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.

Office of Children and Family Services

ERRATUM

A Notice of Emergency Adoption and Proposed Rule Making, I.D. No. CFS-30-16-00001-EP, pertaining to Child Day Care Safety Enforcement and Administrative Hearing Regulations, published in the July 27, 2016 issue of the State Register contained an incorrect word in the Specific Reasons Underlying the Finding of Necessity, and the Regulatory Impact Statement under the Needs and Benefits section. Following are the corrected statements with the proper word in bold.

Specific reasons underlying the finding of necessity: The Office of Children and Family Services (Office) has determined that immediate adoption of these regulations on an emergency basis are necessary to better protect the health, safety and welfare of children in licensed and registered child day care programs throughout New York State and to better protect children from receiving care in programs that do not have the required license or registration to operate. These emergency regulations strengthen the Office's ability to take enforcement action against child day care programs that violate applicable health and safety requirements.

Presently, the grounds for which the Office may suspend or limit a licensed or registered child day care program are extremely narrow. As a result, children may continue to receive care in licensed or registered child care settings even after the Office has found egregious health and safety violations. These emergency regulations will clarify the legal standard to suspend or limit a child day care program so that the Office can act in appropriate circumstances to protect the safety and well-being of children receiving child care services in licensed or registered programs. Adoption of these regulations on an emergency basis is needed to prevent children from to continuing to receive child care services in unsafe environments where egregious health and safety violations have been found.

These regulations will also require programs to post notices to inform parents or caregivers when a program has been suspended or limited. Adoption of these regulations on an expedited basis is needed so that parents can make informed and timely choices regarding the safety of their children. Parents and caregivers deserve to know that child day care providers authorized to provide care by the Office in fact provide the safest, most secure environment for children.

These regulations will modify, within the existing statutory cap, the maximum allowable daily fine the Office can charge a provider for violating specified regulatory requirements and allow for a graduated increase in the maximum fine that can be charged for repeat offenses. These changes are necessary on an expedited basis to provide a greater deterrent for violation of existing regulatory requirements, and to provide appropriate remedies for repeat violations.

Finally, these regulations will help to better protect children in child day care programs by **authorizing** the Office to notify law enforcement when a child care program is found to be operating without the required license or registration and by requiring unlicensed and unregistered programs to inform parents that the program has been shut down. Adoption of these regulations on an emergency basis is needed as unlicensed operation of child care programs has resulted in serious risk to the safety of children and additional deterrents are necessary.

In the absence of these regulations, inspections have shown that there are unsafe programs that continue to operate, parents are unaware of potentially unsafe conditions, and unsafe providers are often not dissuaded from continuing to provide inadequate and unsafe care.

Regulatory Impact Statement

3. Needs and benefits:

The proposed changes to the enforcement and hearing regulations are needed to better protect the health, safety and welfare of children in licensed and registered child day care programs throughout New York State and to better protect children from receiving care in programs that do not have the required license or registration to operate.

These regulations will clarify the legal standard to suspend or limit a child day care program so that the Office can act in appropriate circumstance to protect the safety and well-being of children when egregious violations of the applicable legal standards for health and safety occurs in a licensed or registered program. Such changes are required to prevent children from receiving child care services in unsafe environments.

These regulations will also require programs to post notices to inform parents or caregivers when a program has been suspended or limited. Parents and caregivers deserve to know that child day care providers authorized to provide care by the Office, in fact provide the safest, most secure environment for children.

These regulations will modify, within the existing statutory cap, the maximum allowable daily fine the Office can charge a provider for violating specified regulatory requirements and allow for a graduated increase in the maximum fine that can be charged for repeat offenses. Such changes are necessary to provide a greater deterrent for violation of existing regulatory requirements, and to provide appropriate remedies for repeat violations.

Finally, these regulations will help to better protect children in child day care programs by **authorizing** the Office to notify law enforcement when a child care program is found to be operating without the required license or registration. These regulations will also provide that if the Office requires that such programs close that such programs post a notice to inform parents and caregivers that the program has been closed for not having the required license or registration.

NOTICE OF ADOPTION

Youth Development Program Funding and Implementation

I.D. No. CFS-49-15-00005-A
Filing No. 744
Filing Date: 2016-08-01
Effective Date: 2016-08-17

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

Action taken: Repeal of Subparts 165-1 and 165-2; and addition of new Subpart 165-1 to Title 9 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f); Executive Law, sections 419 and 501(5); L. 2013, ch. 57, part G

Subject: Youth development program funding and implementation.

Purpose: To implement statutory changes regarding youth development program funding and implementation.

Substance of final rule: Part G of Chapter 57 of the Laws of 2013 (Chapter 57) repealed subdivision 1 of Section 420 of the Executive Law, as it pertained to special delinquency prevention programs (SDPP) and youth development and delinquency prevention (YDDP) services, and replaced it with a new subdivision 1. Section 420(1) of the Executive Law, as added by Part G of Chapter 57, streamlined the funding for youth development programs by providing a single stream of funding to replace multiple funding streams, each with its own set of rules.

These proposed regulations repeal subparts 165-1 and 165-2 of Title 9 of the New York Codes, Rules and Regulations (NYCRR), which provide rules for SDPPs and YDDPs, and add a new subpart 165-1, which provides rules for implementing the new youth development programs. The proposed regulations also contain an amendment to the title of Subtitle E of 9 NYCRR, to reflect that the prior Division for Youth is now the Office of Children and Family Services (OCFS).

The following is a summary of the provisions of the proposed subpart 165-1:

Section 165-1.1 states the purpose of the proposed regulations, which is to provide for the coordination and allocation methodology for funding for a range of community level programs and services that will promote positive youth development through youth development programs.

Section 165-1.2 provides definitions for the youth development program regulations. The following terms are defined: Office (meaning the Office of Children and Family Services); youth; municipality; youth development program; youth bureau; municipal youth bureau; local youth bureau; youth board; comprehensive plan for youth development programs; and youth development funding.

Section 165-1.3 provides information about comprehensive plans for youth development programs.

Subdivision (a) of section 165-1.3 requires that each municipality that seeks youth development funding submit a comprehensive plan for youth development programs (comprehensive plan) that is written in consultation with its municipal youth bureau. The comprehensive plan must be submitted in the manner and form and at such time as designated by OCFS and is subject to the approval of OCFS.

Subdivision (b) of section 165-1.3 describes the information that must be included in the comprehensive plan for youth development programs.

Subdivision (c) of section 165-1.3 addresses the instances in which OCFS may approve all or part of a municipality's comprehensive plan for youth development programs. Upon receipt of a notification that OCFS has not approved all or part of its comprehensive plan, a municipality has sixty days under the proposed regulations to submit a revised plan or documents to OCFS. If OCFS does not approve the revised plan submitted during the 60-day period, OCFS may withhold youth development funds from the municipality until its plan is fully approved.

Subdivision (d) of section 165-1.3 requires that municipalities obtain OCFS approval of any amendments to their comprehensive plans for youth development programs prior to the plans taking effect.

Subdivision (e) of section 165-1.3 provides a municipality with the ability to request a waiver of any non-statutory regulatory requirement relating to the content or timing of its comprehensive plan for youth development programs.

Subdivision (f) of section 165-1.3 allows OCFS to waive any non-statutory regulatory requirements related to the content or timing of a comprehensive plan for youth development programs where it is determined that the requirement will impose an undue burden or unreasonably impede a municipality's ability to implement its comprehensive plan. OCFS may establish alternative requirements as a condition of receiving the waiver.

Section 165-1.4 provides rules for implementing the funding of youth development programs.

Subdivision (a) of section 165-1.4 provides that each municipality operating a youth development program is eligible for 100% state reimbursement of qualified expenditures, exclusive of federal funds and subject to the availability of youth development funds. This subdivision also establishes regulatory provisions for youth development funding regarding the following: eligibility, the distribution methodology, the establishment of a single municipal youth bureau by two or more municipalities, and the possible use of funds for statewide training and technical assistance.

Subdivision (b) of section 165-1.4 provides rules regarding reimbursable expenditures and claims for youth development programs.

Subdivision (c) of section 165-1.4 provides rules for instances in which two or more municipalities join together to establish, operate and maintain a municipal youth bureau.

Subdivision (d) of section 165-1.4 permits a municipality to include in its comprehensive plan for youth development programs the funding for a municipal youth bureau and one or more local youth bureaus that are approved by the municipality after April 1, 2013. It also provides that any youth bureau that was approved by OCFS on or before April 1, 2013 shall be an approved local youth bureau. The proposed regulations also provide for minimum requirements that pertain to the funding of local youth bureaus by a municipality.

Subdivision (e) of section 165-1.4 establishes limitations that OCFS may place on reimbursable expenditures and claims.

Subdivision (f) of section 165-1.4 permits OCFS to require municipalities receiving youth development funding to submit reports estimating expenditures.

Section 165-1.5 addresses the administration of youth development programs.

Subdivision (a) of section 165-1.5 prohibits discrimination in the provision of services or in employment of personnel by youth development programs.

Subdivision (b) of section 165-1.5 permits municipalities to enter into contracts in accordance with applicable laws, rules and regulations to effectuate youth development programs.

Subdivision (c) of section 165-1.5 establishes rules that are applicable to the administration of municipal youth bureaus, including requirements regarding the employment and responsibilities of an executive director or other designated person who is employed by the municipality; youth boards; youth board composition; and the powers, duties and responsibilities of youth boards for municipal youth bureaus.

Subdivision (d) of section 165-1.5 provides for rules regarding the establishment of local youth bureaus.

Subdivision (e) of section 165-1.5 requires a municipality receiving youth development funding to make its youth development program records available for examination or inspection upon the request of OCFS.

Subdivision (f) of section 165-1.5 requires municipalities to submit any statistical or other reports related to youth development programs that OCFS may require.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 165-1.3(a) and 165-1.5(c)(1).

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

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

Changes made to the last published rule does not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement because the changes that were made to the rule do not affect the information provided in the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The New York State Office of Children and Family Services (OCFS) received comments from seven persons concerning its proposed regulations for youth development programs. Many of the comments centered on a concern that the importance of the youth bureaus in taking the lead on matters regarding youth development programs had been diminished in the proposed regulations. Several comments cited the importance of the role of the directors of youth bureaus as leaders of comprehensive planning for youth development.

1. Section 165-1.2(i) - Definition of "Comprehensive plan for youth development programs". Three people submitted comments asking that the definition of the comprehensive plan for youth development programs be revised. The definition in the proposed regulations is: "Comprehensive plan for youth development programs shall mean the plan developed by a municipality, in consultation with the applicable municipal youth bureau, to offer youth development programs in accordance with section 420(1) of the Executive Law. The comprehensive plan for youth development programs shall be subject to the approval of the Office and shall be submitted to the Office by each municipality at such time and for such periods as the Office shall determine."

The commenters expressed concern that the proposed definition does not acknowledge the centrality of youth bureaus in youth development. All three suggested changing the first sentence to: "Comprehensive plan for youth development programs shall mean the plan developed by a youth bureau on behalf of its municipality to promote youth development and offer youth development programs in accordance with section 420(1) of the Executive Law."

Response: Executive Law § 420.1(c) requires the municipality to develop the comprehensive plan, in consultation with its youth bureau. The regulation reflects this statutory requirement. Executive Law § 420 also requires that the comprehensive plan for youth development programs be submitted as part of each county's Child and Family Services Plan; such plan includes information about many service areas other than youth development, including child welfare and child care, and must be submitted by the county (i.e., municipality.) We might also note that, while under the previous law OCFS provided direct payments to specific youth development programs, funding for youth development programs is now directed to the municipality, not to the youth bureau or to specific youth development programs. Therefore, the municipality must maintain responsibility for determining an overall plan for its jurisdiction. The current definition reflects the language and intent of the law and as such OCFS will not be amending the definition.

2. Section 165-1.3(a) - Development of the comprehensive plan for youth development programs. Four commenters wrote asking for a change in the wording in this subdivision. Three of those indicated that they were concerned that the current wording here, and in other part of the regulations, could result in a diminishment of the influence of youth bureaus and youth bureau directors in the planning process for developing youth development program plans. They were specifically concerned that with the current language, youth bureau directors might lose the traditional leadership role they have had in youth development program planning. Three commenters asked that the first sentence be changed to, "To be considered for youth development funding, each municipality must 'submit a comprehensive plan for youth development funding developed by its youth bureau, which documents consultation with all key stakeholders in addition to' any documentation as may be required by the Office…" One additional commenter asked that OCFS add the word "must" in specifying that the youth bureau "must" be consulted by the municipality when developing its youth development plan.

Response: The regulatory language that OCFS has been asked to substitute for the currently proposed regulation would contravene the language of the Executive Law, which states that the municipality shall develop the comprehensive youth development program plan. OCFS finds that the concepts of community participation and consultation are captured in section 165-1.5(c)(2) of the regulations, which describes the role of youth boards. Section 165-1.5(c)(2) requires each youth bureau to have a board that is representative of the community, that includes key stakeholders, and that advises the municipality throughout the process of developing the comprehensive plan for youth development programs.

However, OCFS acknowledges and agrees with the concerns expressed about the desirability of providing a strong role for youth bureaus in the planning process. Although OCFS believes that the proposed regulations already address this, we are making a non-substantial change to clarify the requirement that a municipality consult with its youth bureau in developing its comprehensive plan for youth development programs. The sentence will now state, "To be considered for youth development funding, each municipality must consult with its applicable municipal youth bureau to develop a written comprehensive plan for youth development programs including any documentation as may be required by the Office…"

3. Section 165-1.3(b)(1) - Emphasis on municipalities with youth population of 20,000 or more. Two commenters expressed concern about the requirement that comprehensive plans for youth development programs must "describe the need in the municipality for youth development programs, and specify, at a minimum, how the municipality will address the need for youth development in villages, towns, and cities that have a youth population of 20,000 or more persons." Both commenters suggested adding language to the paragraph, so that it would start, "describe the needs of all youth 0-20…" They explained that they thought such language would emphasize the intention to address the needs of all youth, not just those in larger jurisdictions.

Response: The current proposed regulations reflect the statutory requirement and use the same language as that used in the Executive Law pertaining to this subject. "Youth" is already defined in section 165-1.2(b) as any person under twenty-one years of age. Therefore, OCFS does not see the need for the addition of an age range in this part of the regulations. Furthermore, nothing precludes any municipality from including every part of its jurisdiction, including places with low population, in its youth development plan. For these reasons, there will be no change in this regulation.

4. Section 165-1.4(d)(2) - Limitation of 15% for local youth bureau administrative expenses. One commenter inquired about the statement: "No more than fifteen percent (15%) of the youth development funds that a municipality provides to a local youth bureau may be used for administrative functions performed by the local youth bureau," asking three questions:

a. Is the 15% an overall administrative fee for all combined youth programs conducted by the youth bureau?

b. Can the local youth bureau request up to 15% for each program funded by OCFS?

c. Is the 15% included in the dollars funded to the program or is it in addition to the funding for a program?

Response: OCFS considered whether to change the proposed regulation to clarify the rule, but determined that there is no need to make any change. OCFS believes that the current language is clear. The limit of 15% applies to all funds that a municipality provides to a local youth bureau.

5. Section 165-1.5(c) - Requirements regarding the leadership of the municipal youth bureau. Six people provided comments expressing concern about the terminology in the section on staffing of municipal youth boards. As proposed by OCFS, section 165-1.5(c)(1) states, "Each municipal youth bureau must employ sufficient staff to implement its approved youth development programs. An executive director or other designated person must be designated by the municipality to maintain overall responsibility for its municipal youth bureau." Five of the commenters all proposed the same language as a substitute: "Each municipal youth bureau must employ sufficient staff to develop and implement its comprehensive plan, including the administration of youth development programs. An executive director designated by the municipality must have sufficient time, training, expertise, and authority to fulfill the responsibilities of its municipal youth bureau." Four of those five also suggested that the regulation continue on to state that, if a municipality encounters significant hardships in recruiting or training a fully-qualified county employee as executive director, it could seek a waiver to obtain permission to designate another county employee to fulfill the duties of youth bureau director. Some of these commenters expressed the concern that removing the designation of "director" would endanger the traditional role of the head of the youth bureau as a community leader who generates collaboration in planning strategies for youth development. There was concern expressed that some counties might assign someone who lacked expertise, time, or authority to perform the role effectively. OCFS also received one comment about this section that urged that the regulations make clear that the executive director or other designated person be a county employee.

Response: OCFS understands the expressed concerns. Under the proposed regulation, each county will have the flexibility to determine the title that best meets its needs. Nothing in this regulation precludes designating the head of the municipal youth bureau as "director" or "executive director." OCFS believes that the proposed regulations implicitly require that municipal staff must direct the municipal youth board. However, OCFS agrees that the regulations should specify that the municipality must employ its own staff to direct the municipal youth board rather than contract out this work, and thus has added language to clarify this.

NOTICE OF ADOPTION

New York State Child Care Market Rates

I.D. No. CFS-24-16-00005-A
Filing No. 750
Filing Date: 2016-08-02
Effective Date: 2016-08-17

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

Action taken: Amendment of section 415.9 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 410-u through 410-z

Subject: New York State Child Care Market Rates.

Purpose: To establish payment rates for federally-funded child care subsidies to allow equal access to child care for eligible children.

Text or summary was published in the June 15, 2016 issue of the Register, I.D. No. CFS-24-16-00005-EP.

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

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

Assessment of Public Comment

This assessment responds to the comments received on the Notice of Proposed Rule Making for the New York State Child Care Market Rates, Section 415.9 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), I.D. No. CFS-24-16-00005-EP, included in the New York State Register dated June 15, 2016.

The Office of Children and Family Services (OCFS) received comments from 23 responders during the public comment period. Responses were received from Child Care Resource & Referral Agencies, a union representing child care providers, child care program directors, child care advocacy groups, and child care providers. In the following assessment, OCFS combined similar comments from multiple responders for the purpose of responding to the comments.

OCFS received comments from ten responders that the proposed child care market rates are not high enough to operate child care programs and that rates should be increased. Further, three of these ten responders stated that the child care market rates should be calculated at the 75th percentile not the 69th percentile. OCFS reviewed the comments and determined that the purpose of establishing child care market rates for the child care subsidy program is to provide families receiving a child care subsidy with access to child care services that is comparable to families not eligible for child care subsidy. OCFS maintains that calculating the child care market rates at the 69th percentile instead of the 75th percentile still allows families to access child care from a wide range of providers, approximately from seven out of ten licensed or registered child care providers; and, therefore, the child care market rates are sufficient for the purpose of providing comparable access. Further, the child care market rates are not intended to dictate what providers can or should charge, rather they indicate the maximum amount that local social services districts can be reimbursed for a child care subsidy. OCFS determined that no change to the proposed regulations is required in response to these comments.

OCFS received comments from eight responders in opposition to the consolidation of family day care and group family day care providers into the same child care market rate. OCFS reviewed the comments and determined that the health and safety regulations governing family and group family day care providers have become much the same over the years, with the primary regulatory distinction between the two types of providers being total capacity. Therefore, the market rate for the two provider types was combined. Further, the child care market rates are not intended to dictate what providers can or should charge, rather they indicate the maximum amount that local social services districts can be reimbursed for a child care subsidy. OCFS determined that no change to the proposed regulations is required in response to these comments.

OCFS received a comment from one responder supporting the consolidation of family day care and group family day care providers into the same child care market rate. OCFS reviewed the comment and determined that no change to the proposed regulations is required in response to this comment.

OCFS received comments from five responders supporting the change of the age group to under two years of age to reflect the statutory requirement for staff-child ratios for family day care homes and group family day care homes. OCFS reviewed the comments and determined that no change to the proposed regulations is required in response to these comments.

OCFS received comments from nine responders stating that the federal Administration for Children and Families in its conditional approval of the State's child care plan advised that New York's child care market rates may not allow for equal access. The responders recommend that OCFS conduct a new market rate survey since the last survey was conducted in early 2015 and does not reflect subsequent and significant increases in programs' operating costs. OCFS reviewed the comments and OCFS determined that the child care market rates allow families to access child care from a wide range of providers, approximately from seven out of ten licensed or registered child care providers. OCFS maintains that the child care market rates are sufficient to provide equal access to child care services for families receiving a child care subsidy. OCFS determined that no change to the proposed regulations is required in response to these comments.

OCFS received comments from two responders that Broome County should be placed in the child care market rate grouping of counties identified as Group 2 instead of Group 3. OCFS reviewed the comments and determined that, prior to conducting the 2015 market rate survey, a cluster analysis was performed using the 2013 market rate survey data in order to assess the composition of county groupings and whether those county groupings should be changed. That cluster analysis indicated that the rates for Broome County were more similar to the rates of Group 3 counties than any other county groups. Therefore, OCFS determined that no change to the proposed regulations is required in response to these comments.

OCFS received a comment from one responder that disputes the results of the market rate survey because the survey questions were slanted and confusing. OCFS reviewed the survey instrument and methodology and determined that the market rate survey and resulting child care market rates meet acceptable and appropriate statistical standards and are valid and reliable. OCFS determined that no change to the proposed regulations is required in response to this comment.

Department of Financial Services

EMERGENCY RULE MAKING

Title Insurance Agents, Affiliated Relationships, and Title Insurance Business

I.D. No. DFS-33-16-00002-E
Filing No. 743
Filing Date: 2016-08-01
Effective Date: 2016-08-01

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

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

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

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

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

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

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

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

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

Substance of emergency rule: The following sections are amended:

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

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

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

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

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

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

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

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

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

Section 35.1 contains definitions for new Part 35.

Section 35.2 specifies forms for title insurance agent licensing applications.

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

Section 35.4 addresses affiliated business relationships.

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

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

Section 35.7 provides certain other minimum disclosure requirements.

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

Section 35.9 establishes record retention requirements for title insurance agents.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt 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 October 29, 2016.

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 2016 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 impact, including any adverse impact, 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 2016 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 2016 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-33-16-00007-E
Filing No. 748
Filing Date: 2016-08-02
Effective Date: 2016-08-04

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 MB 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 depositary institutions and that are considered at least adequately capitalized.

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

Section 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.

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.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires October 30, 2016.

Text of rule and any required statements and analyses may be obtained from: Hadas A. Jacobi, 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 Licens-

ing System and Registry (NMLS) will be required of non-exempt servicers.

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impacts:

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

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

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

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

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

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

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

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

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

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

Job Impact Statement

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

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

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

Department of Health

NOTICE OF ADOPTION

School Immunization Requirements

I.D. No. HLT-23-16-00007-A
Filing No. 749
Filing Date: 2016-08-02
Effective Date: 2016-08-17

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

Action taken: Amendment of Subpart 66-1 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2164 and 2168

Subject: School Immunization Requirements.

Purpose: To update school immunization and NYSIIS regulations.

Text or summary was published in the June 8, 2016 issue of the Register, I.D. No. HLT-23-16-00007-P.

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

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

Assessment of Public Comment

The agency received no public comment.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Practice of Radiologic Technology

I.D. No. HLT-30-15-00005-RP

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

Proposed Action: Amendment of Part 89 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 3504, 3507(2), (7) and 3510(1)(g)

Subject: Practice of Radiologic Technology.

Purpose: To update regulations related to the practice of radiologic technology.

Text of revised rule: Paragraph (4) of subdivision (a) of section 89.1 is amended to read as follows:

(4) [Board means the department's Radiologic Technologist Advisory Board] *Reserved*

Subdivision (a) of section 89.2 is amended to read as follows:

(a) The practice of radiography includes, but is not limited to, the following activities performed under the supervision of a licensed practitioner:

(1) measuring and positioning patients;

(2) selecting and setting up exposure factors on X-ray equipment;

(3) making X-ray exposures;

(4) using fluoroscopy for localization purposes prior to taking a spot film of a mobile organ such as the gall bladder or the duodenal cap;

(5) operating fluoroscopy equipment under the personal supervision of a physician*, except where direct supervision is required by this part*;

(6) administering non-intravenous contrast media pursuant to a physician's order;

(7) performing quality control tests; [and]

(8) for individuals certified under section 89.40 of this Part, the intravascular administration of contrast media under the direct supervision when such administration is an integral part of an X-ray or imaging procedure*; and*

(9) performing manual air insufflation as a required component of an imaging procedure, such as a virtual colonoscopy procedure or a barium enema procedure, under the supervision of a physician as follows:

(i) initial insertion of the tip of the balloon tube and inflating the balloon at the end of the tube under the direct supervision of a physician; and

(ii) insufflating air into the colon under the personal supervision of a physician.

Paragraph (5) of subdivision (a) of section 89.10 is amended, subdivision (b) is repealed and subdivisions (c) and (d) are re-lettered to be subdivisions (b) and (c) to read as follows:

(a) To qualify for a license to practice as a radiologic technologist, an applicant shall fulfill the following requirements in a manner acceptable to the department:

(1) file an application on a form prescribed by the department along with a nonrefundable license fee of $120;

(2) submit documentation that the applicant has successfully completed an education program in radiologic technology that is registered with the department, the State Education Department, or an accrediting organization approved by the department;

(3) submit evidence that the applicant has passed an examination administered by an accrediting organization approved by the department with a passing grade, as determined by the department;

(4) be at least 18 years of age; and

(5) be of good moral character. *In accordance with Correction Law Article 23-A, a person previously convicted of one or more criminal offenses shall not be found to lack good moral character based upon these conviction(s) unless (i) there is a direct relationship between one or more of the previous criminal offenses and the duties required of the license or (ii) licensing the applicant would involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public. In determining these questions, the department will look at all the factors listed under New York State Correction Law section 753.* [Any person who has been convicted of one or more criminal offenses involving a threat or use of physical violence, sexual behavior, illegal possession or use of drugs, theft or fraud, shall be deemed to not be of good moral character unless the department determines that sufficient mitigating factors exist to warrant a finding of good moral character. In making such a determination, the department shall consider the following factors:

(i) the number and seriousness of the underlying offenses of such conviction;

(ii) the time that has elapsed since such conviction;

(iii) the age of the applicant when the underlying offenses occurred; and

(iv) evidence of rehabilitation and good conduct since such convictions, including the issuance to the applicant of a certificate of relief from disability or a certificate of good conduct.

(b) No person shall be licensed pursuant to this Part who has been convicted of a crime consistent with the provisions of article 23-A of the Corrections Law.]

[(c)] *(b)* Nothing in this Part shall be construed to apply to the practice of nuclear medicine technology prior to January 1, 2009.

[(d)] *(c)* Notwithstanding any provision herein to the contrary, any individual practicing as a nuclear medicine technologist prior to July 26, 2007 may be licensed to practice nuclear medicine technology provided that he or she has completed an education program in nuclear medicine technology acceptable to the department and has five years of verifiable and satisfactory employment within the previous 10 years as a nuclear medicine technologist, or possesses certification by the Nuclear Medicine Technology Certifying Board or registration with the American Registry of Radiologic Technology in nuclear medicine technology.

Subdivision (a) of section 89.11 is amended to read as follows:

(a) If the department determines that an applicant is ineligible for licensure pursuant to this Part, the department shall [proved] *provide* written notice to the applicant of the determination, the reasons therefor and information regarding his/her rights to petition.

Section 89.20 is amended to read as follows:

(a) Each person licensed pursuant to this Part must obtain a certificate of registration from the department prior to practicing radiology in this State. The department shall register each licensee who submits a completed registration application on a form supplied by the department, pays a fee of $20 per year, and provides evidence of completion of any continuing education requirements required by this section. Every practicing radiologic technologist shall have available for review by the department or other interested parties at all places of employment a copy of his/her current certificate of registration.

(b) Each registration shall authorize a licensee to practice radiologic technology for a period of up to four years and terminate on the registrant's birth date [on either the next ensuing odd-numbered or the next ensuing even-numbered year, depending upon whether the registrant was born in an odd-numbered or even-numbered year, respectively].

(c) Beginning January 1, 2010, each radiologic technologist, when applying to register pursuant to subdivision (a) of this section, must provide evidence of continuing education equivalent to *12 credit hours for each year of the registration cycle or 48 credit hours for a four year registration period. The 48 credits may be completed any time during the 48 months preceding the start of the renewal period.*

[12 credits hours per year according to the following schedule:

(1) individuals registering in the year 2010 must have 12 credits within the previous 12 months;

(2) individuals registering in the year 2011 must have 24 credits within the previous 24 months;

(3) individuals registering in the year 2012 must have 36 credits within the previous 36 months; and

(4) individuals registering in the year 2013 must have 48 credits within the previous 48 months.

(d) Thereafter to reregister, the radiologic technologist must provide evidence of the equivalent of 12 credit hours per year for every year since the previous registration period.]

[(e)]*(d)* Notwithstanding any provision herein to the contrary, the department may waive the continuing education requirement of a licensee who has recently completed an education program in radiologic technology pursuant to section 89.10(a)(2) of this Part, and is applying for registration for the first time. Thereafter, to reregister the radiologic technologist must provide evidence of the [equivalent of 12 credit hours per year for each succeeding year] *continuing education credits in accordance with subdivision (c) of this section.*

[(f)]*(e)* All continuing education credits must be approved by an accrediting organization approved by the department.

[(g)]*(f)* A copy of a current certificate of registration from an accrediting organization approved by the department is acceptable evidence to meet the continuing education requirement.

(g) The department may issue a conditional registration to a registrant who does not meet the continuing education requirements of this section provided that such applicant agrees to correct the deficiency within the conditional registration period, in addition to their regular continuing education to be applied to the next registration cycle.

(1) Conditional registrations shall be for no more than 180 days and shall not be renewable.

(2) Failure to complete the required continuing education credits may be considered unethical conduct by the department.

Paragraph (1) of subdivision (a) of section 89.30 is amended to read as follows:

(a) Dental assistants.

(1) A person acting as a dental assistant shall be exempt from licensure as a radiologic technologist when operating the following equipment under the supervision of a dentist for the sole purpose of routine oral radiography in which the X-ray beam is limited to the patient's head:

(i) conventional radiographic dental equipment in which the diameter of the X-ray beam at the patient's face is limited to not more than three inches; [and]

(ii) panoramic radiographic dental equipment;[.] *and*

(iii) conebeam computed tomography equipment after demonstrating satisfactory completion of a training program approved by the department or one provided by the equipment manufacturer. Conebeam computed tomography equipment must be performed under the direct supervision of a dentist.

Revised rule compared with proposed rule: Substantial revisions were made in sections 89.2(a), 89.10, 89.20 and 89.30.

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

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

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

Statutory Authority:

Section 3504 of the Public Health Law (PHL) authorizes the Commissioner of Health to make rules and regulations, not inconsistent with the law, as may be necessary to carry out the provisions of Article 35 of the PHL that govern the practice of radiologic technology. PHL § 3510(1)(g) authorizes the Commissioner to define in regulations unethical conduct regarding the licensure of radiological technicians. PHL § 3507(2) requires the Commissioner to promulgate regulations necessary to effectuate the registration process of radiological technicians. PHL § 3507(7) provides that the Commissioner may create regulations regarding continuing education credits for radiological technicians.

Legislative Objectives:

Article 35 of the PHL expresses the legislative intent that only individuals with the appropriate education, training, and experience shall be allowed to expose human beings to ionizing radiation as part of the performance of diagnostic x-ray, nuclear medicine and therapy procedures. Nuclear medicine technology and the intravenous injection of contrast material by radiographers were added to PHL Article 35 pursuant to Chapter 175 of the Laws of 2006.

Needs and Benefits:

The Department's proposal seeks to modify the regulations governing the practice of radiologic technology. These changes include performing air insufflation as a required component of an imaging procedure, under direct or personal supervision of a physician as required, implementing changes required by Correction Law and other clarifications and corrections. The imaging procedure is part of the technologists training program and competency requirement and are performed by licensed technologists in the majority of states that license this profession. By allowing the technologist to perform this function the radiologist can devote more of their time to higher priority patient care functions. The amendment also clarifies the continuing education requirements for the practice of radiologic technology. The proposed regulation requires a technologist to complete 48 credit hours of continuing education over a 48 month period and allows the department to issue a conditional registration to technologists to allow additional time to meet the continuing education requirements. The proposal also ensures that the licensing process comports with Article 23-A of the Correction Law related to licensure of individuals who have been previously convicted of one or more criminal offenses.

Costs:

Costs to State Government:

The proposed rule does not impose any new costs on state government.

Costs to Local Governments:

The proposed rule does not impose any new costs on local government.

Costs to Private Regulated Parties:

The proposed rule does not impose any new costs on private regulated parties.

Costs to the Regulatory Agency:

The proposed rule does not impose any new costs on any regulatory agency.

Local Government Mandates:

This regulation does not mandate any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or any other special district.

Paperwork:

This regulation does not increase the documentation or paperwork for any individual or organization.

Duplication:

This regulation does not duplicate any other State or Federal law or regulation.

Alternatives:

Changes were made to the proposal as a result of alternatives provided by the regulated parties. The current "personal" physician supervision standard will be retained to ensure that patients are not exposed to increased levels of unsafe radiation. The language of the air insufflation component includes specific components of the process with different supervision levels required. Dental assistants who operate Conebeam computed tomography equipment must be performed under the direct supervision of a dentist.

Federal Standards:

This regulatory amendment does not exceed any minimum standards of the Federal government.

Compliance Schedule:

The proposed rule change will become effective upon publication of a Notice of Adoption in the State Register.

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

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

Assessment of Public Comment

Public comments were submitted to the NYS Department of Health (DOH) in response to the regulation. This was published in the New York State Register on July 29, 2015. The public comment period for this regulation ended on September 14, 2015. The Department received comments on behalf of the New York State Radiologic Society (NYSRS) and the Medical Society of the State of New York. The comments addressed three points and the Department will incorporate them into the regulations.

COMMENT: The first comment recommends that the current "personal" physician supervision standard be retained to ensure that patients are not exposed to increased levels of unsafe radiation. Under the proposed "direct" supervision standard, a physician may not be readily available if the RT has difficulty operating the equipment or other patient safety issues arise. A PA or NP who inserts a PICC line does not have the adequate training and education to lead a fluoroscopy procedure and protect a patient from harmful levels of radiation.

RESPONSE: The Department will remove the change to direct supervision from the scope of practice update.

COMMENT: A second comment indicated that the language of the air insufflation component should include specific components of the process with different supervision levels required.

RESPONSE: The Department will incorporate the recommended changes with respect to air insufflation.

COMMENT: The final comment was that if authority is granted to dental assistants to operate a CBCT the level of supervision by the dentist should be personal or direct because of the potentially significant doses of radiation that the CBCT emits, particularly since many patients are children. Cone beam CT's produce much higher radiation doses than panoramic imaging.

RESPONSE: The Department agrees with recommendation and will amend the exemption listed in 89.30 to require direct supervision.

Office of Mental Health

NOTICE OF ADOPTION

Incident Management, Criminal History Record Checks, Operation of Psychiatric Inpatient Units General Hospitals, RTFs and CPEPs

I.D. No. OMH-18-16-00003-A

Filing No. 740

Filing Date: 2016-07-27

Effective Date: 2016-08-17

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

Action taken: Amendment of Parts 524, 550, 580, 584 and 590 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.07, 7.09, 31.35, 33.03 and 33.04; Social Services Law, sections 490, 491 and 492; Executive Law, sections 556 and 557

Subject: Incident Management, Criminal History Record Checks, Operation of Psychiatric Inpatient Units General Hospitals, RTFs and CPEPs.

Purpose: To update statutory and regulatory citations and conform to non-discretionary statutory provisions.

Text or summary was published in the May 4, 2016 issue of the Register, I.D. No. OMH-18-16-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Jessica Kircher, NYS Office of Mental Health, 44 Holland Avenue, Albany, New York 12229, (518) 474-1331, email: Jessica.Kircher@omh.ny.gov

Revised Job Impact Statement

A Job Impact Statement is not required for this rulemaking because the proposed rule will not have a substantial adverse impact on jobs and employment opportunities. The proposed regulatory changes are non-substantive and merely update statutory and regulatory citations and otherwise conform to non-discretionary statutory provisions. It is evident from the subject matter of this rule that it could only have a positive impact or no impact on jobs or employment opportunities. This rulemaking will not result in the loss of any jobs in New York State. Therefore, the Office has determined that a Job Impact Statement is not required.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Use of Escrow Funds for Repairs

I.D. No. PSC-33-16-00001-EP

Filing Date: 2016-07-27

Effective Date: 2016-07-27

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

Proposed Action: The Commission, on July 27, 2016, adopted an order authorizing Arbor Hills Waterworks, Inc. to use funds in its Escrow Account for Capital Improvements to pay for emergency repairs to its distribution system.

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

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

Specific reasons underlying the finding of necessity: Arbor Hills Waterworks, Inc. suffered a significant leak to its distribution system on July 27, 2016 that threatens the company's ability to provide safe and adequate service to its ratepayers.

Subject: Use of escrow funds for repairs.

Purpose: To authorize the use of escrow account funds for repairs.

Substance of emergency/proposed rule: The Public Service Commission adopted an order authorizing Arbor Hills Waterworks, Inc. to use funds in its Escrow Account for Capital Improvements to pay for emergency repairs to its distribution system.

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 24, 2016.

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Department of Public Service, 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(16-W-0415EP1)

NOTICE OF ADOPTION

Clean Energy Standard

I.D. No. PSC-04-16-00008-A

Filing Date: 2016-08-01

Effective Date: 2016-08-01

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

Action taken: On 8/1/16, the PSC adopted a Clean Energy Standard.

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

Subject: Clean Energy Standard.

Purpose: To adopt a Clean Energy Standard.

Substance of final rule: The Commission, on August 1, 2016, adopted a Clean Energy Standard. The Commission determines that a series of deliberate and mandatory actions to build upon and enhance opportunities for consumer choice are necessary to achieve State environmental, public health, climate policy and economic goals; to enhance and animate voluntary retail markets for energy efficiency, clean energy and renewable resources; to preserve existing zero-emissions nuclear generation resources as a bridge to the clean energy future; to ensure a modern and resilient energy system; and to accomplish its objectives in a fair and cost effective manner. In accordance with the statutory obligation that agency actions must be reasonably consistent with the most recent State Energy Plan (SEP), the Commission adopts the SEP goal that 50% of New York's electricity is to be generated by renewable sources by 2030 as part of a strategy to reduce statewide greenhouse gas emissions by 40% by 2030. In furtherance of that goal, and mindful of the Commission's role as a State regulator sharing jurisdiction with the Federal government, in this order the Commission also adopts a Clean Energy Standard (CES) consistent with the SEP goal, including: (a) program and market structures to encourage consumer-initiated clean energy purchases or investments; (b) obligations on load serving entities to financially support new renewable generation resources to serve their retail customers; (c) a requirement for regular renewable energy credit (REC) procurement solicitations; (d) obligations on distribution utilities on behalf of all retail customers to continue to financially support the maintenance of certain existing at-risk small hydro, wind or biomass generation attributes; (e) a program to maximize the value potential of new offshore wind resources; and (f) obligations on load serving entities to financially support the preservation of existing at-risk nuclear zero-emissions attributes to serve their retail customers, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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-0302SA1)

NOTICE OF ADOPTION

Clean Energy Standard

I.D. No. PSC-11-16-00008-A

Filing Date: 2016-08-01

Effective Date: 2016-08-01

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

Action taken: On 8/1/16, the PSC adopted a Clean Energy Standard.

Statutory authority: Public Service Law, sections 5(2), 65(1), 66(1), (2), (3), (4), (5) and (6)

Subject: Clean Energy Standard.

Purpose: To adopt a Clean Energy Standard.

Substance of final rule: The Commission, on August 1, 2016, adopted a Clean Energy Standard. The Commission determines that a series of deliberate and mandatory actions to build upon and enhance opportunities for consumer choice are necessary to achieve State environmental, public health, climate policy and economic goals; to enhance and animate voluntary retail markets for energy efficiency, clean energy and renewable resources; to preserve existing zero-emissions nuclear generation resources as a bridge to the clean energy future; to ensure a modern and resilient energy system; and to accomplish its objectives in a fair and cost effective manner. In accordance with the statutory obligation that agency actions must be reasonably consistent with the most recent State Energy Plan (SEP), the Commission adopts the SEP goal that 50% of New York's electricity is to be generated by renewable sources by 2030 as part of a strategy to reduce statewide greenhouse gas emissions by 40% by 2030. In furtherance of that goal, and mindful of the Commission's role as a State regulator sharing jurisdiction with the Federal government, in this order the Commission also adopts a Clean Energy Standard (CES) consistent with the SEP goal, including: (a) program and market structures to encourage consumer-initiated clean energy purchases or investments; (b) obligations on load serving entities to financially support new renewable generation resources to serve their retail customers; (c) a requirement for regular renewable energy credit (REC) procurement solicitations; (d) obligations on distribution utilities on behalf of all retail customers to continue to financially support the maintenance of certain existing at-risk small hydro, wind or biomass generation attributes; (e) a program to maximize the value potential of new offshore wind resources; and (f) obligations on load serving entities to financially support the preservation of existing at-risk nuclear zero-emissions attributes to serve their retail customers, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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-0302SA2)

NOTICE OF ADOPTION

Clean Energy Standard

I.D. No. PSC-16-16-00005-A

Filing Date: 2016-08-01

Effective Date: 2016-08-01

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

Action taken: On 8/1/16, the PSC adopted a Clean Energy Standard.

Statutory authority: Public Service Law, sections 5(2), 65(1), 66(1), (2), (3), (4), (5) and (12)

Subject: Clean Energy Standard.

Purpose: To adopt a Clean Energy Standard.

Substance of final rule: The Commission, on August 1, 2016, adopted a Clean Energy Standard. The Commission determines that a series of deliberate and mandatory actions to build upon and enhance opportunities for consumer choice are necessary to achieve State environmental, public health, climate policy and economic goals; to enhance and animate voluntary retail markets for energy efficiency, clean energy and renewable resources; to preserve existing zero-emissions nuclear generation resources as a bridge to the clean energy future; to ensure a modern and resilient energy system; and to accomplish its objectives in a fair and cost effective manner. In accordance with the statutory obligation that agency actions must be reasonably consistent with the most recent State Energy Plan (SEP), the Commission adopts the SEP goal that 50% of New York's electricity is to be generated by renewable sources by 2030 as part of a strategy to reduce statewide greenhouse gas emissions by 40% by 2030. In furtherance of that goal, and mindful of the Commission's role as a State regulator sharing jurisdiction with the Federal government, in this order the Commission also adopts a Clean Energy Standard (CES) consistent with the SEP goal, including: (a) program and market structures to encourage consumer-initiated clean energy purchases or investments; (b) obligations on load serving entities to financially support new renewable generation resources to serve their retail customers; (c) a requirement for regular renewable energy credit (REC) procurement solicitations; (d) obligations on distribution utilities on behalf of all retail customers to continue to financially support the maintenance of certain existing at-risk small hydro, wind or biomass generation attributes; (e) a program to maximize the value potential of new offshore wind resources; and (f) obligations on load serving entities to financially support the preservation of existing at-risk nuclear zero-emissions attributes to serve their retail customers, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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-0302SA4)

NOTICE OF ADOPTION

Clean Energy Standard

I.D. No. PSC-16-16-00006-A

Filing Date: 2016-08-01

Effective Date: 2016-08-01

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

Action taken: On 8/1/16, the PSC adopted a Clean Energy Standard.

Statutory authority: Public Service Law, sections 5(2), 65(1), 66(1), (2), (3), (4), (5) and (12)

Subject: Clean Energy Standard.

Purpose: To adopt a Clean Energy Standard.

Substance of final rule: The Commission, on August 1, 2016, adopted a Clean Energy Standard. The Commission determines that a series of deliberate and mandatory actions to build upon and enhance opportunities for consumer choice are necessary to achieve State environmental, public health, climate policy and economic goals; to enhance and animate voluntary retail markets for energy efficiency, clean energy and renewable resources; to preserve existing zero-emissions nuclear generation resources as a bridge to the clean energy future; to ensure a modern and resilient energy system; and to accomplish its objectives in a fair and cost effective manner. In accordance with the statutory obligation that agency actions must be reasonably consistent with the most recent State Energy Plan (SEP), the Commission adopts the SEP goal that 50% of New York's electricity is to be generated by renewable sources by 2030 as part of a strategy to reduce statewide greenhouse gas emissions by 40% by 2030. In furtherance of that goal, and mindful of the Commission's role as a State regulator sharing jurisdiction with the Federal government, in this order the Commission also adopts a Clean Energy Standard (CES) consistent with the SEP goal, including: (a) program and market structures to encourage consumer-initiated clean energy purchases or investments; (b) obligations on load serving entities to financially support new renewable generation resources to serve their retail customers; (c) a requirement for regular renewable energy credit (REC) procurement solicitations; (d) obligations on distribution utilities on behalf of all retail customers to continue to financially support the maintenance of certain existing at-risk small hydro, wind or biomass generation attributes; (e) a program to maximize the value potential of new offshore wind resources; and (f) obligations on load serving entities to financially support the preservation of existing at-risk nuclear zero-emissions attributes to serve their retail customers, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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-0302SA3)

NOTICE OF ADOPTION

Stock Acquisition

I.D. No. PSC-18-16-00012-A
Filing Date: 2016-08-01
Effective Date: 2016-08-01

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

Action taken: On 8/1/16, the PSC adopted an order approving Corning Natural Gas Holding Corporation's (Corning) petition for certain stock transactions.

Statutory authority: Public Service Law, section 70

Subject: Stock acquisition.

Purpose: To approve Corning's petition for certain stock transactions.

Substance of final rule: The Commission, on August 1, 2016, adopted an order approving Corning Natural Gas Holding Corporation's petition for certain stock 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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.

(16-G-0200SA1)

NOTICE OF ADOPTION

Clean Energy Standard

I.D. No. PSC-21-16-00009-A
Filing Date: 2016-08-01
Effective Date: 2016-08-01

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

Action taken: On 8/1/16, the PSC adopted a Clean Energy Standard.

Statutory authority: Public Service Law, sections 5(2), 65(1), 66(1), (2), (3), (4), (5) and (12)

Subject: Clean Energy Standard.

Purpose: To adopt a Clean Energy Standard.

Substance of final rule: The Commission, on August 1, 2016, adopted a Clean Energy Standard. The Commission determines that a series of deliberate and mandatory actions to build upon and enhance opportunities for consumer choice are necessary to achieve State environmental, public health, climate policy and economic goals; to enhance and animate voluntary retail markets for energy efficiency, clean energy and renewable resources; to preserve existing zero-emissions nuclear generation resources as a bridge to the clean energy future; to ensure a modern and resilient energy system; and to accomplish its objectives in a fair and cost effective manner. In accordance with the statutory obligation that agency actions must be reasonably consistent with the most recent State Energy Plan (SEP), the Commission adopts the SEP goal that 50% of New York's electricity is to be generated by renewable sources by 2030 as part of a strategy to reduce statewide greenhouse gas emissions by 40% by 2030. In furtherance of that goal, and mindful of the Commission's role as a State regulator sharing jurisdiction with the Federal government, in this order the Commission also adopts a Clean Energy Standard (CES) consistent with the SEP goal, including: (a) program and market structures to encourage consumer-initiated clean energy purchases or investments; (b) obligations on load serving entities to financially support new renewable generation resources to serve their retail customers; (c) a requirement for regular renewable energy credit (REC) procurement solicitations; (d) obligations on distribution utilities on behalf of all retail customers to continue to financially support the maintenance of certain existing at-risk small hydro, wind or biomass generation attributes; (e) a program to maximize the value potential of new offshore wind resources; and (f) obligations on load serving entities to financially support the preservation of existing at-risk nuclear zero-emissions attributes to serve their retail customers, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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.

(16-E-0270SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Use of the Silver Spring Network Communication Device in Utility Metering Applications

I.D. No. PSC-33-16-00003-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 a petition filed by Silver Spring Networks, Inc. on July 13, 2016, to use the Silver Spring Network Socket Access Point communication device, in utility metering applications.

Statutory authority: Public Service Law, section 67(1)

Subject: Use of the Silver Spring Network communication device in utility metering applications.

Purpose: To consider the use of the Silver Spring Network communication device.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Silver Spring Networks, Inc. to use the Silver Spring Networks Socket Access Point communication device, in utility metering applications. The petition states FCC and UL certification information and test data will be submitted under separate cover. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve 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: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@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.

(16-E-0376SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Design and Implementation of Low-Income Energy Efficiency Program Proposed by Massena Electric Department

I.D. No. PSC-33-16-00004-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 implement a Low-Income Energy Efficiency Program.

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

Subject: Design and implementation of Low-Income Energy Efficiency Program proposed by Massena Electric Department.

Purpose: To consider the design and implementation of a Low-Income Energy Efficiency Program proposed by Massena Electric Department.

Substance of proposed rule: The Commission is considering a proposal filed by Massena Electric Department (Massena) to implement a Low-Income Energy Efficiency program (Energy Efficiency Program). As proposed, the Energy Efficiency Program would provide opportunities for low-income customers to realize energy cost savings that could moderate the new rate design that is being phased in pursuant to the order issued by the New York State Public Service Commission (Commission) on April 21, 2016 in Case 15-E-0307. The proposed Energy Efficiency Program initially would include the following components: Home Envelope Energy Efficiency Improvements – Owner-Occupied; Low-Income Energy Efficient Lighting; Low-Income Winter Weatherization Kits; Energy Efficient Appliance Fund – Emergency; Educational Activities; and Other Activities, such as the potential development of fuel-switching incentives. 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: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@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-0307SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Exemption from Certain Charges for Delivery of Electricity to Its Niagara Falls, New York Facility

I.D. No. PSC-33-16-00005-P

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

Proposed Action: The Commission is considering a petition filed by Globe Metallurgical, Inc. on July 26, 2016, requesting an exemption from certain delivery charges collected by Niagara Mohawk Power Corporation d/b/a National Grid.

Statutory authority: Public Service Law, sections 5(1)(b), 64, 65(1), 66(1), (5), (9), (10), (12) and (12-b)

Subject: Exemption from certain charges for delivery of electricity to its Niagara Falls, New York facility.

Purpose: Application of System Benefits Charges, Renewable Portfolio Standard charges and Clean Energy Fund surcharges.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Globe Metallurgical, Inc. (Globe) on July, 26, 2016, requesting an expedited Commission order directing Niagara Mohawk Power Corporation d/b/a National Grid to exempt Globe from certain delivery charges; specifically, the System Benefits Charge, the Renewable Portfolio Standard charge, and any future surcharges assessed under the Clean Energy Fund. 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: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@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.

(16-E-0413SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Lightened Regulatory Regime Applicable to Indeck Corinth Limited Partnership

I.D. No. PSC-33-16-00006-P

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

Proposed Action: The Commission is considering a petition by Indeck Corinth Limited Partnership for a lightened regulatory regime in connection with an approximately 128 MW natural gas electric generating facility in Corinth, New York.

Statutory authority: Public Service Law, sections 2(13), 5(1)(b), 18-a, 19, 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-a, 119-b and 119-c

Subject: Lightened regulatory regime applicable to Indeck Corinth Limited Partnership.

Purpose: To determine the extent to which Indeck Corinth Limited Partnership will be regulated under the Public Service Law.

Substance of proposed rule: The New York State Public Service Commission (Commission) is considering a petition filed on July 22, 2016, by Indeck Corinth Limited Partnership (Indeck), for a lightened regulatory regime in connection with its ownership and operation of an approximately 128 MW natural gas electric generating facility located in Corinth, New York. Indeck requests that it be subject to regulation as an electric corporation consistent with the Commission's prior orders affording a lightened regulatory regime to wholesale electric generating facilities. 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: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@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.

(16-E-0409SP1)

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Emergency Shelters for the Homeless

I.D. No. TDA-06-16-00016-A

Filing No. 745

Filing Date: 2016-08-01

Effective Date: 2016-08-17

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

Action taken: Addition of section 352.37 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (j), 20(2)-(3), 34, 460-c and 460-d; Executive Law, section 43(1); General Municipal Law, section 34; State Finance Law, section 109(4); New York City Charter, section 93; and Buffalo City Charter, ch. C, art. 7, section 7-4

Subject: Emergency shelters for the homeless.

Purpose: Emergency measures concerning shelters for the homeless.

Text or summary was published in the February 10, 2016 issue of the Register, I.D. No. TDA-06-16-00016-E.

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

Revised rule making(s) were previously published in the State Register on May 11, 2016.

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Supplemental Nutrition Assistance Program (SNAP)

I.D. No. TDA-19-16-00007-A

Filing No. 747

Filing Date: 2016-08-02

Effective Date: 2016-08-17

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

Action taken: Amendment of section 387.9(a)(7)(ii)(*a*)-(*b*)(*2*)-(*3*); and addition of section 387.9(a)(7)(ii)(*c*) to Title 18 NYCRR.

Statutory authority: 7 United States Code, ch. 51, sections 2011 and 2013; 7 Code of Federal Regulations, section 273.2(d); Social Services Law, sections 17(a)-(b), (j), 20(3)(d), 34(3)(f) and 95; L. 2012, ch. 41

Subject: Supplemental Nutrition Assistance Program (SNAP).

Purpose: Update State regulations concerning household cooperation with SNAP quality control reviews to reflect federal changes.

Text or summary was published in the May 11, 2016 issue of the Register, I.D. No. TDA-19-16-00007-P.

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

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

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 2021, 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.

NOTICE OF ADOPTION

Income Withholding of Child or Combined Child and Spousal Support

I.D. No. TDA-21-16-00005-A

Filing No. 741

Filing Date: 2016-07-28

Effective Date: 2016-08-17

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

Action taken: Amendment of Part 344 and section 347.9 of Title 18 NYCRR.

Statutory authority: 42 U.S. Code, sections 651, 654(b), 666(a)(8)(B)(iii) and (b)(6); Civil Practice Law and Rules, sections 5241 and 5242; Social Services Law, sections 17(a)-(b), (j), 20(3)(d), 34(3)(f), 111-a and 111-b(14)

Subject: Income withholding of child or combined child and spousal support.

Purpose: Update State regulations to conform to federally-mandated changes to CPLR sections 5241 and 5242; Social Services Law, section 111-b.

Text or summary was published in the May 25, 2016 issue of the Register, I.D. No. TDA-21-16-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, NY 12243-0001, (518) 456-7503, email: richard.rhodesjr@otda.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 2021, 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.