

# RULE MAKING ACTIVITIES

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

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

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

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## Department of Agriculture and Markets

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### NOTICE OF ADOPTION

#### Species of Trees and Plants of the Prunus Species

**I.D. No.** AAM-19-16-00003-A  
**Filing No.** 638  
**Filing Date:** 2016-07-05  
**Effective Date:** 2016-07-20

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

**Action taken:** Amendment of Part 140 of Title 1 NYCRR.  
**Statutory authority:** Agriculture and Markets Law, sections 18, 164 and 167

**Subject:** Species of trees and plants of the Prunus species.

**Purpose:** To amend the plum pox virus quarantined and regulated areas for purposes of helping prevent the further spread of this virus.

**Text or summary was published** in the May 11, 2016 issue of the Register, I.D. No. AAM-19-16-00003-EP.

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

**Text of rule and any required statements and analyses may be obtained from:** Christopher A. Logue, Director, Division of Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087, email: christopher.logue@agriculture.ny.gov

#### Initial Review of Rule

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

#### Assessment of Public Comment

The agency received no public comment.

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## Department of Civil Service

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### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-44-15-00004-A  
**Filing No.** 622  
**Filing Date:** 2016-06-29  
**Effective Date:** 2016-07-20

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

**Action taken:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text or summary was published** in the November 4, 2015 issue of the Register, I.D. No. CVS-44-15-00004-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-44-15-00005-A  
**Filing No.** 625  
**Filing Date:** 2016-06-29  
**Effective Date:** 2016-07-20

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

**Action taken:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the non-competitive class.

**Text or summary was published** in the November 4, 2015 issue of the Register, I.D. No. CVS-44-15-00005-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

#### Assessment of Public Comment

The agency received no public comment.

## NOTICE OF ADOPTION

## Jurisdictional Classification

I.D. No. CVS-44-15-00007-A

Filing No. 623

Filing Date: 2016-06-29

Effective Date: 2016-07-20

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

**Action taken:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt class.

**Text or summary was published** in the November 4, 2015 issue of the Register, I.D. No. CVS-44-15-00007-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

## Assessment of Public Comment

The agency received no public comment.

## NOTICE OF ADOPTION

## Jurisdictional Classification

I.D. No. CVS-44-15-00009-A

Filing No. 627

Filing Date: 2016-06-29

Effective Date: 2016-07-20

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

**Action taken:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt class.

**Text or summary was published** in the November 4, 2015 issue of the Register, I.D. No. CVS-44-15-00009-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

## Assessment of Public Comment

The agency received no public comment.

## NOTICE OF ADOPTION

## Jurisdictional Classification

I.D. No. CVS-44-15-00013-A

Filing No. 626

Filing Date: 2016-06-29

Effective Date: 2016-07-20

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

**Action taken:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the non-competitive class.

**Text or summary was published** in the November 4, 2015 issue of the Register, I.D. No. CVS-44-15-00013-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

## Assessment of Public Comment

The agency received no public comment.

## NOTICE OF ADOPTION

## Jurisdictional Classification

I.D. No. CVS-44-15-00015-A

Filing No. 624

Filing Date: 2016-06-29

Effective Date: 2016-07-20

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

**Action taken:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the non-competitive class.

**Text or summary was published** in the November 4, 2015 issue of the Register, I.D. No. CVS-44-15-00015-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

## Assessment of Public Comment

The agency received no public comment.

## NOTICE OF ADOPTION

## Jurisdictional Classification

I.D. No. CVS-44-15-00016-A

Filing No. 628

Filing Date: 2016-06-29

Effective Date: 2016-07-20

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

**Action taken:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a position from and classify a position in the non-competitive class.

**Text or summary was published** in the November 4, 2015 issue of the Register, I.D. No. CVS-44-15-00016-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

## Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED

## Jurisdictional Classification

I.D. No. CVS-29-16-00001-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Public Service, by increasing the number of positions of Special Assistant from 12 to 14.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

#### **Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

#### **Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

#### **Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

#### **Jurisdictional Classification**

**I.D. No.** CVS-29-16-00002-P

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

**Proposed Action:** Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete subheading and positions from; to add heading, subheading and positions in exempt and non-competitive classes.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the New York State Thruway Authority, by deleting therefrom the position of Director, Canal Recreationway Commission and deleting therefrom the subheading "New York State Canal Corporation" and the positions of Director Operations and Special Assistant (2); and, under the heading "Miscellaneous," by adding thereto the heading New York State Power Authority and under the New York State Power Authority, by adding thereto the subheading "New York State Canal Corporation" and the positions of Director, Canal Recreationway Commission, Director Operations and Special Assistant (2); and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the New York State Thruway Authority, by deleting therefrom the subheading "New York State Canal Corporation" and the positions of øBusiness Development Specialist 1 (5), øBusiness Development Specialist 2 (1), øConfidential Assistant (1) and Soil and Water Engineering Specialist (1); and, under the heading "Miscellaneous," by adding thereto the heading New York State Power Authority and under the New York State Power Authority, by adding thereto the subheading "New York State Canal Corporation" and the positions of øBusiness Development Specialist 1 (5), øBusiness Development Specialist 2 (1), øConfidential Assistant (1) and Soil and Water Engineering Specialist (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

#### **Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

#### **Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

#### **Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

#### **Jurisdictional Classification**

**I.D. No.** CVS-29-16-00003-P

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

**Proposed Action:** Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from the exempt and non-competitive classes.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Information Technology Services," by deleting therefrom the position of Special Office Assistant; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by deleting therefrom the position of Assistant to the Director of Facilities Operations (1); in the Executive Department under the subheading "Division of Housing and Community Renewal," by deleting therefrom the position of øNew York City Regional Director, Housing and Community Renewal (1); in the Department of Health, by deleting therefrom the positions of Medicaid Investigator 1 (2); in the Department of Labor, by deleting therefrom the position of Job Training Partnership Assistant (1) and, in the New York State Thruway Authority, by deleting therefrom the position of øDirector of Management Information Systems (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

#### **Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

#### **Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

**Jurisdictional Classification**

**I.D. No.** CVS-29-16-00004-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from the non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Education Department under the subheading "New York State Higher Education Services Corporation," by deleting therefrom the position of College Savings Program Marketing Specialist (1) and, in the Executive Department under the subheading "Division of Military and Naval Affairs," by deleting therefrom the position of Manager, NYS Military Museum (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

**Jurisdictional Classification**

**I.D. No.** CVS-29-16-00005-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by increasing the number of positions of Associate Commissioner from 1 to 2.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

**Jurisdictional Classification**

**I.D. No.** CVS-29-16-00006-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by adding thereto the position of Executive Assistant and by increasing the number of positions of Special Assistant from 4 to 5.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously

printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

**Jurisdictional Classification**

**I.D. No.** CVS-29-16-00007-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Agriculture and Markets, by adding thereto the position of Food Laboratory Scientist (Seed) (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

**Jurisdictional Classification**

**I.D. No.** CVS-29-16-00008-P

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

**Proposed Action:** Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class and to delete a position from the non-competitive class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of State, by increasing the number of positions of Secretary from 5 to 6; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of State, by decreasing the number of positions of Secretary 2 from 6 to 5.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

**Jurisdictional Classification**

**I.D. No.** CVS-29-16-00009-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Law, by increasing the number of positions of Research Associate from 6 to 9.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

**Jurisdictional Classification****I.D. No.** CVS-29-16-00010-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify positions in the exempt class.**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Law, by increasing the number of positions of Research Associate from 6 to 9.**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: sjennifer.paul@cs.ny.gov**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov**Public comment will be received until:** 45 days after publication of this notice.**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

**Jurisdictional Classification****I.D. No.** CVS-29-16-00011-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify a position in the exempt class.**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by increasing the number of positions of Associate Commissioner from 1 to 2.**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov**Public comment will be received until:** 45 days after publication of this notice.**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

**Jurisdictional Classification****I.D. No.** CVS-29-16-00012-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify positions in the exempt class.**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Public Service, by increasing the number of positions of Special Assistant from 12 to 14.**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov**Public comment will be received until:** 45 days after publication of this notice.**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

**Jurisdictional Classification**

I.D. No. CVS-29-16-00013-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by adding thereto the position of Executive Assistant and by increasing the number of positions of Special Assistant from 4 to 5.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

**Jurisdictional Classification**

I.D. No. CVS-29-16-00014-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification

**Purpose:** To classify a position in the non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Agriculture and Markets, by adding thereto the position of Food Laboratory Scientist (Seed) (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

**Jurisdictional Classification**

I.D. No. CVS-29-16-00015-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from the non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Education Department under the subheading "New York State Higher Education Services Corporation," by deleting therefrom the position of College Savings Program Marketing Specialist (1) and, in the Executive Department under the subheading "Division of Military and Naval Affairs," by deleting therefrom the position of Manager, NYS Military Museum (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

**Jurisdictional Classification****I.D. No.** CVS-29-16-00016-P

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

**Proposed Action:** Amendment of Appendixes 1 and 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To delete positions from the exempt and non-competitive classes.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Information Technology Services," by deleting therefrom the position of Special Office Assistant; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by deleting therefrom the position of Assistant to the Director of Facilities Operations (1); in the Executive Department under the subheading "Division of Housing and Community Renewal," by deleting therefrom the position of New York City Regional Director, Housing and Community Renewal (1); in the Department of Health, by deleting therefrom the positions of Medicaid Investigator 1 (2); in the Department of Labor, by deleting therefrom the position of Job Training Partnership Assistant (1) and, in the New York State Thruway Authority, by deleting therefrom the position of Director of Management Information Systems (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

**Jurisdictional Classification****I.D. No.** CVS-29-16-00017-P

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

**Proposed Action:** Amendment of Appendixes 1 and 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify a position in the exempt class and to delete a position from the non-competitive class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of State, by increasing the number of positions of Secretary from 5 to 6; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of State, by decreasing the number of positions of Secretary 2 from 6 to 5.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

**Jurisdictional Classification****I.D. No.** CVS-29-16-00018-P

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

**Proposed Action:** Amendment of Appendixes 1 and 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To delete subheading and positions from; to add heading, subheading and positions in exempt and non-competitive classes.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the New York State Thruway Authority, by deleting therefrom the position of Director, Canal Recreationway Commission and deleting therefrom the subheading "New York State Canal Corporation" and the positions of Director Operations and Special Assistant (2); and, under the heading "Miscellaneous," by adding thereto the heading New York State Power Authority and under the New York State Power Authority, by adding thereto the subheading "New York State Canal Corporation" and the positions of Director, Canal Recreationway Commission, Director Operations and Special Assistant (2); and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the New York State Thruway Authority, by deleting therefrom the subheading "New York State Canal Corporation" and the positions of Business Development Specialist 1 (5), Business Development Specialist 2 (1), Confidential Assistant (1) and Soil and Water Engineering Specialist (1); and, under the heading "Miscellaneous," by adding thereto the heading New York State Power Authority and under the New York State Power Authority, by adding thereto the subheading "New York State Canal Corporation" and the positions of Business Development Specialist 1 (5), Business Development Specialist 2 (1), Confidential Assistant (1) and Soil and Water Engineering Specialist (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

#### **Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

#### **Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

#### **Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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## Department of Environmental Conservation

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### NOTICE OF ADOPTION

#### **Fisher Trapping Seasons and General Trapping Regulations for Furbearers**

**I.D. No.** ENV-19-15-00010-A

**Filing No.** 641

**Filing Date:** 2016-07-05

**Effective Date:** 2016-07-20

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

**Action taken:** Amendment of sections 6.2 and 6.3 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 3-0301, 11-0303, 11-0917, 11-1101, 11-1103 and 11-1105

**Subject:** Fisher trapping seasons and general trapping regulations for furbearers.

**Purpose:** Revise existing fisher seasons, establish a new season in central/western NY, update and clarify general trapping regulations.

**Text or summary was published** in the May 13, 2015 issue of the Register, I.D. No. ENV-19-15-00010-P.

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

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

**Text of rule and any required statements and analyses may be obtained from:** Michael Schiavone, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8883, email: wildliferegs@dec.ny.gov

**Additional matter required by statute:** A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

#### **Revised Regulatory Impact Statement**

##### 1. Statutory Authority

Section 3-0301 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (DEC or department) to provide for the propagation, protection, and management wildlife.

Section 11-0303 of the ECL directs DEC to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to: ecological factors, the compatibility of production and harvest

of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises.

ECL sections 11-0917 and 11-1101 describe the conditions under which wild game may be possessed, transported, or sold, and which trapping activities are prohibited.

ECL section 11-1103 states that the department may by regulation permit trapping of beaver, fisher, otter, bobcat, coyote, fox, raccoon, opossum, weasel, skunk, muskrat, pine marten and mink and may regulate the taking, possession and disposition of such animals.

ECL section 11-1105 describes how traps may be set, how often they must be checked, and how animals may be dispatched.

##### 2. Legislative Objectives

The legislative objectives behind the statutory provisions listed above are to authorize the department to establish, by regulation, certain basic wildlife management tools, including the setting of open areas for trapping fisher and other furbearers. These tools are used by the department in recognition of the importance of trapping for recreational purposes.

##### 3. Needs and Benefits

The Division of Fish and Wildlife (Division) proposes to establish a new 6-day fisher trapping season in select Wildlife Management Units (WMUs) in central and western New York that can sustain a limited harvest opportunity based on analyses of fisher population data and estimates of trapping pressure. In addition, the Division proposes a restriction of the fisher season in Adirondack WMUs from 46 days to 30 days based on scientific evidence that harvest rates in those units is exceeding 20%, the threshold for sustainable harvest. Finally, the Division is proposing minor revisions to the general trapping regulations for furbearers to improve clarity and ease compliance and enforcement.

##### 4. Costs

None beyond normal administrative costs.

##### 5. Paperwork

The proposed revisions require participants in fisher trapping seasons to obtain a special permit from DEC free of charge and to complete a trapping effort log. These requirements allow wildlife managers to obtain important information on trapping harvest, participation, and effort to ensure that harvest is sustainable.

##### 6. Local Government Mandates

These amendments do not impose any program, service, duty or responsibility upon any county, city, town village, school district or fire district.

##### 7. Duplication

There are no other regulations similar to this proposal.

##### 8. Alternatives

Alternatives for Fisher Trapping in Adirondack WMUs in Northern New York

No changes to fisher trapping seasons in Adirondack WMUs. A fundamental part of fisher management is that populations can generally sustain annual harvest rates of approximately 20%. Harvest and trapping effort data from the Adirondacks indicate that the fisher population has declined in recent years and that harvest rates exceed 20%. Based on our analysis of fisher harvest data, Division staff concluded that some changes to trapping regulations are necessary to ensure that fisher harvests are managed on a sustainable basis as a public trust resource.

Temporarily close fisher trapping seasons in Adirondack WMUs. Fisher trapping season closures were implemented in New York in 1977, 1983, and 1984; however, the recently observed fisher harvest declines do not warrant such action at this time. While such measures may provide immediate relief of harvest pressure on fisher populations, short-term season closures are unlikely to provide long-term benefits if other harvest restrictions are not implemented when seasons are re-opened. Furthermore, because fishers and martens are trapped using the same methods, the marten trapping season in the Adirondacks would also be closed under this alternative. Fishers would also continue to be harvested incidental to other terrestrial furbearers with concurrent seasons (e.g., fox, raccoon, coyote). Lastly, when trapping seasons are closed, the Division loses a valuable source of data (i.e., biological data collected during pelt sealing) that is used to assess population status and make management decisions.

##### Alternatives for Fisher Trapping in Central and Western New York

Maintain a closed season for trapping fishers. While maintaining a closed season for fisher trapping is a viable management option, providing regulated trapping opportunities is consistent with the NYSDEC Bureau of Wildlife's mission "To provide the people of New York the opportunity to enjoy all the benefits of the wildlife of the State, now and in the future." These benefits include opportunities to harvest and observe fishers in the wild. Even with the proposed opening of a limited trapping season Central/Western New York, we expect fisher populations to continue to expand to other areas of western New York (e.g., the Lake Plains) which will provide additional opportunities for the public to observe and enjoy this species in the future.

Open a fisher trapping season with harvest regulations similar to other

areas of New York (existing or proposed). We considered this option to address potential concerns regarding inequity of harvest opportunities among fisher management zones or having different trapping seasons and regulations across the state. However, our assessment of fisher populations and harvest data from ecologically-similar areas of southeastern New York, suggested that a more conservative season than occurs elsewhere currently (46 days) or than is proposed for the Adirondack WMUs (30 days) was more appropriate for opening a new season. The proposed 6-day season will almost certainly be sustainable, provide some new harvest opportunities, and provide data that we can use to evaluate possible season expansions in the future.

Alternatives for Revisions to General Trapping Regulations for Furbearers

Make no changes to existing general trapping regulations in NYCRR Section 6.3. We can continue to manage furbearers without making changes to the general regulations described in Section 6.3, but the current wording has led to confusion among both trappers and law enforcement personnel, making compliance and enforcement a challenge.

9. Federal Standards

There are no federal standards associated with fisher trapping.

10. Compliance Schedule

Trappers would have to comply with the new regulations beginning in the fall of 2016.

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

A revised Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not needed. The original Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement, as published in the Notice of Proposed Rule Making, remain valid and do not need to be amended.

**Assessment of Public Comment**

The Department received 45 comments on the proposed amendment to fisher seasons and general trapping regulations. A summary of comments and Department responses follows.

Comment:

General statements opposed to trapping.

Response:

Some people do not approve of trapping; however, New York's Environmental Conservation Law (ECL) authorizes trapping as a legitimate use of our wildlife resources. Consequently, the proposed regulations provide for this use, while ensuring it is done sustainably.

Comment:

The proposed season length reduction in Adirondack Wildlife Management Units (WMUs) is not science-based or is based on inadequate data.

Response:

The proposed regulations are based on analyses of available data including harvest totals and sex ratios, trapping effort, and both mail and field survey results. The Fisher Management Plan, on which the regulatory proposal was based, incorporates numerous references to scientific literature from peer-reviewed professional journals on fisher and furbearer management.

The assessment of fisher population declines in the Adirondacks is based, in part, on "take per unit effort" (TPUE) data. The scientific literature has several references that demonstrate the utility of using TPUE to monitor changes in furbearer populations. TPUE accounts for sources of variation in harvest (e.g., changes in trapping pressure due to pelt prices, weather, and costs) by normalizing harvest by effort expended. TPUE is the product of the number of traps set and the number of nights these traps are set (expressed as the number of fisher harvested per 100 trap-nights). Normalizing harvest data by effort facilitates year-to-year comparisons and addresses changes in effort and resulting harvest. TPUE does not account for changes in trapping vulnerability that occur in response to food availability, but this was considered when interpreting TPUE trends. Some commenters mentioned the link between mast production and harvest. While mast influences variation in harvest between years, over the long-term there has been a consistent decreasing trend in TPUE.

Comment:

More research is needed before decreasing the season length in the Adirondacks.

Response:

Some commenters felt that additional research was necessary to document fisher population declines in Adirondack WMUs. We do not believe more research would change the outcome of our proposals. All indicators (TPUE, harvest rates, and sex ratios) point to a decreasing fisher population. We believe this warrants the proposed season reduction to achieve a 20% harvest rate to stabilize the population.

While the available data indicate that the fisher population in Adirondack WMUs is declining, additional research is needed to better understand the cause(s) of the decline. The need for additional research, including

descriptions of potential studies to address this issue, is described in the Fisher Management Plan. Department staff plan to implement these research studies as resources allow.

Data gathered from ongoing and future field surveys, mail surveys, pelt sealing, and formal research projects will be used to evaluate the changes made to fisher trapping seasons, and to make adjustments, if needed.

Comment:

Trapping harvest favoring female fishers is "normal" and sustainable, contrary to what is stated in the Fisher Management Plan.

Response:

Peer-reviewed published research found that adult female fishers had lower mortality rates and were less vulnerable to trapping than adult males, indicating that sex ratios which favor males or approach 1:1 female:male (F:M) reflect a sustainable harvest. Although Fur Harvesters Auction (FHA) data presented to the Department indicated a F:M ratio similar to that presented in the Fisher Management Plan, there are important differences. First, sex ratio data from New York contain both spatial and temporal components, enabling us to calculate ratios and their variability over time within discrete areas with the same trapping regulations (e.g., northern vs. southeastern NY). Furthermore, the department evaluated additional harvest data (e.g., TPUE, harvest density, success rate) to corroborate sex ratio data. FHA data were pooled across a large geographic area that varied greatly in F:M ratios and trapping regulations, precluding an understanding of how differences in regulations across jurisdictions influence these ratios, and prohibiting a comparison with other harvest data. Lastly, even if FHA data were an accurate reflection of the fisher sex ratio, it's important to note that other eastern and mid-western states are observing similar declines in fisher harvests, which suggests that ratios exceeding 1:1 indicate increasing harvest intensity and potentially overharvest.

Comment:

Trapping season dates should be set for when fur is "prime."

Response:

Many trappers suggested a later season start date to improve the quality of fur on harvested fisher. While later dates would lead to an improvement in pelt quality, there are other factors to consider. First, fishers harvested in late October are routinely sold at reasonable prices, so the difference in pelt quality from a modest delay in season dates is small. In addition, incidental capture of fisher by trappers targeting other species using body-grip traps prior to the later opening date is problematic. Body-grip traps are lethal traps and non-target catches cannot be released.

In response to the input received for Northern New York during the Notice of Proposed Rulemaking (NPR) in 2015, the Department amended the proposed regulation in the Notice of Revised Rulemaking to a season start date of November 1 for Adirondack WMUs (the original proposed start date in the NPR was October 25) and also increased the proposed season length from 22 to 30 days.

Comment:

Restricting the fisher trapping season in the Adirondacks will negatively affect marten trapping opportunity.

Response:

Trapping methods for fisher and marten are very similar and therefore, regulations designed to protect one species must also be applied to the other. Were marten seasons to remain unchanged, there is the strong possibility that marten trappers could incidentally take fisher after fisher season closed. We recognize that the proposed changes will result in the loss of marten trapping opportunity, but to avoid the incidental take of fisher, seasons for the two species must be aligned.

Comment:

Do not restrict the fisher trapping season in select townships in Saratoga County that are dissimilar to fisher populations in the central Adirondacks.

Response:

While fishers may be relatively abundant in a given local area, it is not feasible for the Department to manage populations on a small spatial scale such as townships. Furthermore, it is not scientifically valid to extrapolate the status of fisher populations across a larger region based on what is observed at the township level.

The Department collects and analyzes data at the WMU Aggregate level (e.g., Central Adirondacks, Champlain Valley). WMU aggregates are groupings of WMUs based on their ecological similarity. WMU aggregates are the most appropriate scale for managing furbearers such as fisher because they account for ecological variation across a region while providing an adequate sample size for data collection (e.g., pelt sealed fishers, TPUE data).

Comment:

The "revocable special permit" for fisher trapping needs clarification. Trapping log books provide unreliable data due to the variation in experience of trappers.

Response:

The proposed amendment for fisher trapping specified the requirement for a "special permit" that is obtained from the Department free of charge.

The special permit system is a mechanism that has been used successfully for furbearer species to obtain estimates of participation and effort that cannot be obtained from pelt-sealing alone. As stated above, estimates of TPUE are a more accurate representation of abundance than raw harvest totals. Furthermore, the log books accurately account for the diversity of experience and effort among trappers, thus providing a more accurate assessment of trapping pressure and take. The Department envisions use of the special permit system as temporary as we seek to better understand fisher populations over the next 3-5 years. The special permit would be revoked in the instance where the permit holder committed a violation of the New York State Environmental Conservation Law or New York State Code of Rules and Regulations related to trapping.

Comment:

The fisher population in central and western New York cannot sustain the proposed season.

Response:

The Department conducted intense trail camera surveys in C/WNY over the last three winters to estimate fisher occupancy and density, including surveys in Wildlife Management Units (WMUs) currently open to fisher trapping, and based on these data, is confident fisher populations in select areas of C/WNY can sustain a limited harvest. Department staff will use data from trapper diaries (i.e., "log books"), pelt sealing, and other field surveys to evaluate the new season over the next three years and make changes, if needed.

Comment:

The phrases "leg hold" traps and traps with "teeth in the jaws" reflect poorly upon trappers.

Response:

Regulatory language regarding "leg hold" traps and the prohibition against using traps with "teeth in the jaws" mirror the language in ECL § 11-1101. We recognize that "foot-hold" trap is a more accurate reflection of this device and that traps with "teeth in the jaws" have been prohibited in New York State for decades; however, the Department uses these phrases to remain consistent with statute. Changing this language would require a law change.

Comment:

Changes to size of body-grip traps required to use the offset trigger are unnecessary.

Response:

To improve protection of river otter in areas with no otter trapping season, the Department feels this change is necessary given the prevalence of "330" sized body-grip traps that measure less than nine inches that are commercially available. These traps are generally less expensive than other brands and are therefore likely to be commonly used. Given their smaller dimensions than other "330" sized traps, they may also have a higher likelihood of capturing otter unless offset triggers per 6 NYCRR 6.3(a)(12).

Based on the data collected by the Department, the adjustments made to the Fisher Management Plan and original regulatory proposal based on public input, and new comments received on the Notice of Revised Rulemaking, the department has determined that it remains appropriate to allow the modification of existing fisher trapping seasons, expand fisher trapping opportunity into new regions of the state, and to make minor modifications to the general trapping regulations. Therefore, the regulation is being adopted as proposed in the Notice of Revised Rulemaking published on May 11, 2016.

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## Department of Financial Services

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

#### Workers' Compensation Safe Patient Handling Program

**I.D. No.** DFS-29-16-00020-EP

**Filing No.** 632

**Filing Date:** 2016-07-01

**Effective Date:** 2016-07-01

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

**Proposed Action:** Addition of Subpart 151-7 (Regulation 119) to Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; Insurance Law, sections 301 and 2304(j)

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

**Specific reasons underlying the finding of necessity:** Part A of Chapter 60 of the Laws of 2014 added a new Title 1-A to Public Health Law Article 29-D to require health care facilities to establish safe patient handling programs by January 1, 2017. Part A also added a new Insurance Law § 2304(j) to require the Superintendent of Financial Services ("Superintendent") to make rules, by July 1, 2016, establishing requirements for health care facilities to obtain a reduced workers' compensation insurance rate for safe patient handling programs implemented pursuant to Public Health Law § 2997-(k)(2). Section 2304(j) further requires the Superintendent to submit reports to the Legislature by December 1, 2018 and December 1, 2020 that evaluate the effects of the reduced rate, including changes in claim frequency and costs.

The regulation states that for each workers' compensation insurance policy issued or renewed in New York, an insurer must provide a credit to a health care facility that implements and maintains a safe patient handling program that meets the requirements of Public Health Law § 2997-(k)(2). The amount of the credit and the manner in which it is applied must be in accordance with the approved manual filed by the rate service organization of which the insurer is a member. The regulation also requires an insurer to verify that a health care facility has implemented and maintains a safe patient handling program that meets the requirements of Public Health Law § 2997-(k)(2) before providing a credit, and requires every workers' compensation rate service organization to submit an annual report to the Superintendent regarding policies receiving a credit pursuant to the regulation, including policy year payrolls, indemnity losses, indemnity claim counts, medical losses by classification, and such other information as the Superintendent may require.

Insurance Law § 2304(j) requires that the regulation be in place by July 1, 2016. Therefore, it is necessary to promulgate the regulation on an emergency basis for the furtherance of the general welfare.

**Subject:** Workers' Compensation Safe Patient Handling Program.

**Purpose:** To implement part A of chapter 60 of the Laws of 2014.

**Text of emergency/proposed rule:** *Workers' Compensation Safe Patient Handling Program*

§ 151-7.0 Preamble.

*In March 2014, Governor Andrew M. Cuomo signed into law Part A of Chapter 60 of the Laws of 2014, which amended the Public Health Law and Insurance Law with regard to safe patient handling programs. Specifically, Chapter 60 added a new Title 1-A to Public Health Law Article 29-D to require health care facilities to establish safe patient handling programs, and added a new Insurance Law section 2304(j) to require the department to make rules establishing requirements for health care facilities to obtain a reduced workers' compensation insurance rate for safe patient handling programs implemented pursuant to Public Health Law section 2997-(k)(2).*

§ 151-7.1 Definitions.

*In this Subpart, health care facility shall have the meaning set forth in Public Health Law section 2997-(h)(1).*

§ 151-7.2 Safe patient handling program credits.

*(a) For each workers' compensation insurance policy issued or renewed in this State, an insurer shall provide a credit to a health care facility that implements and maintains a safe patient handling program that meets the requirements of Public Health Law section 2997-(k)(2). The amount of the credit and the manner in which it is applied shall be in accordance with the approved manual filed by the rate service organization of which the insurer is a member.*

*(b) An insurer shall verify that a health care facility has implemented and maintains a safe patient handling program that meets the requirements of Public Health Law section 2997-(k)(2) before providing a credit.*

§ 151-7.4 Reporting requirements.

*By June 1 of each year, every workers' compensation rate service organization shall submit a report to the superintendent regarding policies receiving a credit pursuant to this Part, including policy year payrolls, indemnity losses, indemnity claim counts, and medical losses by classification, and such other information as the superintendent may require. Every workers' compensation rate service organization shall report the information, including adjustments, consistent with the comparable classification relativity review.*

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 28, 2016.

**Text of rule and any required statements and analyses may be obtained from:** Joana Lucashuk, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2125, email: joana.lucashuk@dfs.ny.gov

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

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

#### **Regulatory Impact Statement**

1. Statutory authority: Financial Services Law §§ 202 and 302 and Insurance Law §§ 301 and 2304(j).

Financial Services Law § 202 establishes the office of the Superintendent of Financial Services (“Superintendent”). Financial Services Law § 302 and Insurance Law § 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, Insurance Law, or any other law, and to prescribe regulations interpreting the Insurance Law.

Insurance Law § 2304(j) requires the Superintendent to make rules establishing requirements for health care facilities to obtain a reduced workers’ compensation insurance rate for safe patient handling programs implemented pursuant to Public Health Law § 2997-k(2). This section also requires the Superintendent to evaluate the results of the reduced rate, including changes in claim frequency and costs, and submit a report to the Legislature by December 1, 2018 and December 1, 2020.

2. Legislative objectives: In March 2014, Governor Andrew M. Cuomo signed into law Chapter 60 of the Laws of 2014, Part A of which amended the Public Health Law and Insurance Law with regard to safe patient handling programs. Specifically, Part A of Chapter 60 added a new Title 1-A to Public Health Law Article 29-D to require health care facilities to establish safe patient handling programs. Part A also added a new Insurance Law § 2304(j) requiring the Superintendent to make rules establishing requirements for health care facilities to obtain a reduced workers’ compensation insurance rate for safe patient handling programs implemented pursuant to Public Health Law § 2997-k(2). It also requires the Superintendent to evaluate the results of the reduced rate, including changes in claim frequency and costs, and submit a report to the Legislature by December 1, 2018 and December 1, 2020.

This rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law § 2304(j) by requiring an insurer to provide a credit on each workers’ compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program pursuant to the requirement prescribed in Public Health Law § 2997-k(2). The amount of the credit and the manner in which it is applied must conform with the approved manual filed by the rate service organization (“RSO”) of which the insurer is a member.

3. Needs and benefits: Part A of Chapter 60 of the Laws of 2014 amended the Public Health Law to require health care facilities to establish safe patient handling programs. Part A also amended the Insurance Law to require the Superintendent to establish, by regulation, requirements for health care facilities to obtain a reduced workers’ compensation insurance rate for safe patient handling programs, and to require the Superintendent to evaluate the results of the reduced rate, including changes in claim frequency and costs, and submit a report to the Legislature by December 1, 2018 and December 1, 2020.

This rule requires an insurer to provide a credit on each workers’ compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program pursuant to the requirements prescribed in Public Health Law § 2997-k(2). The amount of the credit and the manner in which it is applied must conform with the approved manual filed by the RSO of which the insurer is a member. The rule also requires every workers’ compensation RSO to file certain information with the Superintendent by June 1 of each year so that the Superintendent may collect information for the reports due to the Legislature in 2018 and 2020.

4. Costs: This rule may impose compliance costs on insurers because an insurer must verify that a health care facility has a safe patient handling program implemented pursuant to Public Health Law § 2997-k(2). However, this is a consequence of Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers’ compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program pursuant to the requirements prescribed in Public Health Law § 2997-k(2).

A workers’ compensation RSO may incur costs for the implementation and continuation of this rule, because every workers’ compensation RSO must submit a report to the Superintendent regarding policies receiving the credit, including providing information on policy year payrolls, indemnity losses, indemnity claim counts, and medical losses by classification, and such other information as the Superintendent may require. This report is necessary, however, in order to comply with the statutory mandate that the Superintendent report to the Legislature the effects of the reduced rate.

The Department of Financial Services (“DFS”) also may incur costs for

the implementation and continuation of this rule, because DFS will need to review the workers’ compensation RSO’s report, as well as draft its own report for submission to the Legislature. However, any additional costs incurred should be minimal and DFS should be able to absorb the costs in its ordinary budget.

This rule does not impose compliance costs on any local government.

5. Local government mandates: This rule does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: Workers’ compensation RSOs may incur additional paperwork because this rule requires every workers’ compensation RSO to submit a report to the Superintendent regarding policies receiving the credit, including providing information regarding policy year payrolls, indemnity losses, indemnity claim counts, and medical losses by classification, and such other information as the Superintendent may require.

7. Duplication: This rule does not duplicate, overlap, or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: DFS considered requiring a workers’ compensation RSO to file its annual report electronically but decided that an RSO likely will want to file the report electronically and therefore it is not necessary to require it in the rule.

DFS also considered prescribing the way in which an insurer must verify that a health care facility has implemented and is maintaining a safe patient handling program that meets the requirements of Public Health Law section 2997-k(2) before providing a credit. However, DFS decided it was not necessary to prescribe the method of verification because the insurer is in the best position to determine the ideal way to verify compliance with the law before providing a credit.

9. Federal standards: The rule does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: An insurer and workers’ compensation RSO must comply with this rule as of July 1, 2016.

#### **Regulatory Flexibility Analysis**

1. Effect of rule: Part A of Chapter 60 of the Laws of 2014 amended the Public Health Law by adding a new Title 1-A to Public Health Law Article 29-D to require health care facilities to establish safe patient handling programs. Part A also added a new Insurance Law § 2304(j), requiring the Superintendent of Financial Services (“Superintendent”) to make rules establishing requirements for health care facilities to obtain a reduced workers’ compensation insurance rate for safe patient handling programs implemented pursuant to Public Health Law § 2997-k(2). This section also requires the Superintendent to evaluate the results of the reduced rate, including changes in claim frequency and costs, and submit a report to the Legislature by December 1, 2018 and December 1, 2020.

This rule reflects the amendments to the Insurance Law by Chapter 60. The rule also requires every workers’ compensation rate service organization (“RSO”) to file certain information with the Superintendent by June 1 of each year so that the Superintendent may collect information for the reports due to the Legislature in December 2018 and December 2020. As such, it should not affect local governments.

In addition, this rule is in part directed at workers’ compensation RSOs, which the Department does not believe fall within the definition of a “small business” as defined by State Administrative Procedure Act § 102(8) because in general they are not independently owned and do not have fewer than 100 employees.

Industry asserts that certain domestic insurers, in particular co-op insurers and mutual insurers, subject to the rule are small businesses. However, the law, rather than the rule, requires that an insurer provide a credit to a health care facility that implements and maintains a safe patient handling program. The rule cannot vary a requirement imposed by law.

2. Compliance requirements: No local government will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the rule because the rule does not apply to any local government. An insurer that is a small business affected by this rule, if any, may be subject to reporting, recordkeeping, or other compliance requirements because the insurer must verify that a health care facility has a safe patient handling program implemented pursuant to Public Health Law § 2997-k(2). However, this is a consequence of Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers’ compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program that meets the requirements of the Public Health Law.

3. Professional services: No local government will need professional services to comply with this rule because the rule does not apply to any local government. No insurer that is a small business affected by the rule, if any, should need to retain professional services, such as lawyers or auditors, to comply with this rule.

4. Compliance costs: No local government will incur any costs to comply with this rule because the rule does not apply to any local government. An insurer that is a small business affected by this rule, if

any, may incur additional compliance costs because the insurer must verify that a health care facility has a safe patient handling program implemented pursuant to Public Health Law § 2997-k(2). However, this is a consequence of Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program that meets the requirements of the Public Health Law.

5. Economic and technological feasibility: This rule does not apply to any local government; therefore, no local government should experience any economic or technological impact as a result of the rule. No insurer that is a small business affected by this rule, if any, should experience any economic or technological impact as a result of the rule. Furthermore, this rule merely implements Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program that meets the requirements of the Public Health Law.

6. Minimizing adverse impact: There will not be an adverse impact on any local government because the rule does not apply to any local government. This rule should not have an adverse impact on an insurer that is a small business affected by the rule, if any, because the rule uniformly affects all insurers that are subject to the rule and merely implements Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program that meets the requirements of the Public Health Law.

7. Small business and local government participation: The Department of Financial Services ("DFS") will comply with SAPA § 202-b(6) by publishing the proposed rule in the State Register and posting the proposed rule on DFS's website.

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

1. Types and estimated numbers of rural areas: Insurers and workers' compensation rate services organizations ("RSOs") affected by this rule operate in every county in this state, including rural areas as defined by State Administrative Procedure Act § 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule imposes additional reporting, recordkeeping, and other compliance requirements by requiring workers' compensation RSOs, including RSOs located in rural areas, to submit a report to the Superintendent of Financial Services ("Superintendent") regarding policies receiving the credit, including information regarding policy year payrolls, indemnity losses, indemnity claim counts, and medical losses by classification, and such other information as the Superintendent may require.

An insurer may be subject to additional reporting, recordkeeping, or other compliance requirements because the insurer must verify that a health care facility has a safe patient handling program implemented pursuant to Public Health Law § 2997-k(2). However, this is a consequence of Part A of Chapter 60 of the Laws of 2014, which requires the Superintendent to make rules establishing requirements for health care facilities to obtain a reduced workers' compensation insurance rate for safe patient handling programs implemented pursuant to Public Health Law § 2997-k(2), by requiring an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program pursuant to the requirements prescribed in the Public Health Law.

An insurer or workers' compensation RSO in a rural area should not need to retain professional services, such as lawyers or auditors, to comply with this rule.

3. Costs: The rule may result in additional costs to workers' compensation RSOs, including RSOs located in rural areas, because it requires workers' compensation RSOs to submit a report to the Superintendent regarding policies receiving the credit, including information regarding policy year payrolls, indemnity losses, indemnity claim counts, and medical losses by classification, and such other information as the Superintendent may require. Such costs are difficult to estimate because of several factors, such as the number of policies that will receive the credit. However, this report is necessary in order to implement the statutory mandate that the Superintendent report to the Legislature the effects of the credit. In addition, any additional costs to workers' compensation RSOs in rural areas should be commensurate with costs for workers' compensation RSOs in non-rural areas.

An insurer may incur additional compliance costs because the insurer must verify that a health care facility has a safe patient handling program implemented pursuant to Public Health Law § 2997-k(2). However, this is a consequence of Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that

implements and maintains a safe patient handling program that meets the requirements of the Public Health Law.

4. Minimizing adverse impact: This rule uniformly affects insurers and workers' compensation RSOs that are located in both rural and non-rural areas of New York State. The rule should not have an adverse impact on rural areas.

5. Rural area participation: Insurers and workers' compensation RSOs in rural areas will have an opportunity to participate in the rule-making process when the proposed rule is published in the State Register and on the Department of Financial Services' website.

#### **Job Impact Statement**

This rule should not adversely impact jobs or employment opportunities in New York State. With regard to insurers, the rule merely implements Part A of Chapter 60 of the Laws of 2014 by requiring that for each workers' compensation insurance policy issued or renewed in New York State, an insurer provide a credit to a health care facility that implements and maintains a safe patient handling program that meets the requirements of Public Health Law § 2997-k(2). The amount of the credit and the manner in which it is applied must be in accordance with the approved manual filed by the rate service organization ("RSO") of which the insurer is a member. The rule also requires every workers' compensation RSO to file certain information with the Superintendent of Financial Services ("Superintendent") by June 1 of each year so that the Superintendent may collect information for the statutorily-required reports due to the Legislature in 2018 and 2020.

### **NOTICE OF ADOPTION**

#### **Regulating Transaction Monitoring and Filtering Systems Maintained by Banks, Check Cashers and Money Transmitters**

**I.D. No.** DFS-50-15-00004-A

**Filing No.** 629

**Filing Date:** 2016-06-30

**Effective Date:** 2017-01-01

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

**Action taken:** Addition of Part 504 to Title 3 NYCRR.

**Statutory authority:** Banking Law, section 37(3) and (4); Financial Services Law, section 302

**Subject:** Regulating Transaction Monitoring and Filtering Systems maintained by banks, check cashers and money transmitters.

**Purpose:** To ensure that the financial system is not used for purposes of money laundering or other suspicious activities, terrorist financing, or sanctions violations.

**Text of final rule: Part 504**

*Banking Division Transaction Monitoring and Filtering Program Requirements and Certifications*

§ 504.1 Background.

*The Department of Financial Services (the "Department") has been involved in investigations into compliance by Regulated Institutions, as defined below, with applicable Bank Secrecy Act/Anti-Money Laundering laws and regulations<sup>1</sup> ("BSA/AML") and Office of Foreign Assets Control of the Treasury Department ("OFAC")<sup>2</sup> requirements implementing federal economic and trade sanctions.<sup>3</sup>*

*As a result of these investigations, the Department identified shortcomings in the transaction monitoring and filtering programs of these institutions attributable to a lack of robust governance, oversight, and accountability at senior levels. Based on not only this experience, but also its regular examinations for safety and soundness, along with other factors, the Department has reason to believe that financial institutions have shortcomings in their transaction monitoring and filtering programs.*

*As a result, the Department has determined to clarify the required attributes of a Transaction Monitoring and Filtering Program and to require that the Board of Directors or Senior Officer(s), as applicable, of each Regulated Institution submit to the Superintendent annually a Board Resolution or Compliance Finding, as defined in this Part, confirming the steps taken to ascertain compliance by the Regulated Institution with this Part.*

*This regulation implements these requirements.*

§ 504.2 Definitions.

*The following definitions apply in this Part:*

(a) "Annual Board Resolution or Senior Officer Compliance Finding" means a board resolution or senior officer(s) finding in the form set forth in Attachment A.

(b) "Bank Regulated Institutions" means all banks, trust companies, private bankers, savings banks, and savings and loan associations chartered pursuant to the New York Banking Law (the "Banking Law") and all branches and agencies of foreign banking corporations licensed pursuant to the Banking Law to conduct banking operations in New York.

(c) "Board of Directors" means the governing board of every Regulated Institution or the functional equivalent if the Regulated Institution does not have a Board of Directors.

(d) "Nonbank Regulated Institutions" shall mean all check cashers and money transmitters licensed pursuant to the Banking Law.

(e) "Regulated Institutions" means all Bank Regulated Institutions and all Nonbank Regulated Institutions.

(f) "Risk Assessment" means an on-going comprehensive risk assessment, including an enterprise wide BSA/AML risk assessment, that takes into account the institution's size, staffing, governance, businesses, services, products, operations, customers, counterparties, other relations and their locations, as well as the geographies and locations of its operations and business relations.

(g) "Senior Officer(s)" shall mean the senior individual or individuals responsible for the management, operations, compliance and/or risk of a Regulated Institution including a branch or agency of a foreign banking organization subject to this Part.

(h) "Suspicious Activity Reporting" means a report required pursuant to 31 U.S.C. § 5311 et seq. that identifies suspicious or potentially suspicious or illegal activities.

(i) "Transaction Monitoring Program" means a program that includes the attributes specified in Subdivisions (a), (c) and (d) of Section 504.3.

(j) "Filtering Program" means a program that includes the attributes specified in Subdivisions (b), (c) and (d) of Section 504.3.

(k) "Transaction Monitoring and Filtering Program" means a Transaction Monitoring Program, and a Filtering Program, collectively.

#### § 504.3 Transaction Monitoring and Filtering Program Requirements.

(a) Each Regulated Institution shall maintain a Transaction Monitoring Program reasonably designed for the purpose of monitoring transactions after their execution for potential BSA/AML violations and Suspicious Activity Reporting, which system may be manual or automated, and which shall include the following attributes, to the extent they are applicable:

1. be based on the Risk Assessment of the institution;
2. be reviewed and periodically updated at risk-based intervals to take into account and reflect changes to applicable BSA/AML laws, regulations and regulatory warnings, as well as any other information determined by the institution to be relevant from the institution's related programs and initiatives;
3. appropriately match BSA/AML risks to the institution's businesses, products, services, and customers/counterparties;
4. BSA/AML detection scenarios with threshold values and amounts designed to detect potential money laundering or other suspicious or illegal activities;
5. end-to-end, pre-and post-implementation testing of the Transaction Monitoring Program, including, as relevant, a review of governance, data mapping, transaction coding, detection scenario logic, model validation, data input and Program output;
6. documentation that articulates the institution's current detection scenarios and the underlying assumptions, parameters, and thresholds;
7. protocols setting forth how alerts generated by the Transaction Monitoring Program will be investigated, the process for deciding which alerts will result in a filing or other action, the operating areas and individuals responsible for making such a decision, and how the investigative and decision-making process will be documented; and
8. be subject to an on-going analysis to assess the continued relevancy of the detection scenarios, the underlying rules, threshold values, parameters, and assumptions.

(b) Each Regulated Institution shall maintain a Filtering Program, which may be manual or automated, reasonably designed for the purpose of interdicting transactions that are prohibited by OFAC, and which shall include the following attributes, to the extent applicable:

1. be based on the Risk Assessment of the institution;
2. be based on technology, processes or tools for matching names and accounts<sup>4</sup>, in each case based on the institution's particular risks, transaction and product profiles;
3. end-to-end, pre- and post-implementation testing of the Filtering Program, including, as relevant, a review of data matching, an evaluation of whether the OFAC sanctions list and threshold settings map to the risks of the institution, the logic of matching technology or tools, model validation, and data input and Program output;
4. be subject to on-going analysis to assess the logic and performance of the technology or tools for matching names and accounts, as well as the OFAC sanctions list and the threshold settings to see if they continue to map to the risks of the institution; and
5. documentation that articulates the intent and design of the Filtering Program tools, processes or technology.

(c) Each Transaction Monitoring and Filtering Program shall require the following, to the extent applicable:

1. identification of all data sources that contain relevant data;
  2. validation of the integrity, accuracy and quality of data to ensure that accurate and complete data flows through the Transaction Monitoring and Filtering Program;
  3. data extraction and loading processes to ensure a complete and accurate transfer of data from its source to automated monitoring and filtering systems, if automated systems are used;
  4. governance and management oversight, including policies and procedures governing changes to the Transaction Monitoring and Filtering Program to ensure that changes are defined, managed, controlled, reported, and audited;
  5. vendor selection process if a third party vendor is used to acquire, install, implement, or test the Transaction Monitoring and Filtering Program or any aspect of it;
  6. funding to design, implement and maintain a Transaction Monitoring and Filtering Program that complies with the requirements of this Part;
  7. qualified personnel or outside consultant(s) responsible for the design, planning, implementation, operation, testing, validation, and on-going analysis of the Transaction Monitoring and Filtering Program, including automated systems if applicable, as well as case management, review and decision making with respect to generated alerts and potential filings; and
  8. periodic training of all stakeholders with respect to the Transaction Monitoring and Filtering Program.
- (d) To the extent a Regulated Institution has identified areas, systems, or processes that require material improvement, updating or redesign, the Regulated Institution shall document the identification and the remedial efforts planned and underway to address such areas, systems or processes. Such documentation must be available for inspection by the Superintendent.

#### § 504.4 Annual Board Resolution or Senior Officer(s) Compliance Finding.

To ensure compliance with the requirements of this Part, each Regulated Institution shall adopt and submit to the Superintendent a Board Resolution or Senior Officer(s) Compliance Finding in the form set forth in Attachment A by April 15th of each year. Each Regulated Institution shall maintain for examination by the Department all records, schedules and data supporting adoption of the Board Resolution or Senior Officer(s) Compliance Finding for a period of five years.

#### § 504.5 Penalties/Enforcement Actions.

This regulation will be enforced pursuant to, and is not intended to limit, the Superintendent's authority under any applicable laws.

#### § 504.6 Effective Date.

This Part shall be effective January 1, 2017. Regulated Institutions will be required to prepare and submit to the Superintendent Annual Board Resolutions or Senior Officer(s) Compliance Findings under § 504.4 commencing April 15, 2018.

#### ATTACHMENT A

(Regulated Institution Name)

APRIL 15, 20\_\_\_\_

Annual Board Resolution or Senior Officer(s) Compliance Finding For Bank Secrecy Act/Anti-Money Laundering and Office of Foreign Asset Control Transaction Monitoring and Filtering Program

Whereas, in compliance with the requirements of the New York State Department of Financial Services (the "Department") that each Regulated Institution maintain Transaction Monitoring and Filtering Program in compliance with Section 504.3; and

Whereas, Section 504.4 requires that the Board of Directors or a Senior Officer(s), as appropriate, adopt and submit to the Superintendent a Board Resolution or Senior Officer Compliance Finding confirming its or such individual's findings that the Regulated Institution is in compliance with Section 504.3 of this Part 504;

NOW, THEREFORE, the Board of Directors or Senior Officer certifies:

- (1) The Board of Directors (or name of Senior Officer(s)) has reviewed documents, reports, certifications and opinions of such officers, employees, representatives, outside vendors and other individuals or entities as necessary to adopt this Board Resolution or Senior Officer Compliance Finding;
- (2) The Board of Directors or Senior Officer(s) has taken all steps necessary to confirm that (name of Regulated Institution) has a Transaction Monitoring and Filtering Program that complies with the provisions of Section 504.3; and
- (3) To the best of the (Board of Directors) or (name of Senior Officer(s)) knowledge, the Transaction Monitoring and the Filtering Program of (name of Regulated Institution) as of \_\_\_\_\_ (date of the Board Resolution or Senior Officer(s) Compliance Finding) for the year ended \_\_\_\_\_ (year

for which Board Resolution or Compliance Finding is provided) complies with Section 504.3.

Signed by each member of the Board of Directors or Senior Officer(s)  
(Name) \_\_\_\_\_ Date: \_\_\_\_\_

<sup>1</sup> With respect to federal laws and regulations, see 31 U.S.C. § 5311, et seq. and 31 CFR Chapter X. For New York State regulations, see Part 115 (3 NYCRR 115), Part 116 (3 NYCRR 116), Part 416 (3 NYCRR 416) and Part 417 (3 NYCRR 417).

<sup>2</sup> 31 CFR part 501 et seq.

<sup>3</sup> For information regarding the United States Code, the Code of Federal Regulations and the Federal Register, see Supervisory Policy G-1.

<sup>4</sup> The technology used in this area may be based on automated tools that develop matching algorithms, such as those that use various forms of so-called “fuzzy logic” and culture-based name conventions to match names. This regulation does not mandate the use of any particular technology, only that the system or technology used must be reasonably designed to identify prohibited transactions.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 504.1, 504.2, 504.3, 504.4, 504.5 and 504.6.

**Revised rule making(s) were previously published in the State Register** on December 16, 2016.

**Text of rule and any required statements and analyses may be obtained from:** Celeste Koeleveld, Department of Financial Services, One state Street, New York, New York 10004, (212) 709-1663, email: Celeste.Koeleveld@dfs.ny.gov

#### Revised Regulatory Impact Statement

##### 1. Statutory Authority.

Pursuant to Sections 37(3) and 37(4) of the New York Banking Law (the “BL”), the Department of Financial Services (the “Department”) has broad authority to require reports from state-chartered banks, private banks, trust companies, licensed branches and agencies of foreign bank corporations, licensed check cashers and licensed money transmitters (each a “Covered Institution”). The Department also has broad authority to prescribe the form of all such reports pursuant to these two provisions. In addition, Section 302 of the Financial Services Law (“FSL”) provides the Department with equally broad authority to adopt regulations relating to “financial products and services” which are broadly defined in the FSL to mean essentially any product or services offered by a regulated institution. Accordingly, the Department has ample authority to adopt the proposed regulation.

##### 2. Legislative Objectives.

The BL and the FSL are both intended to ensure the safe and sound operation of the financial system. The proposed regulation is intended to ensure that the financial system is not used for money laundering, sanctions violations, or terrorist funding purposes. This goal is perfectly consistent with the objective of the BL and FSL. Federal Bank Secrecy Act/Anti-Money Laundering laws and regulations and Office of Foreign Assets Control requirements (together, “Requirements”) generally prohibit financial institutions from engaging in or facilitating money laundering, sanctions violations, and funding for terrorist or criminal organizations and countries.

The proposed rule creates a more granular framework for the Board of Directors or Senior Officer (as defined) at a Covered Institution to follow in implementing and maintaining a program and processes that are reasonably designed to ensure compliance with the Requirements and allows the Department to confirm such compliance.

##### 3. Needs and Benefits.

The proposed rule does not change existing compliance requirements imposed on Covered Institutions. Rather, it mandates that the Board of Directors or Senior Officer at these institutions file an annual certification with the Department confirming that their institution has a program and processes reasonably designed to ensure compliance with the Requirements. It is the Department’s intent that this certification requirement will assist institutions to proactively ensure compliance with the Requirements.

##### 4. Costs.

All Covered Institutions are currently subject to the Requirements. The proposed regulation provides more granular guidance and requires the Board of Directors or Senior Officer at a Covered Institution to certify that their Covered Institution has implemented a program that is reasonably designed to comply with the proposal. It is the Department’s intent that this certification requirement will cause covered institutions to proactively ensure compliance with existing Requirements. The cost of complying with the proposed regulation generally should have been incurred previously to ensure compliance. Hence, it is arguable that only costs associated with the proposed regulation reflect costs that institutions should have expensed in the past.

##### 5. Local Government Mandates.

This proposal imposes no program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

##### 6. Paperwork.

The regulation does not change the process utilized by the Department to determine compliance with the Requirements. However, it does require Covered Institutions to document their compliance with the requirements of this proposal. Nevertheless, it is not believed that this requirement will be significant as Covered Institutions are already required to maintain compliance programs applicable to the Requirements. This proposal will only require that such compliance be appropriately documented.

##### 7. Duplication.

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

##### 8. Alternatives.

The Department is not aware of any alternatives to the proposed rule.

##### 9. Federal Standards.

Not applicable.

##### 10. Compliance Schedule.

The proposed rule will become applicable upon formal adoption.

#### Revised Regulatory Flexibility Analysis

##### 1. Effect of the Rule:

The proposed rule does not have any impact on local governments.

The proposed rule sets forth a methodology to be used by the Banking Division of the Department of Financial Services (the “Department”) to assess the processes and systems used by chartered banks, private banks, trust companies, licensed branches and agencies of foreign banking corporations, licensed check cashers and licensed money transmitters (each a “Covered Institution”) to comply with federal Bank Secrecy Act, Anti-Money Laundering laws and regulations and Office of Foreign Assets Control requirements (together, “Requirements”). The regulation should not significantly increase existing compliance costs of these entities. This new regulation requires that the Board of Directors or Senior Officer (as defined) at these entities take steps to ensure and document compliance by their institutions with the Requirements. Those Requirements, which are implemented under both federal and state law, protect against money laundering, sanctions violations, and funding for terrorist or criminal organizations and countries.

##### 2. Compliance Requirements:

The proposed rule does not change existing compliance requirements imposed on Covered Institutions, except that it creates a more granular framework for the Board of Directors or Senior Officer for these institutions to follow in implementing and maintaining a program that is reasonably designed to ensure compliance by their institutions with the Requirements. It is the Department’s intent that this new certification requirement will cause the Board of Directors or Senior Officers to proactively ensure compliance.

##### 3. Professional Services:

None beyond existing costs to comply with the Requirements under applicable federal and state law.

After their review of the requirements of this proposal, certain institutions may decide to engage third party service providers to ensure compliance with applicable federal and state laws and regulations.

##### 4. Compliance Costs:

All Covered Institutions are currently subject to the Requirements. Depending on the size of the institution, regulatory compliance systems or processes may be manual or automated. The proposed regulation provides more granular guidance and requires the Board of Directors or Senior Officers at a Covered Institution certify that their institutions have a program that is reasonably designed to ensure compliance with the Requirements. It is the Department’s intent that this certification requirement will cause institutions to proactively ensure compliance with federal and state law. The cost of compliance with the new rule generally should have been incurred previously to ensure compliance. Hence, it is arguable that only costs associated with the proposed regulation reflect costs that institutions should have incurred in the past.

##### 5. Economic and Technological Feasibility:

Covered Institutions should already have in place processes and systems, whether manual or automated to ensure compliance with the Requirements. At most, the proposed regulation will focus the attention of institutions on the adequacy of existing systems.

##### 6. Minimizing Adverse Impacts:

As noted above, the proposed regulation does not impose a substantially new regulatory requirement. Rather, it is intended to cause institutions to review their systems and processes to ensure their adequacy.

##### 7. Small Business and Local Government Participation:

This regulation does not impact local governments.

As noted above, under existing federal and state law designed to protect against money laundering and funding for terrorists organizations and countries, Covered Institutions already must have systems and processes

in place to protect against money laundering and funding for terrorist organizations and countries. The proposed regulation is intended merely to foster compliance with existing requirements.

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

Changes made to the last published rule do not necessitate revision to the previously published RAFA.

#### **Revised Job Impact Statement**

Changes made to the last published rule do not necessitate revision to the previously published JIS.

#### **Initial Review of Rule**

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

#### **Assessment of Public Comment**

The Department of Financial Services (the "Department") received in excess of 20 comments on the original proposal as published in the State Register on December 16, 2015, through the close of the comment period on March 31, 2016. These comments addressed the following issues:

1. Commentators noted that the federal framework for anti-money laundering ("AML"), Bank Secrecy Act ("BSA") and the sanctions program administered by the Office of Foreign Assets Control ("OFAC") are risk-based and allow covered institutions to adapt to changing circumstances and threats. The original proposal would have created, it was claimed, a static regulatory framework that could not be adapted in a timely fashion to such evolving dangers. The proposal has been amended to more clearly reflect the risk-based design of the regulation.

2. A number of commentators asserted that the original proposed certification requirement would undermine the ability of covered institutions to develop and implement effective AML and counterterrorism financing compliance programs. In particular, commentators expressed concern that the original proposal would discourage qualified individuals from serving as compliance specialists and that the need to comply with the requirements of the proposal would divert resources from existing compliance programs. The revised regulation addresses these issues by revising the form of certification and broadening the individuals that the institution can select to provide the compliance certification.

3. For similar reasons, a number of commentators noted that the parts of the proposal that focused on criminal penalties were unreasonable given the original wording of Section 504.5. In addition, it was suggested that criminal penalties would be inappropriate where the certifying individual was acting in reliance on many other individuals, not necessarily subject to his or her oversight or control. The revised regulation addresses these issues. The reference to criminal penalties has been removed from Section 504.5, and the form of certification and the individuals required to certify, as well as the facts that the institution is required to certify, have been amended.

4. Many commentators also expressed concern that the certifying official would be held "strictly liable" if he or she certified that a program complied with the regulation but the program did not, in fact, comply with the regulation. The revised regulation addresses these concerns by providing that the program must be "reasonably designed" to monitor prohibited transactions; that the program must be "risk-based"; and that the program must incorporate certain attributes "to the extent they are applicable" to the particular institution. In addition, the compliance finding makes clear that it is based on the certifying individuals' review of necessary documents and materials, which may be prepared by or under the responsibility of other parties, and that it is made to the best of the certifying individuals' knowledge. That said, if such a program is not reasonably designed and if the compliance finding is not based on a review of necessary documents and materials, the certifying individual(s) may appropriately be subject to the Superintendent's civil enforcement powers, and if the compliance finding was made with the intent to deceive, to criminal penalties.

5. Commentators noted that the original regulation did not provide an opportunity to indicate that, during the course of a year, an institution identified areas requiring improvement or remediation. The revised regulation has added a provision to provide for such an opportunity.

6. Several commentators noted that there is an existing federal framework that governs AML/BSA and OFAC. Commentators also asserted that regulations adopted by the Department should be consistent with this framework. The Department believes that the revised regulation is consistent with the federal framework and responsive to the comments.

7. Several commentators also pointed out that the terminology used in the original proposal, while accurately reflecting terminology common to institutions and individuals in the transaction and filtering field, was not generally defined in applicable federal laws and regulations. The revised regulation de-emphasizes such terminology in an effort to ensure consistency with the existing federal framework.

8. A number of commentators noted that the original proposal excluded

credit unions from its coverage. Although credit unions are not included in the regulation because they generally present a lesser risk of money laundering and other suspicious or illegal activities, credit unions are nonetheless required to have BSA and OFAC compliant programs. The Department will continue to monitor and assess whether other types of institutions should be covered by the regulation.

9. With respect to Section 504.3(a), a number of commentators noted that the original requirement that a transaction monitoring program "reflect all current . . . laws, regulations and alerts" was unnecessary and failed to reflect the risk-based nature of the federal guidelines. The regulation has been modified to address these comments.

10. With respect to Section 504.3(b), concern was expressed that the original proposal would require that all transactions would have to be screened and that this requirement was inconsistent with the risk-based nature of the federal framework. The regulation has been modified to address this issue.

11. With respect to 504.3(d) in the original proposal, many commentators noted that this part of the original proposal could be interpreted to mean that a covered institution could not scale back its monitoring and filtering systems if it turned out that the system was not operating as intended or was providing an unreasonable number of false positive alerts. This provision has been deleted from the regulation, because the concern about program changes deliberately designed to avoid regulatory requirements is adequately addressed elsewhere in the regulation and in applicable law.

12. A number of commentators asserted that the immediate effective date provision and April 1, 2017 certification requirement did not allow sufficient time within which covered institutions could ensure their compliance. The revised regulation addresses these concerns by extending the effective date until January 1, 2017, and extending the time for the first certification until April 1, 2018.

13. Check cashers offered their view that their industry already is subject to extensive regulation and, therefore, it is not in need of further regulation by the Department in this area. In the Department's view, this comment misapprehends the purpose of the regulation.

14. One commentator suggested that existing transaction monitoring and filtering systems be grandfathered. The Department believes that public policy mandates that transaction monitoring and filtering programs be up to date and operating as required by law. The revised regulation provides adequate time for regulated institutions to comply with the regulations.

15. One commentator suggested that subsidiaries of federally chartered institutions should not be subject to the requirements of this proposal. The Department respectfully disagrees. Where such subsidiaries are subject to the Department's jurisdiction, they are appropriately subject to this regulation.

### **NOTICE OF ADOPTION**

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

**I.D. No.** DFS-08-16-00002-A

**Filing No.** 631

**Filing Date:** 2016-07-01

**Effective Date:** 2016-09-18

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

**Action taken:** 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 or summary was published in** the February 24, 2016 issue of the Register, I.D. No. DFS-08-16-00002-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Thomas 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

#### **Revised 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 may impose some compliance costs on insurers due to policy form changes that may be necessary as a result of the regulation. However, any such cost will be nominal. Insurers generally file policy form changes each year, and any changes necessary to comply with the regulation will be included with the other annual changes.

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 in the State Register. Insurers may, however, issue policies or contracts before that date that conform to the regulation upon obtaining approval.

#### **Initial Review of Rule**

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

#### **Assessment of Public Comment**

The New York State Department of Financial Services ("Department") received comments from an organization that represents psychiatrists in New York ("psychiatrists' organization"); a national organization that provides crisis intervention and suicide prevention services to lesbian, gay, bisexual, transgender, and questioning youth ("LGBTQ"), aged 13-24 years old, ("LGBTQ youth organization"); and an organization that characterizes itself as "a statewide lobbying organization on behalf of the

Christian community” (“lobbying organization”). The psychiatrists’ organization supports the proposed regulation but believes it is only the first step and advocates action that would prohibit physicians and mental health professionals from offering or providing services to change the sexual orientation of a minor. The LGBTQ youth organization also submitted comments in support of the proposed regulation. The lobbying organization submitted comments in opposition to the proposed regulation.

Specific comments in opposition to the proposed regulation by the lobbying organization include the following.

**Comment**

The regulation is unnecessary or highly premature given that the Department acknowledged in the regulatory impact statement that it is not known if any mental health professional in New York provides conversion therapy to minors.

**Department’s Response**

Although it is not known whether there are mental health professionals in New York that provide such therapy or will provide the therapy in the future, to the extent that a mental health professional in New York currently provides or will provide in the future conversion therapy, this amendment will prohibit health insurance coverage for the therapy.

**Comment**

Although the regulatory impact statement contends that the proposed regulation would impose no compliance costs on insurers, the regulation likely would require insurers to review, and possibly revise, their own insurance provisions, to inform mental health professionals and insureds of the ban on conversion therapy to minors, and to take steps to monitor compliance, all of which would impose costs on insurers.

**Department’s Response**

The Department has revised the regulatory impact statement to reflect that there may be some costs to insurers to comply with the regulation. However, any such costs will be nominal. Insurers generally file policy form changes each year, and any changes necessary to comply with the regulation will be included with the other annual changes. In addition, the revised policy form will inform insureds of the ban. Therefore, insurers will not need to incur additional costs to send separate notifications to insureds. Additionally, any costs incurred as a result of the regulation may be offset by a reduction in claims.

**Comment**

The proposed regulation is an attempt to implement the provisions of a bill, (S.121/A.4958), which failed to pass the New York Legislature.

**Department’s Response**

The proposed bill, S.121/A.4958, would prohibit a mental health care professional from providing conversion therapy to minors and would make doing so professional misconduct that could result in disciplinary action. The proposed regulation does not prohibit mental health professionals from providing conversion therapy to minors, nor does it make doing so professional misconduct. The proposed regulation prohibits health insurance coverage for conversion therapy provided to minors. As explained in the regulatory impact statement, the Superintendent of Financial Services (“Superintendent”) has the authority to prohibit health insurance policy forms that contain provisions that are misleading. Therefore, the Department did not make any changes in response to this comment.

**Comment**

The proposed regulation is based on a false premise that there is a growing consensus in the medical community that conversion therapy can be harmful to minors and that the regulatory impact statement offers no basis for this claim other than a series of conclusory statements by professional associations.

**Department’s Response**

As stated in the regulatory impact statement, numerous relevant professional organizations have repudiated and discredited conversion therapy as being medically invalid and potentially harmful, and have taken positions that its members should avoid providing conversion therapy, particularly to minors. The regulatory impact statement also refers to a study that was conducted. Therefore, the Department did not make any changes in response to this comment.

**Comment**

Instead of banning conversion therapy, the Department should regulate forms of therapy that encourage minors to pursue “gender transitions” as such transitions can lead to significant hormonal changes, unnecessary elective surgeries, and even permanent infertility.

**Department’s Response**

Health insurance coverage for gender dysphoria is a separate and distinct issue from conversion therapy provided to minors. Insurance Circular Letter No. 7 (2014) describes an insurer’s responsibilities regarding health insurance coverage for gender dysphoria. The Department did not make any changes in response to this comment.

## New York State Gaming Commission

### NOTICE OF ADOPTION

#### Surveillance Standards for a Licensed Gaming Facility

**I.D. No.** SGC-19-16-00013-A

**Filing No.** 639

**Filing Date:** 2016-07-05

**Effective Date:** 2016-07-20

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

**Action taken:** Addition of Part 5314 to Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(k) and 1331

**Subject:** Surveillance standards for a licensed gaming facility.

**Purpose:** To govern a gaming facility licensee’s system of procedures and standards for surveillance.

**Text or summary was published** in the May 11, 2016 issue of the Register, I.D. No. SGC-19-16-00013-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Kristen Buckley, Acting Secretary, New York State Gaming Commission, One Broadway Center, 6th Floor, Schenectady, NY 12305, (518) 388-3407, email: gamingrules@gaming.ny.gov

#### Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

#### Assessment of Public Comment

The Gaming Commission received comments from one entity, Fox Rothschild LLP on behalf of Montreign Operating Company, LLC, in regard to this proposed rulemaking. The Commission has considered each of the comments and decided that no changes are appropriate at this time. Requests for interpretations of rules were not considered to be public comments and, therefore, are not addressed in this assessment. In particular:

1. Proposed Rule 5314.2(d). The commenter argues that the cost for surveillance and security employees to undergo annual incident management training is unreasonably burdensome. The Commission believes it is prudent to require such training in order to promote public health and safety in licensed gaming facilities.

2. Proposed Rule 5314.3(b). The commenter suggests that a Commission representative also should be required to sign the monitoring room entry log. The Commission disagrees because the anonymity of a Commission representative may be desired in certain investigations and the rule as drafted is consistent with practices in licensed video lottery gaming facilities.

3. Proposed Rule 5314.7(a). The commenter suggests that the retention requirement for routine activity recordings should be reduced from 14 to seven days. The Commission reviewed retention requirements from other jurisdictions and believes that the rule as drafted is reasonable.

4. Proposed Rule 5314.7(c). The commenter disagrees that the Commission should be provided original recordings of internal control violations and criminal activity and instead suggests that the Commission have daily access to such recordings. The Commission believes that the rule as drafted is prudent, but may consider clarifying or modifying such rule in a subsequent rulemaking.

### NOTICE OF ADOPTION

#### Conduct of Operation of a Gaming Facility

**I.D. No.** SGC-19-16-00014-A

**Filing No.** 640

**Filing Date:** 2016-07-05

**Effective Date:** 2016-07-20

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

**Action taken:** Addition of Part 5313 to Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(i), (k), 1331, 1332, 1333 and 1341(2)

**Subject:** Conduct of operation of a gaming facility.

**Purpose:** To govern a gaming facility licensee's system of procedures for the conduct and operation of gaming.

**Text or summary was published** in the May 11, 2016 issue of the Register, I.D. No. SGC-19-16-00014-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Kristen Buckley, Acting Secretary, New York State Gaming Commission, One Broadway Center, 6th Floor, Schenectady, NY 12305, (518) 388-3407, email: gamingrules@gaming.ny.gov

#### Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

#### Assessment of Public Comment

The Gaming Commission received comments from one entity, Fox Rothschild LLP on behalf of Montreign Operating Company, LLC, in regard to this proposed rulemaking. The Commission has considered each of the comments and decided that no changes are appropriate at this time. Requests for interpretations of rules were not considered to be public comments and, therefore, are not addressed in this assessment. In particular:

1. Proposed Rule 5313.1(e)-(g). The commenter suggests that the timeframe for Commission review of internal control amendments be reduced from 30 to seven days. The Commission finds that the 30-day review period is consistent with or less burdensome than other related statutory and regulatory requirements. The Commission understands that time-sensitive circumstances can arise and will, at its discretion, accept requests to expedite review of any internal control amendment.

2. Proposed Rule 5313.2(e)-(f). The commenter objects to the imposition of mandatory penalties for violations of underage gaming, suggesting that certain instances of minors on a gaming floor might be the result of intentionally deceptive conduct on the part of the minor. The Commission believes that the proposed rule is sufficiently clear in providing that only when it is determined that culpability for a violation is established would the prescribed sanctions apply.

3. Proposed Rule 5313.7(a). The commenter suggests that the timeframe for submission of emergency procedures be reduced to 30 days. The Commission believes that 90 days is prudent and that the rule as proposed is consistent with other sections of law and regulation.

4. Proposed Rule 5313.8(g). The commenter suggests that the timeframe for when an amendment to an operation certificate becomes effective be designated as seven days. The Commission believes that it is prudent to not set a specific time limit because some amendments may require longer review periods.

5. Proposed Rule 5313.14(e). The commenter disagrees with the restrictions on the placement and location of automated teller machines. The Commission conducted a thorough review of those jurisdictions that do regulate the location of automated teller machines and believes that five feet is a reasonable distance.

6. Proposed Rule 5313.14(f). The commenter recommends that the maximum amount a player may withdraw from an automated teller machine be increased from \$3,500 to \$5,000 per calendar day. The Commission conducted a thorough review of jurisdictions that regulate the maximum withdrawal amounts from automated teller machines and believes that the \$3,500 limit proposed is reasonable.

**Action taken:** Amendment of sections 80.136 and 800.5 of Title 10 NYCRR.

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

**Subject:** Controlled Substances for EMS Agency Agent and Requirements for an Advanced Life Support System.

**Purpose:** To amend the regulations regarding the EMS Agency Agent and the Requirements for an Advanced Life Support System.

**Text of final rule:** Paragraph (2) of subdivision (e) of section 80.136 of Part 80 is amended to read as follows:

(2) The Department shall issue such registration unless the Department finds that the application should be denied by reason of false statements in the application, [conviction of a felony,] failure to provide adequate safeguards against diversion of the controlled substances, [any conviction related to controlled substances, or] other good and sufficient reason such as an administrative determination that article 30 or 33 of the Public Health Law [or any provision within Part 800 of this Title or any provision within this Part] was violated, or conviction of one or more criminal offenses, as defined in section 800.3(ak), unless the applicant is found eligible after a balancing of the factors set out in Article 23-A of the Correction Law. In accordance with that Article, no application for registration shall be denied by reason of the applicant having been previously convicted of one or more criminal offenses unless (i) there is a direct relationship between one or more of the previous criminal offenses and duties required of the registration or (ii) registering the applicant would involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public. In determining these questions, the department will look at all factors listed under New York State Correction Law section 753.

Section 800.5 of Part 800 is amended to read as follows:

800.5 Requirements For An Advanced Life Support System

(a) An advanced life support system must meet the following requirements:

(1) designation of a qualified physician to provide medical supervision and direction; and

(2) integration with a hospital emergency service, or intensive care, coronary care, or other appropriate hospital unit.

(b) An ambulance or advanced life support first response service, when providing advanced life support services, must meet the requirements of Sections 800.23 and 800.24 of this Part and utilize a treatment record provided by or approved by the department, including submission of such record for use in quality assurance programs.

(c) An advanced life support system providing prehospital [intermediate] Advanced EMT care must include the following:

(1) voice communications to receive medical direction;

(2) equipment and supplies to provide prehospital [intermediate] advanced care; and

(3) staffing by a certified advanced emergency medical technician [technician-intermediate], emergency medical technician-critical care, or emergency medical technician-paramedic, as appropriate.

(d) An advanced life support system providing prehospital EMT- critical care and/or EMT-paramedic services must include the following:

(1) voice communications to receive medical direction;

(2) biomedical telemetry;

(3) equipment and supplies to provide pre-hospital critical care and/or EMT-paramedic services; [and]

(4) a current class 3(c) institutional dispenser limited license, in accordance with Article 33 of the Public Health Law and section 80.136 of this Title, unless exempt as an ALS agency owned and operated by a hospital, to purchase, possess, deliver and administer controlled substance medications to treat patients, in accordance with applicable State-approved regional protocols developed pursuant to sections 3002-a and 3004-a of the Public Health Law; and

[(4)] (5) staffing by a certified emergency medical technician-critical care or emergency medical technician-paramedic, as appropriate.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 80.136(e)(2) and 800.5(d)(4).

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

#### Revised Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of this regulation is contained in Public Health Law (PHL) Article 30 (Emergency Medical Services), Section 3002, as well as Article 33 (Controlled Substances), Sections 3308 and 3390. Section 3002 sets forth the provisions creating the New York State Emergency Medical Services Council (SEMSCO) and specifies that it shall have the power, by an affirmative vote of a majority of those pre-

## Department of Health

### NOTICE OF ADOPTION

#### Controlled Substances for EMS Agency Agent and Requirements for an Advanced Life Support System

I.D. No. HLT-30-15-00008-A

Filing No. 630

Filing Date: 2016-06-30

Effective Date: 2016-07-20

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

sent, subject to approval by the Commissioner, to enact, and from time to time, amend and repeal, rules and regulations establishing minimum standards for ambulance services, ambulance service certification, advanced life support first response services, the provision of prehospital emergency medical care, public education, the development of a statewide emergency medical services system, the provision of ambulance services outside of the primary territory specified in the ambulance services' certificate and the training, examination, and certification of certified first responders, emergency medical technicians, and advanced emergency medical technicians; provided, however that such minimum standards must be consistent with the staffing standards established by the ambulance services and advanced life support first response services provisions outlined in PHL Section 3005-a.

PHL 3308 authorizes the Commissioner to promulgate regulations which are necessary and proper to supplement the provisions of Article 33 to effectuate its purposes and intent.

Additionally, PHL 3390 authorizes the Commissioner to revoke a license or certificate issued under Article 33 in whole or in part upon a finding that the licensee or certificate holder has been convicted in any jurisdiction relating to a substance listed as a controlled substance in Article 33.

#### Legislative Objectives:

The purpose of PHL Article 30 is to promote the public health, safety and welfare by providing certification for pre-hospital care providers and all advanced life support first response and ambulance services. The purpose of PHL Article 33 is to prevent the illegal use of and trade in controlled substances and to provide for the legitimate use of controlled substances in health care.

#### Needs and Benefits:

The revisions to Section 800.5 add a requirement that Advanced Life Support (ALS) agencies providing Critical Care and/or Paramedic level service must be licensed, in accordance with PHL Article 33 and Title 10 NYCRR Part 80.136, to purchase, possess, deliver and administer controlled substance medications as per state approved regional protocols. The State Emergency Medical Advisory Committee (SEMASC), the advisory board to the Commissioner of Health, and the SEMSCO have recognized that the ability to provide a patient with controlled substance medications when indicated is the national standard for ALS prehospital emergency medical care. At present, there are 675 ALS EMS agencies in New York State. Of the 675 ALS EMS agencies, 522 already hold current controlled substances licenses under PHL Article 33. This revision will currently affect the remaining 153 agencies and any newly established advanced life support level EMS agency. Agencies that do not seek licensure to purchase, possess, deliver and administer controlled substances in accordance with PHL Article 33 Section 800.5 would be authorized to apply for and provide care only at the Advanced EMT level. Agencies that operate at the Advanced EMT level are allowed to perform advanced airway management and some medication for emergency treatment for diabetics and allergies, but does not allow advanced medication therapy.

An ALS EMS agency's ability to administer controlled substance medication to patients during prehospital emergency care is of significant benefit to the patient. Controlled substance medications may be used to treat seizures, medical anxiety, profound agitation and excited delirium, as well as pain prior to arrival at a hospital.

For example, prehospital medical protocols to allow ALS providers to use benzodiazepines for seizure management have been a mainstay of EMS care in much of the State for many years. Indeed, when the National Association of EMS Physicians first examined prehospital care standards in 2008, they carefully considered the ability to provide timely treatment of seizures. (Evidence Based Performance Measures for EMS Systems, Prehospital Emergency Care, 2008;12:141-51.) Patients experiencing prolonged or continuous seizures -- seizures that do not stop rapidly on their own -- can develop subtle brain damage; brain damage that may have been prevented by administration of a benzodiazepine such as midazolam or diazepam. In addition, management of seizures in the field makes transportation safer for both the patient and the EMS providers.

Furthermore, on January 14, 2015, the SEMASC and SEMSCO authorized an update to the EMS protocols for the City of New York to recommend access to the benzodiazepine (midazolam) for the treatment of patients with excited delirium. Excited delirium is a condition that manifests as a combination of delirium, psychomotor agitation, anxiety, hallucinations, speech disturbances, disorientation, violent and bizarre behavior, insensitivity to pain, elevated body temperature, and superhuman strength. Excited delirium can result in sudden death (usually via cardiac or respiratory arrest) when the patient is subjected to physical control measures, including police restraint. ("White Paper Report on Excited Delirium Syndrome", ACEP Excited Delirium Task Force, American College of Emergency Physicians, September 10, 2009). Rapid chemical sedation of patients with excited delirium may prevent such

outcomes and would allow EMS to assist law enforcement effectively in the care of people in crisis.

Pain management is the standard of care for patients suffering acute traumatic injury. (ATLS 9th Ed.) Early treatment of pain improves care in the emergency department and reduces the need for higher doses of medication. The Joint Commission: Accreditation, Healthcare, Certification (Joint Commission) has made early administration of pain medication a goal of its hospital surveys and prehospital pain management reduces the time to emergency department analgesia significantly. Also, for patients suffering heart attacks, early pain management reduces the oxygen demand on the heart and may reduce long-term damage and morbidity. (Circulation 12/13/05, vol 112, no 24, p IV-98 for reduction of oxygen demand.)

Critical care technicians and paramedics train to use complex medications as a part of the delivery of care. The agencies and the medical directors authorizing these providers to afford patient care must have access to controlled substances to provide necessary medical therapy to best protect the health of their patients.

The proposed regulation also amends section 80.136 of Part 80 related to the issuance of certifications to agents of advanced life support agencies. Section 80.136 is updated to incorporate Correction Law Article 23-A's balancing test when reviewing applications to register an agent to purchase, possess, and deliver controlled substances, and specifies that the factors set forth in Correction Law § 753 will be utilized when making a determination whether to grant the application to an applicant who has a criminal conviction.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

There is a fee of \$100 for the original application and each renewal thereafter. Municipally owned EMS agencies are exempt from the application fee. Affected EMS agencies will be required to purchase the controlled substance medications and develop a method of securing them in the vehicles and the base of operations as required by Title 10 NYCRR Part 80.136. This cost will vary depending on the cost of the medications and the locking system chosen by the EMS agency.

#### Cost to State and Local Government:

There will be no costs to the general public, state and local government. These regulations are directed at the advanced life support level EMS agency. An EMS agency that is part of state or local municipal government is exempted by regulation from the application fee.

#### Cost to the Department of Health:

The Department of Health will not incur any additional costs.

#### Local Government Mandates:

These regulations are directed at the advanced life support level EMS agency. An EMS agency that is part of state or local municipal government is exempted by regulation from the application fee. To obtain and maintain an ALS license, local municipal government agencies will have to hold a current class 3(c) institutional dispenser limited license.

#### Paperwork:

Affected EMS agencies will need to apply for a Controlled Substance license through the Department of Health.

#### Duplication:

This measure does not duplicate, overlap or conflict with a State or federal statute or rule.

#### Alternative:

There are no other viable alternative approaches. Current provisions must be updated to reflect appropriate EMS standards and practice.

#### Federal Requirements:

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas. This proposal is intended to update Part 800 provisions with language appropriate and applicable to the modern EMS system.

#### Compliance Schedule:

This proposal will go into effect upon publication of the Notice of Adoption in the New York State Register.

#### Revised Regulatory Flexibility Analysis

##### Effect of Rule:

With respect to small businesses, the amendment will affect only those that are also certified advanced life support (ALS) ambulance or advanced life support first response emergency medical service agencies as defined by Article 30 of the New York State Public Health Law. With respect to local governments, the amendment will only affect those that are also certified ambulance or advanced life support first response emergency medical service agencies as defined by Article 30 of the New York State Public Health Law.

##### Compliance Requirements:

Small businesses and local governments must comply if they are certified advanced life support (ALS) ambulance or advanced life support first response emergency medical service agencies as defined by Article 30 of the New York State Public Health Law.

In order to comply with Title 10 NYCRR Part 80.136, these agencies must apply to the Department of Health to obtain a Controlled Substance License for EMS Agencies. This includes completing specific forms provided by the Department and developing policies and procedures that detail the medical direction, service management, personnel responsibilities, purchase, inventory storage and security, and patient administration and the quality assurance process. In order to maintain the license, the EMS agency must renew every two years using an abbreviated process.

**Professional Services:**

Small businesses and local governments that are certified advanced life support (ALS) ambulance or advanced life support first response emergency medical service agencies will need no additional professional services to comply.

**Compliance Costs:**

**Costs to Private Regulated Parties:**

The regulation will present a cost for the application process (\$100, however this may be waived for municipal entities), medication and security system. This is dependent upon how the EMS agency chooses implement its own controlled substance program. At present, none of the controlled substance medications commonly carried by currently licensed EMS agencies exceeds \$6.00 per single unit. Securing these medications both on vehicles and in EMS stations may range from a small amount of money to several thousand dollars, depending on the EMS service and medical director's preference.

**Costs to State Government and Local Government:**

There will be no additional cost to State government.

**Economic and Technological Feasibility:**

There will be a minimal impact on small businesses that are currently certified advanced life support (ALS) ambulance or advanced life support first response emergency medical service agencies that have yet to obtain a controlled substance license. The regulation will present a cost for the application process (\$100, however this may be waived for municipal entities), medication and security system used to secure medications. The cost and impact are dependent upon how each EMS agency chooses to implement its own controlled substance program.

**Minimizing Adverse Impact:**

The New York State Department of Health will assist local governments by providing consultation, coordination and information and updates on its website.

**Small Business and Local Government Participation:**

The Department received comments during the notice and comment period, and took those comments into consideration when developing this regulation.

**Cure Period:**

The intent of this regulatory amendment is to ensure that patients whose prehospital injury or illness is best treated with controlled substances may receive such lifesaving medications. The ability for an advanced life support EMS agency to administer this class of medication is a standard of care for the ALS level of service, and the Department is satisfied that the benefits to the public outweigh any cost. Violations of such standards would pose a threat to public health, safety and well-being of the patients served. For those EMS agencies not willing to obtain a license, it is expected that they would remain an active part of the EMS response system, as basic life support ambulance services.

**Revised Rural Area Flexibility Analysis**

Changes made to the last published rule do not necessitate revision to the previously published RAFA.

**Revised Job Impact Statement**

**Nature of Impact:**

The proposed rule will have minimal or no impact on jobs. Some current ambulance agencies employ part time staff to provide ALS level of care without a controlled substance license. These agencies would have to continue to employ EMS staff regardless of the level of care they provide. The ambulance services that employ larger numbers of EMS providers are unaffected as they already hold controlled substance licenses.

**Assessment of Public Comment**

Public comments were submitted to the NYS Department of Health (DOH) in response to the proposed changes to Title 10 NYCRR Part 800.5 requiring EMS agencies to obtain a license issued by the Department of Health to possess and administer controlled substance medication per approved regional protocols. The Department received comments from four groups representing the EMS community in Nassau County and the American College of Emergency Physicians. Many of the comments were the same or similar. These comments and the Department of Health's responses are summarized below:

A letter was received via email from a paramedic with the following comments:

COMMENT: The paramedic expressed concern that 45 days would not be enough time for the unlicensed EMS agencies to come into compliance.

RESPONSE: In January 2013, the State Emergency Medical Advisory Committee (SEMACE) resolved that EMS agencies providing advanced life support obtain a controlled substance license. Since that time, the affected advanced life support (ALS) EMS agencies have been working towards compliance with the SEMACE decision as well as this anticipated regulatory amendment. At present, there are at total of 1,150 certified EMS agencies in New York State, of which 582 EMS agencies will be affected by this regulatory amendment. Currently, 456 agencies are already in compliance, leaving 126 services that will have to obtain controlled substance licenses if they choose to continue to provide ALS level of care. The Department believes that, given this background, 45 days provides sufficient additional time to come into compliance.

COMMENT: The paramedic also suggested that the regulation should clearly indicate that EMS agencies obtain the controlled substance license, not individual providers.

RESPONSE: The Department agrees that, under Article 33 of the NYS Public Health Law, a Controlled Substance License is issued to an EMS agency, not an individual certified EMS provider. The Regulatory Flexibility Analysis was revised to clarify this.

Multiple commenters submitted the following comments:

COMMENT: The section concerning the Cure Period in the Regulatory Flexibility Analysis for Small Business and Local Governments states "Violations of such standards would pose a threat to public health, safety and well-being of the patients served." Commenters asserted that requiring Controlled Substance licensure actually creates a larger risk to public safety because ambulance services that refuse or cannot comply will no longer be available to provide ALS level care.

RESPONSE: The intent of this regulatory amendment is to ensure that patients whose prehospital injury or illness is best treated with controlled substances may receive such lifesaving medications. The ability for an advanced life support EMS agency to administer this class of medication is a standard of care for the ALS level of service, and the Department is satisfied that the benefits to the public outweigh any cost. For those EMS agencies not willing to obtain a license, it is expected that they would remain an active part of the EMS response system, as basic life support ambulance services.

COMMENT: Multiple commenters raised concerns that the application process and record keeping burden are not adequately articulated in the Paperwork section of the Regulatory Impact Statement.

RESPONSE: It appears that many commenters misinterpreted the Regulatory Impact Statement. Many of the forms listed in the commenters' letters were provided for convenience by the Department, as samples of what could be required in different applications. The actual number of forms required for each particular application will generally be far less.

COMMENT: Multiple commenters stated that, contrary to the Regulatory Flexibility Analysis, the regulation will have an effect on small business and local government, specifically commercial and volunteer ambulances.

RESPONSE: At present, there are at total of 1,150 certified EMS agencies in New York State, of that 582 EMS agencies will be affected by this regulatory amendment. Currently, 456 agencies are already in compliance, leaving only 126 services that will have to obtain controlled substance licenses if they choose to continue to provide ALS level of care. The Regulatory Flexibility Analysis has been revised accordingly.

COMMENT: Multiple commenters expressed concern that the Job Impact Statement does not reflect the possibility that, if an agency does not obtain a license and downgrades the level of care provided, providers may have to lay off advanced certified staff.

RESPONSE: The Department agrees that the regulations may affect a small number of individuals if their EMS agency chooses not to obtain a controlled substance license. However, many of the unlicensed agencies are volunteer fire department-based ambulance services, which would not be affected. The Job Impact Statement has been revised accordingly.

COMMENT: Multiple commenters asked for an explanation as to why, for regions that do not have protocols to obtain, stock and administer controlled substance medications, EMS agencies should be required to hold controlled substance licenses. They further commented that Regional Emergency Medical Advisory Committees (REMACEs) are authorized to develop protocols that address specific local conditions. Commenters asserted that the proposed regulation would conflict with the authority of REMACEs to develop such protocols.

RESPONSE: The State Emergency Medical Advisory Committee (SEMACE) sets statewide minimum standards for treatment, transportation and triage protocols for the provision of prehospital EMS care by certified providers and agencies. The SEMACE reviews and approves regional EMS protocols, which must be consistent with the SEMACE's standards. This regulatory amendment was submitted at the request of the SEMACE membership. Additionally, these regulations are well within the regulatory authority of the State Emergency Medical Services Council.

COMMENT: Multiple commenters raised concerns regarding the initial

cost for implementation and the cost to remain in continuing compliance with these regulations. The commenters asserted that the evaluation of costs in the Regulatory Impact Statement is misleading and that there will be significant expense to the EMS agencies affected by this amendment.

**RESPONSE:** While there will be cost for the medication and security system, these depend on how each EMS agency chooses to implement its own controlled substance program. At present, none of the controlled substance medications commonly carried by currently licensed EMS agencies exceeds \$6.00 per single unit. Securing these medications both on vehicles and in EMS stations may range from a small amount of money to several thousand dollars, depending on the EMS service and medical director's preference. The Regulatory Impact Statement was revised accordingly.

The Nassau County Regional EMS Council (REMSCO) submitted written comments as follows:

**COMMENT:** The REMSCO stated a concern that having controlled substance medications on the ambulance in their county "will inevitably lead to break-ins of parked ambulances."

**RESPONSE:** The Department has not received any reports of ambulances being broken into for their controlled substance medications. The Department will continue to monitor this concern but, at present, it is satisfied that the benefit of EMS ALS agencies possessing these medications outweighs the costs.

**COMMENT:** The REMSCO disputes the section in the Regulatory Impact Statement entitled Local Government Mandate, which states: "These provisions do not add any additional mandates to local government."

**RESPONSE:** If the EMS agency is owned by a local government, the Department agrees that these provisions add minimal cost to maintain an ALS license. However, the Department is satisfied that the benefit of EMS agencies possessing these medications outweighs the costs. The Local Government Mandate section was revised accordingly.

The Association of Fire Districts of Nassau County, the Nassau County Fireman's Association, the Fire Chief's Council of Nassau County, the Nassau County Fire Commission, Vocational Education and Extension Board of EMS Nassau County and the Executive Council of Firematic Association of Nassau County collectively submitted the following comments:

**COMMENT:** The commenters generally comment that they "agree with the essence of the proposed regulation, which is the ability to provide patients with controlled substance medications when indicated; however, the practicality of providing the narcotics, under this manner, will immediately and severely impact the 1.4 million residents of Nassau County."

**RESPONSE:** The Department respectfully disagrees. This regulatory amendment will improve the level of prehospital emergency medical care available to the 1.4 million residents of Nassau County, and across the State of New York.

**COMMENT:** The commenters generally recommend that the regulation be amended to allow controlled substances to be provided by alternative means such as "Mutual Aid / Dual Response / ALS Intercept". The commenters requested that ALS agencies not be downgraded to BLS if they do not get a controlled substances license.

**RESPONSE:** The State Emergency Medical Advisory Committee (SEMACE) reviewed this issue and determined that such alternatives means were based on the service being provided by neighboring agencies. The SEMACE's physicians were concerned that there would be a delayed response or the neighboring agency would be unavailable. The Department agrees with the SEMACE that these alternatives are not sufficiently reliable.

**COMMENT:** The Nassau County Executive wrote a letter on behalf of the Association of Fire Districts of Nassau County and the Nassau County Fire Commission, requesting that the Department of Health amend its 2013 policy statement requiring ALS EMS agencies to obtain a Controlled Substance License and be able to administer controlled substance medication to patient's requiring these medications.

**RESPONSE:** The Department suspended the policy statement at the end of 2014.

**COMMENT:** The Department received a letter from the New York – American College of Emergency Physicians (ACEP), located in Webster, NY (Monroe County), in support of the proposed changes to the Part 800 regulations.

**RESPONSE:** The Department acknowledges that the letter states that the ability to control seizures and manage pain is an essential component of advanced prehospital care. The Department concurs with the ACEP's opinion that the use of controlled substances for these purposes have been proven both safe and highly effective and should be considered the standard of care for paramedic and critical care technicians practicing in New York State.

## Public Service Commission

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

#### Appointment of a Temporary Operator

**I.D. No.** PSC-29-16-00019-EP

**Filing Date:** 2016-06-30

**Effective Date:** 2016-06-30

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

**Proposed Action:** The Commission, on June 29, 2016, adopted an order appointing Suez Water New York, Inc. the temporary operator of the Forest Park Water Company, Inc.

**Statutory authority:** Public Service Law, sections 89-b, 89-c and 112-a

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

**Specific reasons underlying the finding of necessity:** On January 14, 2016, Suez Water Owego-Nichols, Inc. (SWON) filed a petition seeking authorization to acquire the assets of Forest Park and two other water systems. In June 2016, the Forest Park Water Company, Inc. (Forest Park) suffered a well failure in its Chateau Ridge system. When Forest Park's operator was unable to maintain a connection to another system owned by Forest Park, Department of Public Service Staff requested that SWON assist in restoring service to Forest Park's ratepayers. While the acquisition petition is still under the consideration by the Commission, the Commission believes that the Forest Park ratepayers would benefit from an operator with greater expertise and resources while addressing the supply shortfall. While SWON expresses willingness to assume operation of the system, the company recommends that the Commission instead appoint its sister company, Suez Water New York, Inc., which has greater immediate resources than SWON.

**Subject:** Appointment of a temporary operator.

**Purpose:** To ensure safe water supply through appointment of a temporary operator.

**Substance of emergency/proposed rule:** The Public Service Commission (Commission) adopted an order appointing SUEZ Water New York Inc. temporary operator of the Forest Park Water Company, Inc. (Forest Park) pursuant to its authority under Public Service Law § 112-a. Prior to the Commission's action, Forest Park's owners communicated their consent to the appointment, satisfying the statute's notice requirement.

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 27, 2016.

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

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

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

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

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

(16-W-0390EP1)

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

#### Use of the Silver Spring Network Commercial Gas Interface Management Unit — IMU 200

**I.D. No.** PSC-29-16-00021-P

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

**Proposed Action:** The Public Service Commission is considering a petition filed by Consolidated Edison and Orange and Rockland Utilities, on June 16, 2016, to use the Silver Spring Network Commercial Gas Interface Management Unit (IMU) 200.

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

**Subject:** Use of the Silver Spring Network Commercial Gas Interface Management Unit — IMU 200.

**Purpose:** To consider the use of the Silver Spring Network Commercial Gas Interface Management Unit — IMU 200.

**Substance of proposed rule:** The Public Service Commission is considering a petition filed by Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities, Inc., to use the Silver Spring Interface Management Unit – IMU 200, in commercial gas metering applications. The Companies will deploy the Silver Spring IMU 200 as part of Advanced Metering Infrastructure projects. The Commission may adopt, reject or modify, in whole or in part, the relief requested, 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-G-0379SP1)

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

**Petitions for Rehearing of the Commission's Order Adopting Low Income Program Modifications and Directing Utility Filings**

**I.D. No.** PSC-29-16-00022-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 three Petitions for Rehearing filed on June 20, 2016, requesting rehearing of the Commission's Order Adopting Low Income Program Modifications and Directing Utility Filings.

**Statutory authority:** Public Service Law, sections 4(1), 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9) and (12)

**Subject:** Petitions for Rehearing of the Commission's Order Adopting Low Income Program Modifications and Directing Utility Filings.

**Purpose:** To establish rates, terms, and conditions for low income utility programs.

**Substance of proposed rule:** The New York State Public Service Commission (Commission) is considering three Petitions for Rehearing (Petitions) filed on June 20, 2016, requesting rehearing of the Commission's Order Adopting Low Income Program Modifications and Directing Utility Filings, issued on May 20, 2016 (Order). The Petitions were filed by Multiple Intervenors (MI), National Fuel Gas Distribution Corporation (NFG), and the City of New York (NYC). MI requests rehearing and modification of the Order and seeks to: (1) reduce the increases to the annual budgets for utility low income programs located in Upstate New York; (2) phase-in any increases to the annual budgets for the upstate utilities' low income programs; (3) remove, with respect to the upstate utilities, the linkage between low income program budgets funded through delivery rates and electricity and gas commodity prices; and, (4) with respect to the upstate utilities, allocate the costs of low income programs to the various customer classes on a per customer basis and recover the properly allocated costs from individual demand-metered customers on a per customer or, alternately, per kW basis. NFG requests rehearing and modification of the Order and seeks to: (1) alter the affordability methodology in order to permit targeted variable discounts based on specific household income size and composition; (2) clarify how discount levels should be phased out at program initiation where low usage households are already paying bills at or below the targeted 6%, and whether and to

what extent any discount-related credits can be applied to customers' accounts where bills are below the targeted energy burden; (3) encourage the Office of Temporary and Disability Assistance (OTDA) to include household income figures and number of inhabitants in the files provided to utilities; (4) allow utilities to adopt a targeted low income program providing an affordable bill of 6% of household income based on information provided by OTDA, or allow utilities to continue to offer variable rate discounts to households based on income and household size provided by the customer; (5) clarify an alleged conflict between the 6% energy burden target and the 2% budget cap; and, (6) prohibit arrears forgiveness programs for utilities that are projected to be at or above the 2% budget cap. NYC requests rehearing and modification of the Order and seeks to: (1) reverse the decision to eliminate low income program discounts for direct voucher and utility guarantee customers; (2) alter the affordability methodology to achieve the targeted reduction in energy burden through a generally applicable customer discount with less reliance on receipt of Home Energy Assistance Program benefits; (3) clarify that the greater benefits, compared to those specified in the Order, provided to National Grid NY may continue; and, (4) clarify and confirm that HEAP eligible heating customers can continue to receive heating level benefits under and in accordance with the existing provisions of Consolidated Edison Company of New York, Inc. and National Grid NY's low income programs. 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.

(14-M-0565SP2)

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

**Use of the Silver Spring Network Residential Gas Interface Management Unit — IMU 300 and IMU 300A**

**I.D. No.** PSC-29-16-00023-P

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

**Proposed Action:** The Public Service Commission is considering a petition filed by Consolidated Edison and Orange and Rockland Utilities, on June 16, 2016, to use the Silver Spring Network Residential Gas Interface Management Unit (IMU) 300 and 300A.

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

**Subject:** Use of the Silver Spring Network Residential Gas Interface Management Unit - IMU 300 and IMU 300A.

**Purpose:** To consider the use of the Silver Spring Network Residential Gas Interface Management Unit - IMU 300 and IMU 300A.

**Substance of proposed rule:** The Public Service Commission is considering a petition filed by Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities, Inc., to use the Silver Spring Interface Management Units – IMU 300 and IMU 300A, in residential gas metering applications. The Companies will deploy the Silver Spring IMU 300 and IMU 300A as part of Advanced Metering Infrastructure projects. The Commission may adopt, reject or modify, in whole or in part, the relief requested 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-G-0378SP1)

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

**Participation of NYPA Customers in Surcharge-Funded Clean Energy Programs**

**I.D. No.** PSC-29-16-00024-P

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

**Proposed Action:** The Commission is considering a proposal to allow New York Power Authority customers to participate in Clean Energy Fund and Utility Energy Efficiency programs filed by the Joint Utilities on June 30, 2016.

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

**Subject:** Participation of NYPA customers in surcharge-funded clean energy programs.

**Purpose:** To consider participation of NYPA customers in surcharge-funded clean energy programs.

**Substance of proposed rule:** The Public Service Commission (Commission) is considering the Proposal of the Joint Utilities to allow New York Power Authority customers to participate in Clean Energy Fund Programs (the Proposal) filed by Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, and Niagara Mohawk Power Corporation d/b/a National Grid (collectively, the Joint Utilities) on June 30, 2016. The Joint Utilities filed the Proposal in compliance with the Commission's January 21, 2016 Order Authorizing the Clean Energy Fund Framework in Case 14-M-0094. The Commission may adopt, reject, or modify, in whole or in part, the Proposal 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](mailto: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](mailto:secretary@dps.ny.gov)

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

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

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

(14-M-0094SP8)

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

**Proposed Modifications to Gas Safety Violations Metric Adopted in Case 12-G-0202**

**I.D. No.** PSC-29-16-00025-P

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

**Proposed Action:** The Public Service Commission is considering a Niagara Mohawk Power Corp. (NMPC) petition to modify the gas safety metric in the Joint Proposal in Case 12-G-0202.

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

**Subject:** Proposed modifications to gas safety violations metric adopted in Case 12-G-0202.

**Purpose:** To consider NMPC's petition to modify gas safety violations metric.

**Substance of proposed rule:** The Public Service Commission (PSC) is considering a petition filed by Niagara Mohawk Power Corporation (NMPC) seeking to modify the existing gas safety violations Metric (Metric) adopted by the PSC in Case 12-G-0202 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation d/b/a National Grid for Gas Service, Order Approving Electric and Gas Rate Plans in Accord With Joint Proposal (issued March 15, 2013). The modifications NMPC seeks include: (1) that the number of violations found in the audit results for calendar years 2013 and 2014 would be subject to the maximum negative revenue adjustment only if NMPC does not meet specific (NMPC proposed) levels of improvement in the calendar year 2015 audits; (2) that the Metric be modified so that for calendar year 2015 and all future audit years, the maximum number of High Risk and Other Risk violations will be capped at 10 per regulation; and (3) that any NRAs stemming from audits be directed solely to gas safety programs and improvements, with \$400,000 of the NRAs for 2013 and 2014 being assigned to a third party consultant who will advise NMPC on regulatory compliance improvements. 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](mailto: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](mailto:secretary@dps.ny.gov)

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

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

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

(12-G-0202SP6)