RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice.
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Education Department

REVISED RULE MAKING NO HEARING(S) SCHEDULED

School Receivership

I.D. No. EDU-27-15-00008-RP

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

Proposed Action: Addition of section 100.19 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 211-f(15), 215(not subdivided), 305(1), (2), (20), 308(not subdivided) and 309(not subdivided); L. 2015, ch.56, subpart H, part EE

Subject: School receivership.

Purpose: To implement Education Law section 211-f, as added by part EE, subpart H of ch. 56 of the Laws of 2015.

Substance of revised rule: The Commissioner of Education proposes to add a new section 100.19 of the Commissioner's Regulations. The proposed rule was originally adopted as an emergency action at the June 2015 Regents meeting, effective June 23, 2015 and revised and adopted as an emergency action at the September and October 2015 Regents meetings, and readopted as an emergency action at the December 2015 and January 2016 Regents meetings. Since publication of the Notice of Emergency Adoption and Revised Rule Making in the State Register on November 10, 2015, substantial revisions have been made to the proposed rule as set forth in the Statement Concerning the Regulatory Impact Statement published herewith. The following is a summary of the substantive provisions of the revised proposed rule.

Section 100.19(a), Definitions, provides the definitions used in the section, including the definitions of Failing School (Struggling School), Persistently Failing School (Persistently Struggling School), Priority School, School District in Good Standing, School District Superintendent Receiver, Independent Receiver, School District, Community School, Board of Education, Department-approved Intervention Model, School Intervention Plan, School Receiver, Diagnostic Tool for School and District Effectiveness, Consultation and Cooperation, Consultation, Consulting and Day.

§ 100.19(b), Designation of Schools as Failing and Persistently Failing, explains the process by which the Commissioner shall designate schools as Struggling or Persistently Struggling and clarifies that school districts will have the opportunity to present data and relevant information concerning extenuating or extraordinary circumstances faced by the school that should cause it not to be identified as a Struggling or a Persistently Struggling School.

§ 100.19(c), Public Notice and Hearing and Community Engagement, details the process and timeline for notifying parents and the community regarding the Struggling or Persistently Struggling designation, the establishment of a Community Engagement Team, and the role of the Community Engagement Team in the development of recommendations for the identified school. The regulations would require at least one public meeting or hearing annually regarding the status of the school and annual notification to parents of the school's designation and its implications. The regulations also detail the process by which the hearing shall be conducted and notifications made. Additionally, the subdivision specifies that the district superintendent receiver is required to develop a community engagement plan for approval by the Commissioner.

§ 100.19(d), School District Receivership, specifies that the superintendent shall be vested with the powers of the receiver for Persistently Struggling Schools for the 2015-16 school year and with the powers of the receiver for Struggling Schools for the 2015-16 and 2016-17 school years, provided that there is a Department approved intervention model or comprehensive education plan in place for these school years that includes rigorous performance metrics. The school district superintendent receiver shall provide quarterly written reports regarding implementation of the department-approved intervention model or school comprehensive education plan, and such reports, together with a plain-language summary thereof, shall be made publicly available. At the end of the 2015-16 school year, the Commissioner will review (in consultation and collaboration with the district) the performance of the Persistently Struggling School to determine whether the school can continue under the superintendent receivership or whether the district must appoint an independent receiver for the school. Similarly, the Department will review the performance of Struggling Schools after two years to determine whether the schools can continue under the superintendent receivership or whether the district must appoint an independent receiver for the school.

§ 100.19(e), Appointment of an Independent Receiver, details the timeline and process for appointment of an independent receiver for Persistently Struggling and Struggling Schools and the process by which the Commissioner approves and contracts with the independent receiver. The section also details the power of the Commissioner to appoint an independent receiver if the district fails within sixty days to appoint an independent receiver that meets the Commissioner's approval. The subdivision clarifies that districts may appoint independent receivers from a department approved list or provide evidence of qualifications of a receiver not on the approved list. Additionally, the subdivision specifies what happens when the Commissioner must appoint an interim receiver.

§ 100.19(f), School Intervention Plan, describes the timeline and process by which the independent receiver will submit to the Commissioner for approval a school intervention plan and the specific components of that plan, including the metrics that will be used to evaluate plan implementation. Each approved school intervention plan must be submitted within six months of the independent receiver's appointment and this approval is authorized for a period of no more than three years. Each approved school intervention plan must be based on input from stakeholders delineated in the subdivision and a stakeholder engagement plan must be provided to the Commissioner within ten days of the independent receiver

entering into a contract with the Commissioner. The school intervention plan must also be based upon recent diagnostic reviews and student achievement data. The independent receiver must provide quarterly reports, and plain-language summaries thereof, regarding the progress of implementing the school intervention plan to the local board of education, the Board of Regents, and the Commissioner. In order to provide additional direction to school districts, the regulations further delineate that in converting a school to a community school, the receiver must follow a particular process and meet minimum program requirements. The subdivision further clarifies that if the independent receiver cannot create an approvable plan, the Commissioner may appoint a new independent receiver.

§ 100.19(g), Powers and Duties of a Receiver, delineates the powers and duties of a school receiver, and the powers and duties that an independent receiver has in developing and implementing a school intervention plan. The independent receiver is required to convert the school to a community school and to submit an approvable school intervention plan to the Commissioner. The receiver (both the superintendent receiver and the independent receiver) has powers that may be exercised in the areas of school program and curriculum development; staffing, including replacement of teachers and administrators; school budget; expansion of the school day or year; professional development for staff; conversion of the school to a charter school; and requesting changes to the collective bargaining agreement at the identified school in areas that impact implementation of the school intervention plan. This section also describes the power of the receiver (both the superintendent and the independent receiver) to supersede decisions, policies, or local school district regulations that the receiver, in his/her sole judgment, believes impedes implementation of the school intervention plan.

Under the provisions of this subdivision, the receiver must notify the board of education, superintendent, and principal when the receiver is superseding their authority. The receiver must provide a reason for the supersession and an opportunity for the supersession to be appealed, all within a timeline prescribed in the regulations. This subdivision also delineates a similar process by which the receiver reviews and makes changes to the school budget and supersedes employment decisions regarding staff employed in schools operating under receivership.

§ 100.19(h), Annual Evaluation of Schools with an Appointed Independent Receiver, describes how the Commissioner, in collaboration and consultation with the district, will conduct an annual evaluation of each school to determine whether the school is meeting the performance goals and progressing in implementation of the school intervention plan. As a result of this evaluation, the Commissioner may allow the receiver to continue with the approved plan or require the receiver to modify the school intervention plan.

§ 100.19(i), Expiration of School Intervention Plan, describes the process by which the Commissioner evaluates the progress of the school under the receiver's school intervention plan after a three year period. Based on the results of the evaluation, the Commissioner may renew the plan with the independent receiver for not more than three years; terminate the independent receiver and appoint a new receiver; or determine that the school has improved sufficiently to be removed from Failing or Persistently Failing status.

§ 100.19(j), Phase-out and Closure of Failing and Persistently Failing School, states that nothing in these regulations shall prohibit the Commissioner from directing a school district to phase out or close a school, the Board of Regents from revoking the registration of a school, or a district from closing or phasing out a school with the approval of the Commissioner.

§ 100.19(k), regarding the Commissioner's evaluation of a school receivership program, requires the school receiver to provide any reports or other information requested by the Commissioner, in such form and format and according to such timeline as may be prescribed by the Commissioner, in order for the Commissioner to conduct an evaluation of the school receivership program.

Revised rule making(s) were previously published in the State Register on October 7, 2015.

Revised rule compared with proposed rule: Substantive revisions were made in section 100.19(c)(2), (e)(1)-(3), (f)(1), (g)(4), (5) and (9).

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

Data, views or arguments may be submitted to: Cheryl Atkinson, Associate Commissioner, State Education Department, Office of P-12 Education, State Education Building, 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on November 10, 2015, the following revisions have been made to the proposed rule.

Section 100.19(c)(2)(i) has been revised to clarify: (1) that a community engagement team can be a district-level team if one district has several schools in receivership, as long as each receivership school is represented on this district-level team, and (2) that the team may include agencies (e.g.: mental health, health services, social services, early childhood, expanded learning opportunities, mentoring, youth development, early childhood, CTE, workforce development, and higher education institutions) with an integrated focus on rigorous academics and the fostering of a positive and supportive learning environment, and a range of school-based and school-linked programs and services that lead to improved student learning, stronger families, and healthier communities.

Section 100.19(e)(1)-(3); (f)(1)(i); (g)(4)(ii),(iii),(iv); (g)(5)(iii); and (g)(9)(iii)(b) have been revised to specify that the timelines referenced therein be determined using calendar days.

In addition, section 100.19(f)(5) has been revised to correct a numbering error by renumbering subparagraph (ix) to subparagraph (x); and section 100.19(f)(9) has been revised to correct a grammatical error by replacing the term "the" appearing at the beginning of the first sentence, with "The."

The above changes do not require any changes to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on November 10, 2015, substantial revisions have been made to the proposed rule as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above changes do not require any changes to the previously published Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on November 10, 2015, substantial revisions have been made to the proposed rule as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above changes do not require any changes to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on November 10, 2015, substantial revisions have been made to the proposed rule as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The proposed rule, as revised, applies to public schools that are Struggling or Persistently Struggling and placed into receivership and will not result in an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the revised rule that it will have no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

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

Chemical Bulk Storage (CBS)

I.D. No. ENV-07-16-00004-E

This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement pertain(s) to a notice of Emergency rule making, I.D. No. ENV-07-16-00004-E, printed in the *State Register* on February 17, 2016.

Summary of Regulatory Impact Statement

Full text of the Regulatory Impact Statement is available on the New York State Department of Environmental Conservation's website at http://www.dec.ny.gov/regulations/104968.html

1. STATUTORY AUTHORITY

The State law authority that empowers the New York State Department of Environmental Conservation (Department) to create the list of hazardous substances is found in Title one of Article 37 of the Environmental Conservation Law (ECL), sections 37-0101 through 37-0111, entitled "Substances Hazardous to the Environment" (Article 37). The Department is authorized to adopt regulations pursuant to ECL sections 3-0301(2)(a) and (m). Moreover, section 37-0105 explicitly authorizes the Department to promulgate rules and regulations pertaining to the storage and prevention of releases of hazardous substances to the environment. Specifically, section 37-0103 directs the Department to list "substances hazardous to the public health, safety or environment" that "cause or are capable of causing death, serious illness or serious physical injury to any person or persons as a consequence of release into the environment." The Department's existing rule with respect to the list of hazardous substances is found at 6 NYCRR Part 597. Section 597.2 provides that a substance is considered hazardous if, among other means, "because of its quantity, concentration, or physical, chemical or infectious characteristics, the substance causes physical injury or illness to humans when improperly treated, stored, transported, disposed or, or otherwise managed."

2. LEGISLATIVE OBJECTIVES

The legislative objectives underlying Article 37 are directed toward establishing a list of hazardous substances which pose a threat to public health and the environment. The emergency rule meets these legislative objectives by listing perfluorooctanoic acid (PFOA, Chemical Abstracts Service (CAS) No. 335-67-1) as a hazardous substance. As described below, PFOA is a substance that has the potential to cause illness to humans as a consequence of being exposed to PFOA that has been released into the environment.

3. NEEDS AND BENEFITS

The emergency rule added perfluorooctanoic acid (PFOA, CAS No. 335-67-1) to the list of hazardous substances in 6 NYCRR Section 597.3. The Department issued the emergency rule based, in part, upon the conclusion of the New York State Department of Health (NYSDOH) that the environmental presence, persistence, toxicity, improper treatment, storage, transport, and disposal of PFOA pose a threat to public health in New York State (letter dated January 27, 2016).

The United States Environmental Protection Agency (USEPA) has classified this substance as an emerging contaminant that is extremely persistent in the environment and resistant to typical environmental degradation processes. (USEPA document EPA 505-F-14-001, "Emerging Contaminants Fact Sheet – PFOS and PFOA," March 2014, where PFOS is perfluorooctane sulfonate; http://www.epa.gov/fedfac/emerging-contaminants-perfluorooctane-sulfonate-pfos-and-perfluorooctanoic-acid-pfoa).

The U.S. Department of Health and Human Services, Public Health Service, Agency for Toxic Substances and Disease Registry, issued toxicological information stating that PFOA exposure may cause liver damage and impaired immune function, and may be the cause of some increases in prostate, kidney, and testicular cancers found in workers living near a facility that manufactured PFOA ("Draft Toxicological Profile for Perfluoroalkyls," August 2015, http://www.atsdr.cdc.gov/toxprofiles/tp200.pdf).

To be able to regulate the handling and storage of PFOA and have the authority to remediate sites contaminated with PFOA, it was necessary to list PFOA as a hazardous substance in 6 NYCRR Part 597. In New York State, the "Chemical Bulk Storage (CBS)" regulations (6 NYCRR Parts 596-599) provide standards for the proper handling and storage of bulk quantities of hazardous substances to prevent spills and releases to the environment, prohibit the release of hazardous substances to the environment, and require the reporting of certain releases of hazardous substances to the Department. Certain facilities that store hazardous substances must apply to the Department for a registration certificate to operate. The requirements to register and properly handle and store hazardous substances only apply to materials listed in Part 597.

The prohibition against releasing a hazardous substance to the environment is in Part 597 (subdivision 597.4(a)). It was necessary to list PFOA as a hazardous substance in Part 597 so that the release prohibition would apply.

ECL Section 27-1301.1 defines Part 597 hazardous substances as hazardous wastes. The Department's regulations regarding the remediation of sites contaminated with hazardous wastes (Part 597 hazardous substances and hazardous waste as defined in 6 NYCRR Part 371) are included in 6 NYCRR Part 375 (Part 375). The inactive hazardous waste disposal site remedial program requirements, set forth in Part 375-2, apply to contamination associated with the disposal of hazardous wastes.

Therefore, the Department concluded that it was necessary to list PFOA as a hazardous substance in Part 597 to regulate the storage of PFOA in order to prevent and prohibit spills and releases to the environment, and to provide for the remediation of sites contaminated with PFOA under a Department remedial program.

There are at least three benefits of listing PFOA as a hazardous substance in Part 597. First, if a mixture that contains PFOA in concentrations of 1% or more is stored in an aboveground tank of 185 gallons or more or any size underground tank, the tank will be subject to the requirements of the CBS regulations (6 NYCRR Parts 596 – 599) with the express purpose of preventing leaks and spills in order to protect public health and the environment. Second, releases of PFOA to the environment are now prohibited (subdivision 597.4(a)). Third, and most importantly, if PFOA is released into the environment creating contamination and the need for site cleanup, the Department is authorized to pursue clean-up of the contamination under a Department remedial program (Part 375) and may expend funds under the "State Superfund."

4. COSTS

Costs to Regulated Parties

The production of PFOA has reportedly been discontinued and PFOA is being eliminated from products. Under the federal Toxic Substances Control Act (TSCA), the USEPA has been managing the "2010/2015 PFOA Stewardship Program" to phase out the production and emissions of PFOA by the end of 2015. (http://www.epa.gov/assessing-and-managing-chemicals-under-tsca/20102015-pfoa-stewardship-program-2014-annual-progress). As part of USEPA's PFOA stewardship program, eight manufacturers committed to phasing out the use and production of PFOA. The first commitment was to accomplish a 95% reduction (in comparison to 2000 levels) of 1) all PFOA emissions to the environment, 2) the use of precursor chemicals that break down into PFOA, and 3) the levels of PFOA in products. The second commitment was to phase-out the production of PFOA by the end of 2015.

Because the production of PFOA has been phased out and the substantive CBS tank system requirements for handling and storing PFOA do not apply until two years after the date the emergency rule went into effect (January 27, 2016), the Department expects that the compliance costs for meeting the CBS requirements will be minimal. If the facility discontinues storage within the two-year period before the storage and handling standards go into effect, there would be no other substantive costs. If the facility continues to store PFOA, it would be subject to the costs of complying with the handling and storage requirements in Parts 598 and 599.

With one possible exception, the release prohibition should not present unusual compliance costs for small businesses and local governments who may be in possession of PFOA-containing materials. The possible exception is for those in possession of fire-fighting foams that contain PFOA, the use of which may constitute a "release" to the environment, which is now prohibited as a result of the emergency rule. Fire-fighting foams that can no longer be used for its intended use will likely need to be disposed of in accordance with all local, state, and federal requirements and replacement foams purchased. The Department recognizes the important societal interest of ensuring the availability of materials to control fires. The Department is evaluating this issue further and expects to address it in the final regulation.

The costs for complying with the requirements of Part 375 to implement a remedial program where PFOA is the primary contaminant will vary widely as costs depend upon many factors. It is not possible to meaningfully estimate potential costs to small businesses and local

governments resulting from the listing of PFOA as a hazardous substance other than to note that remedial program costs for other hazardous substances range from the thousands to millions of dollars on a case-by-case basis.

Costs to the Department, State, and Local Government

The Department will incur costs to administer the CBS program. They will be partially offset through registration application fees. In addition, there will be costs associated with the Department's oversight of site remediation by responsible parties and, in cases where the responsible party is unwilling or unable to undertake the remediation, the costs of the remediation incurred by the Department.

State and Local Governments will incur costs making a determination regarding whether products containing PFOA at concentrations of more than 1% are stored at their facilities.

5. LOCAL GOVERNMENT MANDATES

No additional recordkeeping, reporting, or other requirements not already created by statute or described above would be imposed on local governments. This is not a local government mandate.

6. PAPERWORK

The proposed rule contains no substantive changes to existing reporting and recordkeeping requirements, except for those newly subject to this regulation.

7. DUPLICATION

The listing of PFOA as a hazardous substance in Part 597 causes no duplication, overlap or conflict with any other state or federal government programs or rules.

8. ALTERNATIVES

The only alternative to listing PFOA as a hazardous substance considered by the Department was no action. The Department declined to take no action because of the needs and benefits of listing described above. In summary, listing was necessary to prevent further releases of PFOA to the environment by prohibiting releases; requiring PFOA's safe handling and storage at facilities storing bulk amounts of PFOA, and ensuring that responsible parties take necessary, appropriate, and timely actions to address past releases of PFOA to the environment; and allowing the Department to expend state resources to clean up releases of PFOA in accordance with the requirements of Part 375 when no willing or viable responsible parties undertake cleanup.

9. FEDERAL STANDARDS

Listing PFOA as a hazardous substance exceeds the federal standard as USEPA has not listed PFOA as a hazardous substance under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or under the applicable regulation, 40 CFR Part 302 ("Designation, Reportable Quantities, and Notification"). Under TSCA, EPA has worked with industry to voluntarily phase out the use of PFOA by 2015 and, as discussed above, has proposed a significant new use rule to limit the production and importation of PFOA in anticipation of this 2015 phase-out deadline.

10. COMPLIANCE SCHEDULE

PFOA storage facilities subject to the registration requirements of 6 NYCRR Part 596 must register their tank systems with the Department and pay the registration fee. The registration requirements for PFOA became effective as of the date of the emergency rule (January 27, 2016). If a facility begins storing PFOA subject to the registration requirements, it must obtain a valid registration certificate prior to storing the material. Facilities are not required to comply with the handling and storage requirements for hazardous substances until two years after becoming subject to regulation (6 NYCRR subdivision 598.1(h)).

Part 597 prohibits the unauthorized release of a hazardous substance to the environment (subdivision 597.4(a)). As a result of the emergency rule, the prohibition now also applies to PFOA. Releases of a listed hazardous substance above the reportable quantity (RQ) stated in Part 597 for the substance must be reported to the Department's Spill Hotline (subdivision 597.4(b)).

The Department is evaluating the emergency rule's impact on the storage and use of fire-fighting foam containing PFOA.

Listing PFOA as a hazardous substance will result in PFOA sites otherwise meeting regulatory criteria to be subject to the inactive hazardous waste disposal sites regulatory requirements of Part 375. In these cases, compliance requirements are established by Part 375 and by Department orders and agreements. Part 375 sets forth requirements for remediation. Remedial programs for a site tend to take from a few to many years to complete.

Summary of Regulatory Flexibility Analysis

Full text of the Regulatory Flexibility Analysis for Small Businesses and Local Governments is available on the New York State Department of Environmental Conservation's website at http:// www.dec.ny.gov/regulations/104968.html

1. EFFECT OF RULE

The emergency rule added perfluorooctanoic acid (PFOA, Chemical Abstracts Service No. 335-67-1) to the list of hazardous substances in 6 NYCRR section 597.3. The rule applies statewide in all 62 counties of New York State (State). As further discussed below under "Compliance Requirements," the listing has three primary effects. First, certain facilities storing PFOA may now be subject to the requirement to register their facilities (6 NYCRR Part 596) with the New York State Department of Environmental Conservation (Department) under the Department's Chemical Bulk Storage (CBS) program. Facilities newly subject to regulation have two years before they must comply with the applicable handling and storage requirements for hazardous substances (6 NYCRR Parts 598-599).

The production of PFOA has reportedly been discontinued and PFOA is being eliminated from products. Under the federal Toxic Substances Control Act (TSCA), the United States Environmental Protection Agency has been managing the "2010/2015 PFOA Stewardship Program" to phase out the production and emissions of PFOA by the end of 2015. As of the last annual report (2014), United States companies manufacturing PFOA were "on track to reach the program's goal of phasing out these chemicals by the end of 2015" (http:// www.epa.gov/assessing-and-managing-chemicals-under-tsca/ 20102015-pfoa-stewardship-program-2014-annual-progress).

A PFOA product likely still in circulation that could be subject to the CBS registration requirement is older stocks of fire-fighting foam that contain PFOA. Small businesses are not likely to store these foams in quantities that would be subject to the CBS registration requirement (explained below). Large local government agencies (fire departments, fire districts) may still maintain stocks of fire-fighting foam that could be subject to the registration requirement.

The Department does not collect data with respect to the number of the persons employed by the owner or operator of any subject CBS facility or on the industrial classification of a registered facility. Due to this lack of data, the Department is unable to make an estimate of how many small businesses comply with the existing CBS rules (6 NYCRR Parts 596 through 599) or will be required to comply with the emergency rule.

The second main effect of the promulgation of the emergency rule is the prohibition of the release of PFOA to the environment (subdivision 597.4(a)). The release prohibition now applies to any quantity of PFOA, including any older stocks of fire-fighting foams and any other material containing PFOA in the possession of small businesses or local governments. The Department recognizes the important societal interest of ensuring the availability of materials to control fires, and is evaluating the issue of regulating PFOA-containing fire-fighting foams, and expects to address it in the final regulation.

The third main result of the listing of PFOA as a hazardous substance in Part 597 is the potential applicability of the requirements of 6 NYCRR Part 375. If PFOA is or has been released into the environment in such a way that the site of the release meets the definition of an "inactive hazardous waste disposal site" and other regulatory criteria, then such sites would be subject to the investigation and remediation requirements of Part 375. Inactive hazardous waste disposal sites are regulated under subpart 375-2. The Department intends to evaluate the implications of PFOA's listing as a hazardous substance on the Brownfield Cleanup Program, regulated pursuant to subpart 375-3, and the municipal Environmental Restoration Programs, regulated pursuant to subpart 375-4. It is not known how many small businesses or local governments may own properties that are contaminated by PFOA in a way that would make them subject to the regulatory requirements of Part 375.

2. COMPLIANCE REQUIREMENTS

Facilities that store PFOA in amounts and in certain tanks that make them subject to the registration requirements of 6 NYCRR Part 596 must register tank systems with the Department and pay the registration fee associated with the CBS program.

If the facility is already storing PFOA subject to the registration requirements, then the registration requirement became effective as of the date of the emergency rule (January 27, 2016). A facility planning to start storing PFOA subject to the registration requirement must obtain a valid registra-

tion certificate prior to storing the material. Facilities are not required to comply with the handling and storage requirements for hazardous substances until two years after becoming subject to regulation (6 NYCRR subdivision 598.1(h)). The Department anticipates that facilities that currently store PFOA will phase out their storage of the substance prior to the end of the two-year period and therefore will not have substantive CBS compliance requirements beyond the registration requirement.

Part 597 prohibits the unauthorized release of a hazardous substances to the environment (subdivision 597.4(a)). As a result of the emergency rule, this prohibition applies to PFOA. Releases of a listed hazardous substance above the reportable quantity (RQ) set forth in Part 597 for the substance must be reported to the Department's Spill Hotline (subdivision 597.4(b)). Releases of more than one pound (the RQ established for PFOA) to the environment must be reported.

Listing PFOA as a hazardous substance will result in PFOA sites otherwise meeting regulatory criteria being subject to the inactive hazardous waste disposal sites regulatory requirements of Part 375. In these cases, compliance requirements are established by Part 375 and by Department orders and agreements with regulated entities. Remedial programs for a site tend to be complex, multi-phased, and take from a few to many years to complete.

The Department intends to evaluate the implications of the PFOA listing on the Brownfield Cleanup and Environmental Restoration Programs.

3. PROFESSIONAL SERVICES

No new or additional professional services would likely be needed by facilities owned by small businesses or local governments to comply with the emergency rule regarding the CBS requirements if they discontinue storing PFOA before the handling and storage requirements take effect (two years after a facility becomes subject to the registration requirement for existing stocks being stored). If facilities continue to store after the two-year period, small businesses and local governments may need professional services to assist them in meeting the handling and storage requirements for hazardous substances.

If a small business or local government becomes a remedial party subject to requirements to implement a remedial program under Part 375, it would likely require consulting and contractual services to assist in carrying out the remedial program. This could include professional engineers or qualified environmental professionals as defined in Part 375 and contractual services needed to complete site investigation field work, analyses of environmental samples, or other specialized services.

4. COMPLIANCE COSTS

Because the production of PFOA has been phased out and the substantive CBS tank system requirements for handling and storing PFOA will not apply until two years after the date the emergency rule went into effect (January 27, 2016), the Department expects that the compliance costs for meeting the CBS requirements will be minimal. The registration fees range from $50 per tank for tanks less than 550 gallons capacity to $125 per tank for capacities greater than 1,100 gallons. If the facility discontinues storage within the two-year period before the tank system standards go into effect, there would be no other substantive costs.

Other than for fire-fighting foam, which is being further evaluated, the release prohibition should not present significant compliance costs for small businesses and local governments.

The costs of complying with the requirements of Part 375 to implement a remedial program where PFOA is the primary contaminant will vary widely as the costs depend upon many factors. Because of the wide variety of scenarios, it is not possible to meaningfully estimate the potential costs to small businesses and local governments resulting from the listing of PFOA as a hazardous substance other than to note that remedial program costs for other hazardous substances can range from the thousands to millions of dollars on a case-by-case basis.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

If a small business or local government is required to comply with only the CBS registration requirements, no significant impediments would be faced. If a person decides to store PFOA subject to the CBS handling and storage requirements beyond the two-year period, costs for these requirements would be incurred. Costs could include those for the design, construction, and ongoing maintenance of tank systems capable of meeting the technical requirements for release prevention, release detection, and containment of any spills that may occur. They would present no technological feasibility issues, but costs would be incurred commensurate with the amounts to be stored.

The economic and technical feasibility of complying with the requirements to remediate a PFOA-contaminated site for a small business or local government will depend upon the circumstances. If contamination is extensive, there will be both economic and technical obstacles for a small business or local government. Costs can easily extend into the millions of dollars for a complicated site.

6. MINIMIZING ADVERSE IMPACT

The Department issued the emergency rule based upon the conclusion of the New York State Department of Health that the environmental presence, persistence, toxicity, improper treatment, storage, transport, and disposal of PFOA pose a threat to public health in New York State (letter dated January 27, 2016). The emergency rule itself was limited to the inclusion of PFOA in the list of hazardous substances in Part 597. This emergency action does not lend itself to the mitigating measures listed in State Administrative Procedure Act section 202-b(1), but there are existing requirements established in the regulations that help to minimize adverse impacts. For example, the CBS regulations allow a two-year period after a new chemical is added to the list of hazardous substances before the handling and storage requirements of Part 598 apply (subdivision 598.1(h)). The Department has previously determined through other rule making actions that the remaining regulatory compliance provisions, including storage, handling, release prohibition, and disposal, appropriately apply to small businesses and local governments.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The Department provides statewide outreach to persons who will be subject to proposed rules, including small businesses and local governments. When the Department proposes the final rule to list PFOA in Part 597, the Department will ensure public notice and input by issuing public notices issued in the State Register and newspapers, publication in the Department's Environmental Notice Bulletin, holding a comment period of at least 45 days, and holding public hearings. Interested parties, including small businesses and local governments, will have the opportunity to submit comments and participate in the public hearings. The Department will post relevant rule making documents on the Department's website.

8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

There can be no ameliorative actions or cure period regarding the prohibition against releasing PFOA to the environment because the prohibition is absolute and intended to prevent the harm that would come to public health or the environment from a release. If there has been a release to the environment that requires remediation under a Department remedial program, the timing and content of the remediation is developed on a case-by-case basis. This allows the Department to consider and apply appropriate ameliorative actions. The concept of a cure period does not apply in the case of a remedial program.

If a facility subject to the PFOA CBS facility registration requirement fails to register its facility in accordance with Part 596, the facility owner/operator will be subject to penalties that have been in place and exercised by the Department for all types of parties for decades, including small businesses and local governments. Therefore, no additional ameliorative actions or cure period are established for the emergency rule regarding CBS registration or handling and storage requirements.

9. INITIAL REVIEW OF THE RULE

The Department will conduct an initial review of the rule within three years of the promulgation of the final rule.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS

There are 44 counties in New York State (State) that have populations of less than 200,000 people and 71 towns in non-rural counties where the population densities are less than 150 people per square mile. The emergency rule applies statewide so it applies to all rural areas of the State. The emergency rule listed perfluorooctance (PFOA, Chemical Abstracts Service No. 335-67-1) as a hazardous substance in 6 NYCRR section 597.3 and there is no reason to believe that this will disproportionally impact rural areas.

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

The emergency rule made no changes to any reporting, recordkeeping, or other compliance requirements requirement for Chemical Bulk Storage (CBS) facilities other than to place PFOA on the list of hazardous substances in section 597.3.

Facilities that store PFOA in specified quantities and use certain tanks that make them subject to the registration requirements of 6 NYCRR Part 596 must register tank systems with the Department and pay a registration fee associated with the CBS program. Facilities regulated under 6 NYCRR Parts 596-599 most commonly store hazardous substances in stationary aboveground tank systems with a capacity greater than 185 gallons.

If facilities are currently storing PFOA subject to the registration requirement, then the registration requirement became effective as of the date of the emergency rule (January 27, 2016). If facilities plan to start storing PFOA subject to the registration requirement, then they must obtain a valid registration certificate prior to storing the material. Facilities are not required to comply with the handling and storage requirements for hazardous substances until two years after becoming subject to regulation (subdivision 598.1(h)). Since the Department expects that facilities that currently store PFOA will phase out storage of the substance prior to

the end of the two-year period, they will not have substantive CBS compliance requirements regarding PFOA beyond the registration requirement.

Part 597 prohibits the unauthorized release of a hazardous substance to the environment (subdivision 597.4(a)). As a result of the emergency rule, the prohibition now also applies to PFOA. Releases of a listed hazardous substance above the reportable quantity (RQ) stated in Part 597 for the substance must be reported to the Department's Spill Hotline (subdivision 597.4(b)). With PFOA listed as a hazardous substance, releases that are not "authorized" (paragraph 597.4(a)(1)) or qualify as "continuous and stable" (paragraph 597.4(a)(2)) are prohibited. "Authorized" releases are typically those subject to a permitted air or water discharge permit. "Continuous and stable" releases are typically associated with normal operating processes (e.g., releases from a storage tank vent that occur upon filling of the tank). These releases are subject to the requirements and reporting procedures of 40 CFR section 302.8. All other releases are prohibited. Releases of more than one pound (the RQ established for PFOA) to the environment must be reported to the Department.

The Department is evaluating the emergency rule's impact on the storage and use of fire-fighting foam containing PFOA.

Listing PFOA as a hazardous substance will result in PFOA sites otherwise meeting regulatory criteria being subject to the inactive hazardous waste disposal sites regulatory requirements of Part 375. In these cases, compliance requirements are established by Part 375 and by Department orders and agreements with regulated entities. Part 375 sets forth requirements for the investigation of site conditions to determine the nature and extent of environmental contamination, evaluate remedial alternatives, design and construct a remedy, complete the operation and maintenance activities required to achieve the remedial action objectives for the site, and maintain any institutional or engineering controls needed to maintain the effectiveness of the remedy. Remedial programs for a site tend to be complex, multi-phased, and take from a few to many years to complete.

No new or additional professional services would likely be needed by facilities owned in rural areas to comply with the emergency rule regarding the CBS requirements if they discontinue storing PFOA before the handling and storage requirements take effect (two years after a facility becomes subject to the registration requirement for existing stocks being stored). If facilities continue to store after the two-year period, facility owner/operators may need professional services to assist them in meeting the handling and storage requirements for hazardous substances.

If an owner/operator in a rural area becomes a remedial party subject to requirements to implement a remedial program under Part 375, it would likely require consulting and contractual services to assist in carrying out the remedial program. This could include professional engineers or qualified environmental professionals as defined in Part 375 and contractual services needed to complete site investigation field work, analyses of environmental samples, or other specialized services.

3. COSTS

The Department does not expect any likely variation in compliance costs for different types of public and private entities in rural areas. Because the production of PFOA has reportedly been phased out and the substantive CBS tank system requirements for handling and storing PFOA would not apply until two years after the emergency rule went into effect (January 27, 2016), the Department expects that the compliance costs for meeting the CBS requirements will be minimal. Hazardous substances regulated under Parts 596-599 are most commonly stored in stationary aboveground tank systems with a capacity greater than 185 gallons. Registration fees apply to each regulated tank and depend upon the capacity of each tank. The fees range from $50 per tank for tanks less than 550 gallons capacity to $125 per tank for capacities greater than 1,100 gallons. If the facility discontinues storage within the two-year period before the storage and handling standards go into effect, there would be no other substantive costs.

Other than for fire-fighting foams, which is being further evaluated, the release prohibition should not present significant compliance costs for small businesses and local governments.

The costs of complying with the requirements of Part 375 to implement a remedial program where PFOA is the primary contaminant will vary widely as the costs depend upon many factors. These include the quantity released to the environment, the media contaminated (e.g., soil, groundwater, surface water, sediment, bedrock), the horizontal and vertical extent of contamination for each medium, the accessibility of the contamination, whether there are human or environmental receptors that must be protected while a remedial program is being undertaken, the difficulty of removing PFOA from the contaminated environmental media, the future anticipated use of the area of contamination, and other factors. Because of the wide variety of scenarios, it is not possible to meaningfully estimate the potential costs to persons managing PFOA in rural areas resulting from the listing of PFOA as a hazardous substance other than to note that remedial program costs for other hazardous substances can range from the thousands to millions of dollars on a case-by-case basis.

4. MINIMIZING ADVERSE IMPACT

The Department issued the emergency rule based upon the conclusion of the New York State Department of Health that the environmental presence, persistence, toxicity, improper treatment, storage, transport, and disposal of PFOA pose a threat to public health in New York State (letter dated January 27, 2016). The emergency rule itself was limited to the inclusion of PFOA in the list of hazardous substances in Part 597. This action does not lend itself to the mitigating measures listed in State Administrative Procedure Act section 202-bb(2) but there are existing requirements established in the regulations that help to minimize adverse impacts. For example, the CBS regulations allow a two-year period after a new chemical is added to the list of hazardous substances before the handling and storage requirements of Part 598 apply (subdivision 598.1(h)). The Department has previously determined through other rule making actions that the remaining regulatory compliance provisions including storage, handling, release prohibition, and disposal appropriately apply to persons managing hazardous substances in rural areas.

5. RURAL AREA PARTICIPATION

The Department provides statewide outreach to persons who will be subject to the proposed rules, including those in rural areas. When the Department proposes the final rule to list PFOA in Part 597, the Department will ensure public notice and input by issuing public notices in the State Register and newspapers, publication in the Department's Environmental Notice Bulletin, holding a comment period of at least 45 days, and holding public hearings. Interested parties will have the opportunity to submit comments and participate in the public hearings. The Department will post relevant rule making documents on the Department's website.

6. INITIAL REVIEW OF THE RULE

DEC will conduct an initial review of the rule within three years of the promulgation of the final rule.

Job Impact Statement

1. NATURE OF IMPACT

Through the emergency rule, the New York State Department of Environmental Conservation (Department) added perfluorooctanoic acid (PFOA, Chemical Abstracts Service No. 335-67-1) to the list of hazardous substances in 6 NYCRR section 597.3. The substantive effects of the listing are to (1) make the handling and storage of PFOA subject to the registration and other regulatory standards for Chemical Bulk Storage (CBS) facilities (6 NYCRR Parts 596-599); (2) prohibit the unauthorized release of PFOA to the environment (subdivision 597.4(a)) and require that any releases above the reportable quantity (one pound) be reported to the Department (subdivision 597.4(b)); and (3) make the investigation and remediation of releases of PFOA to the environment subject to the Department's remedial program requirements (6 NYCRR Part 375).

Under the federal Toxic Substances Control Act (TSCA), the United States Environmental Protection Agency (USEPA) has been managing the "2010/2015 PFOA Stewardship Program" to phase out the production and emissions of PFOA by the end of 2015. As of the last annual report (2014), United States companies manufacturing PFOA were "on track to reach the program's goal of phasing out these chemicals by the end of 2015" (http://www.epa.gov/assessing-and- managing-chemicals-under-tsca/20102015-pfoa-stewardship- program-2014-annual-progress). In addition, EPA has proposed a significant new use rule to limit the production and importation of PFOA (80 FR 2885; January 21, 2015). If this rule is finalized by USEPA, persons subject to the rule would be required to notify EPA at least 90 days before commencing such manufacture, processing, or importation. The required notifications would provide EPA with the opportunity to evaluate the intended use and, if necessary, an opportunity to protect against potential unreasonable risks from that activity before it occurs. Since production of PFOA has reportedly already been phased out and alternative substances have been developed to take the place of PFOA, the Department does not expect the emergency rule to have a significant impact on jobs and employment either in terms of lost jobs or the creation of new jobs. Employment opportunities should remain the same or may increase somewhat due to remediation activities.

2. CATEGORIES AND NUMBERS AFFECTED

Since PFOA is reportedly no longer being produced in the United States, the CBS regulations would only apply to PFOA-containing materials produced before the phase-out that are still in storage. Since replacement materials are already in place and the number of facilities storing PFOA in quantities large enough to be subject to the CBS regulations is expected to be small, the number of jobs affected is expected to be small. Existing employees may be required to arrange for the disposal of older stocks of PFOA-containing materials, but this should not require the creation of new jobs or the loss of existing jobs.

Where PFOA has previously been released to the environment in ways that make the resulting contamination subject to a 6 NYCRR Part 375 remedial program, a limited number of jobs may be created in order to complete the necessary investigations and remediation of the sites. Job categories would include, for example, drilling contractors and other heavy

equipment operators, field investigation technicians, hydrogeologists, engineers, analytical chemists and technicians, and others with training and experience related to site remediation.

The number of sites that may become remedial sites because of the addition of PFOA to Part 597 is unknown. The Department has placed one site on the Registry of Inactive Hazardous Waste Disposal Sites (Registry) as a result of adding PFOA to Part 597 (Site Registry ID No. 442046). The Department expects that other sites that used PFOA in commercial or industrial processes may be found to have PFOA environmental contamination. Locations where PFOA disposal occurred or where PFOA was a component of materials that were released to the environment may become remedial sites subject to the requirements of Part 375. Nationally, research by the United States Department of Defense (DoD) found that approximately 600 DoD sites are categorized as fire/crash/training areas and thus have the potential for contamination with perfluoroalkyl compounds (PFCs) due to historical use of aqueous film-forming foams (AFFF) [Strategic Environmental Research and Development Program (SERDP), FY 2014 Statement of Need (SON), Environmental Restoration (ER) Program Area, "In Situ Remediation of Perfluoroalkyl Contaminated Groundwater," SON Number: ERSON-14-02, October 25, 2012]. It is possible that the Department will list additional Registry sites. The work needed to investigate and remediate these sites may be accomplished by existing staff or new jobs may be added depending upon the number and complexity of sites.

3. REGIONS OF ADVERSE IMPACT

There are no regions of the State expected to be disproportionately impacted by the emergency rule to list PFOA as a hazardous substance. The rule applies statewide and there is no reason to expect that PFOA issues will be concentrated in one area over another to any significant degree.

4. MINIMIZING ADVERSE IMPACT

For the reasons described above, the emergency rule is not expected to have a significant adverse impact on jobs and employment.

5. SELF-EMPLOYMENT OPPORTUNITIES

The emergency rule is not expected to impact self-employment opportunities.

6. INITIAL REVIEW OF RULE

The Department will conduct an initial review of the rule within three years of the promulgation of the final rule.

Department of Financial Services

EMERGENCY RULE MAKING

Title Insurance Agents, Affiliated Relationships, and Title Insurance Business

I.D. No. DFS-08-16-00001-E

Filing No. 193

Filing Date: 2016-02-05

Effective Date: 2016-02-05

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

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

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

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

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

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

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

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

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

Substance of emergency rule: The following sections are amended:

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

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

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

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

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

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

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

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

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

Section 35.1 contains definitions for new Part 35.

Section 35.2 specifies forms for title insurance agent licensing applications.

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

Section 35.4 addresses affiliated business relationships.

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

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

Section 35.7 provides certain other minimum disclosure requirements.

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

Section 35.9 establishes record retention requirements for title insurance agents.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt 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 May 4, 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 toclarify or elim-

inate unnecessary requirements. Because the proposed regulation has expired, the Department anticipates submitting a new, revised proposal in 2015 that will incorporate additional public comments that the Department has received regarding the initial proposal. To prevent disruption and confusion in the industry until the rules are finalized, however, the emergency regulation is continued unchanged from the versions in effect since September 27, 2014.

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

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

Consolidated Regulatory Flexibility Analysis

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

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

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

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

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

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

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

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

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

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

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

Consolidated Rural Area Flexibility Analysis

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

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

Consolidated Job Impact Statement

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

EMERGENCY RULE MAKING

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

I.D. No. DFS-08-16-00004-E

Filing No. 197

Filing Date: 2016-02-09

Effective Date: 2016-02-11

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

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

Statutory authority: Banking Law, art. 12-D

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

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

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

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

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

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

Section 418.2 implements the provisions in Section 590(2)(b-1) of the Banking Law requiring registration of servicers and exempting mortgage bankers, mortgage brokers, and most banking and insurance companies,

as well as their employees. Servicing loans made pursuant to the Power New York Act of 2011 is excluded. The Superintendent is authorized to approve other exemptions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires May 8, 2016.

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

Regulatory Impact Statement

1. Statutory Authority.

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

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

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

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

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

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

New Subsection (1) of Section 595-b was added by the Subprime Law and requires the Superintendent to promulgate regulations and policies

governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Subprime Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

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

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

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

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

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

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

2. Legislative Objectives.

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

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

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

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

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

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

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

3. Needs and Benefits.

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

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

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

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

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

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

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

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

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

4. Costs.

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

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

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

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

5. Local Government Mandates.

None.

6. Paperwork.

An application process has been established for potential mortgage loan servicers to apply for registration electronically through the National

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

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

7. Duplication.

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

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

8. Alternatives.

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

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

9. Federal Standards.

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

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

10. Compliance Schedule.

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

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

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

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

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

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

3. Professional Services:

None.

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impacts:

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

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Types and Estimated Numbers 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 on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

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

Rural Area Participation. Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry 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.

NOTICE OF ADOPTION

Valuation of Individual and Group Accident and Health Insurance Reserves

I.D. No. DFS-43-15-00004-A

Filing No. 192

Filing Date: 2016-02-03

Effective Date: 2016-02-24

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

Action taken: Amendment of Part 94 (Regulation 56) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 1303, 1304, 1305, 1308, 4117, 4217, 4310 and 4517

Subject: Valuation of Individual and Group Accident and Health Insurance Reserves.

Purpose: To adopt the 2012 Group Long-Term Disability Valuation Table.

Text or summary was published in the October 28, 2015 issue of the Register, I.D. No. DFS-43-15-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Amanda Fenwick, New York State Department of Financial Services, One Commerce Plaza, Albany, New York 12257, (518) 474-7929, email: amanda.fenwick@dfs.ny.gov

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure

I.D. No. DFS-08-16-00002-P

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

Proposed Action: Amendment of Part 52 (Regulation 62) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301 and 3201(c)

Subject: Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure.

Purpose: To prohibit a health insurance policy or contract from providing coverage for conversion therapy to insureds under the age of 18.

Text of proposed rule: Subdivision 52.16(n) is added as follows:

(n)(1) As used in this subdivision:

(i) Mental health professional means a person subject to the provisions of Education Law Article 131, 153, 154, or 163; or any other person designated as a mental health professional pursuant to law, rule, or regulation.

(ii) Conversion therapy:

(a) means any practice by a mental health professional that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors, gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex.

(b) Conversion therapy shall not include counseling or therapy for an individual who is seeking to undergo a gender transition or who is in the process of undergoing a gender transition, that provides acceptance, support, and understanding of an individual or the facilitation of an individual's coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, provided that the counseling or therapy does not seek to change sexual orientation or gender identity.

(2) No policy or certificate shall provide coverage for conversion therapy rendered by a mental health professional to an individual under the age of 18 years.

Text of proposed rule and any required statements and analyses may be obtained from: Thomas Fusco, New York State Department of Financial Services, 65 Court Street, Room 7, Buffalo, NY 14202, (716) 847-7619, email: thomas.fusco@dfs.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority: Financial Services Law ("FSL") Sections 202 and 302 and Insurance Law ("IL") Sections 301 and 3201(c). Pursuant to FSL § 202, the Superintendent of Financial Services ("Superintendent") has the rights, powers, and duties in connection with financial services and protection in this state, expressed or reasonably implied by the FSL or any other applicable law of this State. IL § 301 and FSL § 302, in pertinent

part, authorize the Superintendent to prescribe regulations, not inconsistent with the IL and FSL, interpreting the provisions of the IL and to effectuate any power granted to the Superintendent in the Insurance Law. IL § 3201(c) authorizes the Superintendent to disapprove any policy form for delivery or issuance for delivery in this state if the benefits provided therein are unreasonable in relation to the premium charged or any such form contains provisions that encourage misrepresentation or are unjust, unfair, inequitable, misleading, deceptive, or contrary to law or to the public policy of this state.

2. Legislative objectives: The amendment to the regulation would prohibit any insurer from providing coverage in any insurance policy or contract delivered or issued for delivery in New York for conversion therapy for any individual under the age of 18 years. As discussed below in Needs and Benefits, there is a growing consensus in the medical community that conversion therapy for minors actually can be harmful to the minor. Further, homosexuality is not a disorder requiring treatment; therefore providing coverage for treatment that is not medically necessary in a policy or contract is misleading or deceptive. This amendment is being proposed in conjunction with amendments by the Office of Mental Health that prohibit any facility under its supervision from providing conversion therapy to minors.

3. Needs and benefits: Conversion therapy refers to any practice by a mental health professional that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors, gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex. Conversion therapy does not include counseling or therapy for an individual who is seeking to undergo a gender transition or who is in the process of undergoing a gender transition, that provides acceptance, support, and understanding of an individual or the facilitation of an individual's coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, provided that the counseling or therapy does not seek to change sexual orientation or gender identity. The practice is currently legal in New York State and there are no prohibitions against such therapy being reimbursed through commercial health insurance. However, conversion therapy has been repudiated and discredited by many medical and professional organizations, including: the American Academy of Pediatrics; the American Counseling Association; the American Psychiatric Association; the American Psychological Association; the American School Health Association; the American Association of School Administrators; the American School Counselor Association; the National Association of School Psychologists; and the National Association of Social Workers. These and many other mainstream health and mental health professional organizations have rejected the notion that homosexuality is a mental disorder or that same-sex attraction and orientation in adolescents is abnormal or mentally unhealthy. Below are examples of public statements issued by various professional organizations about the dangers of conversion therapy:

(a) The American Academy of Pediatrics, in a 2001 pamphlet entitled Gay, Lesbian and Bisexual Teens: Facts for Teens and Their Parents, advised that "counseling may be helpful for [adolescents] if [they] feel confused about [their] sexual identity." However, the Academy noted that teens should "avoid any treatments that claim to be able to change a person's sexual orientation, or treatment ideas that see homosexuality as a sickness."

(b) Principle 6 of the American Academy of Child and Adolescent Psychiatry's Practice Parameter, published in September 2012, states that there is no evidence that sexual orientation can be altered through therapy, and that attempts to do so may be harmful. The Academy also noted that "there is no medically valid basis for attempting to prevent homosexuality, which is not an illness. On the contrary, such efforts may encourage family rejection and undermine self-esteem, connectedness, and caring, which are important protective factors against suicidal ideation and attempts."

(c) The American Psychiatric Association published a position statement in March of 2000 in which it stated: "Psychotherapeutic modalities to convert or 'repair' homosexuality are based on developmental theories whose scientific validity is questionable. Furthermore, anecdotal reports of 'cures' are counterbalanced by anecdotal claims of psychological harm. In the last four decades, 'reparative' therapists have not produced any rigorous scientific research to substantiate their claims of cure. Until there is such research available, the American Psychiatric Association recommends that ethical practitioners refrain from attempts to change individuals' sexual orientation, keeping in mind the medical dictum to first, do no harm. The potential risks of reparative therapy are great, including depression, anxiety and self-destructive behavior, since therapist alignment with societal prejudices against homosexuality may reinforce self-hatred already experienced by the patient. Many patients who have undergone reparative therapy relate that they were inaccurately told that homosexuals are lonely, unhappy individuals who never achieve acceptance or satisfaction. The possibility that the person might achieve happiness and satisfying interpersonal relationships as a gay man or lesbian is not presented, nor are alternative approaches to dealing with the effects of societal stigmatization discussed. Therefore, the American Psychiatric Association opposes any psychiatric treatment such as reparative or conversion therapy which is based upon the assumption that homosexuality per se is a mental disorder or based upon the a priori assumption that a patient should change his/her sexual orientation."

Indeed, it has been reported that minors who experience family rejection based on their sexual orientation face especially serious health risks. In one study, lesbian, gay, and bisexual young adults who reported higher levels of family rejection during adolescence were 8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse compared with peers from families that reported no or low levels of family rejection (Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults (2009) 123 Pediatrics 346).

Based on the positions of many reputable medical and mental health professional organizations, the Department believes that providing reimbursement for a repudiated and discredited therapy that is not only medically unwarranted and provides no therapeutic value, but also harmful to the patient is therefore inappropriate and misleading. This amendment ensures that insurers will not provide coverage for such conversion therapy for insureds under 18 years old.

4. Costs: This rule imposes no compliance costs upon state or local governments. This rule also imposes no compliance costs on insurers.

5. Local government mandates: This rule imposes no new mandates on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This rule does not impose any additional paperwork except that insurers will have to refile their policy forms to show that coverage for conversion therapy for individuals under 18 years old is specifically excluded.

7. Duplication: There are no federal or other New York State requirements that duplicate, or conflict with this regulation.

8. Alternatives: The Department considered various alternative methods to ensuring that policies or contracts do not provide coverage for conversion therapy for individuals under 18 years old, including issuance of a Department directive through a circular letter to insurers. However, in order for any such directive to be binding on insurers, a regulation is necessary. In addition, although many reputable medical and mental health professional organizations have condemned the practice of conversion therapy, such condemnation alone will not necessarily curb that practice. In fact, in its May 2012 position statement, the Pan American Health Organization stated that services that "purport to 'cure' people with non-heterosexual sexual orientation lack medical justification and represent a serious threat to the health and well-being of affected people. . .", and recommended that governments and other entities sanction the harmful practice of conversion therapy.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: Since insurers that have to amend their policy forms to conform to this amendment need time to file with and get approval from the Superintendent, the rule is effective 60 days after publication of the Notice of Adoption in the State Register. Insurers may, however, issue policies or contracts before that date that conform to the regulation upon obtaining approval.

Regulatory Flexibility Analysis

1. Effect of rule: This amendment to Insurance Regulation 62 would prohibit any insurer from providing coverage in any insurance policy or contract delivered or issued for delivery in New York for conversion therapy for any individual under the age of 18 years. As discussed more fully in Needs and Benefits in the Regulatory Impact Statement, there is a growing consensus in the medical community that conversion therapy for minors actually can be harmful to the minor. Further, homosexuality is not a mental disorder requiring treatment; therefore providing coverage for treatment that is not medically necessary in a policy or contract is misleading or deceptive.

2. Small businesses: The rule applies directly to insurers authorized to do business in New York State, none of which fall within the definition of a "small business" as defined in State Administrative Procedure Act § 102(8). The Department has monitored annual statements and reports on examination of authorized insurers subject to this rule, and believes that none of the insurers fall within the definition of small business because no insurer is both independently owned and has fewer than 100 employees.

Although the amendment does not directly impose any requirements on any mental health professional, it does prohibit an insurer from providing

coverage for the performance of conversion therapy on individuals under 18 years old. As such, mental health professionals that may provide the therapy may find that patients are unable to pay for the treatment and thus may discontinue it. Many of the mental health professionals licensed in New York may be small businesses but the Department does not have information as to how many such professionals are small businesses or whether any such professional has performed conversion therapy.

3. Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that the rule is not directed at local governments and they do not provide the therapy.

4. Compliance requirements: A local government will not have to undertake any reporting, recordkeeping, or other affirmative acts to comply with this amendment to the rule since the amendment does not apply to a local government. Although health care professionals that provide the therapy may be affected by the regulation, they have no reporting requirements.

5. Professional services: A local government will not need any professional services to comply with this amendment to the rule since the amendment does not apply to a local government. Although health care professionals that provide the therapy may be affected by the regulation, they will not require professional services.

6. Compliance costs: A local government will not incur any costs to comply with this amendment to the rule since the amendment does not apply to a local government. Although health care professionals that provide the therapy may be affected by the regulation, they have no compliance costs.

7. Economic and technological feasibility: There should not be any issues pertaining to the economic and technological feasibility of complying with this amendment to the rule with regard to a local government since this amendment does not apply to a local government. Although health care professionals that provide the therapy may be affected by the regulation, since the regulation imposes no obligations on the professionals, there are no issues pertaining to the economic and technological feasibility of complying with this amendment to the rule.

8. Minimizing adverse impact: There will not be an adverse impact on a local government since this amendment to the rule does not apply to a local government. However, there may be an adverse impact on a mental health professional, but the degree of that impact would depend upon how significant conversion therapy is to the professional's practice. The Department considered the approaches suggested in State Administrative Procedure Act § 202-b(1) for minimizing adverse impacts but did not find them applicable.

9. Small business and local government participation: Mental health professionals that may be small businesses will have an opportunity to participate in the rule making process when this amendment to the rule is published in the State Register.

Rural Area Flexibility Analysis

The Department of Financial Services 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. Additionally, this rule will not require regulated entities to engage in any additional reporting, recordkeeping or other compliance requirements. Neither will it require additional professional services. As such, this rule will not impose additional costs on rural areas.

Job Impact Statement

The Department of Financial Services finds that this rule should have little or no negative impact on jobs or employment opportunities in this state. This rule only prohibits insurance companies from providing health insurance coverage for conversion therapy for individuals under 18 years old. It is not known if any mental health professional in this state provides such therapy but if there are any, those professionals are not likely engaged in such activities as a significant part of their practice. Hence, the prohibition against insurance coverage is likely to have little effect on such providers' job and employment opportunities.

Department of Law

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Clarification of Protections for Senior and Disabled Tenants During Condominium or Cooperative Ownership Conversions

I.D. No. LAW-47-15-00007-RP

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

Proposed Action: Addition of sections 18.1(e)(5), (6), 18.5(e)(10), 23.1(e)(5), (6) and 23.5(e)(10); and amendment of sections 18.3(d), (l), 23.3(d), (m) and (n)(8) of Title 13 NYCRR.

Statutory authority: General Business Law, section 352-e(6)

Subject: Clarification of Protections for Senior and Disabled Tenants During Condominium or Cooperative Ownership Conversions.

Purpose: To clarify the Martin Act's non-purchasing tenant protections for eligible senior citizens and eligible disabled persons.

Text of revised rule: A new section 18.1(e)(5) is added to title 13 to read as follows:

(5) If the offering plan is submitted to the Department of Law on or after September 1, 2016 subject to G.B.L. sections 352-e(2-a) or 352-eeee, and the sponsor executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016, the notice shall also state:

If you are a senior citizen or disabled tenant as defined by G.B.L. section 352-e(2-a)(a)(iii) and 352-eeee(1)(f) or G.B.L. section 352-e(2-a)(a)(iv) and 352-eeee(1)(g), respectively, you have additional rights and protections, including the right to elect to become a non-purchasing tenant within 60 days from the date you receive the filed offering plan from the sponsor. Senior citizen and disabled tenants are advised to read the section of the offering plan entitled "Rights of Eligible Senior Citizens and Eligible Disabled Persons."

If the offering plan is submitted to the Department of Law on or after July 1, 2016 pursuant to G.B.L. sections 352-e(2-a) or 352-eeee, and the sponsor executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after July 1, 2016, the notice shall also include the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law, forms SH-1 and SH-2, respectively.

A new section 18.1(e)(6) is added to title 13 to read as follows:

(6) If the offering plan is submitted to the Department of Law on or after September 1, 2016 subject to G.B.L. section 352-eee, and the sponsor executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016, the notice shall also state:

If you are a senior citizen or disabled tenant as defined by G.B.L. section 352-eee(1)(f) or G.B.L. section 352-eee(1)(g), respectively, you have additional rights and protections, including the right to elect to become a non-purchasing tenant. Senior citizen and disabled tenants are advised to read the section of the offering plan entitled "Rights of Eligible Senior Citizens and Eligible Disabled Persons."

If the offering plan is submitted to the Department of Law on or after July 1, 2016 subject to G.B.L. section 352-eee, and the sponsor executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016, the notice shall also include the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law, forms SH-5 and SH-2, respectively.

Section 18.3(d) of title 13 is amended to read as follows:

(d) [In an eviction plan, if] *If the offering plan is submitted to the Department of Law on or after September 1, 2016 subject to* G.B.L. section 352-eee [is applicable], *and the sponsor executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016,* include the eligible senior citizen and eligible disabled person *election* forms promulgated by the Department of Law, forms SH-5 and SH-2, respectively. [In an eviction plan, if] *If the offering plan is submitted to the Department of Law on or after September 1, 2016 subject to* G.B.L. section 352-e(2-a) or 352-eeee [is applicable], *and the sponsor executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016*, include the eligible senior citizen and eligible disabled person *election* forms promulgated by the Department of Law, forms SH-1 and SH-2, respectively.

Section 18.3(l) of title 13 is amended to read as follows:

Rights of eligible senior citizens and eligible disabled persons. *If the offering plan is submitted to the Department of Law on or after September 1, 2016 subject to* G.B.L., section 352-e(2-a), 352-eee or 352-eeee [is applicable], *and the sponsor executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016*, [and the plan provides that it is an eviction plan,] include the following information on the rights of eligible senior citizens and eligible disabled persons.

A new section 18.5(e)(10) is added to title 13 to read as follows:

(10) If the plan was submitted on or after September 1, 2016 subject to G.B.L. sections 352-e(2-a), 352-eee, or 352-eeee, and the sponsor executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016, include copies of all executed eligible senior citizen and/or eligible disabled person election forms (forms SH-1/SH-5 and SH-2, respectively), if any. In such instances, sponsor must also submit to the Department of Law, if requested, copies of the renewal leases for any tenants who have elected eligible senior citizen or eligible disabled person status.

A new section 23.1(e)(5) is added to title 13 to read as follows:

(5) If the offering plan is submitted to the Department of Law on or after September 1, 2016 subject to G.B.L. sections 352-e(2-a) or 352-eeee, and the sponsor executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016, the notice shall also state:

If you are a senior citizen or disabled tenant as defined by G.B.L. section 352-e(2-a)(a)(iii) and 352-eeee(1)(f) or G.B.L. section 352-e(2-a)(a)(iv) and 352-eeee(1)(g), respectively, you have additional rights and protections, including the right to elect to become a non-purchasing tenant within 60 days from the date you receive the filed offering plan from the sponsor. Senior citizen and disabled tenants are advised to read the section of the offering plan entitled "Rights of Eligible Senior Citizens and Eligible Disabled Persons."

If the offering plan is submitted to the Department of Law on or after September 1, 2016 pursuant to G.B.L. sections 352-e(2-a) or 352-eeee, and the sponsor executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016, the notice shall also include the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law, forms SH-1 and SH-2, respectively.

A new section 23.1(e)(6) is added to title 13 to read as follows:

(6) If the offering plan is submitted to the Department of Law on or after September 1, 2016 subject to G.B.L. sections 352-eee, and the sponsor executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016, the notice shall also state:

If you are a senior citizen or disabled tenant as defined by G.B.L. section 352-eee(1)(f) or G.B.L. section 352-eee(1)(g), respectively, you have additional rights and protections, including the right to elect to become a non-purchasing tenant. Senior citizen and disabled tenants are advised to read the section of the offering plan entitled "Rights of Eligible Senior Citizens and Eligible Disabled Persons."

If the offering plan is submitted to the Department of Law on or after September 1, 2016 subject to G.B.L. sections 352-eee, and the sponsor executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016, the notice shall also include the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law, forms SH-5 and SH-2, respectively.

Section 23.3(d) of title 13 is amended to read as follows:

(d) Election forms for eligible senior citizens and eligible disabled persons. [In an eviction plan, if] *If the offering plan is submitted to the Department of Law on or after September 1, 2016 subject to* G.B.L. section 352-eee [is applicable], *and the sponsor executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016*, include the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law, forms SH-5 and SH-2, respectively. [In an eviction plan, if] *If the offering plan is submitted to the Department of Law on or after September 1, 2016 subject to* G.B.L. section 352-e(2-a) or 352-eeee [is applicable], *and the sponsor executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016,* include the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law, forms SH-1 and SH-2, respectively.

Section 23.3(m) of title 13 is amended to read as follows:

Rights of eligible senior citizens and eligible disabled persons. *If the offering plan is submitted to the Department of Law on or after September 1, 2016 subject to* G.B.L. section 352-e(2-a), 352-eee or 352-eeee [is applicable] (or in cases where applicable local law confers special rights for senior citizens, disabled persons, or other protected class of tenants), [and the plan provides that it is an eviction plan,] *and the sponsor executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016,* include the following information on the rights of eligible senior citizens and eligible disabled persons.

Section 23.3(n)(8) of title 13 is amended to read as follows:

(8) Highlight as special risk and discuss if by reason of the termination of real estate tax benefits, tenants will no longer be subject to rent regulation. State when rent regulation will cease. If the plan is [an eviction plan] *submitted to the Department of Law on or after September 1, 2016* subject to G.B.L. section 352-eee, [or] 352-eeee, or [is a plan subject to] section 352-e (2-a), *and the sponsor executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016,* discuss any protection against rent increases for eligible senior citizens and disabled persons contained in those sections. [If the plan is a noneviction plan subject to G.B.L. section 352-eee or 352-eeee, discuss any protection against rent increases for nonpurchasing tenants contained in those sections.]

A new section 23.5(e)(10) is added to title 13 to read as follows:

(10) If the plan was submitted to the Department of Law on or after September 1, 2016 subject to G.B.L. sections 352-e(2-a), 352-eee, or 352-eeee, and the sponsor executed a contract of sale for the building or group of buildings on or after September 1, 2016, include copies of all executed eligible senior citizen and/or eligible disabled person election forms (forms SH-1/SH-5 and SH-2, respectively), if any. In such instances, sponsor must also submit to the Department of Law, if requested, copies of the renewal leases for any tenants who have elected eligible senior citizen or eligible disabled person status.

Revised rule compared with proposed rule: Substantive revisions were made in sections 18.1, 18.3, 18.5, 23.1, 23.3 and 23.5.

Text of revised proposed rule and any required statements and analyses may be obtained from Jacqueline Dischell, Department of Law, Real Estate Finance Bureau, 120 Broadway, 23rd Floor, New York, NY 10271, (212) 416-8655, email: jackie.dischell@ag.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

1. Statutory Authority.

New York General Business Law Article 23-A ("the Martin Act") regulates the advertisement, sale, purchase, and investment advice given to securities and other covered investment vehicles. See NYS CLS GBL § 352(1). Included under the Martin Act's purview is the regulation of real estate syndication offerings, including the conversion of residential buildings to cooperative and condominium ownership. See NYS CLS GBL 352-e, 352-ee, 352-eee, 352-eeee. Section 352-e(2-b) of the New York General Business Law ("GBL") authorizes the Department of Law ("DoL") to "adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this subdivision." See also NYS CLS GBL § 352-e(6).

2. Legislative Objectives.

The legislative history of the 1982 revisions to the Martin Act demonstrates a clear intent to maintain and improve neighborhoods and housing by permitting the conversion of residential real estate to cooperative or condominium ownership, while also "protecting tenants in possession who do not desire or who are unable to purchase the units in which they reside from being coerced into vacating such units." McKinney's 1982 Session Laws of New York, Volume 2, p. 1474. The legislature also aimed to add additional protections for senior and disabled tenants, regardless of income. The official bill memorandum for the 1982 revisions to the Martin Act specifically states, "All senior citizens and handicapped non-purchasing tenants are protected from eviction (income and residency requirements are eliminated)" (commenting on the removal of the statute's previous income-based eligibility ceiling for senior non-purchasing tenants). In fact, Senator Goodman, a co-sponsor of the bill, listed this as a "principal provision" of the entire bill. Indeed, the notion that, as a matter of public policy, all senior and disabled tenants should be protected during the conversion process appears repeatedly throughout the Martin Act's legislative history. See New York Summary of Legislation, 1982, p. 27-5.

The Martin Act states that tenants who are unwilling or unable to purchase their apartments during the condominium of cooperative conversion process are "entitled to possession at the time the plan is declared effective." NYS CLS GBL 352-e(2-a)(a)(ii), 352-eeee(1)(e), and 352-eeee(1)(e). These "non-purchasing tenants" benefit from numerous protections under the Martin Act, including, in part, protection against eviction at any time, and continuation of any government regulation regarding rent and occupancy to which the apartment was subject prior to the conversion. See NYS CLS GBL 352-eee(2)(c)(ii),(iii), and (iv); 352-eeee(2)(c)(ii),(iii),

and (iv). The Martin Act further provides that if a tenant is "sixty-two years of age or older" or has "an impairment resulting from anatomical, physiological, or psychological conditions," he or she can elect to become a sub-category of "non-purchasing tenant" – an "eligible senior citizen" or an "eligible disabled person," respectively. Indeed, the statute unequivocally defines "eligible senior citizens" and "eligible disabled persons" as "non-purchasing tenants." NYS CLS GBL 352-e(2-a)(a)(iii) and (iv); 352-eee(1)(f) and (g); and 352-eeee(1)(f) and (g). If a tenant successfully elects to become a "non-purchasing tenant" based upon his or her status as an "eligible senior citizen" or "eligible disabled person," the Martin Act accords protection against eviction during the conversion process. See id.

Under the Martin Act, "non-purchasing tenant" protections are available in both eviction and non-eviction conversion plans. However, current DoL regulations require only eviction plans to disclose "eligible senior citizen" and "eligible disabled person" election rights, which can result in the majority of senior and disabled market-rate tenants being susceptible to eviction during the conversion process. This regulatory protection gap directly conflicts with the Martin Act and its legislative intent. The DoL therefore proposes to amend its regulations to prospectively extend "non-purchasing tenant" election rights to "eligible senior citizens" and "eligible disabled persons" in both non-eviction and eviction conversion plans.

These regulatory revisions are consistent with, and permissible under, the Martin Act. The legislature authorized the Attorney General to promulgate suitable rules and regulations necessary to carry out the provisions of the Martin Act. NYS CLS GBL 352-e(2-b). The statute provides protections to "non-purchasing tenants," and defines "eligible senior citizens" and "eligible disabled persons" as a sub-category of "non-purchasing tenants" entitled to such protections. Furthermore, the underlying intent of the Martin Act – a tenant protection and anti-harassment statute – is to protect "non-purchasing tenants," particularly those who are senior or disabled, from being coerced into vacating their homes. The DoL's regulatory revisions better effectuate the intent of the Martin Act to protect seniors and disabled tenants by taking into account the serious change in the tenant landscape: an increase in the number of market-rate tenants in buildings converting to cooperative or condominium status.

3. Needs and Benefits.

Current DoL regulations, drafted in 1989, only extend the "eligible senior citizen" and "eligible disabled person" election process to tenants subject to eviction plans. Senior and disabled market-rate tenants subject to non-eviction plans currently have no mechanism to elect to become "eligible senior citizens" and "eligible disabled persons," and as such, cannot take advantage of the "non-purchasing tenant" protections available to them under the statute. Consequently, this class of tenants risks eviction from the date the offering plan is submitted to the DoL until the date the offering plan is declared effective – a period that can last 10 to 24 months, and during which a property owner may permit market-rate leases to expire without offering renewal leases.

When the DoL promulgated its regulations in 1989, few market-rate tenants were subject to conversion plans; rather, almost all tenants in occupied buildings undergoing conversion (pursuant both to eviction and non-eviction plans) were rent-regulated. Rent-regulated tenants in non-eviction conversions had statutory protections from displacement, and DoL regulations provided rent-regulated senior and disabled tenants in eviction plans the opportunity to seek protections from eviction. At present, however, most conversion plans are non-eviction plans, and most tenants in buildings undergoing conversion are market-rate. To illustrate, the DoL recently conducted an internal analysis of 30 rental conversion plans under review and found that approximately 65% of the tenants were market-rate, and approximately 95% of their leases were set to expire during the conversion process. Current DoL's regulations require only eviction plans to extend the "non-purchasing tenant" election process to "eligible senior citizens" and "eligible disabled persons," and therefore do not adequately protect senior and disabled market-rate tenants from displacement throughout the non-eviction conversion process. Consequently, the DoL's regulations no longer reflect the Martin Act's intent to protect "non-purchasing tenants" from eviction during the conversion process, particularly the senior and disabled. Such changes in the rental market compel the DoL to revise its regulations to better reflect the current residential real estate landscape in which numerous senior and disabled non-purchasing tenants risk eviction during the conversion process.

Under the DoL's revised regulations, sponsors of both eviction and non-eviction conversion plans submitted to the DoL on or after September 1, 2016, and where sponsor has entered into a contract of sale or acquired the building or group of building on or after September 1, 2016, must permit "eligible senior citizens" or "eligible disabled persons" to elect "non-purchasing tenant" status within 60 days of the presentation date of the offering plan. The September 1, 2016 effective date ensures that sponsors have adequate notice of these regulatory revisions as well as adequate time to adjust their business plans to take into account that certain tenants may remain in occupancy as "non-purchasing tenants" for a greater period of time than previously anticipated. Unless a sponsor is able to successfully challenge a tenant's election, the protections afforded by "eligible senior citizen" and "eligible disabled person status" will accrue as soon as the election form is filed (so long as it is filed within 60 days of the presentation date), thereby ensuring that, in accordance with the Martin Act, the vast majority of eligible senior and disabled tenants can protect themselves from eviction at an earlier point in the conversion process.

4. Costs.

(a) Costs to regulated parties.

Under the regulatory revisions, certain sponsors of future condominium or cooperative non-eviction conversion plans must: (1) include the "eligible senior citizen" and "eligible disabled person" election forms in the offering plan when first submitted to the DoL and in the Notice to Tenants, (2) provide renewal leases to "non-purchasing tenants" who elect "eligible senior citizen" or "eligible disabled person status," and (3) include copies of all executed election forms (if any) when submitting the effectiveness amendment to the DoL. The DoL believes that the costs associated with providing the above documents will be minimal.

Sponsors may also incur professional costs associated with the preparation their offering plans, such as legal fees. But because the DoL's regulations already require sponsors to employ these services, any additional costs are likely to be minimal. The DoL will provide sponsors with model election forms, thereby further limiting professional costs.

Although the revised regulations are not retroactive in application and thus afford notice to sponsors, certain sponsors may need to adjust existing business plans to take into account that certain tenants may remain in occupancy for a greater period of time than anticipated. The revised regulations apply to offering plans submitted to the DoL on or after September 1, 2016 wherein the sponsor executed a contract of sale or acquired the building or group of buildings subject to conversion on or after September 1, 2016. Therefore, some sponsors may have additional unanticipated costs if their business plans were created prior to the publication of the revised regulations. However, market-rate non-purchasing tenants must continue to pay prevailing market rents, therefore costs to regulated parties should be minimal, as there are no restrictions on rent other than a prohibition against imposing unconscionable increases.

The aforementioned minimal costs to regulated parties are outweighed by the large public benefit of protecting senior and disabled market-rate tenants from eviction.

(b) Costs to the agency, the state and local governments.

The DoL foresees no costs to any state agencies or local governments as a result of the regulatory revisions.

(c) Information and methodology upon which the estimate is based.

The estimated costs are based on the assessment of the Attorney General, in reliance upon data and information maintained by the DoL's Real Estate Finance Bureau.

5. Local Government Mandates.

The revised regulations do not impose any programs, services, duties, or responsibilities on any county, city, town, village, school district, fire district, or other special district.

6. Paperwork.

The revised regulations require sponsors of future conversion plans to: (1) include the "eligible senior citizen" and "eligible disabled person" election forms in the offering plan when first submitted to the DoL and in the Notice to Tenants, (2) provide renewal leases to "non-purchasing tenants" who elect "eligible senior citizen" or "eligible disabled person" status, and (3) include copies of all executed election forms (if any) when submitting the effectiveness amendment to the DoL. This additional requirement affects only conversion plans submitted to the DoL after September 1, 2016 wherein the sponsor executed a contract of sale or acquired the building or group of buildings subject to conversion on or after September 1, 2016.

7. Duplication.

The revised regulations do not duplicate any existing state or federal rule.

8. Alternatives.

The DoL believes that there are no alternatives to the regulatory revisions. There is no other means by which the DoL can make its regulations consistent with the intent of their authorizing statute other than by amending its regulations.

9. Federal Standards.

The regulatory revisions do not exceed any minimum standards of the federal government for the same or similar subject.

10. Compliance Schedule.

The revised regulations will go into effect on September 1, 2016. Additionally, the revised regulations apply only to conversion plans submitted to the DoL on or after September 1, 2016 wherein the sponsor executed a contract of sale or acquired the building or group of buildings subject to conversion on or after September 1, 2016. The revised regulations will not apply to conversion plans not satisfying this requirement, and are not retroactive in application.

Revised Regulatory Flexibility Analysis

1. Effect of rule.

The Department of Law's ("DoL") revised regulations have the effect of extending "non-purchasing tenant" election rights to "eligible senior citizens" and "eligible disabled persons" in future condominium or cooperative non-eviction conversion offering plans, in addition to eviction offering plans. The regulatory revisions ensure that the DoL's regulations are consistent with their statutory authority, New York General Business Law Article 23-A ("the Martin Act"), the intent of which is to protect "non-purchasing tenants" from eviction during the conversion process, particularly those who are senior or disabled.

The revisions will not affect any local governments. The regulatory revisions do affect certain small businesses: specifically, sponsors of condominium or cooperative non-eviction conversion offering plans. However, the majority of conversion plans submitted to the DoL are sponsored by single-purpose limited liability corporations that are directly affiliated with larger entities. The State Administrative Procedures Act ("SAPA") Section 102(8) defines a defines a small business as, "[a]ny business which is resident in this state, independently owned and operated and that employs 100 or less people." Accordingly, the DoL believes that very few small businesses, as defined by SAPA Section 102(8), will be affected by the proposed revisions. In addition, the only sponsors that will be affected by the revised regulations are those whose conversion plans were submitted to the DoL on or after September 1, 2016 and wherein sponsor executed a contract of sale or acquired the building or group of buildings subject to conversion on or after September 1, 2016. The revised regulations will not apply to conversion plans not satisfying this requirement, and are not retroactive in application.

2. Compliance requirements.

The regulatory revisions do not require local governments to undertake any new obligations in terms of reporting, recordkeeping, or other affirmative acts in order to comply with the rule.

The revised regulations require certain sponsors of future condominium or cooperative non-eviction conversion plans to: (1) include the "eligible senior citizen" and "eligible disabled person" election forms in the offering plan when first submitted to the DoL and also in the Notice to Tenants, (2) provide renewal leases to "non-purchasing tenants" who elect "eligible senior citizen" or "eligible disabled person status," and (3) include copies of all executed election forms (if any) when submitting the effectiveness amendment to the DoL. The revised regulations will affect only those conversion plans submitted to the DoL on or after September 1, 2016 wherein the sponsor executed a contract of sale or acquired the building or group of buildings subject to conversion on or after September 1, 2016.

3. Professional services.

The regulatory revisions do not require local governments to employ any professional services to comply with the rule. Under the revised regulations, sponsors of condominium and cooperative non-eviction conversion plans must employ professionals, such as attorneys and architects, in order to prepare their offering plans. But because the DoL's regulations already require sponsors to employ these services to prepare their offering plans, any additional professional services and related costs are likely to be minimal. The DoL will provide sponsors with model election forms, thereby further limiting professional costs.

4. Compliance costs.

The DoL foresees no initial capital costs and no additional annual costs that will be incurred by local governments, regardless of their size, as a result of compliance with the regulatory revisions.

As described above, the revised regulations require certain sponsors of future condominium or cooperative non-eviction conversion plans to: (1) include the "eligible senior citizen" and "eligible disabled person" election forms in the offering plan when first submitted to the DoL and also in the Notice to Tenants, (2) provide renewal leases to "non-purchasing tenants" who elect "eligible senior citizen" or "eligible disabled person status," and (3) include copies of all executed election forms (if any) when submitting the effectiveness amendment to the DoL. The DoL believes that the costs associated with providing the above documents will be minimal and will not vary depending on the size of the sponsoring entity.

Although the revised regulations are not retroactive in application and thus afford notice to sponsors of condominium and cooperative conversion plans, certain sponsors may need to adjust existing business plans to take into account that certain tenants may remain in occupancy for a greater period of time than anticipated. Therefore, some sponsors may have additional unanticipated costs if their business plans were created prior to the publication of the revised regulations. However, market-rate "non-purchasing tenants" must continue to pay prevailing market rents, so costs to regulated parties should be minimal, as there are no restrictions on rent other than a prohibition against imposing unconscionable increases.

No other compliance costs exist. Moreover, the aforementioned minimal costs to regulated parties are outweighed by the large public benefit of protecting senior and disabled market-rate tenants from eviction.

5. Economic and technological feasibility.

The regulatory revisions contain no technological requirements for regulated small businesses or local governments, and thus are technologically feasible. Compliance with the revised regulations is also economically feasible, because, as described above, there are no compliance costs for local governments and minimal compliance costs for regulated small businesses.

6. Minimizing adverse impact.

The regulatory revisions are designed to minimize any adverse economic impact on local governments and small businesses. The revisions have no adverse economic impact on local governments, as they neither require any action on the part of local governments nor affect them in any way. Likewise, the revisions do not impose an adverse economic impact on regulated small businesses. While certain small businesses may incur costs as a result of compliance with the revised regulations, the DoL expects these costs to be minimal and believes such costs are necessary to effectuate the intent of the Martin Act.

The DoL has considered the approaches for minimizing adverse impact set forth in SAPA Section 202-b(1). Nevertheless, the DoL has concluded that there is no other means by which the DoL can make its regulations consistent with the intent of their authorizing statute other than by amending its regulations.

7. Small business and local government participation.

To ensure that small businesses and local governments have an opportunity to participate in the rule making process, a copy of the regulatory revisions will be sent to members of the Bar who represent sponsors and purchasers of condominiums and cooperatives. Copies of the regulatory revisions will also be posted on the DoL's website.

Revised Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas.

The regulatory revisions apply uniformly throughout the state, including all rural areas. Executive Law, Article 19-F Rural Affairs Act, Section 481(7) defines a rural area as a county with a population of less than 200,000. New York currently has 44 rural areas. However, nearly all cooperative and conversion plans submitted to the Department of Law ("DoL") are for properties in New York City. To illustrate, of the 28 conversion offerings (2 cooperatives, 26 condominiums) submitted to the Department of Law in 2014, only 1 was located outside of New York City, and it was not in a rural area. Accordingly, the DoL believes that the revised regulations will have very little impact on rural areas.

2. Reporting, recordkeeping, and other compliance requirements.

The regulatory revisions do not require rural public entities to undertake any new obligations in terms of reporting, recordkeeping, or other affirmative acts in order to comply with the rule.

The revised regulations require certain sponsors of future condominium or cooperative non-eviction conversion plans to: (1) include the "eligible senior citizen" and "eligible disabled person" election forms in the offering plan when first submitted to the DoL and also in the Notice to Tenants, (2) provide renewal leases to "non-purchasing tenants" who elect "eligible senior citizen" or "eligible disabled person status," and (3) include copies of all executed election forms (if any) when submitting the effectiveness amendment to the DoL. The revised regulations will affect only those conversion plans submitted to the DoL on or after September 1, 2016 wherein the sponsor executed a contract of sale or acquired the building or group of buildings subject to conversion on or after September 1, 2016. The revised regulations will not apply to conversion plans not satisfying this requirement, and are not retroactive in application.

3. Compliance costs.

The DoL foresees no initial capital costs and no additional annual costs that will be incurred by rural public entities, regardless of their size, as a result of compliance with the regulatory revisions.

As described above, certain sponsors of future condominium or cooperative non-eviction conversion plans must: (1) include the "eligible senior citizen" and "eligible disabled person" election forms in the offering plan when first submitted to the DoL and in the Notice to Tenants, (2) provide renewal leases to "non-purchasing tenants" who elect "eligible senior citizen" or "eligible disabled person status," and (3) include copies of all executed election forms (if any) when submitting the effectiveness amendment to the DoL. The DoL believes that the costs associated with providing the above documents will be minimal.

Sponsors may also incur professional costs associated with the preparation their offering plans, such as legal fees. But because the DoL's regulations already require sponsors to employ these services to prepare their offering plans, any additional costs are likely to be minimal. The DoL will provide sponsors with model election forms, thereby further limiting professional costs.

Although the revised regulations are not retroactive in application and thus afford notice to sponsors of condominium and cooperative conversion plans, certain sponsors may need to adjust existing business plans to take into account that certain tenants may remain in occupancy for a

greater period of time than anticipated. Therefore, some sponsors may have additional unanticipated costs if their business plans were created prior to the publication of the revised regulations. However, market-rate "non-purchasing tenants" must continue to pay prevailing market rents, so costs to regulated parties should be minimal, as there are no restrictions on rent other than a prohibition against imposing unconscionable increases.

The aforementioned minimal costs to regulated parties are outweighed by the large public benefit of protecting senior and disabled market-rate tenants from eviction.

4. Minimizing adverse impact.

The regulatory revisions have no adverse economic impact on rural public entities, as they neither require any action on their part nor affect them in any way.

The revised regulations have minimal adverse economic impact the very few sponsors of cooperative and condominium conversion plans operating in rural areas. Although these few sponsors may incur certain costs as a result of compliance with the revised regulations, the DoL expects these costs to be minimal and believes such costs are necessary to effectuate the intent of New York General Business Law Article 23-A ("the Martin Act").

The DoL has considered the approaches for minimizing adverse impact set forth in SAPA Section 202-bb(2). Nevertheless, the DoL has concluded that there is no other means by which the DoL can make its regulations consistent with the intent of their authorizing statute other than by amending its regulations.

5. Rural area participation.

To ensure that regulated rural entities have an opportunity to participate in the rule making process, a copy of the regulatory revisions will be sent to members of the Bar who represent sponsors and purchasers of condominiums and cooperatives. Copies of the revised regulations will also be posted on the DoL's website.

Assessment of Public Comment

The Department of Law's "Notice of Emergency Adoption and Proposed Rule Making" entitled "Clarification of Protections for Senior and Disabled Tenants During Condominium or Cooperative Ownership Conversions" was published in the State Register on November 25, 2015. Pursuant to State Administrative Procedure Act ("SAPA") § 206(6)(d)(iii), this "Notice of Emergency Adoption and Proposed Rule Making" both publicized the adoption of the Department of Law's emergency regulations and proposed the permanent adoption of identical regulations. The emergency regulations went to into effect on November 10, 2015, and pursuant to SAPA § 202(6)(b), expire 90 days thereafter on February 8, 2016. A 45-day public comment period followed the publication of the proposed permanent regulations in the State Register, as required by S.A.P.A. § 202(1)(a).

The Department of Law received no comments on the regulations during the public comment period afforded under SAPA, but prior to the issuance of these revised regulations, the Department of Law received comments, both written and verbal, from sponsors of condominium and cooperative conversion offerings. The Department of Law received one written comment. The commenter said the regulations were beyond the statutory authority afforded to the Attorney General in many respects – a position the Department of Law disagrees with since the rule is firmly grounded in statutory authority, and serves to protect the interests of seniors and disabled persons, as the statute intended. The Department of Law also received verbal comments, which echoed the sentiments of the written comment, but mostly were about possible retrospective application of the regulations. There was concern that the current language of both the emergency and proposed regulations failed to make clear that such regulations were prospective in application. Specifically, they explained that any retrospective application of the regulations would result in undue burdens on sponsors. The commenters suggested that if the regulations were to apply retrospectively, units that sponsors expected to be available for sale could be encumbered by unanticipated tenancies. One commenter stated that such unforeseen changes would "likely have far-reaching economic impact on developers who will suddenly find themselves with assets vastly diminished in value." Notwithstanding, many commenters said they understood why the Department of Law was amending the regulations to extend the election process to seniors and disabled persons in non-eviction plans, but asked that the requirement be set into the future so as to make clear the change is not retrospective and to give developers an opportunity to reorganize their existing business plans. Because the emergency and proposed regulations were never meant to be retrospective in application, nor punitive in nature toward sponsors, the Department of Law has decided to revise the proposed regulations published in the State Register on November 25, 2015 to make abundantly clear that the regulations affect only future condominium and cooperative conversion offerings. The Department of Law always intended that these regulations would only apply prospectively, for the reasons stated by the commenters as well as the fact that retrospective application of these regulations would disrupt already settled tenant and purchaser relationships.

The Department of Law has included a specific effective date in its revised regulations to dispel any additional confusion about their retrospective application. Indeed, the revised regulations state that only sponsors who have submitted their conversion offering plans to the Department of Law on or after September 1, 2016, and executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016, must comply with the new regulatory requirements. The Department of Law has also revised its Regulatory Impact Statement, Regulatory Flexibility Analysis, and Rural Area Flexibility Analysis to reflect these changes.

The Department of Law believes that the above revisions effectively address any concerns of retrospective application. In addition, the Department of Law maintains that the prospective application of the revised application is not unduly burdensome to sponsors of conversion offerings. Although sponsors may need to adjust their existing business plans to take into account that certain tenants may remain in occupancy for a greater period of time than anticipated, senior and disabled market-rate non-purchasing tenants must continue to pay prevailing market rents; therefore, the cost to sponsors should be minimal, as there are no restrictions on rent, other than a prohibition against imposing unconscionable rent increases. The September 1, 2016 effective date in the revised regulations ensures that sponsors have adequate time to adjust their business plans accordingly.

The Department of Law's proposed revisions are permissible under and consistent with the Martin Act. The statute authorizes the Attorney General to "adopt, promulgate, amend and rescind suitable rules and regulations" to carry out the provisions of the Martin Act. NYS CLS GBL §§ 352-e(2-b). See also NYS CLS GBL § 352-e(6). The intent of the Martin Act – a tenant protection and anti-harassment statute – is to protect non-purchasing tenants, particularly those who are senior or disabled, from being coerced into vacating their homes during the condominium or cooperative conversion process. At the time the Department of Law's initial regulations were promulgated in 1989, the real estate landscape was quite different. In 1989, almost all tenants in buildings subject to cooperative or condominium conversion were occupied by rent-regulated tenants. Rent-regulated tenants are only at risk of displacement in eviction plans because in an eviction plan, a tenant who does not buy may be evicted three years after the offering plan is declared effective. That is why the Department of Law drafted its regulations in 1989 the way it did – to ensure that rent-regulated seniors and disabled tenants could elect to become non-purchasing tenants and thereby avoid eviction. Now, in 2016 where most tenants are in fact market-rate, the ability to elect to become a non-purchasing tenant in a non-eviction plan matters. Therefore, the Department of Law's revised regulations, which provide all eligible senior and disabled market-rate non-purchasing tenants the ability to protect themselves from eviction at an earlier point in the condominium or cooperative conversion process, are fully warranted and are designed to carry out the intent of the statute.

Office of Mental Health

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Rights of Patients

I.D. No. OMH-08-16-00003-P

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

Proposed Action: Amendment of section 527.8 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.07 and 7.09

Subject: Rights of Patients.

Purpose: Make clear that conversion therapy is not a permissible treatment for minors in facilities under OMH jurisdiction.

Text of proposed rule: A new subdivision (d) is added to 14 NYCRR Section 527.8 to read as follows:

(d) Notwithstanding the provisions of this Section, no facility shall provide services to minor patients that are intended to change such minor's sexual orientation or gender identity, including efforts to change behaviors, gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings towards individuals of the same sex, provided, however, that this does not include counseling or therapy for a

minor who is seeking to undergo a gender transition or who is in the process of undergoing a gender transition, that provides acceptance, support, and understanding of minors or the facilitation of minors' coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, provided that the counseling or therapy does not seek to change sexual orientation or gender identity.

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

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

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

Regulatory Impact Statement

1. Statutory Authority: Section 7.07 of the Mental Hygiene Law gives the Office of Mental Health the responsibility for seeing that the personal and civil rights of persons with mental illness receiving care and treatment are adequately protected.

Section 7.09 of the Mental Hygiene Law gives the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

2. Legislative Objectives: Article 7 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs and charges the Office of Mental Health with the responsibility for ensuring that persons with mental illness receive high quality care and treatment. The amendment is being proposed in conjunction with proposed amendments of the Department of Financial Services that would prohibit any insurer from providing coverage in any insurance policy or contract delivered or issued for delivery in New York for conversion therapy for any individual under the age of 18 years.

3. Needs and Benefits: In 2012, the American Academy of Child and Adolescent Psychiatry published an article in the Journal of the American Academy of Child and Adolescent Psychiatry, which stated: "Clinicians should be aware that there is no evidence that sexual orientation can be altered through therapy, and that attempts to do so may be harmful. There is no empirical evidence adult homosexuality can be prevented if gender nonconforming children are influenced to be more gender conforming. Indeed, there is no medically valid basis for attempting to prevent homosexuality, which is not an illness. On the contrary, such efforts may encourage family rejection and undermine self-esteem, connectedness and caring, important protective factors against suicidal ideation and attempts. Given that there is no evidence that efforts to alter sexual orientation are effective, beneficial or necessary, and the possibility that they carry the risk of significant harm, such interventions are contraindicated."

Minors who experience family rejection based on their sexual orientation face especially serious health risks. In one study, lesbian, gay, and bisexual young adults who reported higher levels of family rejection during adolescence were 8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse compared with peers from families that reported no or low levels of family rejection (Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults (2009) 123 Pediatrics 346).

This amendment is intended to make clear that conversion therapy is not a permissible form of treatment for minors in facilities under the jurisdiction of the Office of Mental Health, and cannot be provided, even if procedures permitting treatment over objection are followed.

4. Costs: (a) Costs to Local Government: These regulatory amendments will not result in any additional costs to local government.

(b) Costs to State: These regulatory amendments will not result in any additional costs to State government.

(c) Costs to Regulated Parties: These regulatory amendments will not result in any additional costs to regulated parties.

5. Local Government Mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: These amendments will not result in any increase in paperwork requirements of facilities covered by the regulations.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The only potential alternative would be inaction. As the amendments are intended to ensure that treatment based on clinically sound practices is provided in facilities under the jurisdiction of the Office of Mental Health, this alternative was not considered.

9. Federal Standards: The regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: These regulatory amendments will be effective immediately upon adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments has not been submitted with this notice. The proposed regulatory amendments are intended to make clear that conversion therapy is not a permissible form of treatment for minors in facilities under the jurisdiction of the Office of Mental Health, and cannot be provided, even if procedures permitting treatment over objection are followed. The proposed regulatory amendments will not impose any adverse economic impact on small businesses or local governments; therefore a Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis has not been submitted with this notice. The proposed regulatory amendments are intended to make clear that conversion therapy is not a permissible form of treatment for minors in facilities under the jurisdiction of the Office of Mental Health, and cannot be provided, even if procedures permitting treatment over objection are followed. The proposed rule will not impose any adverse economic impact on rural areas; therefore, a Rural Area Flexibility Analysis is not submitted with this notice.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because it is evident from the subject matter that there will be no adverse impact on jobs and employment opportunities as a result of these amendments. The proposed regulatory amendments are intended to make clear that conversion therapy is not a permissible form of treatment for minors in facilities under the jurisdiction of the Office of Mental Health, and cannot be provided, even if procedures permitting treatment over objection are followed.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Amendments to Reimbursement Methodology for Continuing Residential Leases

I.D. No. PDD-50-15-00012-A

Filing No. 195

Filing Date: 2016-02-05

Effective Date: 2016-02-24

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

Action taken: Amendment of section 635-6.3 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 13.09(b)

Subject: Amendments to Reimbursement Methodology for Continuing Residential Leases.

Purpose: To make changes concerning reimbursement methodology for lease costs for continuing residential lease arrangements.

Text or summary was published in the December 16, 2015 issue of the Register, I.D. No. PDD-50-15-00012-P.

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

Text of rule and any required statements and analyses may be obtained from: Counsel's Office, Bureau of Policy and Regulatory Affairs, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue, 3rd floor, Albany, NY 12229, (518) 474-7700, email: U.Unit@opwdd.ny.gov

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

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Examination of Terms and Conditions of Utility Service Received by Fastrac Markets, LLC

I.D. No. PSC-08-16-00006-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 Verified Petition by Fastrac Markets, LLC for an order regarding the terms and conditions of its utility service.

Statutory authority: Public Service Law, sections 2(13), 5(1)(b), 65, 66 and 68(1)

Subject: Examination of terms and conditions of utility service received by Fastrac Markets, LLC.

Purpose: To consider the terms and conditions of utility service received by Fastrac Markets, LLC.

Substance of proposed rule: The New York State Public Service Commission (Commission) is considering a Verified Petition filed by Fastrac Markets, LLC (Fastrac) on January 27, 2016. In its Verified Petition, Fastrac requests a Commission finding that a store located within the former Kodak Park is entitled to receive utility service from Rochester Gas and Electric Corporation (RG&E). Fastrac raises additional issues regarding the terms and conditions of utility service provided to the store that it also asks the Commission to resolve. 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-0057SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-08-16-00007-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by BOP MW Residential Market LLC and BOP MW Residential Affordable LLC, to submeter electricity at 445 W. 31st Street, New York, New York.

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

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent of BOP MW Residential Market LLC and BOP MW Residential Affordable LLC to submeter electricity.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by BOP MW Residential Market LLC and BOP MW Residential Affordable LLC on January 22, 2016, to submeter electricity at 445 W. 31st Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. 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-0034SP1)

Triborough Bridge and Tunnel Authority

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Proposal to Strengthen Toll Violation Enforcement on TBTA Bridges and Tunnels

I.D. No. TBA-08-16-00005-P

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

Proposed Action: Repeal of section 1021.3; and addition of new section 1021.3 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 553(5) and (17)

Subject: Proposal to strengthen toll violation enforcement on TBTA bridges and tunnels.

Purpose: To deter toll evasion.

Text of proposed rule: *TBTA TOLL VIOLATION ENFORCEMENT REGULATIONS*

Part 1021.3 Toll Violation Enforcement

1. The owner, as defined in Public Authorities Law § 2985(3), of any vehicle crossing a bridge or tunnel without paying the crossing charge prescribed by the Triborough Bridge and Tunnel Authority (''Authority'') at the place and time and in the manner established for the collection of such crossing charge commits a violation of toll collection regulations.

(a) Payment of crossing charges by E-ZPass shall be made by means of a properly mounted E-ZPass Tag of the proper class that is classified as valid at the time of the toll transaction. For each such violation, the owner shall be charged the full undiscounted crossing charge for fare media other than E-ZPass. Nothing in this section shall be construed to limit the violation of an E-ZPass account holder for administrative violation fees established and imposed by the E-ZPass agreement for failure to pay crossing charges by means of a properly mounted E-ZPass Tag of the proper class that is classified as valid at the time of the transaction.

(b) Payment of crossing charges by fare media other than E-ZPass shall be made at the place and time and in the manner established for the collection of such crossing charge. Nothing in this section shall be construed to limit the violation of a video account holder for administrative violation fees established and imposed by the applicable video account agreement for failure to pay the crossing charges at the place and time and in the manner established for the collection of such crossing charges.

2. The owner of any vehicle which violates toll collection regulations by crossing a bridge or tunnel without paying the crossing charge prescribed by the Authority at the place and time and in the manner established for the collection of such crossing charge shall be liable to the Authority for an administrative fee, known as the toll violation fee, in the amount of $50.00, for each such toll collection violation. The toll violation fee shall be in addition to the applicable crossing charge and any fines and penalties otherwise prescribed by law or by agreement.

3. A Notice of Violation shall be sent by the Authority's authorized agent (''Authorized Agent'') to the individual or business alleged to be liable for the toll violation as owner and shall contain:

(a) the name and address of the individual or business alleged to be liable for the toll violation as owner;

(b) the registration number and state of the vehicle alleged to have been involved in the violation;

(c) the location, date and time of each use of the facility that forms the basis of such violation;

(d) the amount of the assessed toll and toll violation fee; and

(e) an image of the license plate of the vehicle being used or operated on the toll facility, provided that an image of each such license plate in the Notice of Violation shall be provided by the Authorized Agent upon request.

4. The individual or business alleged to be liable for the toll violation as owner may dispute the violation by submitting a Declaration of Dispute to the Authorized Agent at the time and place and in the manner established in the Notice of Violation and such toll violation and associated toll violation fee shall be dismissed if such individual or business provides a certification that:

(a) The individual or business was not the registered owner of the vehicle at the time of the toll transaction that forms the basis of such alleged violation and submits to the Authorized Agent: (i) a copy of the plate surrender receipt from the Department of Motor Vehicles; (ii) proof of sale of the vehicle; (iii) a copy of the report to a law enforcement agency that the plate was lost; and/or (iv) a copy of the report to a law enforcement agency that the vehicle was stolen; or

(b) The toll was paid by E-ZPass and the toll posted to an E-ZPass Account and submits to the Authorized Agent a copy of the E-ZPass statement showing the toll posting; or

(c) The toll was paid in cash at the time and submits to the Authorized Agent a copy of the toll receipt.

5. If the owner is a vehicle rental or leasing company which seeks to perform a Transfer of Responsibility to the vehicle lessee or renter, the owner shall submit to the Authorized Agent at the time and place and in the manner established in the Notice of Violation a signed lease or rental agreement and certification of the name and address of the lessee or renter of the vehicle at the time of the toll transaction that forms the basis for the violation. A Notice of Violation or toll invoice shall be sent by the Authorized Agent to such lessee or renter within forty-five days of receipt of the signed lease or rental agreement and certification and such lessee or renter shall be deemed to the owner of such vehicle and shall be liable for the payment of tolls and any toll violation fees.

6. The Authorized Agent shall send the owner a written determination of the Declaration of Dispute under subdivision four.

(a) The owner may request a review by the Authority of the Authorized Agent's determination of the Declaration of Dispute by submitting a Request for Review to the Authority at the place and time and in the matter established in the Authorized Agent's written determination of the Declaration of Dispute.

(b) The Authorized Agent's determination of the Declaration of Dispute under subdivision four shall be final and binding on the owner unless overturned by the Authority upon review.

(c) The Authority's determination of the owner's Request for Administrative Review shall be final and binding on the owner unless overturned by a Court of competent jurisdiction of the State of New York, County of New York, under Article 78 of the New York Civil Practice law and Rules or a United States Court located in New York City, under the procedures and laws applicable in that court.

7. The individual or business alleged to be liable for each toll violation as owner shall be liable for each unpaid toll and toll violation fee unless: (i) such unpaid toll and/or toll violation fee has been dismissed under subdivision four or subdivision six; (ii) there has been a Transfer of Responsibility under subdivision five; or (iii) after payment of such toll, the toll violation fee has been dismissed or reduced under the Fee Waiver Policy adopted by the Authority. Such owners who fail to pay each toll and toll violation fee in response to a Notice of Violation may also have their vehicle registrations suspended under vehicle and traffic law section 510(3)(d) and implementing regulations.

Text of proposed rule and any required statements and analyses may be obtained from: M. Margaret Terry, Senior Vice President and General Counsel, Triborough Bridge and Tunnel Authority, 2 Broadway, 24th Floor, New York, NY 10004, (646) 252-7619, email: mterry@mtabt.org

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

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

Regulatory Impact Statement

1. Statutory authority: Public Authority Law (PAL) § 553(5) provides that the Triborough Bridge and Tunnel Authority (Authority) has the power to make "rules and regulations for the regulation of the use of the project and the establishment and collection of tolls thereon" and "that violation of any rule or regulation governing or regulating traffic on the projects of the authority shall be a traffic infraction as the same is defined in the vehicle and traffic law and shall be punishable as such." PAL § 553(17) provides that the Authority may do "all things necessary or convenient to carry out the powers expressly given in this title."

2. Legislative objectives: The proposed rule will revise the Authority's toll violation enforcement regulations to add provisions prescribing the procedural protections for owners seeking to have their tolls and unpaid violation fees dismissed or transferred from vehicle rental and leasing companies to renters and lessees and warning that owners who persistently fail to pay tolls and violation fees may have their vehicle registrations suspended by the New York State Department of Motor Vehicles (DMV).

3. Needs and benefits: This rule is being adopted in conjunction with the DMV's new regulations to suspend vehicle registrations of owners who fail to pay their tolls and violation fees or who have them dismissed or transferred in response to five violation notices within 18 months under DMV's statutory authority to suspend registrations for habitual or persistent violators. As the DMV acknowledged in the Regulatory Impact Statement for its proposed regulations, toll violators should receive ample notice for each toll violation of the amount owed, how to pay and how to dispute the alleged violation. Moreover, violation enforcement procedures are most effective when they are both fair and predictable. The proposed rule strengthens the Authority's toll violation enforcement regulations by enacting due process procedures and policies to give owners an opportunity to have their toll violations dismissed or transferred before being subject to a $50 violation fee per violation, or if persistent or habitual violators, to having their vehicle registration suspended by DMV.

Before beginning its all-electronic tolling (AET) pilot program at the Henry Hudson Bridge in January 2011, the Authority adopted a regulation imposing a $50 toll violation fee upon the owner of any vehicle crossing a bridge or tunnel without paying the prescribed crossing charge by means of a properly mounted and valid E-ZPass Tag or by fare media other than E-ZPass at the place and time and in the manner established by the Authority for the collection of such toll. Since the elimination of cash collection at the Henry Hudson Bridge in November 2012, the $50 violation fee has been effective in keeping the E-ZPass violation rate very low--.4% (i.e., four-tenths of one percent). The $50 violation fee has, however, been less effective in getting customers to make timely payment of their Tolls by Mail invoices; Tolls by Mail customers have a significantly higher violation rate of about 32%. The Authority would be unable to expand AET to other facilities with lower E-ZPass usage than the Henry Hudson Bridge, higher tolls and significant commercial traffic unless it can more effectively deter toll evasion. Since Authority toll revenues are used to maintain and improve its bridges and tunnels and provide support for the Metropolitan Transportation Authority's integrated mass transportation system, effectively deterring toll evasion prevents toll violators from passing the burden of maintaining Authority infrastructure and supporting mass transit to law-abiding citizens who pay the tolls. It is anticipated that strengthening the Authority's toll violation enforcement procedures will increase toll revenue at Authority AET facilities by deterring toll evasion. This proposal establishes a meaningful process to both deter toll evasion and encourage persons to pay delinquent tolls.

4. Costs:

a. to regulated parties: This proposal does not impose new costs on individuals utilizing Authority facilities.

b. cost to the State, the agency and local governments: This proposed rule will impose no costs on local governments. TBTA will incur no additional costs because the regulations are consistent with current practices.

c. source: Authority records.

5. Local government mandates: The proposed rule will not affect local governments.

6. Paperwork: The proposed rule will require the Authority to formalize existing toll violation enforcement processes and procedures and develop an appeal procedure.

7. Duplication: This proposed regulation does not duplicate or conflict with any State or Federal rule.

8. Alternatives: The tolling authorities previously submitted legislative proposals to address the issue of non-payment, but such proposals were not enacted by the Legislature. A no action alternative was not considered.

9. Federal standards: The rule does not exceed any Federal standards.

10. Compliance schedule: Implementation of this regulation is scheduled for April of 2016.

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

A regulatory flexibility analysis for small business and local governments, a rural flexibility analysis and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small business, local governments, rural areas or jobs.

This proposed rulemaking would strengthen the Triborough Bridge and Tunnel Authority's toll violation enforcement regulations by enacting due process procedures and policies to give owners an opportunity to have their violation dismissed or transferred before being subject to a $50 violation fee per violation or, if persistent or habitual violators, to having their registrations suspended by the New York State Department of Motor Vehicles. Due to its narrow focus, this rule will not impose an adverse economic impact or reporting, record-keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

Workers' Compensation Board

NOTICE OF ADOPTION

Voluntary Binding Review of Decisions

I.D. No. WCB-45-15-00022-A
Filing No. 194
Filing Date: 2016-02-05
Effective Date: 2016-03-12

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

Action taken: Amendment of section 300.36 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117, 141 and 32

Subject: Voluntary Binding Review of Decisions.

Purpose: To permit parties to a workers' compensation case to enter into voluntary binding review of issues related to compensation.

Text or summary was published in the November 10, 2015 issue of the Register, I.D. No. WCB-45-15-00022-P.

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

Text of rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, Office of General Counsel, 328 State Street, Schenectady, NY 12305-2318, (518) 486-9564, email: regulations@wcb.ny.gov

Assessment of Public Comment
The agency received no public comment.