinquents in the facility and persons in the surrounding community.

#### 6. Paperwork:

The regulations would require that a social services district or voluntary agency proposing to establish a limited secure facility apply for an operating certificate from OCFS. The district or agency would be required to submit an application form, information on the kinds of care and services to be provided, a description of the facility, a plan for conducting background checks on staff, a staffing plan with descriptions of the duties

and qualifications of staff positions, copies of proposed policies, a description of the financial resources and anticipated revenues of the facility, information on the ownership and control of the land and premises if not owned by the district or agency, and (for an agency) information on the board of directors. (These are the same requirements that apply to any district or agency applying for an operating certificate for other than limited secure facilities.) Records concerning the youth in residence will be required to be recorded in CONNECTIONS, which is New York's automated child welfare record system. Each limited secure facility would be required to have a written procedure governing the issuance of keys to staff and the use and control of keys. A facility seeking a waiver of a regulation would be required to submit a written request for such waiver. The regulations would also require that a local social services commissioner seeking to transfer a youth in a limited secure facility to secure facility operated by OCFS would have to petition the family court seeking an order for such transfer.

#### 7. Duplication:

The proposed regulations do not duplicate other state or federal requirements.

#### 8. Alternatives:

The option for a social services district to apply for approval to operate a close to home initiative including limited secure facilities is in statute. No significant alternative approaches to implementing the statutory provision were considered.

#### 9. Federal standards:

The proposed regulations comply with applicable federal standards.

#### 10. Compliance schedule:

The proposed regulations would take effect immediately upon adoption. Because the regulations require that a social services district have an approved close to home plan before a district or voluntary agency could apply for an operating certificate for a limited secure facility, compliance would become necessary for those districts opting to operate a close to home initiative that includes limited secure placements at such time as they receive OCFS approval of their plan and the limited secure facilities seek operating certificates.

### **Regulatory Flexibility Analysis**

#### 1. Effect on Small Businesses and Local Governments:

The statutory authority for operation of a close to home initiative in section 404 of the Social Services Law currently restricts operation of close to home initiatives to New York City. Accordingly, the proposed regulations will have an impact only upon the New York City social services district. If the underlying statute is amended to extend the option of operating a close to home initiative Statewide, the regulations would affect all social service districts and authorized voluntary agencies. In New York State there are 58 social service districts and approximately 83 voluntary authorized agencies.

#### 2. Compliance Requirements:

The proposed regulations would require that a social services district seeking to transfer a youth in a limited secure facility to a secure facility operated by OCFS notify OCFS of the intent to petition the family court seeking an order authorizing such transfer.

The proposed regulations would require that a social services district or voluntary agency proposing to establish a limited secure facility apply for an operating certificate from OCFS. The district or agency would be required to submit an application form, information on the kinds of care and services to be provided, a description of the facility, a plan for conducting background checks on staff, a staffing plan with descriptions of the duties and qualifications of staff positions, copies of proposed policies, a description of the financial resources and anticipated revenues of the facility, information on the ownership and control of the land and premises if not owned by the district or agency, and (for an agency) information on the board of directors. (These are the same requirements that apply to any district or agency applying for an operating certificate for other than limited secure facilities.) Records concerning the youth in residence will be required to be recorded in CONNECTIONS, which is New York's automated child welfare record system. Each limited secure facility would be required to have a written procedure governing the issuance of keys to staff and the use and control of keys. A facility seeking a waiver of a regulation would be required to submit a written request for such waiver. The regulations would also require that a local social services commissioner seeking to transfer a youth in a limited secure facility to secure facility operated by OCFS would have to petition the family court seeking an order for such transfer.

#### 3. Professional Services:

These proposed regulations would not create the need for additional professional services for small businesses or local governments.

#### 4. Compliance Costs:

The FY 2016 Executive Budget provides \$41.4M in state General Funds to continue providing services to all juvenile delinquents adjudicated by a family court in New York City as needing services or placement other

than placement in a secure facility. Services include, but are not limited to: Home-Like Residential Placement, Case Coordination Services, Permanency and Discharge Planning, Aftercare Treatment Planning and Oversight, Medical and Mental Health Care, Alcohol and Substance Abuse Treatment, Education while in placement, Family Engagement and Transition Planning.

5. Economic and Technological Feasibility:

Operation of a close to home initiative is not mandated, so any social services district can avoid any costs by opting to not operate such an initiative. For those districts that seek, and are approved, to operate a close to home initiative that includes limited secure facilities, the proposed regulations should not have an adverse economic impact, as the operation of close to home initiative may reduce the cost of care of youth in limited secure settings.

The proposed regulations would require that social services districts maintain case records on youth in limited secure facilities in CONNECTIONS, which is the Statewide child welfare records system. Since CONNECTIONS is maintained by the State, there would be no technological issues with this requirement. The proposed regulations would also require that limited secure facilities have closed circuit video coverage of parts of the facility. The necessary technology exists and is readily available.

6. Minimizing Adverse Impact:

Operation of a close to home initiative is not mandated, so any social services district can avoid any costs by opting to not operate such an initiative. For those districts that seek, and are approved, to operate a close to home initiative that includes limited secure facilities, the proposed regulations should not have an adverse economic impact, as the operation of close to home initiative may reduce the cost of care of youth in limited secure settings. Nothing in the proposed regulations would adversely affect small businesses. Accordingly, it is not anticipated that the proposed regulations will result in an adverse impact on local government agencies or small businesses.

7. Small Business and Local Government Participation:

The statutory authority for operation of a close to home initiative in section 404 of the Social Services Law currently restricts operation of close to home initiatives to New York City. Accordingly, the proposed regulations will have an impact only upon the New York City social services district. Draft versions of the proposed regulations have been shared with the New York City Administration for Children's Services, and their input was considered in developing the proposed regulations. There was also a discussion with representatives of other social services districts of the concepts and intentions underlying the proposed regulations, which occurred at a meeting of the New York Public Welfare Association.

**Rural Area Flexibility Analysis**

1. Types and estimated number of rural areas:

The statutory authority for operation of a close to home initiative in section 404 of the Social Services Law currently restricts operation of close to home initiatives to New York City. Accordingly, the proposed regulations have not been shared with rural areas, as rural areas would not be immediately affected by the regulations. In the event that the statute is amended to extend the option of operating a close to home initiative throughout the State, the proposed regulations would affect the 44 social services districts and approximately 35 voluntary authorized agencies that are in rural areas.

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

The proposed regulations implement the requirements of the operation of a limited secure facility by any local social service district or voluntary agency.

The proposed regulations would require that a social services district seeking to transfer a youth in a limited secure facility to a secure facility operated by OCFS notify OCFS of the intent to petition the family court seeking an order authorizing such transfer.

The proposed regulations would require that a social services district or voluntary agency proposing to establish a limited secure facility apply for an operating certificate from OCFS. The district or agency would be required to submit an application form, information on the kinds of care and services to be provided, a description of the facility, a plan for conducting background checks on staff, a staffing plan with descriptions of the duties and qualifications of staff positions, copies of proposed policies, a description of the financial resources and anticipated revenues of the facility, information on the ownership and control of the land and premises if not owned by the district or agency, and (for an agency) information on the board of directors. (These are the same requirements that apply to any district or agency applying for an operating certificate for other than limited secure facilities.) Records concerning the youth in residence will be required to be recorded in CONNECTIONS, which is New York's automated child welfare record system. Each limited secure facility would be required to have a written procedure governing the issuance of keys to staff and the use and control of keys. A facility seeking a waiver of a

regulation would be required to submit a written request for such waiver. The regulations would also require that a local social services commissioner seeking to transfer a youth in a limited secure facility to secure facility operated by OCFS would have to petition the family court seeking an order for such transfer.

The proposed regulations would not specifically require any professional services.

3. Costs:

The FY 2016 Executive Budget provides \$41.4M in state General Funds to continue providing services to all juvenile delinquents adjudicated by a family court in New York City as needing services or placement other than placement in a secure facility. Services include, but are not limited to: Home-Like Residential Placement, Case Coordination Services, Permanency and Discharge Planning, Aftercare Treatment Planning and Oversight, Medical and Mental Health Care, Alcohol and Substance Abuse Treatment, Education while in placement, Family Engagement and Transition Planning.

4. Minimizing adverse impact:

The operation of a close to home initiative that includes the operation of limited secure facilities is not mandatory. Districts that seek, and are approved, to operate a close to home initiative including limited secure facilities may save some money by lowering the costs of care of youth in limited secure programs. Accordingly, it is not anticipated that the proposed regulations will result in an adverse impact on social service districts in rural areas. The proposed regulations would not adversely affect businesses that are in rural areas.

5. Rural area participation:

The statutory authority for operation of a close to home initiative in section 404 of the Social Services Law currently restricts operation of close to home initiatives to New York City. Accordingly, the proposed regulations have not been shared with rural areas, as rural areas would not be affected by the regulations unless there is a change in the underlying statute. There was, however, a discussion with representatives of other social services districts of the concepts and intentions underlying the proposed regulations, which occurred at a meeting of the New York Public Welfare Association.

**Job Impact Statement**

The proposed regulations will not have a negative impact on jobs or employment opportunities in either public or private child welfare agencies. Accordingly, a job impact statement has not been prepared for the proposed regulations as the proposed regulations will not result in the loss of any jobs.

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## Department of Corrections and Community Supervision

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

**Applicability of Title and Definitions**

**I.D. No.** CCS-35-15-00018-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 sections 1.0(a), 1.5(a) and (b); and add section 1.5(u), (v), (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee) and (ff) to Title 7 NYCRR.

**Statutory authority:** Correction Law, section 112

**Subject:** Applicability of Title and Definitions.

**Purpose:** Update the Department name and add new definitions.

**Text of proposed rule:** 1.0 Applicability of Title.

Amend Section 1.0 as follows:

(a) This Title, other than Chapter XXX, constitutes the rules and regulations of the Department of Correction[a]s and Community Supervision [Services], located at Building No. 2, State Campus, Albany, NY 12226.

1.5 Definitions.

Amend Section 1.5(a) as follows:

(a) Department means the State Department of Correction[a]s and Community Supervision [Services].

Amend Section 1.5(b) as follows:

(b) Commissioner means the State Commissioner of Correction[a]s and Community Supervision [Services].

Add Sections (u) through (ff) as follows:

(u) *Administrative law judge (ALJ)* means a hearing officer who is authorized to conduct parole revocation proceedings.

(v) *Area office* means the community based location where supervision and services are provided by parole officers to persons released to community supervision in that geographic location.

(w) *Area supervisor/bureau chief* means the chief administrative officer of an area office which provides supervision to individuals subject to SIST or community supervision.

(x) *Community supervision* means the supervision of individuals released into the community on temporary release, presumptive release, parole, conditional release, post release supervision, or medical parole.

(y) *Inmate* means a person convicted of a felony or adjudicated as a youthful offender and who has been committed to the custody of the New York State Department of Corrections and Community Supervision under an indeterminate or determinate sentence of imprisonment. For purposes of any departmental directive, the term offender may also be used to mean an inmate, a releasee, or both.

(z) *Region* means a cluster of Area Offices where administrative, support, and program services are provided to persons subject to community supervision. A region is also the geographic area of responsibility for providing supervision.

(aa) *Regional director* means the chief administrative officer of a region.

(bb) *Releasee* means an individual released into the community on temporary release, presumptive release, parole, conditional release, post release supervision, or medical parole who is under supervision by community supervision.

(cc) *Residential mental health treatment unit* means housing for inmates with serious mental illness that is operated jointly by the Department and the Office of Mental Health and is therapeutic in nature. Such units shall not be operated as disciplinary housing units, and decisions about treatment and conditions of confinement shall be made based upon a clinical assessment of the therapeutic needs of the inmate and maintenance of adequate safety and security on the unit. Such units shall include, but not be limited to, the residential mental health unit model, the behavioral health unit model, the intermediate care program, and the intensive intermediate care program.

(dd) *Separate keeplock unit* means a housing unit that consists of cells grouped so as to provide separation from the general population, and may be used to house inmates confined pursuant to the disciplinary procedures described in regulations.

(ee) *Strict and intensive supervision and treatment (SIST)* means the regimen of supervision provided by Parole Officers to those sex offenders who were subject to a civil management petition, and found to suffer from a mental abnormality, as provided for by the Sex Offender Management and Treatment Act.

(ff) *Vocational and skills training facility* means a correctional facility designated by the Commissioner to provide a Vocational And Skills Training (VAST) program to inmates who need such service before they participate in a work release program.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kevin P. Bruen, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus - Building 2, Albany, NY 12226-2050, (518) 457-4951, email: Rules@Doccs.ny.gov

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

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

#### Consensus Rule Making Determination

The Department of Correctional and Community Supervision (DOCCS) has determined that no person is likely to object to the proposed action. The amendment of these sections updates the Department name and adds relevant definitions. See SAPA Section 102(11)(a).

#### Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal updates the Department name and adds relevant definitions.

## Department of Economic Development

### NOTICE OF ADOPTION

#### Empire State Film Production Tax Credit Program

**I.D. No.** EDV-24-15-00002-A

**Filing No.** 693

**Filing Date:** 2015-08-14

**Effective Date:** 2015-09-02

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

**Action taken:** Amendment of section 170.2(a) of Title 5 NYCRR.

**Statutory authority:** L. 2004, ch. 60

**Subject:** Empire State Film Production Tax Credit Program.

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

**Text or summary was published** in the June 17, 2015 issue of the Register, I.D. No. EDV-24-15-00002-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

## Education Department

### EMERGENCY RULE MAKING

#### Teacher Certification

**I.D. No.** EDU-22-15-00012-E

**Filing No.** 697

**Filing Date:** 2015-08-18

**Effective Date:** 2015-08-18

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

**Action taken:** Amendment sections 52.21, 80-3.3, 80-3.4 and 80-5.13; and addition of section 80-1.5(c) to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 305(1), (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1)

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

**Specific reasons underlying the finding of necessity:** Despite the high pass rates on the new and redeveloped certification examinations by candidates who have completed preparation programs and have been recommended for certification, the field has expressed concern about the pass rates for candidates who have not completed a preparation program and have not yet been recommended for certification. At its April meeting, the Board of Regents requested that the Department propose safety net options for the ALST, EAS and the CSTs. In response to the Board's request, the Department proposed at the April 2015 meeting, multiple options for safety nets applicable to each of the following certification examinations: ALST, EAS and the CSTs and an extension of the current edTPA safety net to exist contemporaneously with any other safety nets covering the remainder of the teacher certification examinations.

The proposed amendment was adopted by emergency action at the May 18-19, 2015 Regents meeting, effective May 19, 2015, in order to ensure that candidates have notice of the new safety net options for these exams. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 3, 2015. Because the Board of

Regents meets at scheduled intervals, and does not meet during the month of August, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the September 16-17, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the September meeting, would be October 7, 2015, the date a Notice of Adoption would be published in the State Register. However, the May emergency rule will expire on August 16, 2015, 90 days from its filing with the Department of State on May 23, 2014.

Emergency action to adopt the proposed rule is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the May 2015 Regents meeting remains continuously in effect until the proposed rule can be presented for adoption and take effect as a permanent rule, and thereby ensure that teacher candidates who will be applying for certification from now until June 30, 2016, have timely and sufficient notice that, if they fail on or more of the following new and redeveloped certification examinations (the ALST, the EAS, the edTPA and/or the required CST), if they meet one or more of the safety net options in lieu of retaking the failed examination, they may receive an initial certificate.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the September 16-17, 2015 Regents meeting, which is the first meeting scheduled after expiration of the 45-day period for public comment pursuant to the State Administrative Procedure Act.

**Subject:** Teacher Certification.

**Purpose:** To provide a safety net for candidates who take the new teacher certification examinations (ALST, EAS, and the redeveloped CSTs) and to extend the time validity of the existing edTPA safety net.

**Text of emergency rule:** 1. A new subdivision (c) shall be added to section 80-1.5 of the Regulations of the Commissioner of Education, effective August 17, 2015, to read as follows:

(c) *Notwithstanding any applicable provisions of Subparts 80-1, 80-3, 80-4 and 80-5 of this Part or any other provision of rule or regulation to the contrary, a candidate who applies for and meets all the requirements for a certificate on or before June 30, 2017, except that such candidate does not achieve a satisfactory level of performance on one or more of the new certification examinations (the academic literacy skills test and/or the teacher performance assessment) or the revised content specialty examination(s), as prescribed by the Commissioner, that is/are required for the certificate title sought, and such examination(s) was/were taken and failed on or after September 1, 2013 through June 30, 2016, may instead use one or more of the following safety net options, in lieu of retaking one or more of such new and/or revised certification examinations:*

(1) *Teacher performance assessment. A candidate who takes and fails to achieve a satisfactory level of performance on the teacher performance assessment (after completing and submitting for scoring the teacher performance assessment), may, in lieu of retaking the teacher performance assessment:*

(i) *receive a satisfactory score on the written assessment of teaching skills after receipt of his/her score on the teacher performance assessment and prior to June 30, 2016; or*

(ii) *pass the written assessment of teaching skills on or before April 30, 2014 (before the new certification examination requirements became effective), provided the candidate has taken and failed the teacher performance assessment prior to June 30, 2016.*

(2) *Academic Literacy Skills Test. A candidate who takes and fails to achieve a satisfactory level of performance on the academic literacy skills test may, in lieu of retaking the academic literacy skills test, submit an attestation on or before June 30, 2016, on a form prescribed by the commissioner, and signed by a dean or chief academic officer of a higher education institution or the substantial equivalent, attesting that the candidate has:*

(i) *demonstrated comparable skills to what is required by the academic literacy skills test through course completion by completing a minimum of three semester hours in coursework satisfactory to the commissioner; and*

(ii) *received a cumulative grade of a 3.0 or higher, or the substantial equivalent, in such coursework.*

(3) *Content Specialty Examination. A candidate who takes and fails to achieve a satisfactory level of performance on any required revised content specialty examination in the candidate's certification area, may, in lieu of retaking such revised content specialty test:*

(i) *receive a satisfactory score on the predecessor content specialty examination after receipt of his/her failing score on the revised content specialty tests and prior to June 30, 2016; or*

(ii) *pass the predecessor content specialty examination on or before the new certification examination requirements became operational,*

*provided the candidate has taken and failed the revised content specialty test prior to June 30, 2016.*

2. Subclause (1) of clause (b) of subparagraph (iv) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective August 17, 2015, to read as follows:

(1) [The] *For the 2015-2016 academic year, in the event that fewer than 80 percent of students, who have satisfactorily completed an institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination they have completed, such program shall submit to the Department a professional development plan that describes how the program plans to improve the readiness of faculty and the pass rate for candidates on the examinations required for a teaching certificate. Further, for the 2015-2016 academic year, the department shall conduct a registration review in the event that fewer than [80] 70 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed; provided that for the 2014-2015 and 2015-2016 academic years, the department shall not conduct a registration review based solely upon students having less than an 80 percent passage rate on the teacher performance assessment. However, programs with less than an 80 percent passage rate for the 2013-2014 and 2014-2015 academic years on the teacher performance assessment will be required to submit a professional development plan to the Department that describes how the program plans to improve the readiness of faculty and pass rate for candidates on the teacher performance assessment]. For the 2016-2017 academic year and thereafter, the department shall conduct a registration review in the event that fewer than 80 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed. For purposes of this clause, students who have satisfactorily completed the institution's program shall mean students who have met each educational requirement of the program, excluding any institutional requirement that the student pass each required examination of the New York State teacher certification examinations for a teaching certificate in order to complete the program. Students satisfactorily meeting each educational requirement may include students who earn a degree or students who complete each educational requirement without earning a degree. For determining this percentage, the department shall consider the performance on each certification examination of those students completing an examination not more than five years before the end of the academic year in which the program is completed or not later than the September 30th following the end of such academic year, academic year defined as July 1st through June 30th, and shall consider only the highest score of individuals taking a test more than once.*

3. Clause (b) of subparagraph (i) of paragraph (2) of subdivision (b) of section 80-3.3 of the Regulations of the Commissioner is amended, effective August 17, 2015, to read as follows:

(b) Except as otherwise provided in this section, for candidates applying for certification on or after May 1, 2014 or candidates who applied for certification on or before April 30, 2014 but did not meet all the requirements for an initial certificate on or before April 30, 2014, such candidates shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination teacher performance assessment, the educating all students test, the academic literacy skills test and the content specialty test(s) in the area of the certificate, except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to achieve a satisfactory level of performance on the content specialty test or the teacher performance assessment and a candidate seeking an initial certificate in the title of Educational Technology Specialist (all grades) shall not be required to achieve a satisfactory level of performance on the teacher performance assessment. [Provided however, if a candidate applies for and meets all the requirements for an initial certificate on or before June 30, 2016, except the candidate does not achieve a satisfactory level of performance on the teacher performance assessment, the candidate may meet the requirements for an initial certificate, if the candidate either:

(1) receives a satisfactory score on the written assessment of teaching skills after receipt of his/her score on the teacher performance assessment and prior to June 30, 2015; or

(2) passes the written assessment of teaching skills on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the teacher performance assessment prior to June 30, 2015.]

4. Clause (b) of subparagraph (i) of paragraph (3) of subdivision (b) of section 80-3.4 of the Regulations of the Commissioner of Education is amended, effective August 17, 2015, as follows:

(b) Candidates who hold a transitional C certificate for career

changers and others holding a graduate academic or graduate professional degree, pursuant to the requirements of section 80-5.14 this Part, and who apply for certification on or after May 1, 2014 or candidates who apply for professional certification on or before April 30, 2014 but do not meet all the requirements for a professional certificate on or before April 30, 2014 shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination teacher performance assessment. [Provided however, if a candidate applies for and meets all the requirements for an initial certificate on or before June 30, 2016, except the candidate does not achieve a satisfactory level of performance on the teacher performance assessment, the candidate may meet the requirements for an initial certificate, if the candidate either:

(1) receives a satisfactory score on the written assessment of teaching skills after receipt of his/her score on the teacher performance assessment and prior to June 30, 2015; or

(2) passes the written assessment of teaching skills on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the teacher performance assessment prior to June 30, 2015.]

5. Clause (b) of subparagraph (ii) of paragraph (1) of subdivision (b) of section 80-5.13 of the Regulations of the Commissioner of Education is amended, effective August 17, 2015, to read as follows:

(b) A candidate who applies for an initial certificate on or after May 1, 2014 or who applies for an initial certificate on or before April 30, 2014 but does not meet all the requirements for an initial certificate on April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the teacher performance assessment, if applicable for that certificate title, and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable. [Provided however, if a candidate applies for and meets all the requirements for an initial certificate on or before June 30, 2016, except the candidate does not achieve a satisfactory level of performance on the teacher performance assessment, the candidate may meet the requirements for an initial certificate, if the candidate either:

(1) receives a satisfactory score on the written assessment of teaching skills after receipt of his/her score on the teacher performance assessment and prior to June 30, 2015; or

(2) passes the written assessment of teaching skills on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the teacher performance assessment prior to June 30, 2015.]

**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. EDU-22-15-00012-EP, Issue of June 3, 2015. The emergency rule will expire October 16, 2015.

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

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY:

Education Law section 207 grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Education Law section 305(1) and (2) empowers the Commissioner of Education to be the chief executive officer of the state system of education and authorizes the Commissioner to execute educational policies determined by the Regents.

Education Law section 3001(2) establishes certification by the State Education Department as a qualification to teach in the State's public schools.

Education Law section 3004(1) authorizes the Commissioner of Education to prescribe regulations governing the certification of teachers.

Education Law section 3006(1)(b) provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Education Law section 3009(1) provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or part thereof, be collected by a district tax except as provided in the Education Law.

##### 2. LEGISLATIVE OBJECTIVES:

The amendment carries out the legislative objectives of the above-referenced statutes by providing flexibility relating to the teacher certification examinations that are required for certain teachers who are seeking to be certified in New York State.

##### 3. NEEDS AND BENEFITS:

At the February and March 2015 Board of Regents meetings, the Board discussed various safety net options for the certification exams. The Board

of Regents discussion included safety nets for the Academic Literacy and Skills Test ("ALST"), the Educating All Students ("EAS") exam, the redeveloped Content Specialty Tests (CSTs), and the teacher performance assessment ("edTPA").

We are nearly five years into the implementation of the new and revised certification examinations. The Department has already provided two separate one year extensions of the teacher performance assessment and \$ 11.5 million to CUNY, SUNY, and the independent colleges to support the provision of faculty professional development on topics such as the Common Core and the new certification examinations. However, in spite of the nearly five years of awareness raising, professional development offerings related to transition to the new assessment, and the extensions that were already provided for programs and candidates, the field has expressed concern about the pass rates for candidates who have not completed a preparation program and have not yet been recommended for certification.

In order to address the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the certification exams, the Board requested that the department propose safety net options for the teacher certification exams. The proposed amendments provide alternative methods of meeting certification requirements for those candidates that take and fail the certification exams.

For candidates who take and fail the Academic Literacy Skills Test ("ALST") on or before June 30, 2016, the candidate may submit an attestation on or before June 30, 2016, on a form prescribed by the Commissioner, and signed by a dean or chief academic officer of a higher education institution, attesting that the candidate has demonstrated comparable skills to what is required by the ALST.

For candidates who have taken and failed a revised Content Specialty Test ("CST"), they may take and pass the predecessor of the CST currently required.

Additionally, the proposed amendment would extend the safety net currently in place for the edTPA through June 30, 2016. If a candidate applies for and meets all the requirements for an initial certificate on or before September 1, 2014 except he/she does not receive a satisfactory passing score on the first attempt of the edTPA, the candidate may receive a satisfactory level of performance on the ATS-W in lieu of a satisfactory level of performance on the edTPA.

##### 4. COSTS:

Cost to the State: None.

Costs to local government: None.

Cost to private regulated parties: Candidates who take and fail the ALST, edTPA and/or CST, will need to pay a fee for the alternative safety net examination, if they choose to use the safety net option. The proposed amendment will provide additional flexibility for candidates who take and fail the certification exams on their first attempt.

Cost to regulating agency for implementation and continued administration of this rule: The State Education Department will use existing resources to implement the safety net.

##### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES.

##### 6. PAPERWORK:

There are no additional paperwork requirements beyond those currently imposed; except that for candidates who take and fail the ALST on or before June 30, 2016, the candidate may submit an attestation on or before June 30, 2016, on a form prescribed by the Commissioner, and signed by a dean or chief academic officer of a higher education institution, attesting that the candidate has demonstrated comparable skills to what is required by the ALST.

##### 7. DUPLICATION:

The amendment does not duplicate any existing State or Federal requirements.

##### 8. ALTERNATIVES:

There were no significant alternatives and none were considered.

##### 9. FEDERAL STANDARDS:

There are no Federal standards that establish requirements for the certification of teachers for service in the State's public schools.

##### 10. COMPLIANCE SCHEDULE:

The proposed amendment does not impose any additional compliance requirements or costs and instead provides additional flexibility for candidates who take and fail the certification exams on their first attempt. It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

#### Regulatory Flexibility Analysis

In order to address the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the certification examinations, the proposed amendment attempts to provide additional flexibility for candidates who take and

fail the certification examinations on their first attempt. The proposed amendment provides candidates alternative options to fulfill the requirements for certification if they take and fail the certification exams. For candidates who take and fail the Academic Literacy Skills Test ("ALST") on or before June 30, 2016, the candidate may submit an attestation on or before June 30, 2016, on a form prescribed by the Commissioner, and signed by a dean or chief academic officer of a higher education institution, attesting that the candidate has demonstrated comparable skills to what is required by the ALST.

For candidates who have taken and failed a revised Content Specialty Test ("CST"), they may take and pass the predecessor of the CST currently required.

Finally, the proposed amendment authorizes the Commissioner to issue to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2016, except he/she does not receive a satisfactory passing score on the teacher performance assessment, if required, an initial certificate; provided that subsequent to receiving a score for the teacher performance assessment and prior to June 30, 2016, the candidate receives a satisfactory level of performance on the written assessment of teaching skills examination in lieu of a satisfactory level of performance on the teacher performance assessment.

The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

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

##### **1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

The proposed amendment will affect teacher candidates who are applying for an initial certificate and who have taken and failed the new certification exams prior to June 1, 2016, including those candidates in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

In order to address the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the certification exams, the proposed amendment attempts to provide additional flexibility for candidates who take and fail the certification exams on their first attempt. The proposed amendment provides candidates alternative options to fulfill the requirements for certification if they take and fail the certification exams. For candidates who take and fail the Academic Literacy Skills Test ("ALST") on or before June 30, 2016, the candidate may submit an attestation on or before June 30, 2016, on a form prescribed by the Commissioner, and signed by a dean or chief academic officer of a higher education institution, attesting that the candidate has demonstrated comparable skills to what is required by the ALST.

For the redeveloped Content Specialty Tests ("CSTs"), candidates who have taken and failed a revised CST may take and pass the predecessor of the CST currently required on or before June 30, 2016.

Finally, the proposed amendment authorizes the Commissioner to issue to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2016 except a passing score on the teacher performance assessment, an initial certificate; provided that subsequent to receiving a score for the teacher performance assessment and prior to June 30, 2016, the candidate receives a satisfactory level of performance on the written assessment of teaching skills examination in lieu of a satisfactory level of performance on the teacher performance assessment.

The proposed amendment does not require any professional services to comply.

##### **3. COSTS:**

The proposed amendment does not impose any costs on the State, local governments, private regulated parties or the State Education Department; except that candidates who take and fail the edTPA or the CST will have to pay another certification examination fee to take advantage of the safety net option.

##### **4. MINIMIZING ADVERSE IMPACT:**

The State Education Department does not believe any changes for candidates who live or work in rural areas is warranted because uniform standards for certification are necessary across the State.

##### **5. RURAL AREA PARTICIPATION:**

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

#### **Job Impact Statement**

In order to address the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty

development around the teachers certification exams, the proposed amendment attempts to provide additional flexibility for candidates who take and fail the Academic Literacy and Skills Test ("ALST"), the redeveloped Content Specialty Tests ("CST") and the teachers performance assessment ("edTPA") on their first attempt. For candidates who take and fail the ALST on or before June 30, 2016, the candidate may submit an attestation on or before June 30, 2016, on a form prescribed by the Commissioner, and signed by a dean or chief academic officer of a higher education institution, attesting that the candidate has demonstrated comparable skills to what is required by the ALST.

For the redeveloped Content Specialty Tests ("CSTs"), through June 30, 2016, candidates who have taken and failed a revised CST may take and pass the predecessor of the CST currently required.

Finally, the proposed amendment authorizes the Commissioner to issue to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2016, except he/she does not receive a satisfactory passing score on the teacher performance assessment; an initial certificate; provided that subsequent to receiving a score for the teacher performance assessment and prior to June 30, 2016, the candidate receives a satisfactory level of performance on the written assessment of teaching skills examination in lieu of a satisfactory level of performance on the teacher performance assessment.

Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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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-35-15-00002-E

**Filing No.** 691

**Filing Date:** 2015-08-13

**Effective Date:** 2015-08-13

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

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

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

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

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

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

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

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

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

**Substance of emergency rule:** The following sections are amended:

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

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

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

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

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

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

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

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

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

Section 35.1 contains definitions for new Part 35.

Section 35.2 specifies forms for title insurance agent licensing applications.

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

Section 35.4 addresses affiliated business relationships.

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

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

Section 35.7 provides certain other minimum disclosure requirements.

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

Section 35.9 establishes record retention requirements for title insurance agents.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 10, 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, although the cost impact will likely vary among the agents and insurers affected by this regulation, the costs of these new disclosures and reporting requirements 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 the consolidated rules in July, 2014, 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 the initial proposed new Regulation 206, particularly with respect to affiliated business relationships, and title insurance corporation or title insurance agent responsibility for title insurance closers. The Department initially submitted the regulation as a proposed rulemaking that was published in the State Register on July 23, 2014. Because of the critical need to have regulations in effect on and after the September 27, 2014 effective date of Chapter 57, the Department promulgated emergency regulations effective on that date. In response to comments received during the public comment period, the Department made additional changes that were incorporated into the emergency rules, in order to clarify or eliminate unnecessary requirements. Because the proposed regulation has expired, the Department anticipates submitting a new, revised proposal in 2015 that will incorporate additional public comments that the Department has received regarding the initial proposal. To prevent disruption and confusion in the industry until the rules are finalized, however, the emergency regulation is continued unchanged from the versions in effect since September 27, 2014.

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. The emergency rules have continued unchanged since September 27, 2014.

#### **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:** The Department initially submitted the regulation as a proposed rulemaking on July 23, 2014. Prior to submission, interested parties, including an organization representing title insurance agents, were given an opportunity to comment on a draft version of these rules, in addition to their opportunity to review and comment on the proposed rulemaking when it was published. The proposed regulation has now expired and the Department anticipates submitting a new, revised proposal in 2015 that will incorporate additional public comments that the Department has received regarding the initial proposal. However, to prevent disruption and confusion in the industry until the rules are finalized, the emergency regulation is continued unchanged from the versions in effect since September 27, 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:** The Department initially submitted the regulation as a proposed rulemaking on July 23, 2014. Prior to submission, interested parties, including those located in rural areas, were given an opportunity to review and comment on a draft version of these rules, in addition to their opportunity to review and comment on the proposed rulemaking when it was published. The proposed regulation has now expired and the Department anticipates submitting a new, revised proposal in 2015 that will incorporate additional public comments that the Department has received regarding the initial proposal. However, to prevent disruption

and confusion in the industry until the rules are finalized, the emergency regulation is continued unchanged from the versions in effect since September 27, 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.

## **EMERGENCY RULE MAKING**

### **Registration and Financial Responsibility Requirements for Mortgage Loan Servicers**

**I.D. No.** DFS-35-15-00006-E

**Filing No.** 699

**Filing Date:** 2015-08-18

**Effective Date:** 2015-08-18

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

**Action taken:** Addition of Part 418 and Supervisory Procedures MB 109 and 110 to Title 3 NYCRR.

**Statutory authority:** Banking Law, art. 12-D

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

**Specific reasons underlying the finding of necessity:** Chapter 472 of the Laws of 2008, which requires mortgage loan servicers to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), went into effect on July 1, 2009. These regulations implement the registration requirement and inform servicers of the details of the registration process so as to permit applicants to prepare, submit and review applications for registrations on a timely basis.

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

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

**Purpose:** The rule implements provisions of the Subprime Lending Reform Law (ch. 472, Laws of 2008) amending Article 12-D of the Banking Law to require that persons or entities which service mortgage loans on residential real property on or after July 1, 2009 be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). Part 418 sets forth application, exemption and approval procedures for registration as a mortgage loan servicer (MLS) and financial responsibility requirements for applicants, registrants and exempted persons. Supervisory Procedure MB 109 sets forth the details of the application procedure. Supervisory Procedure MB 110 sets forth the procedure for approval of a change of control of a registered MLS.

#### **Substance of emergency rule:**

Section 418.1 summarizes the scope and application of Part 418. It notes that Sections 418.2 to 418.11 implement the requirement in Article 12-D of the Banking Law that certain mortgage loan servicers ("servicers") be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), while Sections 418.12 and 418.13 set forth financial responsibility requirements that are applicable to both registered and exempt servicers. [Section 418.14 sets forth the transitional rules.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 110.2 contains a general description of the process for applying

for approval of a change of control of a mortgage loan servicer (“servicer”) and contains information about where the necessary forms and instructions may be found.

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

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

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires November 15, 2015.

**Text of rule and any required statements and analyses may be obtained from:** Hadas A. Jacobi, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 480-5890, email: hadas.jacobi@dfs.ny.gov

#### **Regulatory Impact Statement**

##### **1. Statutory authority.**

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

Subsection (1) of Section 590 of the Banking Law was amended by the Subprime Law to add the definitions of “mortgage loan servicer” and “servicing mortgage loans”. (Section 590(1)(h) and Section 590(1)(i).)

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

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

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

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

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

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

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

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

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

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

The fee amounts for MLS registration applications and for MLS branch applications are established in accordance with Banking Law Section 18-a.2. Legislative objectives.

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

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

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

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

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

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

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

##### **3. Needs and benefits.**

The Subprime Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry. It affected a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Previously, the Department of Financial Services (formerly the Banking Department) regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also may act as agents for owners of mortgages in negotiations relating to modifications. As “middlemen,” moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender,

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

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

As noted above, these regulations relate to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It is intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers.

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

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

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

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

#### 4. Costs.

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

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

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

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

#### 5. Local government mandates.

None.

#### 6. Paperwork.

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

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

#### 7. Duplication.

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

An exemption was created under Section 418.13, from the otherwise applicable net worth and surety bond requirements, for entities that are

subject to the capital requirements applicable to insured depository institutions and are considered adequately capitalized.

#### 8. Alternatives.

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

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

#### 9. Federal standards.

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

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

#### 10. Compliance schedule.

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

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

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

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

### **Regulatory Flexibility Analysis**

#### 1. Effect of the Rule:

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

#### 2. Compliance Requirements:

The provisions of the Subprime Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of Financial Services (formerly the Banking Department) of servicers who are not mortgage bankers, mortgage brokers or exempt organizations (the “MLS Registration Regulations”), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Subprime Law relating to mortgage loan servicers (the “MLS Business Conduct Regulations”).

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

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

MLS registrations, as well as for the imposition of fines and penalties on MLSS.

3. Professional Services:

None.

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impacts:

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

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

7. Small Business and Local Government Participation:

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

**Rural Area Flexibility Analysis**

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

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

MLSS are required to meet certain financial responsibility requirements based on their level of business. The regulations authorize the Superintendent of Financial Services (formerly the Superintendent of Banks) to reduce or waive the otherwise applicable financial responsibility requirements in the case of MLSS which service not more than \$4,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden which those requirements might otherwise impose on entities operating in rural areas.

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

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

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

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

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

**Job Impact Statement**

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

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

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

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## New York State Gaming Commission

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

#### Video Lottery Gaming Facility Closing Hours

I.D. No. SGC-35-15-00001-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 5118.9 of Title 9 NYCRR.

**Statutory authority:** Tax Law, section 1617-a(b); and Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2) and 104(1) and (19)

**Subject:** Video lottery gaming facility closing hours.

**Purpose:** To remove the 4:00 a.m. restriction, which is now superseded by new subdivision (b) of section 1617-a of the Tax Law.

**Text of proposed rule:** Section 5118.9 of 9 NYCRR is amended to read as follows:

## § 5118.9. Hours of Operation.

The hours of operation of video lottery gaming at all licensed video lottery gaming facility locations shall be 20 consecutive hours per day, unless otherwise approved by the commission in writing after [a 60-day written application is made by the] a video gaming agent *applies for an exception at least 60 days in advance of a proposed change*. In no event shall video lottery gaming be conducted past [4:00 a.m.] *the time set forth in subdivision b of Section 1617-a of the Tax Law*. Public access to the video lottery gaming floor must be restricted at all times video lottery gaming is not in operation. The failure of the video lottery gaming agent to comply with the hours of operation set forth in this [Part] *section* shall be a violation of these regulations.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301, (518) 388-3407, email: gamingrules@gaming.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 New York State Gaming Commission ("Commission") is authorized to promulgate this rule by Tax Law Sections 1601 and 1604, and by Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2) and 104(1, 19).

Tax Law Section 1601 describes the purpose of the New York State Lottery for Education Law (Tax Law Article 34) as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively to aid to education. Tax Law Section 1604 authorizes the promulgation of rules governing the establishment and operation of such lottery.

Racing Law Section 103(2) provides that the Commission is responsible to operate and administer the state lottery for education, as prescribed by Article 34 of the Tax Law. Racing Law Section 104(1) provides the Commission with general jurisdiction over all gaming activities within the State and over any person, corporation or association engaged in such activities. Section 104(19) of such law authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities.

2. Legislative objectives: To establish hours of operation for facilities that operate video lottery terminals (VLTs). This rulemaking supports the mandate of establishing a state lottery, the net proceeds of which are to be applied exclusively for the purpose of providing aid to pupils with special educational needs and pupils with handicapping conditions, and supplemental aid to all school children.

3. Needs and benefits: This rulemaking is necessary to amend the Commission's VLT regulations to conform with Section 1617-a of the Tax Law, which was amended on July 22, 2014 in regards to hours of operation. Subdivision (b) of Section 1617-a of the Tax Law was amended to read that "Video lottery gaming shall only be permitted for no more than twenty consecutive hours per day and on no day shall such operation be conducted past 6:00 a.m." Previously, VLT operations could not be conducted past 4:00 a.m. Expanded hours of VLT operations will increase lottery revenues which are applied to special education needs and supplemental aid for general education.

The rule amendment will not explicitly state that VLT hours of operation may be conducted until 6:00 a.m. The rule references the statute [Tax Law 1617-a(b)], which specifically states the hours of operation.

## 4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to the VLT facility operators. The rule does not expand the 20-hour period of operation. It allows the VLT to move the hours of operation to conclude at 6:00 a.m. It is a permissive rule and does not mandate the VLT facility operator to remain open until 6:00 a.m.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated. The costs of state monitoring of gaming operations are provided by the facility operator. The state inspectors will still provide coverage for no more than 20 hours a day per facility.

c. Sources of cost evaluations: The Commission evaluated the impact of the new rule.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. Paperwork: There are no changes in paperwork requirements.

7. Duplication: There are no relevant State programs or regulations that duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: No other alternative was considered because this rulemaking is intended to amend the Commission rules to comply with statutory amendments.

9. Federal standards: The proposed amendment does not exceed any minimum standards imposed by the federal government.

10. Compliance schedule: VLT facilities have already established new hours of operation as authorized by the Tax Law amendment, so they are already in compliance with the proposed rule.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rule making because it will have no adverse effect on small businesses, local governments, rural areas, or jobs.

The rule making is necessary to conform Commission rules to recently-enacted legislation allowing later closing hours in video lottery facilities. This addition will impose no significant technological changes. No local government activity is involved. There will be no new reporting, record keeping or other compliance requirements on small businesses or local governments or rural areas. The revision will not adversely affect employment opportunities or jobs.

Based on the foregoing, no regulatory flexibility analysis for small businesses and local governments, rural area flexibility analysis, or a job impact statement is required for this proposed rulemaking.

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## Department of Health

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### EMERGENCY RULE MAKING

**Protection Against Legionella**

**I.D. No.** HLT-35-15-00005-E

**Filing No.** 696

**Filing Date:** 2015-08-17

**Effective Date:** 2015-08-17

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

**Action taken:** Addition of Part 4 to Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 225(5)(a)

**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.

**Specific reasons underlying the finding of necessity:** Improper maintenance of cooling towers can contribute to the growth and dissemination of Legionella bacteria, the causative agent of legionellosis. Legionellosis causes cough, shortness of breath, high fever, muscle aches, headaches and can result in pneumonia. Hospitalization is often required, and between 5-30% of cases are fatal. People at highest risk are those 50 years of age or older, current or former smokers, those with chronic lung diseases, those with weakened immune systems from diseases like cancer, diabetes, or kidney failure, and those who take drugs to suppress the immune system during chemotherapy or after an organ transplant. The number of cases of legionellosis reported in New York State between 2005-2014 increased 323% when compared to those reported in the previous ten year period.

Outbreaks of legionellosis have been associated with cooling towers. A cooling tower is an evaporative device that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration, or energy production system. Because water is part of the process of removing heat from a building, these devices require biocides—chemicals that kill or inhibit bacteria (including Legionella)—as means of controlling bacterial overgrowth. Overgrowth may result in the normal mists ejected from the tower having droplets containing Legionella.

For example, in 2005, a cooling tower located at ground level adjacent to a hospital in New Rochelle, Westchester County resulted in a cluster of 19 cases of legionellosis and multiple fatalities. Most of the individuals were dialysis patients or companions escorting the patients to their dialysis session. One fatality was in the local neighborhood. The cooling tower was found to have insufficient chemical treatment. The entire tower was ultimately replaced by the manufacturer in order to maintain cooling for the hospital and to protect public health. In June and July of 2008, 12 cases of legionellosis including one fatality were attributed to a small evaporative condenser on Onondaga Hill in Syracuse, Onondaga County. An investigation found that the unit was not operating properly and this resulted in the growth of microorganisms in the unit. Emergency biocide treatment was initiated and proper treatment was maintained. No new cases were then detected thereafter.

Recent work has shown that sporadic cases of community legionellosis are often associated with extended periods of wet weather with overcast skies. A study conducted by the New York State Department of Health that included data from 13 states and one United States municipality noted a dramatic increase in sporadic, community acquired legionellosis cases in May through August 2013. Large municipal sites such as Buffalo, Erie County reported 2- to 3-fold increases in cases without identifying common exposures normally associated with legionellosis. All sites in the study except one had a significant correlation, with some time lag, between legionellosis case onset and one or more weather parameters. It was concluded that large municipalities produce significant mist (droplet) output from hundreds of cooling towers during the summer months. Periods of sustained precipitation, high humidity, cloud cover, and high dew point may lead to an "urban cooling tower" effect. The "urban cooling tower" effect is when a metropolitan area with hundreds of cooling towers acts as one large cooling tower producing a large output of drift, which is entrapped by humid air and overcast skies.

More recently, 119 cases of legionellosis that included 12 fatalities (8/12/15) occurred in Bronx, NY (July-August, 2015). This event was preceded by an outbreak in Co-Op City in the Bronx, from December 2014 to January 2015, which involved 8 persons and no fatalities. Both of these outbreaks have been attributed to cooling towers, and emergency disinfection of compromised towers helped curtail these outbreaks. These events highlight the need for proper maintenance of cooling towers.

The heating, ventilation, and air-conditioning (HVAC) industry has issued guidelines on how to seasonally start a cooling tower; treat it with biocides and other chemicals needed to protect the components from scale and corrosion; and set cycles of operations that determine when fresh water is needed; and how to shut down the tower at the end of the cooling season. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has recently released a new Standard entitled Legionellosis: Risk Management for Building Water Systems (ANSI/ASHRAE Standard 188-2015). Section 7.2 of that document outlines components of the operations and management plan for cooling towers. The industry also relies on other guidance for specific treatment chemicals, emergency disinfection or decontamination procedures and other requirement.

However, none of the guidance is obligatory. Consequently, poor practice in operation and management can result in bacterial overgrowth, increases in legionellae, and mist emissions that contain a significant dose of pathogenic legionellae. This regulation requires that all owners of cooling towers ensure proper maintenance of the cooling towers, to protect the public and address this public health threat.

Further, these regulations require all general hospitals and residential health care facilities (i.e., nursing homes) to develop a sampling plan, report the results, and take necessary actions to protect the safety of their patients or residents. The details of each facility's sampling plan and remedial measures will depend on the risk factors for acquiring Legionnaires' disease in the population served by the hospital or nursing home.

Most people in nursing homes should be considered at risk, as residents are typically over 50 years of age. In general hospitals, persons at risk include those over 50 years of age, as well as those receiving chemotherapy, those undergoing transplants, and other persons housed on healthcare units that require special precautions. Additional persons who might be at increased risk for acquiring Legionnaires' disease include persons on high-dose steroid therapy and persons with chronic lung disease. Certain facilities with higher risk populations, such as those with hematopoietic stem-cell transplant (HSCT) and solid organ transplant units, require more protective measures.

An environmental assessment involves reviewing facility characteristics, hot and cold water supplies, cooling and air handling systems and any chemical treatment systems. The purpose of the assessment is to discover any vulnerabilities that would allow for amplification of Legionella spp. and to determine appropriate response actions in advance of any environmental sampling for Legionella. Initial and ongoing assessment should be conducted by a multidisciplinary team that represents the expertise, knowledge and functions related to the facility's operation and service. A team should include, at a minimum, representatives from the following groups: Infection Control; Physical Facilities Management; Engineering; Clinicians; Laboratory; and Hospital Management.

Thus, to protect the public from the immediate threat posed by Legionella, the Commissioner of Health and the Public Health and Health Planning Council have determined it necessary to file these regulations on an emergency basis. Public Health Law § 225, in conjunction with State Administrative Procedure Act § 202(6) empowers the Council and the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest.

**Subject:** Protection Against Legionella.

**Purpose:** To protect the public from the immediate threat posed by Legionella.

**Text of emergency rule:** Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 225(5)(a) of the Public Health Law, Part 4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is added, to be effective upon filing with the Secretary, to read as follows:

#### 4.1 Scope.

All owners of cooling towers, and all general hospitals and residential health care facilities as defined in Article 28 of the Public Health Law, shall comply with this Part.

#### 4.2 Definitions.

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

(a) **Building.** The term "building" means any structure used or intended for supporting or sheltering any use or occupancy. The term shall be construed as if followed by the phrase "structure, premises, lot or part thereof" unless otherwise indicated by the text.

(b) **Commissioner.** The term "commissioner" means the New York State Commissioner of Health.

(c) **Cooling Tower.** The term "cooling tower" means a cooling tower, evaporative condenser or fluid cooler that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration or energy production system.

(d) **Owner.** The term "owner" means any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of the premises.

#### 4.3 Registration.

All owners of cooling towers shall register such towers with the department within 30 days after the effective date of this Part. Thereafter, all owners of cooling towers shall register such towers with the department prior to initial operation, and whenever any owner of the cooling tower changes. Such registration shall be in a form and manner as required by the commissioner and shall include, at a minimum, the following information:

(a) street address of the building at which the cooling tower is located, with building identification number, if any;

(b) intended use of the cooling tower;

(c) name(s), address(es), telephone number(s), and email address(es) of all owner(s) of the building;

(d) name of the manufacturer of the cooling tower;

(e) model number of the cooling tower;

(f) specific unit serial number of the cooling tower;

(g) cooling capacity (tonnage) of the cooling tower;

(h) basin capacity of the cooling tower;

(i) whether systematic disinfection is maintained manually, through timed injection, or through continuous delivery;

(j) the contractor or employee engaged to inspect and certify the cooling tower; and

(k) commissioning date of the cooling tower.

#### 4.4 Culture sample collection and testing; cleaning and disinfection.

(a) All owners of cooling towers shall collect samples and obtain culture testing:

(1) within 30 days of the effective date of this Part, unless such culture testing has been obtained within 30 days prior to the effective date of this Part, and shall take immediate actions in response to such testing, including interpreting Legionella culture results, if any, as specified in Appendix 4-A.

(2) in accordance with the maintenance program and plan, and shall take immediate actions in response to such testing as specified in the plan, including interpreting Legionella culture results, if any, as specified in Appendix 4-A; provided that if a maintenance program and plan has not yet been obtained in accordance with section 4.6 of this Part, bacteriological culture samples and analysis (dip slides or heterotrophic plate counts) to assess microbiological activity shall be obtained, at intervals not exceeding 90 days while the tower is in use, and any immediate action in response to such testing shall be taken, including interpreting Legionella culture results, if any, as specified in Appendix 4-A.

(b) Any person who performs cleaning and disinfection shall be a commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower and certified in accordance with the requirements of Article 33 of the Environmental Conservation Law and 6 NYCRR Part 325, or a pesticide apprentice under the supervision of a certified applicator.

(c) Only biocide products registered by the New York State Department of Environmental Conservation may be used in disinfection.

(d) All owners shall ensure that all cooling towers are cleaned and disinfected when shut down for more than five days.

#### 4.5 Inspection and certification.

(a) *Inspection.* All owners of cooling towers shall inspect such towers within 30 days of the effective date of this Part, unless such tower has been inspected within 30 days prior to the effective date of this Part. Thereafter, owners shall ensure that all cooling towers are inspected at intervals not exceeding every 90 days while in use. All inspections shall be performed by a: New York State licensed professional engineer; certified industrial hygienist; certified water technologist; or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015, as incorporated by section 4.6 of this Part.

(1) Each inspection shall include an evaluation of:

(i) the cooling tower and associated equipment for the presence of organic material, biofilm, algae, and other visible contaminants;

(ii) the general condition of the cooling tower, basin, packing material, and drift eliminator;

(iii) water make-up connections and control;

(iv) proper functioning of the conductivity control; and

(v) proper functioning of all dosing equipment (pumps, strain gauges).

(2) Any deficiencies found during inspection will be reported to the owner for immediate corrective action. A person qualified to inspect pursuant to paragraph (a) of this section shall document all deficiencies, and all completed corrective actions.

(3) All inspection findings, deficiencies, and corrective actions shall be reported to the owner, recorded, and retained in accordance with this Part, and shall also be reported to the department in accordance with section 4.10 of this Part.

(b) *Certification.* Each year, the owner of a cooling tower shall obtain a certification from a person identified in paragraph (a) of this section, that such cooling tower was inspected, tested, cleaned, and disinfected in compliance with this Part, that the condition of the cooling tower is appropriate for its intended use, and that a maintenance program and plan has been developed and implemented as required by this Part. Such certification shall be obtained by November 1, 2016, and by November 1 of each year thereafter. Such certification shall be reported to the department.

4.6 Maintenance program and plan.

(a) By March 1, 2016, and thereafter prior to initial operation, owners shall obtain and implement a maintenance program and plan developed in accordance with section 7.2 of Legionellosis: Risk Management for Building Water Systems (ANSI/ASHRAE 188-2015), 2015 edition with final approval date of June 26, 2015, at pages 7-8, incorporated herein by reference. The latest edition of ASHRAE 188-2015 may be purchased from the ASHRAE website ([www.ashrae.org](http://www.ashrae.org)) or from ASHRAE Customer Service, 1791 Tullie Circle, NE, Atlanta, GA 30329-2305. E-mail: [orders@ashrae.org](mailto:orders@ashrae.org). Fax: 678-539-2129. Telephone: 404-636-8400, or toll free 1-800-527-4723. Copies are available for inspection and copying at: Center for Environmental Health, Corning Tower Room 1619, Empire State Plaza, Albany, NY 12237.

(b) In addition, the program and plan shall include the following elements:

(1) a schedule for routine bacteriological sampling and analysis (dip slides or heterotrophic plate counts) to assess microbiological activity and a schedule for Legionella sampling and culture analysis; provided that where the owner is a general hospital or residential health care facility, as defined in Article 28 of the Public Health Law, routine testing shall be performed at a frequency in accordance with the direction of the department.

(2) emergency sample collection and submission of samples for Legionella culture testing to be conducted in the case of events including, but not limited to:

(i) power failure of sufficient duration to allow for the growth of bacteria;

(ii) loss of biocide treatment sufficient to allow for the growth of bacteria;

(iii) failure of conductivity control to maintain proper cycles of concentration;

(iv) a determination by the commissioner that one or more cases of legionellosis is or may be associated with the cooling tower, based upon epidemiological data or laboratory testing; and

(v) any other conditions specified by the commissioner.

(3) immediate action in response to culture testing, including interpreting Legionella culture results, if any, as specified in Appendix 4-A; provided that where the owner is a general hospital or residential health care facility, as defined in Article 28 of the Public Health Law, the provisions shall additionally require immediately contacting the department for further guidance, but without any delay in taking any action specified in Appendix 4-A.

(c) An owner shall maintain a copy of the plan required by this subdivision on the premises where a cooling tower is located. Such plan shall be

made available to the department or local health department immediately upon request.

4.7 Recordkeeping.

An owner shall keep and maintain records of all inspection findings, deficiencies, corrective actions, cleaning and disinfection, and tests performed pursuant to this Part, and certifications, for at least three years. An owner shall maintain a copy of the maintenance program and plan required by this Part on the premises where a cooling tower is located. Such records and plan shall be made available to the department or local health department immediately upon request.

4.8 Discontinued use.

The owner of a cooling tower shall notify the department within 30 days after removing or permanently discontinuing use of a cooling tower. Such notice shall include a statement that such cooling tower has been disinfected and drained in accordance with the same procedures as set forth in the shutdown plan, as specified in the maintenance program and plan required pursuant to this Part.

4.9 Enforcement.

(a) An officer, employee or agent of the department or local health department may enter onto any property to inspect the cooling tower for compliance with the requirements of this Part, in accordance with applicable law.

(b) Where an owner does not register, obtain certification, clean or disinfect, culture test or inspect a cooling tower within the time and manner set forth in this Part, the department or local health department may determine that such condition constitutes a nuisance and may take such action as authorized by law. The department or local health department may also take any other action authorized by law.

(c) A violation of any provision of this Part is subject to all civil and criminal penalties as provided for by law. Each day that an owner remains in violation of any provision of this Part shall constitute a separate and distinct violation of such provision.

4.10 Electronic registration and reporting.

(a)(1) Within 30 days of the effective date of this Part, and thereafter within 10 days after any action required by this Part, owners shall electronically input the following information in a statewide electronic system designated by the commissioner:

(i) registration information;

(ii) date of last routine culture sample collection, sample results, and date of any required remedial action;

(iii) date of any legionella sample collection, sample results, and date of any required remedial action;

(iv) date of last cleaning and disinfection;

(v) dates of start and end of any shutdown for more than five days;

(vi) date of last certification and date when it was due;

(vii) date of last inspection and date when it was due;

(viii) date of discontinued use; and

(ix) such other information as shall be determined by the department.

(2) The commissioner may suspend this requirement in the event that the electronic system is not available.

(b) The data in the system referenced in paragraph (a) shall be made publicly available, and shall be made fully accessible and searchable to any local health department. Nothing in this Part shall preclude a local health department from requiring registration and reporting with a local system or collecting fees associated with the administration of such system.

4.11 Health care facilities.

(a) All general hospitals and residential health care facilities, as defined in Article 28 of the Public Health Law, shall, as the department may determine appropriate:

(1) adopt a Legionella sampling plan for its facilities' potable water distribution system;

(2) report the results of such sampling; and

(3) take necessary responsive actions.

(b) With respect to such general hospitals and residential health care facilities, the department shall investigate to what extent, if any, requirements more stringent than those set forth in this Part are warranted.

4.12 Severability.

If any provisions of this Part or the application thereof to any person or entity or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons, entities, and circumstances.

Appendix 4-A

Interpretation of Legionella Culture Results from Cooling Towers

Legionella Test Results in CFU1/ml	Approach
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No detection (< 10 CFU/ml)

Maintain treatment program and Legionella monitoring.

For levels at ≥ 10 CFU/ml but < 1000 CFU/ml perform the following:

- Review treatment program.
- Institute immediate online disinfection<sup>2</sup> to help with control
- Retest the water in 3 – 7 days.
- Continue to retest at the same time interval until two consecutive readings show acceptable improvement, as determined by a person identified in 10 NYCRR 4.6. Continue with regular maintenance strategy.
- If < 100 CFU/ml repeat online disinfection<sup>2</sup> and retest.
- If ≥ 100 CFU/ml but < 1000 CFU/ml further investigate the water treatment program and immediately perform online disinfection.<sup>2</sup> Retest and repeat attempts at control strategy.
- If ≥ 1000 CFU/ml undertake control strategy as noted below.

For levels ≥ 1000 CFU/ml perform the following:

- Review the treatment program
- Institute immediate online decontamination<sup>3</sup> to help with control
- Retest the water in 3 – 7 days.
- Continue to retest at the same time interval until two consecutive readings show acceptable improvement, as determined by a person identified in 10 NYCRR 4.6. Continue with regular maintenance strategy.
- If < 100 CFU/ml repeat online disinfection<sup>2</sup> and retest;
- If ≥ 100 CFU/ml but < 1000 CFU/ml further investigate the water treatment program and immediately perform online disinfection.<sup>2</sup> Re-test and repeat attempts at control strategy.
- If ≥ 1000 CFU/ml carry out system decontamination<sup>4</sup>

<sup>1</sup> Colony forming units.

<sup>2</sup> Online disinfection means – Dose the cooling tower water system with either a different biocide or a similar biocide at an increased concentration than currently used.

<sup>3</sup> Online decontamination means – Dose the recirculation water with a chlorine-based compound equivalent to at least 5 mg/l (ppm) free residual chlorine for at least one hour; pH 7.0 to 7.6.

<sup>4</sup> System decontamination means – Maintain 5 to 10 mg/l (ppm) free residual chlorine for a minimum of one hour; drain and flush with disinfected water; clean wetted surface; refill and dose to 1 – 5 mg/l (ppm) of free residual chlorine at pH 7.0 – 7.6 and circulate for 30 minutes. Refill, re-establish treatment and retest for verification of treatment.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 14, 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

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but will be published in the *Register* within 30 days of the rule’s effective date.

**Office of Mental Health**

**NOTICE OF ADOPTION**

**PROS; Medical Assistance Payment Outpatient Programs; Medical Assistance Payment for Comp. Psychiatric Emergency Programs (CPEP)**

**I.D. No.** OMH-25-15-00006-A

**Filing No.** 698

**Filing Date:** 2015-08-18

**Effective Date:** 2015-09-02

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

**Action taken:** Amendment of Parts 512, 588 and 591 of Title 14 NYCRR. **Statutory authority:** Mental Hygiene Law, sections 7.09, 31.04, 43.02(a) and (c); Social Services Law, sections 364 and 364-a; L. 2014, ch. 60

**Subject:** PROS; Medical Assistance Payment Outpatient Programs; Medical Assistance Payment for Comp. Psychiatric Emergency Programs (CPEP).

**Purpose:** Increase Medicaid fees paid to certain OMH-licensed programs consistent with enacted State Budgets and chapter 60 of Laws of 2014.

**Text or summary was published** in the June 24, 2015 issue of the Register, I.D. No. OMH-25-15-00006-EP.

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

**Text of rule and any required statements and analyses may be obtained from:** Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: regs@omh.ny.gov

**Initial Review of Rule**

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

**Assessment of Public Comment**

The agency received no public comment.

**Public Service Commission**

**NOTICE OF ADOPTION**

**Extension of NYAW’s System Improvement Charge Mechanism**

**I.D. No.** PSC-48-14-00012-A

**Filing Date:** 2015-08-14

**Effective Date:** 2015-08-14

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

**Action taken:** On 8/13/15, the PSC adopted the terms of a joint proposal for New York American Water Company, Inc. (NYAW) that extends the System Improvement Charge mechanism.

**Statutory authority:** Public Service Law, sections 89-b and 89-c

**Subject:** Extension of NYAW’s System Improvement Charge mechanism.

**Purpose:** To extend NYAW’s System Improvement Charge mechanism.

**Substance of final rule:** The Commission, on August 13, 2015, adopted the terms of a Joint Proposal between New York American Water Company, Inc. (NYAW) and the Department of Public Service Staff to extend NYAW’s System Improvement Charge (SIC) mechanism for two years starting April 1, 2015, allowing for updates to projects covered under the SIC mechanism, and directed NYAW to file SIC Statement No. 8, 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-0489SA1)

**NOTICE OF ADOPTION****Waiver for 16 NYCRR Part 501 and Section 28 of UWW's Tariff**

**I.D. No.** PSC-04-15-00014-A

**Filing Date:** 2015-08-14

**Effective Date:** 2015-08-14

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

**Action taken:** On 8/13/15, the PSC adopted an order granting United Water New Rochelle (UWNR) and Saber Dobbs Ferry, LLC (Saber) a waiver for 16 NYCRR Part 501 and section 28 of United Water Westchester, Inc.'s (UWW) tariff regarding a proposed main extension.

**Statutory authority:** Public Service Law, sections 89-b and 89-c

**Subject:** Waiver for 16 NYCRR Part 501 and section 28 of UWW's tariff.

**Purpose:** To grant UWNR and Saber a waiver for 16 NYCRR Part 501 and section 28 of UWW's tariff.

**Text or summary was published** in the January 28, 2015 issue of the Register, I.D. No. PSC-04-15-00014-P.

**Substance of final rule:** The Commission, on August 13, 2015, adopted an order granting United Water New Rochelle (UWNR) and Saber Dobbs Ferry, LLC (Saber) a waiver for 16 NYCRR Part 501 and Section 28 of United Water Westchester, Inc.'s (UWW) tariff regarding a proposed main extension, subject to the terms and conditions set forth in the order.

**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-0556SA1)

**NOTICE OF ADOPTION****Temporary Rate Surcharge Related to an RSSA**

**I.D. No.** PSC-09-15-00003-A

**Filing Date:** 2015-08-14

**Effective Date:** 2015-08-14

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

**Action taken:** On 8/13/15, the PSC adopted an order establishing a temporary rate surcharge to mitigate potential rate impacts related to a Reliability Support Services Agreement (RSSA).

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

**Subject:** Temporary rate surcharge related to an RSSA.

**Purpose:** To establish a temporary rate surcharge related to an RSSA.

**Substance of final rule:** The Commission, on August 13, 2015, adopted an order establishing a temporary rate surcharge for Rochester Gas and Electric Corporation (RG&E or the Company) for collection of revenues, subject to refund, to offset the potential costs of a Reliability Support Services Agreement (RSSA or Agreement) between RG&E and R.E. Ginna Nuclear Power Plant, LLC (Ginna), if the RSSA is ultimately approved by the Commission, and directed RG&E to file tariff revisions necessary to effectuate the temporary surcharge, 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-0270SA2)

**NOTICE OF ADOPTION****Tariff Filing of Central Hudson Reflecting LED Lighting**

**I.D. No.** PSC-11-15-00025-A

**Filing Date:** 2015-08-14

**Effective Date:** 2015-08-14

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

**Action taken:** On 8/13/15, the PSC adopted an order approving, with modifications, Central Hudson Gas and Electric Corporation's tariff filing to update S.C. No. 8 — Public Street and Highway Lighting to reflect LED lighting in P.S.C. No. 15 — Electricity.

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

**Subject:** Tariff filing of Central Hudson reflecting LED lighting.

**Purpose:** To approve Central Hudson's tariff filing to reflect LED lighting in P.S.C. No. 15 — Electricity.

**Substance of final rule:** The Commission, on August 13, 2015, adopted an order approving, with modifications, Central Hudson Gas and Electric Corporation's (Central Hudson) tariff filing to update S.C. No. 8 — Public Street and Highway Lighting to reflect LED lighting in P.S.C. No. 15 — Electricity, and directed Central Hudson to file further revisions to implement the provisions, 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-0126SA1)

**NOTICE OF ADOPTION****Financing, Review of Ownership Transfer and Restructuring Transactions for an Electric Transmission Facility**

**I.D. No.** PSC-20-15-00009-A

**Filing Date:** 2015-08-17

**Effective Date:** 2015-08-17

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

**Action taken:** On 8/13/15, the PSC adopted an order approving Cross-Sound Cable Company, LLC's (Cross-Sound) petition on electric transmission facility financings and a review of ownership transfer and restructuring transactions.

**Statutory authority:** Public Service Law, sections 5(2), 65(1), (2), (3), 66(1), (2), (3), (5), 69 and 70

**Subject:** Financing, review of ownership transfer and restructuring transactions for an electric transmission facility.

**Purpose:** To approve Cross-Sound's petition on financing and a review of ownership transfer and restructuring transactions.

**Substance of final rule:** The Commission, on August 13, 2015, adopted an order approving Cross-Sound Cable Company, LLC's (Cross-Sound) petition on electric transmission facility financings and a review of ownership transfer and restructuring transactions, 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-0243SA1)

**NOTICE OF ADOPTION****Extension of NYAW's System Improvement Charge Mechanism**

**I.D. No.** PSC-22-15-00013-A

**Filing Date:** 2015-08-14

**Effective Date:** 2015-08-14

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

**Action taken:** On 8/13/15, the PSC adopted the terms of a joint proposal for New York American Water Company, Inc. (NYAW) that extends the System Improvement Charge mechanism.

**Statutory authority:** Public Service Law, sections 89-b and 89-c

**Subject:** Extension of NYAW's System Improvement Charge mechanism.

**Purpose:** To extend NYAW's System Improvement Charge mechanism.

**Substance of final rule:** The Commission, on August 13, 2015, adopted the terms of a Joint Proposal between New York American Water Company, Inc. (NYAW) and the Department of Public Service Staff to extend NYAW's System Improvement Charge (SIC) mechanism for two years starting April 1, 2015, 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-0489SA2)

**NOTICE OF ADOPTION****Transfer of Ownership Interests by Saranac for an Electric Generation Facility**

**I.D. No.** PSC-22-15-00014-A

**Filing Date:** 2015-08-17

**Effective Date:** 2015-08-17

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

**Action taken:** On 8/13/15, the PSC adopted an order approving a transfer of ownership interests by Saranac Power Partners, L. P. (Saranac) for a 252 MW electric generation facility located in Plattsburgh, New York.

**Statutory authority:** Public Service Law, sections 5(2) and 70

**Subject:** Transfer of ownership interests by Saranac for an electric generation facility.

**Purpose:** To approve a transfer of ownership interests by Saranac for an electric generation facility.

**Substance of final rule:** The Commission, on August 13, 2015, adopted an order approving a transfer of ownership interests by Saranac Power Partners, L. P. (Saranac) for a 252 MW electric generation facility located in Plattsburgh, New York, 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-0208SA1)

**PROPOSED RULE MAKING  
HEARING(S) SCHEDULED****Major Electric Revenue Increase**

**I.D. No.** PSC-35-15-00008-P

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

**Proposed Action:** The Commission is considering a proposal filed by Massena Electric Department to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 2 — Electric.

**Statutory authority:** Public Service Law, sections 5, 65 and 66

**Subject:** Major electric revenue increase.

**Purpose:** To consider an increase to its annual electric revenues by approximately \$857,227 or 6.2%.

**Public hearing(s) will be held at:** 10:00 a.m. (Evidentiary Hearing)\*, October 27, 2015 and continuing daily as needed at Department of Public Service, Agency Building Three, 3rd Fl. Hearing Rm., Albany, NY 12223.

\*On occasion, there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website ([www.dps.ny.gov](http://www.dps.ny.gov)) under Case 15-E-0307.

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

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

**Substance of proposed rule:** The Commission is considering a proposal filed by Massena Electric Department (Massena) to increase its electric revenues for the rate year ending March 31, 2017 by approximately \$857,227 or 6.2%. Massena's requested increase results in an increase in delivery revenues of \$4.65 or 5.3% for an average residential customer's total monthly bill using 1,223 kWh. The initial suspension period for the proposed filing runs through October 28, 2015. The Commission may adopt, in whole or in part, modify or reject terms set forth in Massena's proposal and other related matters.

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

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

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

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

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

(15-E-0307SP1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Deferral of Incremental Storm Restoration Expenses**

**I.D. No.** PSC-35-15-00009-P

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

**Proposed Action:** The PSC is considering a petition filed by Central Hudson Gas & Electric Corporation seeking authority to defer \$5.3 million of incremental electric storm restoration expenses incurred on November 26-27, 2014.

**Statutory authority:** Public Service Law, sections 4(1), 65, 66(1), (9) and (12)

**Subject:** Deferral of incremental storm restoration expenses.

**Purpose:** Consideration of Central Hudson Gas & Electric's request to defer incremental expenses incurred during storm restoration work.

**Substance of proposed rule:** Central Hudson Gas & Electric Corporation (Central Hudson or Company) has requested permission to defer for future rate recovery, with carrying charges, \$5.3 million in incremental electric storm restoration expenses related to the 2014 Thanksgiving snow storm on November 26-27, 2014. The Company proposes to defer such expenses and the associated deferred income taxes as a regulatory asset in Account 182. Central Hudson proposes to offset the deferred costs and carrying charges against the electric net regulatory liability account established in Case 14-E-0318. The Commission may adopt, reject or modify, in whole or in part, Central Hudson's request, and may also consider 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.

(15-E-0464SP1)

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

**Notice of Intent to Submeter Electricity**

**I.D. No.** PSC-35-15-00010-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent filed by 605 West 42nd Owner LLC, to submeter electricity at 605 West 42nd Street, New York, New York.

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

**Subject:** Notice of Intent to Submeter Electricity.

**Purpose:** To consider the request of 605 West 42nd Owner LLC to submeter electricity at 605 West 42nd Street, New York, New York.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent filed by 605 West 42nd Owner LLC, to submeter electricity at 605 West 42nd Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., and to take other actions necessary to address the Notice of Intent.

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

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

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

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

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

(15-E-0463SP1)

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

**Demand Based Standby Service Charges Levied Upon Offset  
Tariff Customers Accounts**

**I.D. No.** PSC-35-15-00011-P

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

**Proposed Action:** The Commission is considering a petition filed by Related Companies and Oxford Properties proposing a revision to the calculation of demand for offset tariff customers subject to standby service rates.

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

**Subject:** Demand based Standby Service Charges levied upon Offset Tariff customers accounts.

**Purpose:** To consider a revision to demand based Standby Service Charges levied upon Offset Tariff customers accounts.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by Related Companies and Oxford Properties (Related) for the calculation of demand for offset tariff customers subject to standby service rates. Related requests that demand-based Standby Service charges levied upon Offset Tariff customers should be based on the coincident demand of Offset customer accounts rather than based on the independent peak of each account. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-E-0452SP1)

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

**Consideration of Consequences Against Spectrum Gas &  
Electric, LLC for Violations of the UBP**

**I.D. No.** PSC-35-15-00012-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 consequences against Spectrum Gas & Electric, LLC for violations of the Uniform Business Practices (UBP).

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

**Subject:** Consideration of consequences against Spectrum Gas & Electric, LLC for violations of the UBP.

**Purpose:** To consider consequences against Spectrum Gas & Electric, LLC for violations of the UBP.

**Substance of proposed rule:** The Public Service Commission is considering consequences against Spectrum Gas & Electric, LLC, an energy service company (ESCO), for violations of the Uniform Business Practices (UBP), which include failure to submit required filings to the Secretary to maintain ESCO eligibility status. The Commission issued an Order to Show Cause in Case 15-M-0260 on June 18, 2015, setting forth possible consequences that may be imposed upon ESCO's for violations of the UBP.

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

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

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

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

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

(15-M-0260SP1)

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

**Consideration of Consequences Against Energy Your Way, LLC for Violations of the UBP**

**I.D. No.** PSC-35-15-00013-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 consequences against Energy Your Way, LLC for violations of the Uniform Business Practices (UBP).

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

**Subject:** Consideration of consequences against Energy Your Way, LLC for violations of the UBP.

**Purpose:** To consider consequences against Energy Your Way, LLC for violations of the UBP.

**Substance of proposed rule:** The Public Service Commission is considering consequences against Energy Your Way, LLC, an energy service company (ESCO), for violations of the Uniform Business Practices (UBP), which include failure to submit required filings to the Secretary to maintain ESCO eligibility status. The Commission issued an Order to Show Cause in Case 15-M-0247 on June 18, 2015, setting forth possible consequences that may be imposed upon ESCO's for violations of the UBP.

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

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

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

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

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

(15-M-0247SP1)

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

**Consideration of Consequences Against Light Power & Gas, LLC for Violations of the UBP**

**I.D. No.** PSC-35-15-00014-P

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

**Proposed Action:** The Commission is considering consequences against Light Power & Gas, LLC for violations of the Uniform Business Practices (UBP).

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

**Subject:** Consideration of consequences against Light Power & Gas, LLC for violations of the UBP.

**Purpose:** To consider consequences against Light Power & Gas, LLC for violations of the UBP.

**Substance of proposed rule:** The Public Service Commission is consider-

ing consequences against Light Power & Gas, LLC, an energy service company (ESCO), for violations of the Uniform Business Practices (UBP), which include failure to submit required filings to the Secretary to maintain ESCO eligibility status. The Commission issued an Order to Show Cause in Case 15-M-0259 on June 18, 2015, setting forth possible consequences that may be imposed upon ESCO's for violations of the UBP.

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

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

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

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

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

(15-M-0259SP1)

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

**Consideration of Consequences Against National Power & Gas, Inc. for Violations of the UBP**

**I.D. No.** PSC-35-15-00015-P

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

**Proposed Action:** The Commission is considering consequences against National Power & Gas, Inc. for violations of the Uniform Business Practices (UBP).

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

**Subject:** Consideration of consequences against National Power & Gas, Inc. for violations of the UBP.

**Purpose:** To consider consequences against National Power & Gas, Inc. for violations of the UBP.

**Substance of proposed rule:** The Public Service Commission is considering consequences against National Power & Gas, Inc., an energy service company (ESCO), for violations of the Uniform Business Practices (UBP), which include failure to submit required filings to the Secretary to maintain ESCO eligibility status. The Commission issued an Order to Show Cause in Case 15-M-0261 on June 18, 2015, setting forth possible consequences that may be imposed upon ESCO's for violations of the UBP.

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

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

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

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

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

(15-M-0261SP1)

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

**Consideration of Consequences Against Engineered Energy Solutions, LLC for Violations of the UBP**

**I.D. No.** PSC-35-15-00016-P

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

**Proposed Action:** The Commission is considering consequences against Engineered Energy Solutions, LLC for violations of the Uniform Business Practices (UBP).

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

**Subject:** Consideration of consequences against Engineered Energy Solutions, LLC for violations of the UBP.

**Purpose:** To consider consequences against Engineered Energy Solutions, LLC for violations of the UBP.

**Substance of proposed rule:** The Public Service Commission is considering consequences against Engineered Energy Solutions, LLC, an energy service company (ESCO), for violations of the Uniform Business Practices (UBP), which include failure to submit required filings to the Secretary to maintain ESCO eligibility status. The Commission issued an Order to Show Cause in Case 15-M-0263 on June 18, 2015, setting forth possible consequences that may be imposed upon ESCO's for violations of the UBP.

**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-M-0263SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Consideration of Consequences Against Ipsum Solutions, Inc. for Violations of the UBP**

**I.D. No.** PSC-35-15-00017-P

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

**Proposed Action:** The Commission is considering consequences against Ipsum Solutions, Inc. for violations of the Uniform Business Practices (UBP).

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

**Subject:** Consideration of consequences against Ipsum Solutions, Inc. for violations of the UBP.

**Purpose:** To consider consequences against Ipsum Solutions, Inc. for violations of the UBP.

**Substance of proposed rule:** The Public Service Commission is considering consequences against Ipsum Solutions, Inc., an energy service company (ESCO), for violations of the Uniform Business Practices (UBP), which include failure to submit required filings to the Secretary to maintain ESCO eligibility status. The Commission issued an Order to Show Cause in Case 15-M-0262 on June 18, 2015, setting forth possible consequences that may be imposed upon ESCO's for violations of the UBP.

**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-M-0262SP1)

## Department of State

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

#### Posting Requirements

**I.D. No.** DOS-35-15-00003-EP

**Filing No.** 694

**Filing Date:** 2015-08-14

**Effective Date:** 2015-08-14

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

**Proposed Action:** Addition of section 160.10(e) to Title 19 NYCRR.

**Statutory authority:** Executive Law, section 91; and General Business Law, sections 402(5) and 404

**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.

**Specific reasons underlying the finding of necessity:** The Department of State ("Department") is charged, inter alia, with the enforcement of New York General Business Law ("NY GBL") Article 27, which relates to the appearance enhancement industry. A principal purpose behind the enactment of Article 27 was to provide a system of licensure of appearance enhancement businesses and operators that would both allow for the greatest possible flexibility in the establishment of regulated services and implement measures to protect those inextricably entwined in the industry. Consistent with this legislative intent of Article 27, the Department is empowered to issue regulations which protect the general welfare of the public, including licensed nail specialists. Notwithstanding existing laws and regulations, a number of businesses have taken unfair advantage of a significant number of licensed nail specialists who contribute to the community and economy. The ease with which some establishments have been able to deprive workers of fair wages and other rights is due in part to the inadequacy of effective efforts to educate workers and consumers on such rights. On July 15, 2015 Governor Cuomo signed into law new legislation (S.5966) which among other things obligates appearance enhancement business to provide a wage bond guaranteeing the wages legally due workers. The new law further supports continuation of this emergency regulation by educating business owners, workers and patrons about the right to fair wages.

To help ensure that consumers and workers, who are often vulnerable to abuses, are aware of certain workers' rights, the Department finds that it is necessary to continue to require public posting of a Bill of Rights sign at every establishment that offers such services. The enhancement of public safety, health and general welfare necessitates the re-adoption of this regulation on an emergency basis. The Department finds that greater public and worker awareness of fair wages and other rights should reduce such unlawful activity and potential abuses by unscrupulous business owners. This rule was originally filed on an emergency basis on May 18, 2015 and first appeared in the State Register on June 3, 2015.

**Subject:** Posting requirements.

**Purpose:** To require posting of a Bill of Rights sign at all businesses where nail specialist services are offered.

**Text of emergency/proposed rule:** New subdivision (e) is added to section 160.10 of Title 19 of the NYCRR.

Section 160.10. Posting requirements

(e) An owner who permits the practice of nail specialty to be conducted in an appearance enhancement business shall conspicuously post a nail practitioner bill of rights in a place where it will be readily visible by practitioners and the public. The Department of State shall furnish such sign to every place of business that permits the practice of nail specialty.

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 12, 2015.

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

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

**2. Legislative Objectives:**

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

**3. Needs and Benefits:**

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

**4. Costs:****a. Costs to Regulated Parties:**

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

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

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

**5. Local Government Mandates:**

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

**6. Paperwork:**

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

**7. Duplication:**

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

**8. Alternatives:**

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

**9. Federal Standards:**

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

**10. Compliance Schedule:**

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

**Regulatory Flexibility Analysis****1. Effect of rule:**

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

**2. Compliance requirements:**

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

**3. Professional services:**

The Department does not anticipate the need for professional services.

**4. Compliance costs:**

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

**5. Economic and technological feasibility:**

This proposal is economically and technically feasible.

**6. Minimizing adverse impact:**

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

**7. Small business and local government participation:**

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

**8. Compliance:**

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

**9. Cure period:**

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

**Rural Area Flexibility Analysis****1. Types and estimated numbers of rural areas:**

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

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

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

**3. Costs:**

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

**4. Minimizing adverse impact:**

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

**5. Rural area participation:**

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

**Job Impact Statement****1. Nature of impact:**

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

**2. Categories and numbers affected:**

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

**3. Regions of adverse impact:**

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

**4. Minimizing adverse impact:**

The Department considered not proposing the instant rulemaking. It

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

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

**Mandatory Public Posting of Notices of Violations**

**I.D. No.** DOS-35-15-00004-EP

**Filing No.** 695

**Filing Date:** 2015-08-14

**Effective Date:** 2015-08-14

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

**Proposed Action:** Addition of section 160.39 to Title 19 NYCRR.

**Statutory authority:** Executive Law, section 91; General Business Law, sections 402(5) and 404

**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.

**Specific reasons underlying the finding of necessity:** The Department of State ("Department") is charged, inter alia, with the enforcement of New York General Business Law ("NY GBL") Article 27, which relates to the appearance enhancement industry. A principal purpose behind the enactment of Article 27 was to provide a system of licensure of appearance enhancement businesses and operators that would both allow for the greatest possible flexibility in the establishment of regulated services and implement measures to protect the consumer. Adequate requirements for maintaining public health and safety standards and for ensuring financial responsibility with respect to businesses are important elements of such a system. Consistent with this legislative intent of Article 27, the Department is empowered to issue orders directing the cessation of unlicensed activity by businesses and operators whose continued unlicensed operations pose a potential threat to the general welfare of the public. On July 15, 2015 Governor Cuomo signed into law new legislation (S.5966) which among other things increased the penalties for operating without an appropriate license. The new law now makes that the operation of an unlicensed appearance enhancement business a misdemeanor, which indicates the danger these businesses represent and further support continuation of this emergency regulation.

To combat the dangers associated with unlicensed appearance enhancement operations and to help ensure that the public is aware that such businesses and/or persons are not permitted to offer appearance enhancement services, which require close personal contact between providers and the consumer, the Department finds that it is necessary to continue to require public postings of Notices of Violations seeking orders directing the cessation of unlicensed activities. The enhancement of public safety, health and general welfare necessitates the re-adoption of this regulation on an emergency basis. The Department finds that greater public awareness regarding such unlawful activity should reduce the potential risk of injury posed by such unlicensed businesses and persons. This rule was originally filed on an emergency basis on May 18, 2015 and first appeared in the State Register on June 3, 2015.

**Subject:** Mandatory public posting of Notices of Violations.

**Purpose:** To inform the public that the Department of State has commenced an enforcement proceeding against an unlicensed business.

**Text of emergency/proposed rule:** Section 160.39 is added to Title 19 of the NYCRR to read as follows:

*Section 160.39. Notification of Proceeding to Direct Cessation of Unlicensed Activity*

*(a) All businesses and operators served with a Notice of Violation relating to unlicensed activity pursuant to Article 27 of the New York General Business Law shall immediately affix a copy of such notice on the front window, door or exterior wall of the business. The Notice of Violation shall be within five feet of the front door or other opening to the business where customers enter from the street, at a vertical height no less than four feet and no more than six feet from the ground or floor. An establishment without a direct entrance from the street shall post such Notice of Violation at its immediate point of entry in a place where consumers are likely to see it.*

*(b) Such Notice of Violation shall not be removed except when authorized by the Department.*

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 12, 2015.

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

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

2. Legislative Objectives:

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

3. Needs and Benefits:

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

4. Costs:

a. Costs to Regulated Parties:

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

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

The Department does not anticipate any additional costs to implement the rule. Existing staff will manage issuing Notices of Violations. Further, the Department has sufficient funds to produce Notice of Violation forms.

5. Local Government Mandates:

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

6. Paperwork:

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

7. Duplication:

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

8. Alternatives:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is needed to protect the general welfare of the public who seek appearance enhancement services.

Requiring public posting will allow consumers to make informed decisions regarding the services that they may be receiving.

9. Federal Standards:

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

10. Compliance Schedule:

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

**Regulatory Flexibility Analysis**

1. Effect of rule:

This rule requires public postings of Notices of Violations issued by the Department of State. The Department believes that the rule will provide greater public awareness of unlawful and potentially dangerous activities. Specifically, the rule will require persons and businesses who operate without a license and who have been served with a Notice of Violation to post the same. The rule applies to businesses that offer appearance enhancement services as well as to persons who engage in the following

practices: nail specialty, waxing, natural hair styling, esthetics or cosmetology. Given that this rule applies to persons and businesses who are already operating unlawfully, the Department is not able to accurately estimate the number that will be affected by this rule.

2. Compliance requirements:

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

3. Professional services:

The Department does not anticipate the need for professional services.

4. Compliance costs:

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business and local government participation:

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

8. Compliance:

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

9. Cure period:

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

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

**Job Impact Statement**

1. Nature of impact:

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

2. Categories and numbers affected:

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

3. Regions of adverse impact:

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

4. Minimizing adverse impact:

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