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.

Department of Agriculture and Markets

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

National Institute of Standards and Technology (''NIST'') Handbook 44; Receipts Issued by Taxicab Operators, Digital Scales

I.D. No. AAM-23-16-00005-P

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

Proposed Action: This is a consensus rule making to amend section 220.2(a) and (c); repeal section 220.2(d); renumber section 220.2(e) and (f) to (d) and (e) of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179

Subject: National Institute of Standards and Technology (''NIST'') Handbook 44; receipts issued by taxicab operators, digital scales.

Purpose: To incorporate NIST Handbook 44 (2016 edition); to allow handwritten taxicab receipts; to liberalize scale requirements.

Text of proposed rule: Subdivision (a) of section 220.2 of 1 NYCRR is amended to read as follows:

(a) Except as otherwise provided in this Part, the specifications, tolerances and regulations for commercial weighing and measuring devices shall be those adopted by the [99th] *100th* National Conference on Weights and Measures [2014] *2016* as published in the National Institute of Standards and Technology Handbook 44, [2015] *2016* edition. This document is available from the National Conference on Weights and Measures, 1135 M Street, Suite 110, Lincoln, NE 68508, or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is available for public inspection and copying in the office of the Director of Weights and Measures, Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, or in the office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, New York 12231.

The first sentence of subdivision (c) of section 220.2 of 1 NYCRR is repealed and a new first sentence is added thereto to read as follows:

(c) Notwithstanding any provision of regulation to the contrary, a municipal agency, authority, or department that has regulatory authority over taximeters may exempt taxicabs, operating within its jurisdiction, from having to have available an integral or separate recording element to provide receipts for fares and may allow such taxicabs to provide handwritten receipts for fares.

Paragraphs (1)-(10) of subdivision (c) of section 220.2 of 1 NYCRR are repealed.

Subdivision (d) of section 220.2 of 1 NYCRR is repealed and subdivisions (e) and (f) are re-lettered to be subdivisions (d) and (e), respectively.

Text of proposed rule and any required statements and analyses may be obtained from: Mike Sikula, Director, Bureau of Weights & Measures, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-3146, email: Mike.Sikula@agriculture.ny.gov

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

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

Consensus Rule Making Determination

The proposed rule will amend subdivision (a) of 1 NYCRR section 220.2 to incorporate by reference the 2016 edition of National Institute of Standards and Technology Handbook 44 and will amend subdivision (c) of such section to allow certain taxicab operators to issue handwritten receipts. The proposed rule will, also, repeal subdivision (d) of such section to allow Class III scales to have a lesser number of gradations than presently required.

The proposed amendment to subdivision (a) of 1 NYCRR section 220.2 is non-controversial. The 2016 edition of Handbook 44 has been adopted by or is in the process of being adopted by every state; manufacturers of weighing and measuring devices located in New York already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce. Furthermore, the State's users of commercial weighing and measuring devices also already use devices that conform to the provisions of this document due to its nearly-nationwide applicability.

The proposed amendment to subdivision (c), and the proposed repeal of subdivision (d), of 1 NYCRR section 220.2 are, also, non-controversial; both actions will "liberalize" certain existing requirements, thereby placing a lesser burden upon regulated parties.

Based upon the foregoing, the proposed rule will not have any adverse impact upon parties regulated pursuant thereto and is, therefore, non-controversial.

Job Impact Statement

The proposed rule will not have an adverse impact on jobs or on employment opportunities.

The proposed rule will incorporate by reference in subdivision (a) 1 NYCRR section 220.2 the 2014 edition of National Institute of Standards and Technology Handbook 44 (henceforth, "Handbook 44 (2016 edition)") which contains specifications, tolerances and regulations for commercial measuring devices. The 2014 edition of Handbook 44 is presently incorporated by reference. Handbook 44 (2016 edition) differs from the 2014 edition in that it permits operators of weighing and measuring devices to issue electronic receipts when the device is equipped to do so; clarifies conditions for determining whether such devices are accurate; establishes requirements applicable to receipts issued by or from devices that dispense fuel to propane-powered vehicles; requires taxicabs to be equipped with printers; grants approval to timing mechanisms currently

incorporated in electric vehicle charging devices; and other, non-substantive additions, amendments, and deletions. Handbook 44 (2016 edition) has been adopted or is in the process of being adopted by every state; manufacturers and users of weighing and measuring devices located in New York already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce.

The proposed rule will, also, amend subdivision (c) of 1 NYCRR section 220.2 to allow municipal directors of weights and measures who have regulatory authority over taxicabs to allow operators thereof to issue handwritten receipts rather than "printed" receipts. Finally, the proposed rule will permit "Class III" scales to have a lesser number of gradation than is presumably required.

The proposed rule requires manufacturers and users of weighing and measuring devices to do no more than they are practically required to do presently and/or lessens certain regulatory burdens; as such, the proposed rule will not have an adverse impact upon jobs or employment opportunities.

Office of Children and Family Services

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Requirements Regarding the Cooperation of School Districts with Investigations of Suspected Child Abuse or Maltreatment

I.D. No. CFS-23-16-00004-EP

Filing No. 506

Filing Date: 2016-05-23

Effective Date: 2016-05-23

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

Proposed Action: Amendment of section 432.3 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 421(3), 423(6) and 425(1)

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

Specific reasons underlying the finding of necessity: These regulations are necessary to protect the health, safety and welfare of children involved in a report of suspected child abuse or maltreatment. An oral order issued by the United States District Court for the Southern District of New York on August 19, 2015 pertaining to Phillips et al. v. County of Orange, et al. ("Phillips") granted a motion by the plaintiffs for summary judgment and held that, in this case, the county engaged in an unconstitutional seizure of a child when the child was questioned in a public school without parental consent as part of a child protective services investigation. Although the oral determination was not part of a published decision, holds no precedential value, and went well beyond established case law, the determination created great confusion and anxiety for school districts and child protective services agencies alike.

In response to the order, some school districts have begun denying access to the child protective service (CPS) or requiring additional CPS actions prior to allowing CPS access to children in a school setting without parental consent. These obstructions are disparate in form and manner among school districts and have added dangerous and unnecessary delay and confusion to the investigatory process. These delays are creating danger to the health, safety and welfare of children.

The position of OCFS and SED was and remains that children who are alleged to have been abused or maltreated can be interviewed by CPS at school without parental permission or a court order in appropriate circumstances. The first duty of CPS in conducting a child protective services investigation is to see to the safety of the child. (Section 424(6)(a) of the Social Services Law and 18 NYCRR 432.2(b)(3)). Especially in a situation where a parent is alleged to have abused or maltreated a child and there is concern over the immediate health or safety of the child, the need to protect the health and safety of the child requires CPS to interview the child outside the presence of the parent who has allegedly abused or maltreated the child.

Regulations are necessary to clarify the requirements and standards around CPS access to children in schools. Emergency regulations are necessary to provide immediate protections for vulnerable children when CPS encounters circumstances during an investigation into suspected child abuse or maltreatment that warrant interviewing the child apart from family members or the home where child abuse or maltreatment allegedly occurred and without parental consent.

Subject: Requirements regarding the cooperation of school districts with investigations of suspected child abuse or maltreatment.

Purpose: To clarify requirements for the cooperation of school districts with investigations of suspected child abuse or maltreatment.

Text of emergency/proposed rule: Existing subdivision (i) of Section 432.3 of Title 18 of the NYCRR is amended to read as follows:

(i) *(1)* Commencing or causing the appropriate society for the prevention of cruelty to children to commence within 24 hours an appropriate investigation or family assessment response on all reports of suspected child abuse and maltreatment in accordance with the provisions of sections 432.2(b)(3) and section 432.13 of this Part.

(2) Request and receive, as provided for in subdivision 1 of Section 425 of the Social Services Law, when applicable, from departments, boards, bureaus, or other agencies of the state, or any of its political subdivisions including school districts (as that term is defined in subdivision 2 of Section 1980 of the Education Law), and charter schools operated pursuant to Article 56 of the Education Law, or any duly authorized agency, or any other agency providing services under the local child protective services plan, such assistance and data as will enable the local child protective service to fulfill its responsibilities properly, including providing such assistance and data to members of a multi-disciplinary team established pursuant to subdivision 6 of Section 423 of the Social Services Law when such members accompany a representative of the child protective service. Such assistance and data includes, but is not limited to:

(i) access to records relevant to the investigation of suspected abuse or maltreatment; and

(ii) access to any child named as a victim in a report of suspected abuse or maltreatment or any sibling or other child residing in the same home as the named victim. Such access includes conducting an interview of such child without a court order or the consent of the parent, guardian or other person legally responsible for the child when the child protective service encounters circumstances that warrant interviewing the child apart from family or other household members or the home or household where child abuse or maltreatment allegedly occurred. The representative of the child protective service and other members of a multi-disciplinary team accompanying a representative of the child protective service may be asked to provide identification and to identify the child or children to be interviewed, but may not be asked for or required to provide any other information or documentation as a condition of having access to a child or children. Nothing contained herein shall preclude a school, school district or other program or facility operated by a department, board, bureau, or other agency of the state or any of its political subdivisions, or by a duly authorized agency or other agency providing services under the local child protective services plan from authorizing a staff member of the school or other such program or facility to observe the interview of the child, either from the same or another room, at the discretion of the school, school district or other such program or facility. Nothing contained herein shall preclude a school, school district or other such program or facility from requiring that representatives of the child protective service or other members of a multi-disciplinary team accompanying a representative of the child protective service comply with the reasonable visitor policies or procedures of the school, school district or other such program or facility, unless such policies or procedures are contrary to the requirements of this paragraph.

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 August 20, 2016.

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

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

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

Regulatory Impact Statement

1. Statutory authority:

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

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

Section 421(3) of the SSL requires the Commissioner of OCFS to promulgate regulations setting forth requirements for the provision of child protective services by social services districts including establishing uniform requirements for the investigation of reports of child abuse and maltreatment.

Section 423(6) of the SSL authorizes the establishment of multidisciplinary teams by social services districts for the purpose of investigating reports of suspected child abuse and maltreatment. Such teams must include representatives of child protective services, law enforcement, and others.

Section 425(1) of the SSL provides that the Commissioner of OCFS may request and shall receive from departments, boards, bureaus and agencies of the State or any of its political subdivisions, or any duly authorized agency, or any other agency providing services under the local child protective services plan, such assistance and data as will enable the local child protective service to fulfill its responsibilities properly.

2. Legislative objectives:

The proposed changes to the regulations are necessary to further the legislative objective that children be protected from abuse and maltreatment.

3. Needs and benefits:

The regulatory language clarifies the expectations of child protective services and schools around cooperation and assistance with ongoing investigations of suspected child abuse and maltreatment. The proposed changes to the regulations are in response to the recognized need to strengthen and clarify these expectations to better provide for the safety of children in New York State. Accordingly, the benefit of this regulation is to create consistent safeguards for children during the investigation of allegations of abuse and maltreatment.

The regulations will clarify that the requirement to provide assistance and data to child protective services includes school districts and charter schools. The regulations will discuss what constitutes assistance and clarify that it includes access to an allegedly abused or maltreated child by child protective services and members of a multi-disciplinary team accompanying child protective services. The regulations will limit the information that child protective services and members of a multi-disciplinary team accompanying child protective services may be required to provide as a condition of having access to a child, but will permit schools, school districts and other programs and facilities operated by a department, board, bureau or other agency of the State or any of its political subdivisions, or any duly authorized agency, or any other agency providing services under the local child protective services plan to require compliance with reasonable visitor policies and procedures. Schools, school districts and other such programs and facilities would also be permitted to have staff observe interviews of children occurring in the school, school district or other such program or facility.

The regulations will also clarify that the provision of data includes those records relevant to the child protective investigation. it will not require the provision of any and all records in the possession of the school, school district or other such program or facility, but only those relevant to such investigation. As under current practice, the determination of what records are relevant will have to be determined on a case by case basis through discussion between child protective services and the holder of the records.

4. Costs:

The proposed regulatory changes are not expected to have an adverse fiscal impact on social services districts, child protective services or school districts.

5. Local government mandates:

The proposed regulations will not impose any additional mandates on social services districts or school districts.

6. Paperwork:

The proposed regulations do not require any additional paperwork.

7. Duplication:

The proposed regulations effectuate the requirements of Section 425(1) of the SSL. They do not duplicate any other State or Federal requirements.

8. Alternatives:

The proposed regulations are necessary to provide immediate protections for vulnerable children when child protective services encounters circumstances during an investigation into suspected child abuse or maltreatment that warrant interviewing the child apart from family members or the home where child abuse or maltreatment allegedly occurred. Therefore, there are no alternatives to the proposed regulations.

9. Federal standards:

The regulatory amendments do not conflict with any federal standards.

10. Compliance schedule:

The regulations will be effective on May 23, 2016.

Regulatory Flexibility Analysis

1. Types and estimated number of small businesses and local governments:

There are 58 social services districts and 695 school districts in New York State.

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

No anticipated impact.

3. Costs:

No anticipated additional costs.

4. Economic and technological feasibility:

The proposed regulatory changes would not require any additional technology and should not have any adverse economic consequences for regulated parties.

5. Minimizing adverse impact:

The proposed changes to the regulations clarify requirements and standards for child protective services (and in relevant cases, accompanying members of a multi-disciplinary team) access to children in school settings. The regulation is necessary to provide immediate protections for vulnerable children when child protective services encounters circumstances during an investigation into suspected child abuse or maltreatment that warrant interviewing the child apart from family members or the home where child abuse or maltreatment allegedly occurred, and without the consent of the parent.

6. Small business and local government participation:

The Office of Children and Family Services (OCFS) received requests from the New York Public Welfare Association (NYPWA), multiple social services districts, the New York State Association of School Attorneys (NYSASA) and the New York State School Boards Association (NYSSBA) for clarification or guidance on this issue. This regulation is supported by policies issued by OCFS and the State Education Department. In addition, forums for training and other presentations are anticipated using resources available to OCFS, NYPWA, NYSASA and NYSSBA to reach school districts and social services districts.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

There are 44 rural social services districts and 299 school districts in rural areas.

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

No anticipated impact.

3. Costs:

No anticipated costs.

4. Minimizing adverse impact:

The proposed changes to the regulations clarify expectations and standards around access to children in school settings by child protective services and, in relevant cases, accompanying members of a multi-disciplinary team. The regulation is necessary to provide immediate protections for vulnerable children when child protective services encounters circumstances during an investigation into suspected child abuse or maltreatment that warrant interviewing the child apart from family members or the home where child abuse or maltreatment allegedly occurred, and without the consent of the parent.

5. Rural area participation:

The Office of Children and Family Services (OCFS) received requests from the New York Public Welfare Association (NYPWA), multiple social services districts, the New York State Association of School Attorneys (NYSASA) and the New York State School Boards Association (NYSSBA) for clarification or guidance on this issue. This regulation is supported by policies issued by OCFS and the State Education Department. In addition, forums for training and other presentations are anticipated using resources available to OCFS, NYPWA, NYSASA and NYSSBA to reach school districts and social services districts.

Job Impact Statement

The proposed regulations are not expected to have a negative impact on jobs or employment opportunities in either public or private sector service providers. A full job impact statement has not been prepared for the proposed regulations as it is not anticipated that the proposed regulations will have any adverse impact on jobs or employment opportunities.

Division of Criminal Justice Services

NOTICE OF ADOPTION

Victims of Human Trafficking

I.D. No. CJS-03-16-00002-A
Filing No. 510
Filing Date: 2016-05-24
Effective Date: 2016-06-08

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

Action taken: Amendment of Part 6174 of Title 9 NYCRR.

Statutory authority: Executive Law, section 837(13); L. 2015, section 32, ch. 368

Subject: Victims of Human Trafficking.

Purpose: To conform to the "Trafficking Victims Protection and Justice Act," as added by chapter 368 of the Laws of 2015.

Text of final rule: 1. A new subdivision (f) is added to section 6174.2 of 9 NYCRR to read as follows:

(f) The term statutory referral source shall mean either (i) the law enforcement agency or district attorney's office, or (ii) an established provider of social or legal services designated by the office, the Office for the Prevention of Domestic Violence, or the Office of Victim Services that, as soon as practicable after a first encounter with a person who reasonably appears to be a human trafficking victim, refers such human trafficking victim to the division and the office for assessment as a State-confirmed human trafficking victim. Provided, however, in the case of an established provider of social or legal services, such established provider shall make a referral if the victim consents to seeking services pursuant to Article 10-D of the Social Services Law.

2. Subdivision (a) of section 6174.3 of 9 NYCRR is amended to read as follows:

(a) As soon as practicable after a first encounter with a person who reasonably appears to a [law enforcement agency or a district attorney's office] *statutory referral source* to be a human trafficking victim, that agency [or], office *or provider* shall notify the Human Trafficking Director and the Office on a form and in a manner prescribed by the Commissioner. *Provided, however, in the case of an established provider of social or legal services, such established provider shall make the notification if the victim consents to seeking services pursuant to Article 10-D of the Social Services Law.*

3. Subdivisions (e), (f) and (g) of section 6174.3 of 9 NYCRR are amended to read as follows:

(e) If the Human Trafficking Director determines that the person appears to meet the criteria for certification as a victim of a severe form of trafficking in persons, as defined in section 7105 of title 22 of the United States Code, or appears to be otherwise eligible for any Federal, State or local benefits and services, he or she shall immediately notify the Office in writing which shall thereafter notify the victim and the [referring law enforcement agency or district attorney's office] *statutory referral source*, and the Office may assist the victim and [referring law enforcement agency or a district attorney's office] *statutory referral source* in making services available to the victim.

(f) If the Human Trafficking Director determines that the person does not appear to meet the criteria for certification as a victim of a severe form of trafficking in persons, as defined in section 7105 of title 22 of the United States Code, or does not appear to be otherwise eligible for any Federal, State or local benefits and services, he or she shall immediately notify in writing the victim, the [referring law enforcement agency or district attorney's office] *statutory referral source*, and the Office.

(g) The Human Trafficking Director shall issue to the victim, the Office, and [referring law enforcement agency or district attorney's office] *statutory referral source* a written explanation setting forth the basis for his or her determination within 10 business days of receipt of the referral.

4. Subdivision (c) of section 6174.4 of 9 NYCRR is amended to read as follows:

(c) The Commissioner, after consultation with the Office, shall issue a written response to the appellant, the Office, and the [referring law enforcement agency or district attorney's office] *statutory referral source* within 15 business days of receipt of the written appeal. If the Commissioner determines that the appellant does appear to either meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of title 22 of the United States Code or be otherwise eligible for any Federal, State, or local benefits and services, the Office may assist the victim and [referring law enforcement agency or district attorney's office] *statutory referral source* in receiving services.

5. Section 6174.5 of 9 NYCRR is amended to read as follows:

The Division shall consult with the Office regarding the confirmation of human trafficking victims pursuant to Social Services Law, section 483-cc, including, but not limited to, the form and manner in which a [law enforcement agency or district attorney's office] *statutory referral source* shall refer a person who reasonably appears to be a human trafficking victim.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 6174.2(f) and 6174.3(a).

Text of rule and any required statements and analyses may be obtained from: Natasha M. Harvin, Esq., NYS Division of Criminal Justice Services, Alfred E. Smith Building, 80 South Swan Street, Albany, New York 12210, (518) 457-8413, email: natasha.harvin@dcjs.ny.gov

Revised Job Impact Statement

The ''Trafficking Victims Protection and Justice Act,'' as added by Chapter 368 of the Laws of 2015, amends Social Services Law § 483-cc(a), as added by Chapter 74 of the Laws of 2007, to provide that, as soon as practicable after a first encounter with a person who reasonably appears to be a human trafficking victim, an established provider of social or legal services, designated by the Office of Temporary and Disability Assistance (OTDA), the Office for the Prevention of Domestic Violence or the Office of Victim Services, in addition to a law enforcement agency or district attorney's office, shall notify OTDA and the Division of Criminal Justice Services (DCJS) that such person may be eligible for services. In the case of an established provider of social or legal services, such established provider shall notify OTDA and DCJS if the victim consents to seeking services.

This proposal merely implements or conforms to the statutory provisions. As such, it is apparent from the nature and purpose of the proposal that it will have no substantial adverse impact on jobs and employment opportunities.

Assessment of Public Comment

9 NYCRR Part 6174: Confirmation as a Victim of Human Trafficking

The Division of Criminal Justice Services (DCJS) formally proposed amendments of 9 NYCRR Part 6174. A Notice of Proposed Rule Making was published in Issue 3 of the State Register on January 20, 2016 under I.D. No. CJS-03-16-00002-P.

DCJS accepted public comments through March 7, 2016. DCJS received comments from, and on behalf of, Sanctuary for Families, Inc. (SFF). SFF is "New York's leading service provider and advocate for survivors of domestic violence, sex trafficking and related forms of gender violence." Although DCJS did not receive any objections to the adoption of the propose rule, it did receive suggested amendments, which were taken into consideration.

Purpose: The ''Trafficking Victims Protection and Justice Act,'' as added by Chapter 368 of the Laws of 2015, amends Social Services Law § 483-cc(a), as added by Chapter 74 of the Laws of 2007, to provide that, as soon as practicable after a first encounter with a person who reasonably appears to be a human trafficking victim, an established provider of social or legal services, designated by the Office of Temporary and Disability Assistance (OTDA), the Office for the Prevention of Domestic Violence or the Office of Victim Services, in addition to a law enforcement agency or district attorney's office, shall notify OTDA and DCJS that such person may be eligible for services. In the case of an established provider of social or legal services, such established provider shall notify OTDA and DCJS if the victim consents to seeking services.

The regulation was proposed as consensus rule because DCJS believed that no person was likely to object to the rule because it would merely implement or conform to statutory provisions.

Comment: SSF is reluctant to being "lumped together" with law enforcement as a "statutory referral source."

Response: DCJS' goal is to avoid listing each referral source (law enforcement agency, district attorney's office or established service provider) individually, each time throughout the regulation. Accordingly, DCJS will not make any changes to the definitions.

Comment: The proposed rule would mandate that the "statutory referral sources," which includes an "established provider of social or legal services," notify OTDA and DCJS as soon as practicable after a first encounter with a person who appears to be a human trafficking victim. However, Social Services Law § 483-cc provides that the established provider shall notify OTDA and DCJS "if such victim consents." "SFF believes that while the statute is clear, DCJS should consider amending the proposed rules to incorporate the victim intent expressed within the statute."

Response: Social Services Law § 483-cc, upon which the proposed rule is based, provides:

As soon as practicable after a first encounter with a person who reasonably appears to a law enforcement agency, district attorney's office, or an established provider of social or legal services designated by the office of temporary and disability assistance, the office for the prevention of domestic violence or the office of victim services to be a human trafficking victim, that law enforcement agency or district attorney's office shall notify the office of temporary and disability assistance and the division of criminal justice services that such person may be eligible for services under this article or, in the case of an established provider of social or legal services, shall notify the office of temporary and disability assistance and the division of criminal justice services if such victim consents to seeking services pursuant to this article (emphasis supplied).

Accordingly, and based upon the above, DCJS made the following nonsubstantial changes to the proposed regulation to clarify the text and reflect the "consent" language.

1. A new subdivision (f) is added to section 6174.2 of 9 NYCRR to read as follows:

(f) The term statutory referral source shall mean either (i) the law enforcement agency or district attorney's office, or (ii) an established provider of social or legal services designated by the office, the Office for the Prevention of Domestic Violence, or the Office of Victim Services that, as soon as practicable after a first encounter with a person who reasonably appears to be a human trafficking victim, refers such human trafficking victim to the division and the office for assessment as a State-confirmed human trafficking victim. Provided, however, in the case of an established provider of social or legal services, such established provider shall make a referral if the victim consents to seeking services pursuant to Article 10-D of the Social Services Law.

2. Subdivision (a) of section 6174.3 of 9 NYCRR is amended to read as follows:

(a) As soon as practicable after a first encounter with a person who reasonably appears to a [law enforcement agency or a district attorney's office] statutory referral source to be a human trafficking victim, that agency [or], office or provider shall notify the Human Trafficking Director and the Office on a form and in a manner prescribed by the Commissioner. Provided, however, in the case of an established provider of social or legal services, such established provider shall make the notification if the victim consents to seeking services pursuant to Article 10-D of the Social Services Law.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

Peekamoose Valley Riparian Corridor

I.D. No. ENV-23-16-00001-EP
Filing No. 500
Filing Date: 2016-05-19
Effective Date: 2016-05-25

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

Proposed Action: Addition of section 190.35 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(3)(b), 3-0301(1)(b), (d), (2)(m), 9-0105(1) and (3)

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

Specific reasons underlying the finding of necessity: The Peekamoose Valley encompasses more than over 2,000 acres of Forest Preserve land straddling the upper Rondout Creek along Peekamoose Road (Ulster County 42) in the Town of Denning in Ulster County. It is a remote area in the heart of the Catskill Park and New York City's Catskill/Delaware watershed. The upper Rondout Creek flows into the Rondout Reservoir, an important drinking water supply for New York City.

Until recently, most of the public use in the area was concentrated in the Peekamoose primitive camping area. However, day use of the area referred to as the "Blue Hole," a large, deep and very cold swimming hole in the Rondout Creek immediately upstream of the Valley's primitive camping area, has recently increased exponentially, due in part to coverage in social media, several websites, and national magazines which tout the Blue Hole as "one of the best swimming holes in the nation." Due to this dramatic increase in public use, the natural resources of the area are rapidly becoming degraded, fragile ecosystems are being degraded, and serious public health and safety issues are being created. The area is being fouled by human waste, raising concerns about water quality in the Rondout Creek and the New York City reservoir into which it flows. The trampling of vegetation has exposed and compacted the soil. Trees are being stripped of their limbs for firewood, and indiscriminately located campfires are creating numerous carbon scars on the ground. Garbage, trash, and broken glass are despoiling the wild character of the area and raising public safety concerns. The use of portable generators and boom boxes has interfered with the Valley's quiet and solitude. Moreover, the Town of Denning indicates that Peekamoose Road is often not passable by emergency service vehicles because of illegally parked cars, and visitors sometimes stand in the road, putting themselves and passing motorists at risk.

The emergency regulations are tailored to address these problems by creating and delineating a new Peekamoose Valley Riparian Corridor ("the Corridor") that will prohibit certain activities within it. Because of the immediate threat to the public health, safety and general welfare posed by the surge in the number of people recreating in the Peekamoose Valley Corridor, it is essential to immediately promulgate this regulation on an emergency basis, before heavy public use of the area commences in the summer. It is essential to immediately take steps to maintain the natural character of the area so that it will be available for sustained public use and enjoyment. Given the significant threats to public health, safety and the environment and the inability of the normal rulemaking process to result in the promulgation of regulations in time for this summer's busy season, it is appropriate to adopt this regulation now on an emergency basis.

The use of the emergency rulemaking process is authorized by the State Administrative Procedure Act (SAPA) section 202(6), providing that a State agency may dispense with all or part of the normal rulemaking requirements and adopt a rule on an emergency basis if " the agency finds that the immediate adoption of a rule is necessary for the preservation of the public health, safety or general welfare and that compliance with the normal rulemaking requirements … would be contrary to the public interest …" Because of the immediate threat to the Peekamoose Valley Riparian Corridor as a result of overuse, it is essential to immediately promulgate this regulation on an emergency basis, prior to the beginning of the 2016 season.

Subject: Peekamoose Valley Riparian Corridor.

Purpose: Protect public health, safety and general welfare, as well as the natural resources on the Peekamoose Valley Riparian Corridor.

Public hearing(s) will be held at: 7:00 p.m., June 21, 2016 at Sundown United Methodist Church, Peekamoose Rd., Denning, NY.

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

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

Text of emergency/proposed rule: Section 190.35 is renumbered 190.36 and a new section 190.35 Peekamoose Valley Riparian Corridor is added to read as follows:

In addition to other applicable general provisions of this Part, the following requirements apply to the Peekamoose Valley Riparian Corridor. In the event of a conflict between this section and another section of this Part, the more restrictive provision will control.

(a) Description. For the purposes of this section, Peekamoose Valley Riparian Corridor means all those state forest preserve lands lying and situated in the Town of Denning in Ulster County located within 300 feet on either side of the centerline of the Roundout Creek, beginning at the New York State land boundary where it crosses Ulster County Route 42 southwest of the Lower Field Parking Area, thence heading northeast for approximately 3.75 miles, and ending with the New York State land boundary approximately one mile east of the Buttermilk Falls parking area, encompassing lands designated by the department as the Sundown Wild Forest and Slide Mountain Wilderness Area of the Catskill Park.

(b) No person shall kindle, build, maintain or use a fire within the Peekamoose Valley Riparian Corridor, including, but not limited to, charcoal fires, wood fires, gas grills, propane stoves or other portable stoves, except at designated campsites.

(c) No person shall possess a glass container within the Peekamoose

Valley Riparian Corridor, except when necessary for the storage of prescribed medicines.

(d) No person shall possess a portable generator within the Peekamoose Valley Riparian Corridor, except at designated campsites.

(e) No person shall play a musical instrument or audio device, including, but not limited to, radios, tape players, compact disc or digital players, except at designated campsites unless the noise is rendered inaudible to the public by personal noise-damping devices such as headphones or earbuds. At designated camp sites no person shall use any audio device which is audible outside the immediate area of the campsite.

(f) No person shall deposit or cause to be deposited any solid waste, garbage, food waste, human wastes or other sanitary waste products within the bounds of the Peekamoose Valley Riparian Corridor except at facilities provided and designated by the department.

(g) No person shall park any motor vehicle within the Peekamoose Valley Riparian Corridor except at areas designated and marked by the department as parking areas.

(h) No person shall enter the Peekamoose Valley Riparian Corridor area between one-half hour after sunset and one-half hour before sunrise except for: (1) persons camping at designated campsites; (2) licensed hunters and trappers for the purpose of hunting or trapping; (3) pedestrians using the marked hiking trails crossing the corridor; or (4) persons otherwise authorized by permit issued by the department.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 16, 2016.

Text of rule and any required statements and analyses may be obtained from: William Rudge, Natural Resources Supervisor, NYSDEC, 21 South Putt Corners Road, New Paltz, NY 12561-1696, (845) 256-3092, email: bill.rudge@dec.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.

Additional matter required by statute: An EAF/Negative Declaration has been prepared in compliance with article 8 of the Environmental Conservation Law.

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

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law ("ECL") section 1-0101(3)(b) directs the Department of Environmental Conservation (Department) to guarantee "that the widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintentional consequences." ECL section 3-0301(1)(b) gives the Department the responsibility to "promote and coordinate management of...land resources to assure their protection, enhancement, provision, allocation, and balanced utilization...and take into account the cumulative impact upon all such resources in promulgating any rule or regulation." ECL section 3-0301(1)(d) authorizes the Department to "provide for the care, custody and control of the Forest Preserve." ECL section 9-0105(1) authorizes the Department to ''[e]xercise care, custody, and control of the several preserves, parks and other State lands described in [Article 9 of the ECL]," which includes Forest Preserve lands. Article XIV, Section 1 of the New York State Constitution provides that the lands of the Forest Preserve "shall be forever kept as wild forest lands." ECL section 3-0301(2)(m) authorizes the Department to adopt rules and regulations "as may be necessary, convenient or desirable to effectuate the purposes of [the ECL]," and ECL 9-0105(3) authorizes the Department to "[m]ake necessary rules and regulations to secure proper enforcement of [ECL Article 9]."

2. Legislative objectives:

Paragraph 1 of section 3 of Article XIV of the New York State Constitution provides that "forest and wild life conservation are. . . policies of the State." Article XIV, section 1 of the New York State Constitution provides that the lands of the Forest Preserve "shall be forever kept as wild forest lands," and ECL sections 3-0301(1)(b) and 9-0105(1) give the Department jurisdiction to manage Forest Preserve lands. The Department is also authorized to promulgate rules and regulations for the use of such lands (see ECL sections 3-0301(2)(m) and 9-0105(3)). Consistent with this authority, the proposed regulations are crafted to protect natural resources and the health, safety and general welfare of those who engage in recreational activities within the Peekamoose Valley Riparian Corridor of the Forest Preserve in the Catskill Park.

3. Needs and benefits:

The Peekamoose Valley is an area encompassing more than 2,000 acres of Forest Preserve lands straddling the upper Rondout Creek along Peekamoose Road (Ulster County 42) in the Town of Denning in Ulster County. The Valley is a remote area in the heart of the Catskill Park and New York City's Catskill/Delaware watershed. The upper Rondout Creek flows into the Rondout Reservoir, an important drinking water supply for New York City. Due to the high quality of the Catskill/Delaware water supply, New York City is one of only five large cities in the country with a surface drinking water supply of such high quality that filtration is not required as a form of treatment.

This Peekamoose Valley has been a popular public destination since the State began acquiring land in the Valley in the 1960's. As early as 1971 the area had been discovered by more distant visitors, including those from urban areas to the south. Camping grew increasingly popular in this remote valley (several thousand people over the course of a typical summer), resulting in garbage and other unacceptable impacts. To address these impacts, the Department instituted a camping permit system and limited camping to designated primitive campsites.

Although in the past, public use of the valley has often been loud, occasionally unlawful, and near or above capacity, until recently most of the public use was concentrated in the Peekamoose primitive camping area. However, during the summer of 2015, day use of the area referred to as the "Blue Hole," a large, deep and very cold swimming hole in the Rondout Creek immediately upstream of the primitive camping area, increased exponentially compared to previous years. This was due in part to coverage in social media, several websites, and national magazines touting the Blue Hole as "one of the best swimming holes in the nation."

Due to this dramatic increase in public use, the natural resources of the area are rapidly becoming despoiled, fragile ecosystems are being degraded, and serious public health and safety issues are being created. The area is being fouled by human waste, raising concerns about water quality in the Rondout Creek and the New York City reservoir into which it flows. The trampling of vegetation has exposed and compacted the soil. Trees are being stripped of their limbs for firewood, and indiscriminately located campfires are creating numerous carbon scars on the ground. Garbage, trash, and broken glass are despoiling the wild character of the area and raising public safety concerns. The use of portable generators and boom boxes has interfered with the Valley's quiet and solitude. Moreover, the Town of Denning indicates that Peekamoose Road is often not passable by emergency service vehicles because of illegally parked cars, and visitors sometimes stand in the road, putting themselves and passing motorists at risk.

In 2015, the Department attempted to address the problems associated with overuse by implementing a number of strategies, including: clearly defining parking lots and limiting parking to those lots; prohibiting parking along the road (as posted by the Town of Denning); performing weekly garbage pick-ups; assigning two seasonal back country stewards to work weekends in the Peekamoose Valley from June through Labor Day; updating our twitter and Facebook pages to notify the public of the issues one may encounter in the Peekamoose/Blue Hole region which included limited parking and crowding; providing a map of the area showing the authorized parking areas; recommending alternative swimming/picnicking areas, including Department campgrounds, which are more suitable and with appropriate facilities; suggesting to media outlets who had posts touting the area that they modify their sites to inform the public of the parking and overuse issues; and maintaining a daily presence of up to three Forest Rangers and Environmental Conservation Officers working in conjunction with the Ulster County Sheriff's office and New York State Police in a joint law enforcement effort to curb illegal use of the area

In spite of the Department's attempts in 2015 to address the area's problems, public use continued to exceed the area's carrying capacity, continuing to create unsanitary conditions, threats to water quality, trampled vegetation and a dramatic degradation of the wild character of the area.

Local municipal leaders, the Department, New York City Department of Environmental Protection (DEP) staff, law enforcement and public safety officials met on September 3, 2015 to address management issues at the Blue Hole. Several additional strategies were agreed upon for the 2016 season. Those at the meeting agreed to increase public outreach and education efforts by erecting new kiosks with information that would present themes related to water quality and drinking water protection (such as "This is Your Drinking Water") as well as emphasizing responsibility for careful treatment of the resource ("leave no trace/carry it in, carry it out" ethics). NYCDEP agreed to seek at least one seasonal bilingual intern to help educate the public about the natural resources at this site. Other agreed upon strategies include: continuing current public outreach efforts using social media, web sites and print media and maintaining a law enforcement presence in partnership with Environmental Conservation Officers, Forest Rangers and County and State Police.

Those at the meeting also agreed that the Department should develop special regulations for the Valley because existing regulations, at 6 NYCRR Part 190, apply generically to all lands under the Department's jurisdiction and do not adequately address the problems that are unique to

the Valley and do not enable the Valley's natural resources to be protected. Therefore, the Department proposes to promulgate regulations for the Peekamoose Valley Riparian Corridor.

The proposed regulations define the Peekamoose Valley Corridor as a 600 foot wide corridor on New York State Forest Preserve lands located within 300 feet on either side of the centerline of the Rondout Creek, beginning at the New York State land boundary where it crosses Ulster County Route 42 southwest of the Lower Field Parking Area, thence heading northeast for approximately 3.75 miles, and ending with the New York State land boundary approximately one mile east of the Buttermilk Falls parking area.

The proposed regulations prohibit the deposition of human waste within the Corridor except at designated facilities provided by the Department, thereby protecting the water quality of the Roundout Creek and the Roundout Reservoir, a critical part of New York City's water supply.

To address the problem of broken glass, the regulations will prohibit the use of glass containers in the Corridor except when necessary to store prescription medications. The regulations will prohibit the use of portable generators and audio devices in the Corridor, helping to restore quiet and solitude for the public. The regulations will also restrict the hours of public use in the area to one half hour before sunrise to one half hour after sunset, thereby reducing or eliminating partying at the site by prohibiting the public from being in the area at night, when the greatest amount of abusive partying occurs. The regulations will also protect the public health and safety by requiring the public to leave the area at times when sufficient daylight allows for safe passage over uneven and steep terrain.

Local law enforcement and public safety officials are the first responders to incidents on this property. Local governments support the regulatory proposal and local law enforcement personnel will assist the Department with enforcement.

Information regarding the Department's intent to propose a regulation, content of the regulation and the public process associated with the rulemaking will appear in a widely- distributed newspaper in the area. In addition, a public meeting in the local community will be held during the formal regulatory comment period. All regulatory documents will appear on the Department's website.

4. Costs:

No costs to the regulated community are anticipated to result from the adoption of the proposed regulations. Costs to the State for the additional management actions are minimal and are estimated as follows: $4,000 for a kiosk and new signage; $1,000 for boulders to prohibit parking/define parking areas; $2,500/year for port-a-john rental/service; and $2,000/year for bear-proof refuse container rental/service.

5. Local government mandates:

This proposal will not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

6. Paperwork:

The proposed regulations will not impose any reporting requirements or other paperwork on any private or public entity.

7. Duplication:

There is no duplication, conflict, or overlap with State or Federal regulations.

8. Alternatives:

The no-action alternative is not feasible since it does not adequately protect the Peekamoose Valley Riparian Corridor from overuse and abuse and does not protect the public health, safety and general welfare. The existing generic 6 NYCRR Part 190 regulations for State lands are inadequate in protecting the Peekamoose Valley Riparian Corridor because of its unique characteristics, remote location and high level of public use.

Closing the area to public use is also not an acceptable alternative. Forest Preserve land is acquired for the use of and enjoyment by the public. ECL section 9-0301(1) provides that "all lands in the Catskill Park. . . shall be forever reserved and maintained for the free use of all the people. . ." The closure of Forest Preserve land to public use should not occur except when absolutely necessary to protect public health or the resource.

9. Federal standards:

There is no relevant federal standard governing the use of State lands.

10. Compliance schedule:

Once the regulations are adopted, they are effective immediately, and all persons will be expected to comply with them upon their effective date. The Department will educate the public about the regulations through information posted on the Departments' web site, signage posted on the property, and by working with user groups and other stakeholders to help disseminate information regarding the regulations.

Regulatory Flexibility Analysis

Adoption of a new section 190.35 to 6 NYCRR will address overuse and increase public safety on the Peekamoose Valley Riparian Corridor while still providing a quality outdoor experience for users. A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with these regulations because the proposal will not impose any reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Since there are no identified cost impacts for compliance with the proposed regulations on the part of small businesses and local governments, they will bear no economic impact as a result of this proposal. The proposed regulations relate solely to protecting public safety and natural resources on the Peekamoose Valley Riparian Corridor.

Rural Area Flexibility Analysis

Adoption of a new subdivision 190.35 to 6 NYCRR will address overuse and increase public safety on the Peekamoose Valley Riparian Corridor while still providing a quality outdoor experience for users. A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will not impose any reporting, record-keeping or other compliance requirements on rural areas. The proposed regulations relate solely to protecting public safety and natural resources on the Peekamoose Valley Riparian Corridor.

Job Impact Statement

Adoption of a new section 190.35 to 6 NYCRR will address overuse and increase public safety on the Peekamoose Valley Riparian Corridor while still providing a quality outdoor experience for users. A Job Impact Statement is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities. The proposed regulations relate solely to protecting public safety and natural resources on the Peekamoose Valley Riparian Corridor.

Department of Financial Services

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. DFS-23-16-00002-E
Filing No. 501
Filing Date: 2016-05-20
Effective Date: 2016-05-22

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

Action taken: Addition of Part 419 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: The legislature required the registration of mortgage loan servicers as part of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") to help address the existing foreclosure crisis in the state. By registering servicers and requiring that servicers engage in the business of mortgage loan servicing in compliance with rules and regulations adopted by the Superintendent, the legislature intended to help ensure that servicers conduct their business in a manner acceptable to the Department. However, since the passage of the Mortgage Lending Reform Law, foreclosures continue to pose a significant threat to New York homeowners. The Department continues to receive complaints from homeowners and housing advocates that mortgage loan servicers' response to delinquencies and their efforts at loss mitigation are inadequate. These rules are intended to provide clear guidance to mortgage loan servicers as to the procedures and standards they should follow with respect to loan delinquencies. The rules impose a duty of fair dealing on loan servicers in their communications, transactions and other dealings with borrowers. In addition, the rule sets standards with respect to the handling of loan delinquencies and loss mitigation. The rule further requires specific reporting on the status of delinquent loans with the Department so that it has the information necessary to assess loan servicers' performance.

In addition to addressing the pressing issue of mortgage loan delinquencies and loss mitigation, the rule addresses other areas of significant concern to homeowners, including the handling of borrower complaints and inquiries, the payment of taxes and insurance, crediting of payments and handling of late payments, payoff balances and servicer fees. The rule also sets forth prohibited practices such as engaging in deceptive practices or placing homeowners' insurance on property when the servicers has reason to know that the homeowner has an effective policy for such insurance.

Subject: The business conduct of mortgage loan servicers.

Purpose: To implement the purpose and provisions of the Mortgage Lending Reform Law of 2008 with respect to mortgage loan servicers.

Substance of emergency rule:

Section 419.1 contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including "Servicer", "Qualified Written Request" and "Loan Modification".

Section 419.2 establishes a duty of fair dealing for Servicers in connection with their transactions with borrowers, which includes a duty to pursue loss mitigation with the borrower as set forth in Section 419.11.

Section 419.3 requires compliance with other State and Federal laws relating to mortgage loan servicing, including Banking Law Article 12-D, RESPA, and the Truth-in-Lending Act.

Section 419.4 describes the requirements and procedures for handling to consumer complaints and inquiries.

Section 419.5 describes the requirements for a servicer making payments of taxes or insurance premiums for borrowers.

Section 419.6 describes requirements for crediting payments from borrowers and handling late payments.

Section 419.7 describes the requirements of an annual account statement which must be provided to borrowers in plain language showing the unpaid principal balance at the end of the preceding 12-month period, the interest paid during that period and the amounts deposited into and disbursed from escrow. The section also describes the Servicer's obligations with respect to providing a payment history when requested by the borrower or borrower's representative.

Section 419.8 requires a late payment notice be sent to a borrower no later than 17 days after the payment remains unpaid.

Section 419.9 describes the required provision of a payoff statement that contains a clear, understandable and accurate statement of the total amount that is required to pay off the mortgage loan as of a specified date.

Section 419.10 sets forth the requirements relating to fees permitted to be collected by Servicers and also requires Servicers to maintain and update at least semi-annually a schedule of standard or common fees on their website.

Section 419.11 sets forth the Servicer's obligations with respect to handling of loan delinquencies and loss mitigation, including an obligation to make reasonable and good faith efforts to pursue appropriate loss mitigation options, including loan modifications. This Section includes requirements relating to procedures and protocols for handling loss mitigation, providing borrowers with information regarding the Servicer's loss mitigation process, decision-making and available counseling programs and resources.

Section 419.12 describes the quarterly reports that the Superintendent may require Servicers to submit to the Superintendent, including information relating to the aggregate number of mortgages serviced by the Servicer, the number of mortgages in default, information relating to loss mitigation activities, and information relating to mortgage modifications.

Section 419.13 describes the books and records that Servicers are required to maintain as well as other reports the Superintendent may require Servicers to file in order to determine whether the Servicer is complying with applicable laws and regulations. These include books and records regarding loan payments received communications with borrowers, financial reports and audited financial statements.

Section 419.14 sets forth the activities prohibited by the regulation, including engaging in misrepresentations or material omissions and placing insurance on a mortgage property without written notice when the Servicer has reason to know the homeowner has an effective policy in place.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 17, 2016.

Text of rule and any required statements and analyses may be obtained from: Hadas A. Jacobi, Senior Attorney, NYS Department of Financial Services, 1 State Street, New York, NY 10004, (212) 480-5890, email:hadas.jacobi@dfs.ny.gov.

Regulatory Impact Statement

1. Statutory Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Legislative Objectives.

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

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

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

Part 418 of the Superintendent's Regulations, initially adopted on an

emergency basis on July 1 2009, addresses the first component of the mortgage servicing statute by setting standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as setting financial responsibility standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. This part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Collectively, the provisions of Part 418 and 419 implement the intent of the Legislature to register and supervise mortgage loan servicers.

3. Needs and Benefits.

The Mortgage Lending Reform Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry, particularly with respect to servicing and foreclosure. It addressed a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Until July 1, 2009, when the mortgage loan servicer registration provisions first became effective, the Department regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also act as agents for owners of mortgages in negotiations relating to loss mitigation when a mortgage becomes delinquent. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

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

More than 2,000,000 loans on residential one-to-four family properties are being serviced in New York. Of these over 9% were seriously delinquent as of the first quarter of 2012. Despite various initiatives adopted at the state level and the creation of federal programs such as Making Home Affordable to encourage loan modifications and help at risk homeowners, the number of loans modified, have not kept pace with the number of foreclosures. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

As noted above, Part 418, initially adopted on an emergency basis on July 1 2009, relates to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It was intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers. It also provided for the suspension, revocation and termination of licensees involved in wrongdoing and establishes minimum financial standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers and establishes certain consumer protections for homeowners whose residential mortgage loans are being serviced. These regulations provide standards and procedures for servicers to follow in their course of dealings with borrowers, including the handling of borrower complaints and inquiries, payment of taxes and insurance premiums, crediting of borrower payments, provision of annual statements of the borrower's account, authorized fees, late charges and handling of loan delinquencies and loss mitigation. Part 419 also identifies practices that are prohibited and imposes certain reporting and record-keeping requirements to enable the Superintendent to determine the servicer's compliance with applicable laws, its financial condition and the status of its servicing portfolio.

Since the adoption of Part 418, 67 entities have been approved for registration or have pending applications and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements.

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

These regulations will improve accountability and the quality of service in the mortgage loan industry and will help promote alternatives to foreclosure in the state.

4. Costs.

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

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

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

5. Local Government Mandates.

None.

6. Paperwork.

Part 419 requires mortgage loan servicers to keep books and records related to its servicing for a period of three years and to produce quarterly reports and financial statements as well as annual and other reports requested by the Superintendent. It is anticipated that the quarterly reporting relating to mortgage loan servicing will be done electronically and would therefore be virtually paperless. The other recordkeeping and reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations. The various federal laws that touch upon aspects of mortgage loan servicing are noted in Section 9 "Federal Standards" below.

8. Alternatives.

The Mortgage Lending Reform Law required the registration of mortgage loan servicers and empowered the Superintendent to prescribe rules and regulations to guide the business of mortgage servicing. The purpose of the regulation is to carry out this statutory mandate to register mortgage loan servicers and regulate the manner in which they conduct business. The Department circulated a proposed draft of Part 419 and received comments from and met with industry and consumer groups. The

current Part 419 reflects the input received. The alternative to these regulations is to do nothing or to wait for the newly created federal bureau of consumer protection to promulgate national rules, which could take years, may not happen at all or may not address all the practices covered by the rule. Thus, neither of those alternatives would effectuate the intent of the legislature to address the current foreclosure crisis, help at-risk homeowners vis-à-vis their loan servicers and ensure that mortgage loan servicers engage in fair and appropriate servicing practices.

9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies, and there are no comprehensive federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan.

Additionally, the newly created Bureau of Consumer Financial Protection established by the Dodd-Frank Act may soon propose additional regulations for mortgage loan servicers.

10. Compliance Schedule.

Similar emergency regulations first became effective on October 1, 2010.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The rule will not have any impact on local governments. The Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") requires all mortgage loan servicers, whether registered or exempt from registration under the law, to service mortgage loans in accordance with the rules and regulations promulgated by the Banking Board or Superintendent. The functions and powers of the Banking Board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89. Of the 67 entities which have been approved for registration or have pending applications and the nearly 400 entities which have indicated that they are exempt from the registration requirements, it is estimated that very few are small businesses.

2. Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers who are not a bank, mortgage banker, mortgage broker or other exempt organizations (the "MLS Registration Regulations") , and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "Mortgage Loan Servicer Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, sets for the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting of borrower payments, late payments, account statements, delinquencies and loss mitigation, fees and recordkeeping.

3. Professional Services:

None.

4. Compliance Costs:

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publishes quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

Compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

5. Economic and Technological Feasibility:

For the reasons noted in Section 4 above, the rule should impose no adverse economic or technological burden on mortgage loan servicers that are small businesses.

6. Minimizing Adverse Impacts:

As noted in Section 1 above, most servicers are not small businesses. Many of the requirements contained in the rule derive from federal or state laws, existing servicer guidelines utilized by Fannie Mae and Freddie Mac and best industry practices.

Moreover, the ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, help borrowers at risk of foreclosure and decrease the number of foreclosures in this state.

7. Small Business and Local Government Participation:

The Department distributed a draft of proposed Part 419 to industry representatives, received industry comments on the proposed rule and met with industry representatives in person. The Department likewise distributed a draft of proposed Part 419 to consumer groups, received their comments on the proposed rule and met with consumer representatives to discuss the proposed rule in person. The rule reflects the input received from both industry and consumer groups.

Rural Area Flexibility Analysis

Types and Estimated Numbers: Since the adoption of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), which required mortgage loan servicers to be registered with the Department unless exempted under the law, 67 entities have pending applications or have been approved for registration and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements. Only one of the non-exempt entities applying for registration is located in New York and operating in a rural area. Of the exempt organizations, all of which are required to comply with the conduct of business contained in Part 419, approximately 400 are located in New York, including several in rural areas. However, the overwhelming majority of exempt organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

Compliance Requirements: The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers that are not a bank, mortgage banker, mortgage broker or other exempt organization (the "MLS Registration Regulations") , and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the

provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2010, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Costs: The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from federal or state laws, current federal loan modification programs, servicing guidelines utilized by Fannie Mae and Freddie Mac or servicers' own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Of the 67 entities that have been approved for registration or that have pending applications, only one is located in a rural area of New York State. Of the few exempt organizations located in rural areas of New York, virtually all are banks or credit unions. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

Minimizing Adverse Impacts: As noted in the "Costs" section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas.

In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loans servicers that service not more than 12 mortgage loans or more than $5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

Rural Area Participation: The Department issued a draft of Part 419 in December 2009 and held meetings with and received comments from industry and consumer groups following the release of the draft rule. The Department also maintains continuous contact with large segments of the servicing industry though its regulation of mortgage bankers and brokers and its work in the area of foreclosure prevention. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the application, exemption and approval procedures for registration as a mortgage loan servicer, as well as financial responsibility requirements for applicants, registrants and exempted persons.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Compliance with Part 419 is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. The vast majority of mortgage loan servicers are sophisticated financial entities that service millions, if not billions, of dollars in loans and have the experience, resources and systems to comply with the requirements of the rule. Moreover, many of the requirements of the rule reflect derive from federal or state laws and reflect existing best industry practices.

New York State Gaming Commission

NOTICE OF ADOPTION

Problem Gambling Awareness and Training and to Establish a Process for Gaming Facility Patron Self-Exclusion

I.D. No. SGC-12-16-00002-A

Filing No. 508

Filing Date: 2016-05-24

Effective Date: 2016-06-08

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

Action taken: Addition of Parts 5325-5326; and amendment of section 5300.1 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(2)(p), 1344, 1345, 1362 and 1363

Subject: Problem gambling awareness and training and to establish a process for gaming facility patron self-exclusion.

Purpose: To promote best responsible gaming practices and establish a process for gaming facility patron self-exclusion.

Text of final rule: § 5300.1. Definitions.

Sections 5300.1(f) through (m) are redesignated as (g) through (n)

(f) Excluded person means a person who is excluded from a gaming facility pursuant to Part 5326 of this Subchapter.

Title 9 of the NYCRR would be amended to add new Parts 5325 and 5326, to read as follows:

PART 5325

Problem Gambling Prevention and Outreach

§ 5325.1. Purpose, scope and applicability.

The purpose of this Part is to establish standards, criteria and procedures by which the commission and gaming facility licensees maximize the effectiveness of a problem gambling prevention and outreach program established pursuant to section 5325.2 of this Part for individuals, families and communities, as well as promote best responsible gaming practices in all aspects of gaming facility activities and use principles of responsible gaming in introducing new and emerging technologies.

§ 5325.2. Problem gambling plan.

(a) At least 90 days prior to projected issuance of an operation certificate, a gaming facility licensee shall submit for commission review and approval a problem gambling plan.

(b) A problem gambling plan shall include the following:

(1) the goals of the plan, including procedures and timetables to implement the plan;

(2) identification of the individual who will be responsible for implementation and maintenance of the plan;

(3) policies and procedures that clearly illustrate:

(i) the commitment of the gaming facility licensee to train appropriate employees;

(ii) the duties and responsibilities of the employees designated to implement or participate in the problem gambling plan;

(iii) procedures for compliance with the self-exclusion program set forth in Part 5326 of this Subchapter;

(iv) procedures to identify patrons and employees exhibiting suspected or known problem gambling behavior;

(v) procedures to limit or prevent loyalty and other rewards and marketing programs for patrons exhibiting suspected or known problem gambling behavior;

(vi) procedures for providing information to individuals and responding to patron/employee requests for information in regard to the self-exclusion program and any community, public and private treatment services, gamblers anonymous programs and similar treatment or addiction therapy programs designed to prevent, treat or monitor problem gamblers and to counsel family members;

(vii) the provision of printed material to educate patrons and employees about problem gambling and to inform them about the self-exclusion program set forth in Part 5326 of this Subchapter and treatment services available to problem gamblers and their families. The gaming facility licensee shall provide examples of the materials to be used as part of its problem gambling plan, including brochures and other printed material and a description of how the material will be disseminated;

(viii) advertising and other marketing and outreach to educate the general public about problem gambling and the self-exclusion program set forth in Part 5326 of this Subchapter;

(ix) an employee training program as set forth in section 5325.3 of this Part, including sample training materials to be used and a plan for periodic reinforcement training and a certification process established by the gaming facility applicant to verify that each employee has completed the training required by the plan;

(x) procedures to prevent underage gambling;

(xi) procedures to prevent patrons impaired by drugs or alcohol, or both, from gambling; and

(xii) a signage plan containing information on gambling treatment and on the self-exclusion program set forth in Part 5326 of this Subchapter. The gaming facility licensee shall provide examples of the language and graphics to be used on the signs as part of the problem gambling plan. Additionally, the signage plan shall include posting of signs on appropriate languages other than English, depending upon the patron demographics in a facility.

(4) a list of community, public and private treatment services, gamblers anonymous programs and similar treatment therapy programs designed to prevent, treat, or monitor problem gamblers and to counsel family members and procedures for making such list available upon request; and

(5) any other information, documents and policies and procedures as the commission may request.

(c) Each gaming facility licensee shall submit to the commission for review and approval any amendments to such gaming facility licensee's problem gambling plan at least 30 days prior to the intended implementation of such amendment. The gaming facility licensee may implement a proposed amendment on the 30th calendar day following the filing of such amendment with the commission, unless the commission provides notice pursuant to subdivision (d) of this section objecting to such amendment.

(d) If during the 30-day review period the commission determines that any amendment is inconsistent with the intent of this Part, the commission shall, by delivering written notice to the gaming facility licensee, object to such amendment. Such objection notice shall:

(1) specify the nature of the objection and, when possible, an acceptable alternative; and

(2) direct that such amendment not be implemented.

(e) When an amendment has been objected to pursuant to subdivision (d) of this section, the gaming facility licensee may submit a revised amendment for review pursuant to subdivision (c) of this section.

§ 5325.3. Employee training program.

(a) The employee training program required pursuant to subparagraph (viii) of paragraph (3) of subdivision (b) of section 5325.2 shall include instruction in the following:

(1) characteristics and symptoms of problem gambling behavior;

(2) the relationship of problem gambling to other addictive behavior;

(3) techniques to be used when problem gambling is suspected or identified;

(4) techniques to be used to discuss problem gambling with patrons and advise patrons in regard to community, public and private treatment services;

(5) procedures designed to prevent serving alcohol to visibly intoxicated patrons;

(6) procedures designed to prevent persons from gambling after having been determined to be visibly intoxicated;

(7) procedures for the dissemination of written materials to patrons explaining the self-exclusion program as set forth in Part 5326 of this Subchapter;

(8) procedures for removing an excluded person, as defined in section 5300.1 of this Subchapter, an underage individual or a person on the self-exclusion list from a gaming facility, including, if necessary, procedures that include obtaining the assistance of appropriate law enforcement personnel;

(9) procedures to prevent an excluded person or a person on the self-exclusion list from being mailed any advertisement, promotion or other target mailing as soon as practicable after receiving notice from the commission that the person has been placed on the excluded person or self-exclusion list;

(10) procedures to prevent an individual under 21 years of age from receiving any advertisement, promotion or other target mailing;

(11) procedures to prevent an excluded person, an individual under 21 years of age or a person on the self-exclusion list from directly accessing or receiving complimentary services, or other like benefits; and

(12) procedures to prevent an excluded person, an individual under 21 years of age or a person on the self-exclusion list from cashing checks or vouchers that require ID on gaming facility premises.

(b) Training and training materials shall be reviewed annually to be updated, if applicable, to include new or revised information on responsible and problem gambling or empirical research.

(c) Training for employees shall be conducted by a person with specialized knowledge, skill, training and experience in responsible gaming training programs as part of the employee's orientation.

(d) Employees who have received training shall be acknowledged by the gaming facility licensee upon completion of training.

(e) Employees are required to receive periodic reinforcement training at no less than once every 12 months, starting with the year following the year in which the employee was hired. The gaming facility licensee shall retain a record of the date of the reinforcement trainings.

(f) Employees shall report suspected or identified problem gamblers to a designated casino key employee or other designated supervisory employee.

(g) Gaming facility licensees may collaborate with a person with specialized knowledge, skill, training and experience in responsible gaming employee training programs to develop an in-house or Internet-based employee training program to provide the training and reinforcement training required under this Part.

§ 5325.4. Reports.

(a) Each gaming facility licensee shall submit to the commission quarterly updates and an annual summary of its problem gambling plan and goals.

(b) The quarterly updates and annual summary must contain, at a minimum, detailed information in regard to:

(1) employee training, including the dates of live or Internet-based new-hire and annual reinforcement problem gambling training, the individual or group who conducted the training, the number of employees who completed the new hire problem gambling training and the number of employees who completed the annual reinforcement problem gambling training;

(2) an estimated amount of printed materials provided to patrons in regard to problem gambling, the self-exclusion program, responsible gambling and available treatment services;

(3) the annual dollar amount spent on the problem gambling plan for employee training, printed materials and outreach including information on sponsorships, memberships and other problem-gambling-related expenditures; and

(4) additional information including:

(i) the number of underage individuals who were denied access to the gaming floor;

(ii) the number of self-excluded individuals who were discovered on the gaming floor at the gaming facility;

(iii) the number of signs within the gaming facility that contain the approved problem gambling statement and helpline number; and

(iv) a summary of any additional employee training, problem gambling related conferences or problem gambling awareness events conducted by the gaming facility licensee or in which employees of the gaming facility licensee participated.

§ 5325.5. Signage.

Each gaming facility licensee shall post signs in a size as approved in writing by the commission that include the problem gambling assistance message as set forth in section § 5325.6 of this Part at each of the following locations:

(a) within 50 feet of each entrance and exit of the gaming facility or at a distance otherwise approved in writing by the commission;

(b) above or below the cash-dispensing opening on all automated teller machines, automated gaming voucher and coupon redemption machines and other machines that dispense cash to patrons at the gaming facility;

(c) on all gaming devices;

(d) in all gaming facility employee break areas;

(e) in the player club location or locations;

(f) in or near cage areas; and

(g) in any other location, as the commission may require.

§ 5325.6. Advertising.

(a) Advertisements used by a gaming facility licensee shall comply with Racing, Pari-Mutuel Wagering and Breeding Law section 1363 and with advertising guidelines issued by the National Council on Problem Gambling.

(b) Advertisements shall contain a problem gambling assistance message comparable to one of the following:

(1) If you or someone you know has a gambling problem, help is available. Call (877-8-HOPENY) or text HOPENY (46769);

(2) Gambling Problem? Call (877-8-HOPENY) or text HOPENY (46769); or

(3) any other message approved in writing by the commission.

(c) Unless otherwise approved in writing by the commission, the problem gambling assistance message shall meet the following requirements:

(1) for signs, direct mail marketing materials, posters and other print advertisements, the height of the font used for the problem gambling assistance message must be the greater of:

(i) the same size as the majority of the text used in the sign, direct mail marketing material, poster or other print advertisement; and

(ii) two percent of the height or width, whichever is greater, of the sign, direct mail marketing material, poster or other print advertisement;

(2) for billboards, the height of the font used for the problem gambling assistance message must be at least five percent of the height or width, whichever is greater, of the face of the billboard;

(3) for video and television, the problem gambling assistance message must be visible for either:

(i) the entire time the video or television advertisement is displayed, in which case the height of the font used for the problem gambling assistance message must be at least two percent of the height or width, whichever is greater, of the image that will be displayed; or

(ii) from the first time a table game, table game device, slot machine, associated equipment or gaming facility name is displayed or orally referenced, and on a dedicated screenshot visible for at least the last three seconds of the video or television advertisement. If the gaming facility licensee elects to use this option, the height of the font used for the problem gambling assistance message displayed:

(a) during the advertisement must be at least two percent of the height or width, whichever is greater, of the image that will be displayed; and

(b) on the dedicated screen shot must be at least eight percent of the height or width, whichever is greater, of the image that will be displayed;

(4) for websites, including social media sites and mobile phone applications:

(i) the problem gambling assistance message must be posted on each webpage or profile page and on any gaming-related advertisement posted on the webpage or profile page;

(ii) the height of the font used for the problem gambling assistance message must be at least the same size as the majority of the text used in the webpage or profile page; and

(iii) for advertisements posted on the webpage or profile page, the height of the font used for the problem gambling assistance message must comply with subparagraph (ii) of this paragraph.

PART 5326

Self-Exclusion

§ 5326.1. Request for self-exclusion.

As set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1344, the commission shall provide for the establishment of a list of persons who have chosen voluntarily to be excluded from participation in all gaming activities and to be prohibited from collecting any winnings or recovering any losses at gaming facilities. For purposes of this Part, the term "gaming facility" shall mean any room, premises or designated gaming area where gaming is conducted.

(a) A person requesting placement on the self-exclusion list shall submit to the commission a request for self-exclusion from gaming activities. The submission may be made by appearing at the commission's Schenectady office during regular business hours or at designated commission offices. Persons who are unable to travel to a commission office due to employment, financial or medical reasons may request, in writing, a reasonable accommodation in a manner or at a site and time designated at the sole discretion of the commission secretary. Nothing in this section shall require that an accommodation be granted.

(b) A request for self-exclusion from gaming activities shall include the following identifying information:

(1) name, including any aliases or nicknames;

(2) date of birth;

(3) address of current residence;

(4) telephone number;

(5) social security number, when voluntarily provided in accordance with section seven of the Privacy Act of 1974 (5 U.S.C. § 552a) or Article 6-A of the N.Y. Public Officers Law (Personal Privacy Protection Law);

(6) height, weight, gender, hair color, eye color and any other physical characteristic that may assist in the identification of the person; and

(7) a copy of a current government-issued photo identification such as a driver's license or passport.

(c) Any person requesting self-exclusion pursuant to this Part shall be required to have his or her photograph taken by the commission upon submission of the request.

(d) A self-excluded person shall update any of the information provided in subdivision (b) of this section within 30 days of any change.

(e) The length of self-exclusion requested by a person shall be one of the following:

(1) one year;

(2) five years; or

(3) lifetime.

(f) Each person requesting self-exclusion shall provide:

(1) a waiver and release that shall release and forever discharge the State of New York, the commission and its employees and agents and all gaming facility licensees and their employees and agents, from any liability to the person requesting self-exclusion and his or her heirs, administrators, executors and assigns for any harm, monetary or otherwise, that may arise out of or by reason of any act or omission relating to the request for self-exclusion or request for removal from the self-exclusion list, including:

(i) the processing or enforcement of the self-exclusion request;

(ii) the failure of a gaming facility licensee to withhold gaming privileges from, or restore gaming privileges to, a self-excluded person;

(iii) permitting a self-excluded person to engage in gaming activity in a gaming facility while on the list of self-excluded persons; and

(iv) disclosure of the information contained in the self-exclusion request or list, except for a willfully unlawful disclosure of such information; and

(2) the signature of the person submitting the request for self-exclusion, indicating acknowledgment of the following statement:

"I voluntarily request exclusion from all casino gaming activities at all licensed New York gaming facilities. I certify that the information that I have provided above is true and accurate, and that I have read and understand and agree to the waiver and release included with this request for self-exclusion. I am aware that my signature below authorizes the Commission to direct all New York gaming facility licensees to restrict my gaming activities in accordance with this request and, unless I have requested to be excluded for life, until such time as the Commission removes my name from the self-exclusion list. I am aware and agree that during any period of self-exclusion, I shall not collect any winnings or recover any losses resulting from any gaming activity at all licensed gaming facilities, and that any money or thing of value obtained by me from, or owed to me by, a gaming facility licensee as a result of wagers made by me while on the self-exclusion list shall be subject to forfeiture.";

(g) The commission shall document a description of the type of identification credentials examined containing the signature of a person requesting self-exclusion, and whether said credentials included a photograph or general physical description of the person.

(h) The commission shall document the signature of the commission employee authorized to accept a self-exclusion request, indicating that the signature of the person on the request for self-exclusion appears to agree with that contained on the requester's identification credentials and that any photograph or physical description of the person appears to agree with the requester's actual appearance.

(i) Each self-excluded person shall acknowledge that no gaming facility shall allow such person to redeem any points or complimentaries earned by such person as of the time such person completes the request for placement on the self-exclusion list. Points or complimentaries refer to credits

earned by a person under the terms of a licensee's marketing program and shall include, without limitation, food vouchers or coupons, chip or free play vouchers or coupons, hotel complimentaries or any other such noncash benefit owing to such person. The terms and conditions of the player club shall remain in effect during the period of self-exclusion.

(j) Each person requesting self-exclusion for one or five years shall be advised that if such person is found violating the rules set forth in this Part, in addition to any other penalty that may otherwise be imposed, the commission shall revise the start date of such person's self-exclusion period to correspond with the date such violation occurred.

§ 5326.2. Self-exclusion list.

(a) The commission shall maintain the official self-exclusion list and notify each gaming facility licensee of additions to or deletions from the list within five business days of the verification of the information received pursuant to section 5326.1 of this Part.

(b) The notice that the commission provides to gaming facility licensees shall include the information provided pursuant to subdivision (b) of section 5326.1 of this Part and a copy of the photograph taken by the commission pursuant to subdivision (c) of section 5326.1 of this Part.

(c) A gaming facility licensee shall maintain a current copy of the self-exclusion list and ensure that all appropriate employees and agents of the gaming facility licensee are promptly notified of any addition to or deletion from the list within three business days after the day notice is provided to each gaming facility licensee.

(d) Gaming facility licensees, employees or agents thereof may not disclose the name of, or any information about, a person who has requested self-exclusion to anyone other than employees and agents of the gaming facility licensee whose duties and functions require access to the information. Notwithstanding anything to the contrary in this subdivision, a gaming facility licensee may disclose the identity of a self-excluded person to appropriate employees of other gaming facility licensees in the State of New York or affiliated gaming entities in other jurisdictions for the limited purpose of assisting in the proper administration of responsible gaming programs.

(e) A self-excluded person shall not collect in any manner any winnings or recover any losses arising as a result of any gaming activity for the period of time that such person is on the commission's self-exclusion list, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1345(1).

(f) Winnings of a self-excluded person shall be subject to forfeiture and deposited into the commercial gaming revenue fund, subject to the requirements of Racing, Pari-Mutuel Wagering and Breeding Law 1345(3).

(g) For the purposes of this section, winnings issued to, found on or about, or redeemed by, a self-excluded person shall be presumed to constitute winnings subject to remittance to the commission.

§ 5326.3. Duties of gaming facility licensees.

(a) A gaming facility licensee shall train its employees and establish procedures to:

(1) identify a self-excluded person when present on the gaming floor, in areas off the gaming floor where gaming activity is conducted or engaging in gaming-related activities and, upon identification, immediately notify, unless section 5326.5 of this Part applies, the following persons:

(i) employees of the gaming facility licensee whose duties include the removal of self-excluded persons;

(ii) the commission's designated staff at the licensed facility; and

(iii) if the gaming facility licensee deems appropriate, a law enforcement agency;

(2) refuse wagers from and deny gaming privileges to a self-excluded person;

(3) deny gaming-related activities including casino credit, check-cashing privileges, player club membership, complimentary goods and services, redemption of any previously earned complimentary goods and services, gaming junket participation and other similar privileges and benefits to a self-excluded person;

(4) ensure that self-excluded persons do not receive, either from the gaming facility licensee or any agent thereof, gaming junket solicitations, targeted mailings, telemarketing promotions, player club materials or other promotional materials relating to gaming activities at its licensed facility;

(5) comply with section 5326.2 of this Part; and

(6) make available to patrons written materials explaining the self-exclusion program and resources for treatment and assistance.

(b) A gaming facility licensee shall submit amendments to the procedures and training materials required under subdivision (a) of this section to the commission for review and approval at least 30 days prior to the intended implementation date of such amendments. Such gaming facility licensee may implement the amendments on the 30th calendar day following the submission of such amendments unless such gaming facility licensee receives a notice under subdivision (d) of this section objecting to such amendments.

(c) If during the 30-day review period the commission determines that an amendment is inconsistent with the intent of this Part, the commission shall, by written notice to the gaming facility licensee, object to such amendment. The objection shall:

(1) specify the nature of the objection and, when possible, an acceptable alternative; and

(2) direct that the amendments not be implemented until approved by the commission.

(d) When amendments to procedures and training materials have been objected to pursuant to subdivision (c) of this section, a gaming facility licensee may submit revised amendments in accordance with subdivision (b) of this section.

(e) Each gaming facility licensee shall post signs within 50 feet of each entrance and exit of the gaming facility or at a distance otherwise approved in writing by the commission indicating that a person who is on the self-exclusion list will be subject to arrest for trespassing pursuant to Penal Law sections 140.10, 140.15 and 140.17 if such person is on the gaming floor, in areas off the gaming floor where gaming activity is conducted or engaging in gaming-related activities in the gaming facility. The text and font size of such signs shall be submitted to the commission for review and approval.

§ 5326.4. Removal from self-exclusion list.

For a person who is self-excluded for one year or five years, upon the conclusion of such period of self-exclusion, such person shall be removed from the self-exclusion list unless such person requests in writing, no later than 30 days prior to the expiration of such self-exclusion period, that the commission extend the term of such self-exclusion.

§ 5326.5. Exceptions for individuals on the self-exclusion list.

The prohibition against allowing self-excluded persons to be on the gaming floor or in areas off the gaming floor where gaming activity is conducted shall not apply to a person who is on the self-exclusion list, if all of the following apply:

(a) the individual is carrying out the duties of employment or incidental activities related to employment;

(b) the gaming facility licensee's security department has received prior notice, unless it was impracticable to have done so;

(c) access to the gaming floor or areas off the gaming floor where gaming activity is conducted is limited to the time necessary to complete the individual's assigned duties; and

(d) the individual does not otherwise engage in gaming activities.

§ 5326.6. Disclosure of information related to persons on the self-exclusion list.

(a) Information furnished to or obtained by the commission pursuant to this Part shall be deemed confidential and not be disclosed as disclosure would constitute an unwarranted invasion of personal privacy under the provisions of the Public Officers Law section 89(2);

(b) The commission may periodically release to the public demographics and general information in regard to the self-exclusion list, such as the total number of persons on the list, gender breakdown and age range.

(c) The commission may make selected data available, upon request, for the limited purpose of assisting in the proper administration of responsible gaming programs.

Final rule as compared with last published rule: Nonsubstantive changes were made in Parts 5323 and 5324.

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, Schenectady, NY 12305, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

The Commission has renumbered the following regulations proposed in the March 23, 2016 State Register: Part 5323 Problem Gambling, Prevention and Outreach to Part 5325 and Part 5324 Self-Exclusion to Part 5326. The renumbering is not a substantive amendment to the proposed regulations and, therefore, does not necessitate a revision to the previously published RIS and consolidated RFA, RAFA and JIS statement.

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Consequences for Commission Licensees, Agents, and Other Regulated Parties Who Violate Prohibition on Underage Wagering

I.D. No. SGC-12-16-00009-A
Filing No. 509
Filing Date: 2016-05-24
Effective Date: 2016-06-08

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

Action taken: Amendment of sections 4003.39, 4122.6, 4404.10, 4602.1, 4622.2, 4622.3, 5001.27, 5007.5, 5007.13, 5013.3 and 5117.1 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104, 108 and 116; Tax Law, sections 1601, 1604, 1610 and 1612; General Municipal Law, sections 195-a and 486

Subject: Consequences for Commission licensees, agents, and other regulated parties who violate prohibition on underage wagering.

Purpose: To further enforce the age restriction laws for gambling by imposing fines, suspensions and/or license revocation.

Text or summary was published in the March 23, 2016 issue of the Register, I.D. No. SGC-12-16-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, Acting Secretary, New York State Gaming Commission, One Broadway Center, 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 two comments, one from the New York Gaming Association (NYGA) and one from six collaborating trade associations representing convenience stores, grocery stores, gas stations, taverns and other retail establishments that are licensed to sell New York Lottery products in regard to this proposed rulemaking. The Commission has considered each of the comments received and decided that no changes were appropriate at this time.

NYGA stated that the proposed regulations are not necessary, inadvisably remove Commission discretion to determine penalties, are unduly harsh in not allowing consideration of mitigating circumstances and impose unreasonable new burdens on operators. In general, NYGA opposed fixed penalties for violations that do not allow for the exercise of Commission discretion. NYGA asserted that facts and circumstances can vary significantly and that "unintentional" violations should not be punished as severely as violations involving "genuine misconduct or fault." NYGA suggested that the importance of advance notice of possible penalties could be addressed through suggested, rather than mandated, penalties. In particular, NYGA stated that the proposed fines for allowing underage wagering at race tracks are excessive, especially with no provision for circumstances in which a minor produces false identification. NYGA noted that with respect to underage violations at video lottery facilities, the proposed penalties would be unduly harsh in circumstances in which apparent violations are remedied quickly (for example, within minutes, or when a minor crosses the gaming floor to use a restroom). NYGA also stated that it would be unfair for multiple violations to accrue from a single incident.

The Commission considered NYGA's comments and did not make any amendments to the proposed rulemaking in response. The Commission is considering whether affirmative defenses similar to those existing in regard to video lottery would be appropriate in other regulated forms of gaming and, if so, will suggest a proposed rulemaking to address those concerns. With regard to the examples of minors on video lottery gaming floors, the Commission would retain discretion to determine whether a violation occurred. Only when it is determined that a violation occurred would the prescribed sanctions apply. For example, in the event the proposed rules were adopted, a minor quickly entering and exiting a gaming floor to use a restroom might, under the circumstances, not be charged as a violation at all. Similarly, an incident in which two minors accompany an adult on a gaming floor might, under the circumstances, be charged as one violation, which would result in one level of fine, not two levels concurrently, as NYGA suggests might be possible.

The second public comment was submitted jointly by the Food Industry Alliance of New York State, the Empire State Restaurant & Tavern Association, the Bodega Association of the United States, the New York State Association of Service Station and Repair Shops, the New York Association of Convenience Stores and the Long Island Gasoline Retailers Association (the "Joint Comment"). The Joint Comment stated that the proposed penalty structure for selling lottery tickets to minors seems to be reasonable. The Joint Comment opposed enforcement of the proposed penalties in regard to lottery vending machines until the Commission retrofits each lottery vending machine with an identification-card reader. The writers of the Joint Comment believed that it is too difficult to monitor a vending machine. The Joint Comment urges that a hearing process should afford lottery retailers an opportunity to defend themselves. The Joint Comment recommends that it be made unlawful for a person over the age of 18 to provide a lottery ticket to an underage customer. The Joint Comment states that language clarifying the meaning of the multiple-violation penalty structure would be beneficial. The Joint Comment states that the regulations should set forth which agency or agencies will be authorized to carry out underage lottery sale enforcement, that retailers should "know up-front what the rules of engagement are" and that an enforcement plan should be detailed and published for comment before put into practice.

The Commission considered the Joint Comment and did not make any amendments to the proposed rulemaking.

Improved technology would be useful to promote compliance in regard to lottery ticket vending machines, but is not necessary. Furthermore, the Commission would retain discretion to determine whether a violation had occurred at all in regard to a violation involving a lottery ticket vending machine.

With regard to hearings for lottery retailers, the Commission is considering whether affirmative defenses similar to those existing in regard to video lottery would be appropriate in other regulated forms of gaming and, if so, will suggest a proposed rulemaking to address that concern, which would include hearing procedures.

With regard to the provision of lottery tickets by purchasers who are over the age of 18 to underage persons, the legislature has made the policy choice that persons under the age of 18 may receive lottery tickets and be entitled to lottery prizes, see Tax Law § 1613(b) (providing for procedures for paying prizes to minors), even though lottery tickets may not be sold to persons under the age of 18. See Tax Law § 1610(a).

With regard to the multiple-violation penalty structure, the Commission believes that the intent is clear to measure the potential penalty for a subsequent violation from the time of the initial violation from which the time period is measured. For example, if violations occur on January 1, 2017, June 1, 2017 and April 1, 2018, to use the example in the Joint Comment, the January 1, 2017 violation would result in a written warning, the June 1, 2017 violation would result in a $500 fine (as a second violation within one year of January 1, 2017) and the April 1, 2018 violation would result in a $500 fine (as a second violation within one year of June 1, 2017). The Commission will consider the advisability of providing examples in written direction to retailers.

With regard to enforcement implementation, the Commission does not believe that the description of enforcement methods is an appropriate matter for regulation.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Voidable Claims Based on Race Day Samples

I.D. No. SGC-23-16-00006-P

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

Proposed Action: Amendment of sections 4038.19(a) and 4109.7(a) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 301(1)

Subject: Voidable claims based on race day samples.

Purpose: To enhance the safety and integrity of horse racing while generating a reasonable return for government.

Text of proposed rule: Subdivision (a) of Section 4038.19 of 9 NYCRR would be amended as follows:

§ 4038.19. Certain voidable claims.

(a) [Post race] *Race-day* positive. Should the analysis of a [post-race] *race-day* blood or urine sample taken from a claimed horse result in a [post-race] positive test, or if the *race-day* test results of a previous race have not been cleared by the date of the claim and result in a [post-race]

positive test, the claimant's trainer shall be promptly notified by the stewards and the claimant shall have the option to void said claim within five days of such notice by [the claimant's] *such* trainer. An election to void a claim shall be submitted in writing to the stewards by the claimant or the claimant's trainer. In the event the claim is voided, the horse shall be returned to the owner of the horse who subjected the horse to claiming in the race from which the positive test resulted.

* * *

Subdivision (a) of Section 4109.7 of 9 NYCRR would be amended as follows:

§ 4109.7. Certain voidable claims.

(a) [Post-race] *Race-day* positive. Should the analysis of a [post-race] *race-day* blood or urine sample taken from a claimed horse result in a [post-race] positive test, *or if the race-day test results of a previous race have not been cleared by the date of the claim and result in a positive test,* the claimant's trainer shall be promptly notified in writing by the judges and the claimant shall have the option to void said claim within five days of receipt of such notice by such trainer. An election to void a claim shall be submitted in writing to the judges by the claimant or such claimant's trainer.

* * *

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2), 104(1), (19), and 301(1). Under Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Under Section 301, which applies to only harness racing, the Commission is authorized to supervise generally all harness race meetings.

2. Legislative objectives: To enable the Commission to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: This rule making is necessary to amend the Commission's claiming rules to permit a claimant of any horse to void the claim when samples collected the day of the claiming race test positive for an impermissible drug administration. The rule making will also permit a claimant of a Standardbred horse to void the claim based on an equine drug positive in the race before the claiming race, when such positive test result is revealed only after the claiming race, as already permitted by the Commission's rules for Thoroughbred racing.

The current rules permit a claimant of a Thoroughbred or Standardbred horse to void a claim when samples collected from the horse after racing, called post-race samples, show in later laboratory testing that the claimed horse was raced in the claiming race in violation of Commission rules restricting the use of drugs and certain other substances in race horses. 9 NYCRR §§ 4038.19(a) and 4109.7(a). This permits a claimant to avoid owning a horse that was illegally drugged while under the care and control of the previous owner and trainer. Such illegal drugging can contribute to a false impression of the health and racing ability of the horse, key considerations that a prospective claimant considers before entering a claim for a horse. Allowing the claimant to void a claim when laboratory tests later reveal such impermissible drug use ensures greater fairness in the claiming transactions. It also serves as a disincentive to owners or trainers who might attempt to secure a higher price for a claiming horse by manipulating its health and performance with drugs. Such misconduct not only misrepresents the horse's condition, it sometimes endangers the health of the horse and other participants in the claiming race.

The Commission has adopted per se regulatory thresholds this year that apply to all samples collected on race day, even before the race. The positive test results based on such race-day samples should also permit a claimant to void a claim because of impermissible drug administrations to the claimed horse.

The proposal would amend the governing rules to allow a claimant to void a claim when any sample collected on race day, not just post-race samples, are later tested and demonstrate that the claimed horse was impermissibly drugged.

The proposal would also amend subdivision (a) of section 4109.7 to permit the claimant of a Standardbred horse to void a claim based on an equine drug positive from the race preceding the claiming race, when such positive drug test result is revealed only after the claiming race. The race before a claiming race is influential to prospective claimants, who should be able to void a claim, entered before the start of the next (claiming) race, upon learning only later that the prior race was misleading because of impermissible drug administrations to the horse.

This protection was extended to the claimants of Thoroughbred horses in 2006, and has worked well to provide additional protection to claimants and a further disincentive to those who might seek to manipulate horses with drugs.

Finally, the proposal makes various changes in style to clarify the rules.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will not add any new costs. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate pari-mutuel harness racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: N/A.

5. Local government mandates: None. The Commission is the only governmental entity authorized to regulate pari-mutuel thoroughbred racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: No relevant rules or other legal requirements of the state and/or federal government exist that duplicate, overlap or conflict with this rule.

8. Alternatives. The Commission considered no alternatives to the adoption of this rule.

9. Federal standards: There are no minimum standards of the Federal government for this or a similar subject area.

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

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

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

The amendments would permit a claimant, who currently can void a claim when post-race samples test positive after the claiming race, to void a claim when any race-day sample tests positive after the claiming race. The Commission recently adopted regulatory thresholds that apply to any sample collected on race day. The proposal will ensure that a claimant may void the claim of a drugged horse when such drugging is revealed by any test of the Commission.

The amendments would also update the Standardbred rule to correspond to the rule for Thoroughbred claims, by allowing a claimant to void a claim upon learning after the claiming race that the claimed horse in its preceding race was raced while drugged.

These amendments will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Criteria for the Licensing, Conduct and Operation of Independent Testing Laboratories

I.D. No. SGC-23-16-00014-P

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

Proposed Action: Addition of Part 5318; and amendment of sections 5100.2 and 5118.6 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), 1303, 1326(1) and 1335(8); Lottery for Education Law (Tax Law, art. 34), section 1617-a(c)

Subject: Criteria for the licensing, conduct and operation of independent testing laboratories.

Purpose: To govern the licensing, conduct and operation, testing and reporting requirements of independent testing laboratories.

Substance of proposed rule (Full text is posted at the following State website:www.gaming.ny.gov): The addition of Part 5318 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission ("Commission") to prescribe rules requiring that gaming facility and video lottery facility licensees not operate any slot machine, video lottery gaming system or other gaming equipment unless such have been certified by a licensed independent testing laboratory. These rules also establish the standards for licensing and operating an independent testing laboratory as well as the required notification and reporting of inspection and certification results.

Section 5318.1 sets forth the requirement that a gaming facility licensee not operate any slot machine or other gaming equipment unless such has been certified by a licensed independent testing laboratory. Section 5318.2 sets forth licensing requirements for an independent testing laboratory. Section 5318.3 sets forth additional standards for the issuance of a license to an independent testing laboratory. Section 5318.4 sets forth notification and reporting requirements. Section 5318.5 sets forth requirements for the conduct and operation of a licensed independent testing laboratory. Section 5318.6 sets forth the reporting of inspection and certification results.

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1307(1) authorizes the Commission to adopt regulations that it deems necessary to protect the public interest in carrying out the provisions of Racing Law Article 13.

Racing Law section 1303 authorizes the Commission to utilize the services of an independent testing laboratory that has been qualified and approved by the Commission to perform the testing of slot machines and other gaming equipment and to utilize applicable data.

Racing Law section 1326(1) requires the Commission to regulate the method and form of vendor licensing including the licensing of independent testing laboratories.

Racing Law section 1335(8) mandates the testing of all slot machines and other gaming equipment prior to being used to conduct gaming.

Lottery for Education Law (Article 34 of the Tax Law) section 1617-a(c) authorizes the Commission to promulgate rules and regulations that it deems necessary to carry out the implementation of video lottery gaming.

2. LEGISLATIVE OBJECTIVES: The above referenced statutory provisions carry out the legislature's stated goal "to tightly and strictly" regulate casinos "to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state and to prevent organized crime from any involvement in the casino industry" as set forth in Racing Law section 1300(10).

3. NEEDS AND BENEFITS: The proposed rules implement the above listed statutory directives regarding the utilization of independent testing laboratories that are qualified and approved by the Commission to perform the testing of slot machines, video lottery gaming systems and other gaming equipment. The rules provide specificity with respect to the above listed statutory directives to assure a credible, independent and secure testing process for all games, gaming devices, associated equipment, cashless wagering systems, inter-casino linked systems, mobile gaming systems and interactive gaming systems and any components thereof or modifications thereto. The rules represent best practices in the testing of slot machines, video lottery gaming systems and other gaming equipment and are the result of input from stakeholders and other gambling jurisdiction best practices and regulation. Best practices addressed in the proposed rules include the payment of independent testing laboratory service fees, licensing criteria, the conduct and operation of independent testing laboratories, notification and reporting requirements and inspection and certification results.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: Gaming facility and video lottery facility licensees are responsible for the payment of any fees imposed by an independent testing laboratory for services performed. Those fees will be approximately $3 to $4 million annually. Gaming facility and video lottery facility licensees or licensed independent testing laboratories are responsible for the payment of any costs associated with the Commission's review or approval of (i) slot machine, video lottery gaming system and other gaming equipment testing, and (ii) independent testing laboratory inspection, certification or review. Those fees will be approximately $500,000 to $750,000 annually.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The costs to the Commission for the implementation of and continued administration of the rule will be negligible given that all such costs are the responsibility of the gaming facility and video lottery facility licensees or licensed independent testing laboratories. These rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. LOCAL GOVERNMENT MANDATES: There are no local government mandates associated with these rules.

6. PAPERWORK: These rules impose paperwork burdens on independent testing laboratories to apply for licensure, perform slot machine, video lottery gaming system and other gaming equipment testing and report on results. Examples of paperwork burdens on the independent testing laboratories include the drafting and maintenance of audits and reviews as well as inspection and certification results.

7. DUPLICATION: These rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulation. Alternatives were discussed and considered with stakeholders and compared to other jurisdictions regulations. These included the definition of associated equipment; the allocation and payment of independent testing laboratory fees; the best practices concerning conduct and operation of an independent testing laboratory; the appropriate entity to receive testing and certification results; the appropriate criteria included in the testing and certification results; and the best practices concerning reciprocity of independent testing laboratory results from other jurisdictions. The Commission is also required to promulgate these rules pursuant to Racing Law sections 1303 and 1335(8).

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York; it is purely a matter of New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

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

These rules will not have any adverse impact on small businesses, local governments, jobs or rural areas. These rules set forth the requirement that gaming facility and video lottery facility licensees not operate slot machines, video lottery gaming systems or any other gaming equipment unless such have been certified by a licensed independent testing laboratory. These rules also establish the standards for licensing and operating an independent testing laboratory as well as the required notification and reporting of inspection and certification results. These rules apply only to licensed gaming facilities and video lottery facilities.

These rules do not impact local governments or small businesses as it is not expected that any local government or small business will hold a gaming facility or video lottery facility license.

These rules impose no adverse impact on rural areas. These rules apply uniformly throughout the state and solely apply to licensed gaming facilities and video lottery facilities.

These rules will have no adverse impact on job opportunities.

These rules will not adversely impact small businesses, local governments, jobs, or rural areas. Accordingly, a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement are not required and have not been prepared.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Thoroughbred Restricted Time Periods for Various Drugs

I.D. No. SGC-39-15-00005-RP

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

Proposed Action: Amendment of section 4043.2(a) and (e) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Thoroughbred restricted time periods for various drugs.

Purpose: To enhance the integrity and safety of thoroughbred horse racing.

Text of revised rule: Section 4043.2 of 9 NYCRR would be amended as follows:

§ 4043.2. Restricted use of drugs, [medication] *medications* and other substances.

Drugs and medications are permitted to be used only in accordance with the following provisions.

(a) The following substances are permitted to be used at any time up to race time:

(1) topical applications (such as antiseptics, ointments, salves, [DMSO,] *DMSO* leg rubs, leg paints and liniments) which may contain antibiotics but do not contain benzocaine, steroids or other drugs;

* * *

(e) The following substances are permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete:

* * *

(14) the following nonsteroidal anti-inflammatory drugs ([NSAID's] *NSAIDs*): [Phenylbutazone (e.g., Butazolidin)] *diclofenac*, [Flunixin] *flunixin* (e.g., Banamine), *ketoprofen (e.g., Orudis),* meclofenamic acid (*e.g.,* Arquel), naproxen (e.g., Naprosyn, Equiproxen), [Ketoprofen (e.g., Orudis)] *and phenylbutazone (e.g., Butazolidin)*.

* * *

(20) an oral or intravenous administration of dimethyl sulfoxide (i.e., DMSO).

* * *

Revised rule compared with proposed rule: Substantial revisions were made in section 4043.2(a)(1) and (e)(20).

Text of revised proposed rule and any required statements and analyses may be obtained from Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, PO Box 7500, Schenectady, NY 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

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

Revised Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law Sections 103(2), 104 (1), (19) and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to protect the integrity of pari-mutuel horse races and the health and safety of thoroughbred horses and human participants in pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This revised rulemaking is necessary to adjust the Commission's restricted time period governing the administration of the drugs dimethyl sulfoxide, i.e., DMSO, and diclofenac, a non-steroidal anti-inflammatory drug ("NSAID"), to be consistent with the regulatory thresholds for the drugs that have been adopted by the Commission.

The proposal would amend the restricted time period for DMSO to permit the oral or intravenous administration of DMSO within 48 hours of a race. Currently, in 9 NYCRR, topical administration of DMSO is permitted at any time under Section 4043.2(a)(1) and other administrations of DMSO are not permitted until one week before a horse's next race under the restrictions of Section 4043.2(h). The Commission has adopted a regulatory threshold on race day for DMSO that is consistent with an oral or intravenous administration of DMSO at least 48 hours before a horse's next race. The proposed amendment would add such administrations of DMSO to the list, in subdivision (e) of Section 4043.2, of drugs that may be administered until 48 hours before racing. A 48-hour restricted time period for DMSO will also provide an assurance to thoroughbred horsepersons that compliance would protect them from violation of such threshold.

The Commission will continue to permit topical use of DMSO at any time. The most recent indications from the Racing Medication & Testing Consortium are that such administrations of DMSO will not result in violations of the new regulatory threshold.

The proposal would also amend subdivision (e) Section 4043.2 to add diclofenac to the list of permissible NSAIDs that appears at paragraph 14. This change will make the restricted time period for diclofenac, which currently is regulated for one week before racing pursuant to subdivision (h) of Section 4043.2, consistent with the regulatory threshold that the Commission has adopted for diclofenac. A 48-hour restricted time period will provide an assurance to thoroughbred horsepersons that compliance would protect them from violation of such threshold.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons. The rule merely revises an existing rule in regard to allowable time of administration of various medications.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the State, or local government. The rule will be implemented using the Commission's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed based upon the fact that the rule does not create any new mandatory duty or obligation, utilizes an existing regulatory framework and medication testing program, and merely modifies a medication rule.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives. This rule amendment is to assure horsepersons that the Commission's restricted time periods are consistent with the separately proposed national regulatory laboratory thresholds for these equine drugs that have been recommended by the RMTC and the ARCI. No other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: Regulated persons will be able to achieve compliance with the rule upon publication of a Notice of Adoption in the New York State Register.

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

This rulemaking proposal does not necessitate a revision to the previously published analyses and statement and does not have an adverse effect on small businesses, local governments, jobs, or rural areas.

Assessment of Public Comment

Two public comments were received in response to the publication of the proposed rule-making in the September 30, 2015 State Register. The Racing Medication & Testing Consortium wrote to recommend that the Commission continue to permit topical use of DMSO at any time, and has indicated that it will be revising its recommended withdrawal guideline for topical use of DMSO from 48 hours before racing to race day. The New York Thoroughbred Horseman's Association wrote to request that race-day topical use of DMSO continue to be permitted. The Commission agrees with these suggestions and its revised proposal will result in greater ease of enforcement of agency rules that restrict the use of equine drugs in a manner that promotes the participation of racehorses in New York and enhances the health and safety of horses and jockeys.

Department of Health

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

School Immunization Requirements

I.D. No. HLT-23-16-00007-P

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

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

Statutory authority: Public Health Law, sections 2164 and 2168

Subject: School Immunization Requirements.

Purpose: To update school immunization and NYSIIS regulations.

Text of proposed rule: Paragraph (1) of Subdivision (f) of Section 66-1.1 is amended to read as follows:

(f) Fully immunized means that an adequate dosage and number of

doses of an immunizing agent licensed by the United States Food and Drug Administration has been received commensurate with the child's age, or the child has been demonstrated to have immunity as defined in [subdivision (g) of] this section.

(1) For those immunizations required by section 2164 of the Public Health Law only, the number of doses that a child [should] *shall* have at any given age, and the minimum intervals between these doses, [is determined by] *shall be in accordance with* the Advisory Committee on Immunization Practices Recommended Immunization Schedules for Persons Aged 0 through 18 Years*,* issued by the Advisory Committee on Immunization Practices (ACIP) as set forth in Morbidity and Mortality Weekly Reports (MMWR) [February 7, 2014 Volume 63 (No. 5)] *February 5, 2016 Volume 65 (No. 4)* and posted on the Centers for Disease Control and Prevention website at [http://www.cdc.gov/vaccines/schedules/index.html] *http://www.cdc.gov/vaccines/schedules*. The department will amend this section as necessary to reflect revised ACIP Recommended Immunization Schedules. Any child who completed an immunization series following minimum intervals prescribed in an ACIP Recommended Immunization Schedule pre-dating February [2014] *2016* shall continue to be deemed in compliance as long as the number of vaccine doses the child received conforms to the current ACIP Recommended Immunization Schedule.

The Advisory Committee on Immunization Practices Recommended Immunization Schedules for Persons Aged 0 through 18 Years issued by the ACIP as set forth in the MMWR [February 7, 2014 Volume 63 (No. 5)] *February 5, 2016 Volume 65 (No. 4)* is hereby incorporated by reference, with the same force and effect as if fully set forth at length herein. It is available for public inspection and copying at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237. Copies are also available from the United States Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), Atlanta, Georgia 30333, and from the CDC website at [http://www.cdc.gov/mmwr] *http://www.cdc.gov/vaccines/schedules/*.

(i) For all vaccinations except as provided in subparagraphs (ii) through [(vi) of this paragraph] *vii below*, children shall be assessed upon school entry or attendance, and annually thereafter, and [be found to] be fully immunized commensurate with their age.

(ii) [If they had] *Any child who has* satisfied the immunization requirements in effect in regulation on June 30, 2014, [children] entering [eighth] *ninth* through twelfth grade (or comparable age level grade equivalents) in the [2015-2016] *2016-2017* school year only*,* shall be deemed in compliance with the immunization requirements set forth in this section, including those set forth in subparagraphs (iii) through (vi) below, until [they graduate] *such child graduates* from school*; provided, however, that such child shall comply with the meningococcal vaccination requirement set forth in subparagraph (vii) below*.

(iii) Any child entering or attending kindergarten through twelfth grade must have received the following vaccine doses, with the minimum intervals between these doses as established by the Advisory Committee on Immunization Practices Recommended Immunization Schedules for Persons Aged 0 through 18 Years incorporated by reference herein:

(a) Two adequate doses of measles containing vaccine, two adequate doses of mumps containing vaccine, and at least one adequate dose of rubella containing vaccine; and

(b) Five adequate doses of diphtheria and tetanus toxoids and acellular pertussis vaccine. If, however, the fourth dose of diphtheria and tetanus toxoids and acellular pertussis vaccine was given at forty-eight months of age or older, only four adequate doses of vaccine are required. The final dose of vaccine must be received no sooner than forty-eight months of age. Doses given after age seven should start with one dose of Tdap.

(iv) For poliomyelitis vaccination, beginning on or after July 1, 2014, children shall be assessed upon entry or attendance to kindergarten and sixth grade, and/or their equivalent grades, and must have received four adequate doses of poliomyelitis vaccine. If, however, the third adequate dose of poliomyelitis vaccine was given at forty-eight months of age or older, only three adequate doses of vaccine are required. The final dose of vaccine must be received no sooner than forty-eight months of age. As the students enrolling in kindergarten and sixth grade move up a grade level each year, the students enrolling in those higher grades, or grade equivalent, must be appropriately immunized against poliomyelitis. *Beginning on or after September 1, 2016, children shall be assessed upon entry or attendance to child-caring centers, day-care agencies, nursery schools and pre-kindergarten programs and must be fully immunized against poliomyelitis commensurate with their age.*

(v) For varicella vaccination, beginning on and after July 1, 2014, children shall be assessed upon entry or attendance to kindergarten and sixth grade, and/or their equivalent grades, and must have received two adequate doses of vaccine. As the students enrolling in kindergarten and sixth grade move up a grade level each year, the students enrolling in those higher grades, or grade equivalent, must be appropriately immunized against varicella.

(vi) By entry to sixth grade or a comparable age level grade equivalent, any child eleven years of age or older must have received one dose of a booster immunization containing tetanus and diphtheria toxoids and acellular pertussis vaccine.

(vii) For meningococcal vaccination, beginning on and after September 1, 2016, children shall be assessed upon entry or attendance to seventh grade, or a comparable age level grade equivalent, and must have received one adequate dose of vaccine upon such entry or attendance. Children shall be assessed upon entry or attendance to twelfth grade, or a comparable age level grade, and must have received two adequate doses of meningococcal vaccine upon such entry or attendance. If, however, the first dose of meningococcal vaccine was given at sixteen years of age or older, then only one adequate dose of meningococcal vaccine is required for twelfth grade.

Paragraph (6) of subdivision (a) of section 66-1.2 is amended to read as follows:

(6) Registrants shall mean all individuals for whom an immunization or exemption to immunization *or blood lead analysis* is recorded in the system, at any time following January 1, 2008 for NYSIIS and January 1, 1994 for the CIR. Registrants also include individuals born in New York State (outside of New York City) on or after January 1, 2004 for NYSIIS or born in New York City on or after January 1, 1996 for the CIR.

Paragraph (8) of subdivision (a) of section 66-1.2 is amended to read as follows:

(8) Authorized users of NYSIIS and the CIR shall mean the following categories of users, who are permitted access only to records of registrants falling within their administrative or clinical responsibilities. An authorized user in a category below may designate the ability to access the system to others where indicated.

(i) health care providers who order an immunization, and their designees, including Regional Health Information Organizations or other Health Information Technology entities as defined in 18 NYCRR section 504.9(h)(2);

(ii) local health districts;

(iii) commissioners of local social services districts and their designees;

(iv) the Commissioner of the Office of Children and Family Services and his/her designees;

(v) schools;

(vi) third party payers;

(vii) WIC programs;

(viii) colleges;

(ix) professional and technical schools; [and]

(x) children's overnight camps and summer day camps[.]*;*

(xi) registered professional nurses; and

(xii) pharmacists authorized to administer immunizations pursuant to subdivision two of section sixty-eight hundred one of the Education Law.

Paragraph (1) of subdivision (b) of section 66-1.2 is amended to read as follows:

(b) Mandated Reporting

(1) Mandated reporters to NYSIIS and the CIR include any health care provider, as defined in [paragraph (a)(3) of this] section *66-1.2* who administers an immunization *or conducts a blood lead analysis of a sample*.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for school entry immunization requirements resides in Title 6 of Article 21of the Public Health law (PHL): Poliomyelitis and Other Diseases. PHL § 2164 mandates the vaccination of children between the ages of two months and eighteen years as a condition of entry or attendance to school. PHL § 2164(10) authorizes the commissioner to promulgate regulations to effectuate the provisions and purposes of PHL § 2164.

The authority for the statewide immunization information system is PHL § 2168, which establishes the New York State Immunization Information System (NYSIIS). PHL § 2168(13) authorizes the commissioner to promulgate regulations to effectuate the provisions of PHL § 2168.

Legislative Objectives:

The legislative objective of PHL § 2164 includes the protection of the health of residents of the state by assuring that children are immunized according to current recommendations before attending child-caring centers, day care agencies, nursery schools, pre-kindergarten, or school, to prevent the transmission of vaccine preventable disease and accompanying morbidity and mortality. The legislative objective of PHL § 2168 is to establish a comprehensive database of complete, accurate and secure immunization records.

Needs and Benefits:

The purpose of the proposed regulatory changes is to update the existing school immunization requirements to ensure that children entering grades seven and twelve (or comparable age level equivalents) receive an adequate number of meningococcal vaccines consistent with recent statutory amendments; to ensure that children entering or attending child-caring centers, day-care agencies, nursery schools, or pre-kindergarten programs receive an adequate number of poliomyelitis vaccines; and to conform the regulations for the New York State Immunization Information System (NYSIIS) to statutory amendments.

In October 2015, Governor Andrew M. Cuomo signed into law Chapter 401 of the Laws of 2015, which amended PHL § 2164 to require vaccination against meningococcal disease for children entering or attending seventh and twelfth grades on or after September 1, 2016. Meningococcal meningitis is a serious disease, which can lead to death within hours. Survivors may be left with severe disabilities, including the loss of limbs, cognitive deficits, paralysis, deafness, or seizures. ACIP provides immunization advice and guidance to the Director of the Centers for Disease Control and Prevention (CDC), and recommends that a single dose of vaccine against meningococcal serogroups A, C, W, and Y (MenACWY vaccine) be administered to all adolescents at 11 or 12 years of age, followed by a booster at 16 years of age (recommendation Category A, for all persons in an age-or risk-factor based group). ACIP recommends that adolescents who received their first dose of MenACWY vaccine at age 13 through 15 years receive a booster dose at age 16 through 18 years, with a minimum interval of 8 weeks between doses, and that healthy adolescents who receive the first dose of MenACWY on or after their sixteenth birthday do not need a booster dose.[1]

In order to conform to the statutory amendment and be consistent with ACIP recommendations, the proposed regulatory change would require one dose of MenACWY vaccine for seventh grade and a second dose for twelfth grade, unless the first dose was received at sixteen years of age or older in which case only one dose will be required. Of note, the exemption set forth in Section 66-1.1(f)(1)(ii), which would deem children entering the ninth through twelfth grades (or comparable age equivalents) in the 2016-2017 school year in compliance with the immunization requirements provided they were in compliance with the immunization regulations in effect on June 30, 2014, would not apply to this new meningococcal vaccine requirement. This exemption was only intended to address new vaccine interval requirements, which began in the 2014-2015 school year, and was not intended to exempt this cohort of students from future vaccination requirements.

ACIP recommends that persons identified as being at increased risk because of an outbreak of serogroup B meningococcal disease should receive serogroup B meningococcal vaccine (MenB vaccine, recommendation Category A).[2] ACIP further recommends that a MenB vaccine series may be administered to adolescents and young adults 16 through 23 years of age (recommendation Category B, for individual clinical decision making).[3] Because MenB vaccine is not universally recommended for all adolescents at this time, the proposed regulatory change would not require MenB vaccine for school entry or attendance. However, the New York State Commissioner of Health, or his or her designee, or in the City of New York, the Commissioner of Health of the New York City Department of Health and Mental Hygiene, would have the authority pursuant to Section 66-1.10 to order the appropriate school officials to exclude from attendance students who have not been immunized with MenB vaccine in the event of an outbreak of serogroup B meningococcal disease. In the event of such outbreak, the state and local health departments would work closely with schools to identify students who have not been immunized with MenB vaccine.

Paragraph (1) of Subdivision (f) of Section 66-1.1 was amended in 2014 to update poliomyelitis vaccination requirements, reflecting the ACIP recommended doses and intervals between doses. Prior to 2014, students were required to have three doses of poliomyelitis vaccine, at any interval. The 2014 regulatory amendments applied to children entering or attending kindergarten and sixth grade in the 2014-2015 school year, and as the students in those grades moved up a grade level each year, the students enrolling in those higher grades must also be appropriately immunized against poliomyelitis in accordance with the ACIP recommended numbers of doses and intervals between doses. However, the multi-year phase-in of the poliomyelitis interval requirements adopted in 2014 did not cover children entering or attending child-caring centers, day-care agencies, nursery schools or prekindergarten programs, who were still required to have three doses of poliomyelitis vaccine, but were not required to have intervals between doses in accordance with the ACIP schedule.

In order to ameliorate this situation, the proposed regulatory change would require that children entering or attending child-caring centers, day-care agencies, nursery schools and pre-kindergarten programs are vaccinated against poliomyelitis commensurate with their age in accordance with the ACIP-recommended doses and intervals. The age-appropriate number of doses for children in child-caring centers, day-care agencies, nursery schools and pre-kindergarten programs is three doses by 18 months of age, unchanged from the previous requirements; however, the intervals between doses of poliomyelitis vaccine for these children must now be in accordance with the ACIP schedule.

Finally, the proposed amendments would add registered professional nurses and pharmacists authorized to administer immunizations pursuant to Education Law Section 6801(2) as authorized users of NYSIIS consistent with recent amendments to PHL § 2168 (Ch. 420 of the Laws of 2014), and to reflect the blood lead reporting mandate in Public Health Law § 2168 (Ch. 58 of the Laws of 2009).

Costs to State Government including the Department of Health:

The CDC has estimated that routine childhood immunizations resulted in a twenty-year cost savings of approximately $295 billion in direct costs and $1.38 trillion in societal costs from 1994 through 2013 and that every dollar spent on immunization saves at least ten dollars in aggregate societal costs.[4] Potential savings to Medicaid and other payers are also expected as a result of the prevention of cases of disease.

ACIP has recommended routine MenACWY vaccination of adolescents aged 11 to 12 years for over ten years, and has recommended a booster dose at 16 years of age for nearly 5 years. Current immunization coverage data suggests that most students entering grade seven in September 2016 will already meet the new MenACWY vaccine requirement, however, many adolescents entering grade twelve will need a booster dose in order to meet the new requirements. According to the 2014 National Immunization Survey-Teen (NIS-Teen), 78% (± 2.5%) of 13 year olds in the United States had received one dose of MenACWY in 2014, but only 28.5% (± 2.8%) of 17 year olds had received a booster dose on or after 16 years of age.[5] The latter estimate does not include adolescents who received a first dose on or after 16 years of age and who will not require a booster in order to meet NYS requirements.

The Vaccines for Children Program (VFC), a federal entitlement program, provides MenACWY vaccine for eligible adolescents. In addition, Section 317 of the Public Health Service Act supports purchase of vaccine for administration at no cost to certain eligible children, and also supports immunization delivery, surveillance, communication and education. Commercial health insurance, the VFC Program, and the "317 grant" will cover the cost of most of the doses of MenACWY vaccine required for grades seven and twelve. The State, however, may be required to use additional funds for the purchase and administration of vaccine to meet the new MenACWY vaccine requirements for those individuals who are underinsured or who participate in the State Children's Health Insurance Program (SCHIP).

The Department will need to provide education on and promote awareness of the regulatory changes. The Department has contact information for all schools and healthcare providers in New York State, and currently communicates with schools and healthcare providers across the state on a regular basis. The new school immunization requirements and the resultant need for education of schools and healthcare providers will not be a burden to the State as this communication takes place on a frequent basis already.

Costs to Local Governments:

School staff already collect immunization records and ensure that students comply with school entry requirements. Under the proposed regulations, schools will have to add MenACWY vaccine to their information collection protocols. School staff will be responsible for assuring that students entering or attending grades seven and twelve are in compliance with the new MenACWY vaccine requirements. Administrative procedures already in place could be utilized to notify students of the MenACWY vaccine requirement and to notify deficient students of the need to comply. Given that schools are already checking, recording, and notifying students of the vaccine requirements and their need to comply, the costs of implementing these proposed regulations will likely be minimal.

Additional costs of the administration of MenACWY vaccine by local health departments to meet the new requirements will likely be incurred. A substantial portion of the costs of operating county health departments' clinic services will be eligible for reimbursement through State public health local assistance or from third party payers. MenACWY vaccine will be available through the VFC Program for eligible adolescents, and will be reimbursed through health insurance plans for children enrolled in commercial health insurance.

Costs to Private Regulated Parties:

It is possible that the proposed regulations will prompt an initial increase in patient flow to catch up adolescents in accordance with the new MenACWY vaccine requirements. This could require some additional staffing time and office hours to accommodate these patients, but any additional visits would be eligible for reimbursement from payers. It is likely, however, that after this initial phase, no further cost will be incurred by private parties.

Local Government Mandates:

The revised school entry regulations will not impose any additional mandates on local governments or school districts. NYS school districts are already required by PHL § 2164 to verify all students' immunization histories.

Paperwork:

Since schools are already required to maintain student immunization records, there will be no increase in their paperwork.

Duplication:

No relevant rules or other legal requirements of the State and/or federal government exist that duplicate, overlap or conflict with this rule.

Alternatives:

No alternatives were considered given that other alternatives would only result in inconsistencies with national immunization policy and good medical practice.

Federal Standards:

In the United States, all school entry immunization laws are created by individual states. There is no federal standard with regard to school entry immunization regulations.

Compliance Schedule:

The regulations will be effective upon publication of a Notice of Adoption in the New York State Register, and all children must satisfy the immunization requirements of the proposed school entry regulations on and after September 1, 2016.

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[1] Centers for Disease Control and Prevention. Prevention and Control of Meningococcal Disease. Morbidity and Mortality Weekly Report (MMWR). 2013; 62(RR02): 1-28.

[2] Centers for Disease Control and Prevention. Use of Serogroup B Meningococcal Vaccines in Persons Aged ≥ 10 Years at Increased Risk for Serogroup B Meningococcal Disease: Recommendations of the Advisory Committee on Immunization Practices. MMWR. 2015; 64(22): 608-612.

[3] Centers for Disease Control and Prevention. Use of Serogroup B Meningococcal Vaccines in Adolescents and Young Adults: Recommendations of the Advisory Committee on Immunization Practices, 2015. MMWR. 2015; 64(41): 1171-1176.

[4] Centers for Disease Control and Prevention. Benefits from Immunization During the Vaccines for Children Program Era – United States, 1994-2013. MMWR. 2014; 63(16): 352-355.

[5] Centers for Disease Control and Prevention. National, Regional, State, and Selected Local Area Vaccination Coverage Among Adolescents Aged 13-17 Years – United States, 2014. MMWR. 2015; 64(29): 784-792.

Regulatory Flexibility Analysis

Effect of Rule:

Any facility defined as a school pursuant to PHL § 2164 will be required to comply. Schools that are affected by this rule will include approximately: 1,719 public, private, or parochial child care centers; 11,169 day cares and Head Starts; 551 nursery schools; 2,166 schools with students in grade 7; and 1,416 schools with students in grade twelve.

Compliance Requirements:

All schools must document the immunization status of all students who are entering or attending their facility, including immunizations received, history of disease, serology performed, and medical or religious exemptions to said immunizations.

The approximate number of students are as follows: 118,372 in public, private, or parochial child-caring centers; 231,340 in day cares and Head Starts; 32,358 in nursery schools; 232,206 in grade seven; and 162,152 in grade twelve. However, because schools were already required to collect immunization information, the burden of compliance with this new rule is substantially minimized.

Professional Services:

Schools are already required to comply with immunization requirements for entering and attending students and, therefore, immunization record retrieval already occurs with necessary follow-up, if applicable. It is not anticipated that schools will need to hire additional staff to meet this requirement.

Compliance Costs:

The cost to schools to meet the requirements of the proposed regulation is estimated to be minimal, because schools are already required to inspect vaccination records of all students and appropriate vaccination of the student body may result in cost savings. Specifically, it is anticipated that any costs incurred to check vaccination records will be offset by savings in direct medical costs by reducing vaccine preventable disease transmission among students, as well as savings in indirect costs associated with student and school staff absenteeism.

LHDs may incur costs for the administration of MenACWY vaccine. However, MenACWY vaccine will be available free of cost through the VFC Program for eligible adolescents, and vaccine costs and administration fees will be reimbursed through health insurance plans for children enrolled in commercial health insurance.

Economic and Technological Feasibility:

This proposal is economically and technologically feasible. Many schools currently have read-only access to retrieve immunization information from the New York State Immunization Information System (NYSIIS) for students outside of NYC, and the Citywide Immunization Registry (CIR) for students within NYC. Because schools have direct read-only access to the consolidated immunization record through NYSIIS or the CIR, they are able to efficiently identify children at risk for vaccine preventable diseases secondary to their under-immunization, which is critical during outbreak situations. In addition, access to this information simplifies assessment of immunization coverage as required for school entry or attendance.

No software needs to be purchased and no other fees are required to access the web-based systems. Using electronic tools for student record immunization queries also results in a significant cost savings when compared to the effort required to collect and analyze the volume of paper immunization histories provided by parents to the school.

Minimizing Adverse Impact:

Many, if not all schools, already have mechanisms in place to verify immunization requirements.

Small Business and Local Government Participation:

The New York City Department of Health and Mental Hygiene (DOHMH) and New York State Education Department (NYSED) were solicited for comments on the regulations. DOHMH is a large local government jurisdiction representing nearly half of children in New York State, and NYSED oversees prekindergarten through grade 12 programs in New York State. Both DOHMH and NYSED expressed support for the proposed regulatory changes.

Rural Area Flexibility Analysis

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural facilities defined within PHL Articles 28, 36, or 40.

Job Impact Statement

A Job Impact Statement is not included in accordance with Section 201-a(2) of the State Administrative Procedure Act (SAPA), because it will not have a substantial adverse effect on jobs and employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Low Income Program Modifications

I.D. No. PSC-24-15-00011-A

Filing Date: 2016-05-20

Effective Date: 2016-05-20

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

Action taken: On 5/19/16, the PSC adopted an order approving low income program modifications and directed utilities to make filings to implement the framework.

Statutory authority: Public Service Law, sections 4(1) and 66(1)

Subject: Low income program modifications.

Purpose: To approve low income program modifications and direct utilities to make filings to implement the framework.

Substance of final rule: The Commission, on May 19, 2016, adopted an order approving modifications for the low income programs to address energy affordability for low income utility customers and directed Central Hudson Gas and Electric Corp., Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., National Fuel Gas Distri-

bution Corp., Brooklyn Union Gas Co. d/b/a National Grid NY, KeySpan Gas East Corp. d/b/a National Grid, Niagara Mohawk Power Corp. d/b/a National Grid, New York State Electric and Gas Corp., and Rochester Gas and Electric Corp. to make filings to implement the framework, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-M-0565SA1)

NOTICE OF ADOPTION

Ratemaking, Rate Design and Regulatory Practices

I.D. No. PSC-33-15-00008-A

Filing Date: 2016-05-19

Effective Date: 2016-05-19

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

Action taken: On 5/19/16, the PSC issued an order adopting a ratemaking and utility revenue model policy framework.

Statutory authority: Public Service Law, sections 4(1) and 66(1)

Subject: Ratemaking, rate design and regulatory practices.

Purpose: To adopt a ratemaking and utility revenue model policy framework.

Substance of final rule: The Commission, on May 19, 2016, issued an order adopting a ratemaking and utility revenue model policy framework, and directed Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation to file a system efficiency proposal, providing directional guidance for long-term reform to the utility business model, by December 1, 2016, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-M-0101SA13)

NOTICE OF ADOPTION

Issuance of Long-Term Debt

I.D. No. PSC-40-15-00013-A

Filing Date: 2016-05-19

Effective Date: 2016-05-19

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

Action taken: On 5/19/16, the PSC adopted an order authorizing Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) to issue up to $2.07 billion of long-term debt, in one or more transactions, no later than March 31, 2020.

Statutory authority: Public Service Law, section 69

Subject: Issuance of long-term debt.

Purpose: To authorize National Grid to issue up to $2.07 billion of long-term debt.

Substance of final rule: The Commission, on May 19, 2016, adopted an order authorizing Niagara Mohawk Power Corporation d/b/a National Grid to issue up to $2.07 billion of long-term debt, comprised of up to $1.94 billion of new long-term debt and up to $429.5 million of debt to refinance its existing auction rate debt, in one or more transactions, no later than March 31, 2020, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(15-M-0509SA1)

NOTICE OF ADOPTION

Tariff Amendments to SC No. 2 Contained in P.S.C. No. 214 — Electricity

I.D. No. PSC-47-15-00009-A

Filing Date: 2016-05-23

Effective Date: 2016-05-23

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

Action taken: On 5/19/16, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's (NMPC) tariff amendments to Service Classification (SC) No. 2 contained in P.S.C. No. 214 — Electricity.

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

Subject: Tariff amendments to SC No. 2 contained in P.S.C. No. 214 — Electricity.

Purpose: To approve NMPC's tariff amendments to SC No. 2 contained in P.S.C. No. 214 — Electricity.

Substance of final rule: The Commission, on May 19, 2016, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's tariff amendments to Service Classification No. 2 — Street Lighting - Unmetered Company Owned/Company Maintained Facility to incorporate LED options in its street lighting schedule P.S.C. No. 214 — Electricity, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(15-E-0645SA1)

NOTICE OF ADOPTION

Waiver to Normalize Certain Customer Service Measure Results

I.D. No. PSC-47-15-00014-A

Filing Date: 2016-05-20

Effective Date: 2016-05-20

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

Action taken: On 5/19/16, the PSC adopted an order denying New York State Electric and Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation's (RG&E) petition for a waiver to normalize certain customer service measure results.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Waiver to normalize certain customer service measure results.

Purpose: To deny NYSEG and RG&E's petition for a waiver to normalize certain customer service measure results.

Substance of final rule: The Commission, on May 19, 2016, adopted an

order denying New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation's petition for a waiver to normalize the results of the measure of Estimated Meter Reads for February 2015, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(15-M-0649SA1)

NOTICE OF ADOPTION

Incremental CapEx Petition

I.D. No. PSC-03-16-00006-A

Filing Date: 2016-05-19

Effective Date: 2016-05-19

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

Action taken: On 5/19/16, the PSC adopted an order directing Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) to file amendments to the tariff leaves attached to its Incremental CapEx Petition.

Statutory authority: Public Service Law, section 66

Subject: Incremental CapEx Petition.

Purpose: To direct National Grid to file amendments to the tariff leaves attached to its Incremental CapEx Petition.

Substance of final rule: The Commission, on May 19, 2016, adopted an order directing Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) to file amendments to the tariff leaves attached to its Incremental CapEx Petition, to use accumulated deferred credits associated with both its electric and gas operations to offset a portion of the revenue requirement associated with its proposed expenditures for its operations over its fiscal years of 2017 and 2018, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(15-M-0744SA1)

NOTICE OF ADOPTION

Long-Term Loan Agreement

I.D. No. PSC-09-16-00003-A

Filing Date: 2016-05-20

Effective Date: 2016-05-20

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

Action taken: On 5/19/16, the PSC adopted an order approving Fishers Island Water Works Corporation's (Fishers Island) petition to enter into a long-term loan agreement with Bank Rhode Island up to $358,000, no later than July 31, 2016.

Statutory authority: Public Service Law, section 89-f

Subject: Long-term loan agreement.

Purpose: To approve Fishers Island's petition to enter into a long-term loan agreement with Bank Rhode Island.

Substance of final rule: The Commission, on May 19, 2016, adopted an order approving Fishers Island Water Works Corporation's petition to enter into a long-term loan agreement with Bank Rhode Island up to $358,000 of principal debt, no later than July 31, 2016, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(16-W-0063SA1)

NOTICE OF ADOPTION

Amendments to DLM Programs, Contained in P.S.C. No. 220 — Electricity

I.D. No. PSC-10-16-00007-A

Filing Date: 2016-05-23

Effective Date: 2016-05-23

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

Action taken: On 5/19/16, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) amendments to Dynamic Load Management (DLM) Programs, contained in P.S.C. No. 220 — Electricity.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Amendments to DLM Programs, contained in P.S.C. No. 220 — Electricity.

Purpose: To approve National Grid's amendments to DLM Programs, contained in P.S.C. No. 220 — Electricity.

Substance of final rule: The Commission, on May 19, 2016, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to Dynamic Load Management Programs, contained in P.S.C. No. 220 — Electricity, and directed the company to file further revisions to effectuate the changes, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(15-E-0189SA2)

NOTICE OF ADOPTION

Amendments to DLM Programs, Contained in P.S.C. No. 15 — Electricity

I.D. No. PSC-10-16-00008-A

Filing Date: 2016-05-23

Effective Date: 2016-05-23

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

Action taken: On 5/19/16, the PSC adopted an order approving Central Hudson Gas and Electric Corporation's (Central Hudson) amendments to Dynamic Load Management (DLM) Programs, contained in P.S.C. No. 15 — Electricity.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Amendments to DLM Programs, contained in P.S.C. No. 15 — Electricity.

Purpose: To approve Central Hudson's amendments to DLM Programs, contained in P.S.C. No. 15 — Electricity.

Substance of final rule: The Commission, on May 19, 2016, adopted an

order approving Central Hudson Gas and Electric Corporation's amendments to Dynamic Load Management Programs, contained in P.S.C. No. 15 — Electricity, and directed the company to file further revisions to effectuate the changes, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(15-E-0186SA2)

NOTICE OF ADOPTION

Amendments to DLM Programs, Contained in P.S.C. No. 19 — Electricity

I.D. No. PSC-10-16-00009-A

Filing Date: 2016-05-23

Effective Date: 2016-05-23

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

Action taken: On 5/19/16, the PSC adopted an order approving Rochester Gas and Electric Corporation's (RG&E) amendments to Dynamic Load Management (DLM) Programs, contained in P.S.C. No. 19 — Electricity.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Amendments to DLM Programs, contained in P.S.C. No. 19 — Electricity.

Purpose: To approve RG&E's amendments to DLM Programs, contained in P.S.C. No. 19 — Electricity.

Substance of final rule: The Commission, on May 19, 2016, adopted an order approving Rochester Gas and Electric Corporation's amendments to Dynamic Load Management Programs, contained in P.S.C. No. 19 — Electricity, and directed the company to file further revisions to effectuate the changes, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(15-E-0190SA2)

NOTICE OF ADOPTION

Issuance and Sale of Unsecured Debt

I.D. No. PSC-10-16-00011-A

Filing Date: 2016-05-20

Effective Date: 2016-05-20

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

Action taken: On 5/19/16, the PSC adopted an order authorizing Consolidated Edison Company of New York, Inc. (Con Edison) to issue and sell up to $5.2 billion of unsecured debt in one or more transactions, no later than December 31, 2019.

Statutory authority: Public Service Law, section 69

Subject: Issuance and sale of unsecured debt.

Purpose: To authorize Con Edison to issue and sell up to $5.2 billion of unsecured debt.

Substance of final rule: The Commission, on May 19, 2016, adopted an order authorizing Consolidated Edison Company of New York, Inc. to issue and sell up to $5.2 billion of unsecured debt in one or more transactions, no later than December 31, 2019, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(16-M-0020SA1)

NOTICE OF ADOPTION

Tariff Amendments to P.S.C. No. 10—Electricity

I.D. No. PSC-10-16-00012-A

Filing Date: 2016-05-19

Effective Date: 2016-05-19

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

Action taken: On 5/19/16, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Ed) tariff amendments to P.S.C. No. 10—Electricity.

Statutory authority: Public Service Law, sections 39, 47 and 66(12)

Subject: Tariff amendments to P.S.C. No. 10—Electricity.

Purpose: To approve Con Ed's tariff amendments to P.S.C. No. 10—Electricity.

Substance of final rule: The Commission, on May 19, 2016, adopted an order approving Consolidated Edison Company of New York, Inc.'s tariff amendments to P.S.C. No. 10 – Electricity, to revise its method of calculating capacity changes for customers billed under Rider M – Day-Ahead Hourly Pricing, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(16-E-0086SA1)

NOTICE OF ADOPTION

Amendments to DLM Programs, Contained in P.S.C. No. 120 — Electricity

I.D. No. PSC-10-16-00013-A

Filing Date: 2016-05-23

Effective Date: 2016-05-23

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

Action taken: On 5/19/16, the PSC adopted an order approving New York State Electric and Gas Corporation's (NYSEG) amendments to Dynamic Load Management (DLM) Programs, contained in P.S.C. No. 120 — Electricity.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Amendments to DLM Programs, contained in P.S.C. No. 120 — Electricity.

Purpose: To approve NYSEG's amendments to DLM Programs, contained in P.S.C. No. 120 — Electricity.

Substance of final rule: The Commission, on May 19, 2016, adopted an order approving New York State Electric and Gas Corporation's amendments to Dynamic Load Management Programs, contained in P.S.C. No. 120 – Electricity, and directed the company to file further revisions to effectuate the changes, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(15-E-0188SA2)

NOTICE OF ADOPTION

Amendments to DLM Programs, Contained in P.S.C. No. 3 — Electricity

I.D. No. PSC-10-16-00014-A

Filing Date: 2016-05-23

Effective Date: 2016-05-23

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

Action taken: On 5/19/16, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s (O&R) amendments to Dynamic Load Management (DLM) Programs, contained in P.S.C. No. 3 — Electricity.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Amendments to DLM Programs, contained in P.S.C. No. 3 — Electricity.

Purpose: To approve O&R's amendments to DLM Programs, contained in P.S.C. No. 3 — Electricity.

Substance of final rule: The Commission, on May 19, 2016, adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to Dynamic Load Management Programs, contained in P.S.C. No. 3 — Electricity, and directed the company to file further revisions to effectuate the changes, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(15-E-0191SA2)

NOTICE OF ADOPTION

Emergency Rule

I.D. No. PSC-10-16-00016-A

Filing Date: 2016-05-20

Effective Date: 2016-05-20

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

Action taken: On 5/19/16, the PSC adopted an order approving the emergency order issued on February 23, 2016 on a permanent basis.

Statutory authority: Public Service Law, sections 89-b and 89-c(2)

Subject: Emergency rule.

Purpose: To approve the emergency rule on a permanent basis.

Substance of final rule: The Commission, on May 19, 2016, adopted an order approving the emergency Order Commencing Proceeding and Requiring Emergency Action, filed on February 23, 2016, on a permanent basis, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(16-W-0079SA1)

NOTICE OF ADOPTION

Property Lease Agreement

I.D. No. PSC-11-16-00019-A

Filing Date: 2016-05-19

Effective Date: 2016-05-19

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

Action taken: On 5/19/16, the PSC adopted an order approving New York State Gas and Electric Corporation's (NYSEG) petition to enter into a property lease agreement with Columbia Memorial Hospital (Columbia).

Statutory authority: Public Service Law, section 70

Subject: Property lease agreement.

Purpose: To approve NYSEG's petition to enter into a property lease agreement with Columbia.

Substance of final rule: The Commission, on May 19, 2016, adopted an order approving New York State Gas and Electric Corporation's petition to enter into a property lease agreement with Columbia Memorial Hospital, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email:john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(16-M-0018SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-23-16-00008-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by 135 West 52nd Street Condominium, to submeter electricity at 135 West 52nd Street, New York, New York.

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

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent to submeter electricity at 135 West 52nd Street, New York, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by 135 West 52nd Street Condominium on May 6, 2016, to submeter electricity at 135 West 52nd Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(16-E-0265SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Transfer of Assets and Dissolution of Birch Hill Water Company Inc.

I.D. No. PSC-23-16-00009-P

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

Proposed Action: The Commission is considering a petition of Birch Hill Water Company Inc. to transfer its assets to the Town of Southeast and to dissolve the company.

Statutory authority: Public Service Law, sections 89-h and 108

Subject: Transfer of assets and dissolution of Birch Hill Water Company Inc.

Purpose: To consider the transfer of assets and dissolution of the Birch Hill Water Company Inc.

Substance of proposed rule: The Commission is considering a petition, filed by Birch Hill Water Company Inc. requesting authorization to transfer its assets to the Town of Southeast, discontinue water service and dissolve the company. The Commission may adopt, reject or modify, in whole or in part, the petition proposed and may resolve related issues.

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-W-0311SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minor Water Rate Filing

I.D. No. PSC-23-16-00010-P

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

Proposed Action: The Commission is considering a proposal filed by Pheasant Hill Water Corporation to increase its rates by approximately $66,325 or 126% to become effective October 1, 2016.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (3), (10)(a), (b) and (f)

Subject: Minor water rate filing.

Purpose: To consider an increase in Pheasant Hill Water Corporation's annual water revenues by approximately $66,325 or 126%.

Substance of proposed rule: The Commission is considering a proposal filed by Pheasant Hill Water Corporation (Pheasant Hill or the Company) to increase its total annual revenues by approximately $66,325 or 126% with an effective date of October 1, 2016. Pheasant Hill provides flat rate water service to 49 customers in the Pheasant Hill real estate subdivision in the Town of Minisink, Orange County. Public fire protection service is not provided. The Company states the rate increase is necessary due to an increase in property taxes since the current rates went into effect on October 1, 2014. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(16-W-0302SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notification Concerning Tax Refunds

I.D. No. PSC-23-16-00011-P

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

Proposed Action: The PSC is considering Verizon New York Inc.'s petition seeking the retention of a portion of a property tax refund received from the City of New York in relation to its regulated, intrastate New York operations during the 2015-2016 tax year.

Statutory authority: Public Service Law, section 113(2)

Subject: Notification concerning tax refunds.

Purpose: To consider Verizon New York Inc.'s request to retain a portion of a property tax refund.

Substance of proposed rule: The Commission is considering Verizon New York Inc.'s request to retain the portion of a property tax refund received from the City of New York that is allocable to Verizon's regulated, intrastate New York operations. Verizon proposes to retain such tax refund in accordance with earlier Commission Orders involving previous Verizon tax refunds. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(16-C-0298SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Area Code Overlay

I.D. No. PSC-23-16-00012-P

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

Proposed Action: The Commission is considering a petition filed by Neustar Inc., in its role as the North American Numbering Plan Administrator to add a new area code within the current 518 area code.

Statutory authority: Public Service Law, section 97(2)

Subject: Area Code Overlay.

Purpose: To consider an area code overlay in the current 518 area code.

Substance of proposed rule: The Commission is considering a petition filed by Neustar Inc., in its role as the North American Numbering Plan Administrator to add a new area code within or adjacent to the current 518 area code that serves parts of Upstate New York including Albany, Saratoga and Plattsburgh. Neustar's proposal would overlay a new area

code over the current 518 area code, and would result in required 10-digit dialing for those with numbers in the current 518 and new area code. The reason for Neustar's request is a projection that indicates the current 518 area code will be exhausted in the first quarter of 2019. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(16-C-0297SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Acquisition of All of the Assets of Beaver Dam Lake Water Corporation

I.D. No. PSC-23-16-00013-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 Joint Petition filed May 11, 2016 by New York American Water Company, Inc. and Beaver Dam Lake Water Corporation for acquisition of all assets of Beaver Dam Lake Water Corporation.

Statutory authority: Public Service Law, sections 4(1), 5(1), 89-c(1), (10) and 89-h(1)

Subject: Acquisition of all of the assets of Beaver Dam Lake Water Corporation.

Purpose: To consider the acquisition of all assets of Beaver Dam Lake Water Corporation by New York American Water Company Inc.

Substance of proposed rule: The Public Service Commission is considering a Joint Petition filed May 11, 2016 by New York American Water Company, Inc. (NYAW) and Beaver Dam Lake Water Corporation (Beaver Dam) for approval of an Agreement of Sale under which Beaver Dam Lake Water Corporation will sell and New York American Water Company, Inc. will acquire 100% of the assets of Beaver Dam Lake Water Corporation. Beaver Dam provides metered water service to 155 homes in the Towns of New Windsor and Cornwall in Orange County, New York. NYAW proposes, upon closing of sale, installation of Commission approved meters along with updates to and relocation of water mains to improve customer service quality and reliability. These modifications would be funded through NYAW's Capital Budget. Current customers of Beaver Dam would potentially be placed under the Lynbrook District Tariff, resulting in multiple benefits. Transition to the Lynbrook Tariff would be a more cost effective and efficient method for the customer transition and would allow for ultimately lower rates. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(16-W-0284SP1)

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-10-16-00002-A
Filing No. 504
Filing Date: 2016-05-20
Effective Date: 2016-05-20

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2016 through June 30, 2016.

Text or summary was published in the March 9, 2016 issue of the Register, I.D. No. TAF-10-16-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

Assessment of Public Comment

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

NOTICE OF ADOPTION

Metropolitan Transportation Business Tax Surcharge

I.D. No. TAF-13-16-00005-A
Filing No. 502
Filing Date: 2016-05-20
Effective Date: 2016-06-08

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

Action taken: Addition of Part 9 to Title 20 NYCRR.

Statutory authority: Tax Law, subdivision First of section 171 and subdivision First of section 209-B; L. 2014, ch. 59, part A, section 7

Subject: Metropolitan Transportation Business Tax Surcharge.

Purpose: To provide metropolitan transportation business tax rate for tax year 2016.

Text or summary was published in the March 30, 2016 issue of the Register, I.D. No. TAF-13-16-00005-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: Kathleen.OConnell@tax.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

Written comments were received regarding proposal TAF-13-16-00005-EP from Senator Terrence P. Murphy, Member of the New York Senate, 40th District. No other comments were received.

Senator Murphy noted that the Commissioner of the Department of Taxation and Finance is responsible for making adjustments to the rate of the metropolitan transportation business tax surcharge for Tax Year 2016 and that he must ensure that the receipts attributable to the surcharge meet and not exceed the financial projections for state fiscal year 2016-17. Nevertheless, he urged that "although an increase of 2.4 percent may not appear onerous, many corporations forced to pay this higher rate, are already struggling with the costs of doing business in New York State." Senator Murphy also noted that the metropolitan business transportation tax surcharge rate was increased in 2015, from 17 percent to 25.6 percent. The Senator further notes that the corporations doing business in the metropolitan commuter transportation district provide the State of New York with much needed goods, services, and jobs. In closing, he requests that the Commissioner strongly consider amending the proposed rule to decrease the rate of the surcharge.

New Part 9 of the Business Corporation Franchise Tax regulations complies with the mandate of Tax Law section 209-B(1)(f), as amended, setting forth the rate for taxable years beginning on or after January 1, 2016. The previously established statutory rate was 25.6 percent of the tax imposed under section 209 of the Tax Law. As required by section 209-B(1)(f), using the state fiscal year 2016-2017 fiscal projections, the commissioner has determined the rate must be adjusted to be at the rate of 28 percent of the tax imposed under section 209 of the Tax Law for taxable years beginning on or after January 1, 2016 and before January 1, 2017, in order to ensure appropriate funding to the metropolitan commuter transportation district.

The requirement that the Commissioner adjust the metropolitan transportation business tax surcharge using the methodology prescribed in Tax Law, section 209-B is not discretionary. The Commissioner is not authorized to adjust the rate as requested by Senator Murphy.

No changes were made to the rule as a result of these comments.

NOTICE OF ADOPTION

Production of Daily Inventory Records to the Department, Upon Request, by Those Already Required to Maintain Such Records

I.D. No. TAF-13-16-00006-A
Filing No. 503
Filing Date: 2016-05-20
Effective Date: 2016-06-08

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

Action taken: Amendment of section 533.2(e) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First and 1135(d)

Subject: Production of daily inventory records to the department, upon request, by those already required to maintain such records.

Purpose: To provide the department access to relevant existing data, in furtherance of the administration of the Tax Law.

Text or summary was published in the March 30, 2016 issue of the Register, I.D. No. TAF-13-16-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.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.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-23-16-00003-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period July 1, 2016 through September 30, 2016.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxxxiii) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lxxxii) April-June 2016					
13.7	21.7	38.7	14.9	22.9	38.15
(lxxxiii) July-September 2016					
13.6	*21.6*	*38.6*	*14.5*	*22.5*	*37.75*

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.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, 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.

Workers' Compensation Board

NOTICE OF ADOPTION

Funeral Expenses

I.D. No. WCB-45-15-00023-A
Filing No. 507
Filing Date: 2016-05-24
Effective Date: 2016-06-08

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

Action taken: Amendment of section 311.1 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 16, 117 and 141

Subject: Funeral expenses.

Purpose: To increase the permitted amount of reimbursement for funeral and memorial services in work related deaths.

Text of final rule: Section 311.1 of Title 12 of the New York Codes Rules and Regulations is amended as follows:

Reimbursement for funeral expenses *or memorial services* under the Workers' Compensation Law, including but not limited to the following items: grave sites; headstone; organist; priest, minister, rabbi or other officiant; removal from hospital; casket; vault; chapel rental; embalming; preparation fees; hearse; cemetery fees including plot; death certificates; newspaper ad; and cremation costs, shall not exceed $ [6]*12,5*00 in the counties of Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, and Westchester. In the remaining counties, reimbursement for such funeral expenses shall not exceed $ [5]*10,5*00. This fee schedule shall be applicable to deaths occurring on or after [July 31, 1990] *June 8, 2016*.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 311.1.

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

Revised Regulatory Impact Statement
A revised Regulatory Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The only change to the adopted rule is to change the effective date to June 8, 2016, the date of publication in the State Register.

Revised Regulatory Flexibility Analysis
A revised Regulatory Flexibility Analysis for Small Business and Local Governments is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The only change to the adopted rule is to change the effective date to June 8, 2016, the date of publication in the State Register.

Revised Rural Area Flexibility Analysis
A revised Rural Area Flexibility Analysis is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The only change to the adopted rule is to change the effective date to June 8, 2016, the date of publication in the State Register.

Revised Job Impact Statement
A revised Statement in Lieu of Job Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The only change to the adopted rule is to change the effective date to June 8, 2016, the date of publication in the State Register.

Assessment of Public Comment
The agency received no public comment.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Requests for Administrative Review

I.D. No. WCB-45-15-00020-RP

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

Proposed Action: Repeal of sections 300.13, 300.15 and 300.16; addition of new section 300.13 to Title 12 NYCRR.

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

Subject: Requests for Administrative Review.

Purpose: To clarify the process for requesting administrative review and full Board review including requests for reconsideration.

Text of revised rule: Sections 300.13, 300.15 and 300.16 of Title 12 of NYCRR are repealed and a 300.13 is added:

300.13 Administrative Review, Full Board Review, and Applications for Board Reconsideration

a. Definitions

(1) "Administrative Review" means an administrative appeal from a decision of a Compensation Claims Referee, under section twenty-three of the workers' compensation law, or an administrative appeal of a finalized administrative determination as set forth in part three-hundred twelve of this chapter.

(2) "Full Board Review" means an administrative appeal from a decision of the Board pursuant to section twenty three of the workers' compensation law. Such review is discretionary unless a board member dissents from the ruling regarding a finding other than the issue of whether to appoint an impartial medical specialist. Upon notice to the claimant, his or her legal representative, if any, the employer or carrier or Special Fund, the full board may review any case on its own motion.

(3) "Filing" means an application has been received by the Board at the designated point of receipt. Upon posting on the Board's website, the Chair may prescribe the format and method for filing and service including, among other methods, electronic, mail or fax service.

(4) "Necessary Parties of Interest" means, for the purposes of this section, claimants, self-insured employers, private insurance carriers, the state insurance fund, special funds, no-fault carriers per section one hundred forty-two of the workers' compensation law, or any surety, including but not limited to the uninsured employer's fund, and the liquidation bureau. Treating Medical Providers and Independent Medical Examiners are not parties of interest and may not make filings, oral arguments, or otherwise participate in the administrative review process. Attorneys and licensed hearing representatives are not necessary parties of interest under this rule, except that an attorney or representative is a necessary party in an appeal that concerns the amount of a fee payable to an attorney or representative or a penalty imposed against an attorney or licensed hearing representative. A claimant's attorney or licensed hearing representative, properly designated by the claimant as his or her representative, shall receive a copy of any applications or rebuttals filed under this section.

(b) Requests for Administrative Review and Requests for Full Board Review filed pursuant to Workers' Compensation Law Section 23, and Requests for Reconsideration of a Board Panel decision pursuant to Section 300.14 of this Part.

(1) Application Format. Unless submitted by an unrepresented claimant, an application to the Board for administrative review of a decision by a Workers' Compensation Law Judge shall be in the format as prescribed by the Chair. The application in the format prescribed by the Chair must be filled out completely by the appellant, except that the requirement to utilize the application format shall not be imposed upon a claimant who is unrepresented.

(i) Unless otherwise specified by the Chair, the appellant may attach a legal brief of up to eight pages in length, in 12-point font, with one inch margins, on 8.5 inch by 11 paper. A brief longer than eight pages will not be considered, unless the appellant specifies, in writing, why the legal argument could not have been made within eight pages. In no event shall a brief longer than fifteen pages be considered.

(ii) Documents that are present in the Board's electronic case folder at the time the administrative review is submitted shall not be, included with or attached to the application. The Board may reject applications for review by an appellant, or an attorney or licensed representative of the appellant, who attaches documents that are already in the case folder at the time of the application.

(iii) If the appellant seeks to introduce additional documentary evidence in the administrative appeal that was not presented before the Workers' Compensation Law Judge, the appellant must submit a sworn affidavit, setting forth the evidence, and explaining why it could not have been presented before the Workers' Compensation Law Judge. The Board has discretion to accept or deny such newly filed evidence. Newly filed evidence submitted without the affidavit will not be considered by the Board panel.

(2) The application for administrative review:

(i) shall specify the issues and grounds for the appeal;

(ii) shall specify the objection or exception that was interposed to the ruling, and when the objection or exception was interposed;

(iii) shall, when filed by an employer or carrier, specify which payments are continuing pending resolution of the administrative appeal, and which payments are stayed pursuant to section twenty-three of the Workers' Compensation Law;

(iv) shall include proof of service upon all necessary parties of interest, in the format prescribed by the Chair. Service upon a party who is not adverse to the interest of the appellant may not render the appeal defective as such party is not a necessary party of interest. Failure to properly serve a necessary party shall be deemed defective service and the application may be rejected by the Board.

(A) Proof of service in the format prescribed by the Chair shall specify the papers served, the person who was served, the date, and method of service including the actual address, email address or fax number where service was transmitted. An affidavit, affirmation, or other satisfactory proof of service as prescribed by the Chair, shall be submitted with the Application for Administrative Review to the Board. The affidavit, affirmation, or other proof of service must certify that all service was completed within thirty days from the filing of the decision that is the subject of the Application for Administrative Review.

(B) There is no requirement that each party be served in the same manner. Service is deemed timely if completed by the party of interest within thirty days of the filing of the decision by the Board.

(C) Unless the Chair directs service by electronic means, the appellant must certify in the affidavit or affirmation of service, that the party served provided explicit permission to receive service by fax, email, or other electronic means.

(D) When the administrative appeal is filed by the carrier, self-insured employer, or other payor or potential payor, service shall be upon the claimant, and claimant's attorney or representative, and other necessary parties in interest.

(E) Service upon a party who is not adverse to the interest of the appellant is optional, and failure to properly serve an optional party shall not be deemed to render the appeal defective.

(v) Shall include any additional fee request in the format prescribed by the Chair for fee requests. Failure to request an additional fee in the prescribed format shall result in waiver of such fee.

(3) Filing with the Board

(i) The application shall be filed with the board within thirty days after the notice of the filing of the decision. All filings must be made using methods designated, permitted, and prescribed by the Chair. If more than one filing option is permitted by the Chair, the appellant shall choose one

method for filing. Any duplicate filings may be deemed to be raising or continuing an issue without reasonable grounds, and may subject the appellant to assessments under 114-a(3) of the Workers' Compensation Law.

(ii) Method of filing the application

(A) By mail shall be sent to the Board's designated Centralized Mailing Address;

(B) By fax shall be sent to the Board's designated Centralized Fax Number;

(C) By email shall be sent to the Board's designated email address for claims documents;

(D) By electronic means shall be filed in the method and manner prescribed by the Chair. An application that is submitted by electronic means in accordance with this subparagraphs shall not be deemed filed with the Board until such submission is received and acknowledged by the Board.

(iii) The Chair may prescribe and require the format and the methods of filing of administrative appeals, including by electronic means, and may set the requirements to include various data fields, except that claimants who are unrepresented are exempt from the requirement to file electronically.

(4) Denial of review. The application for review may be denied under the following circumstances:

(i) By letter issued by the Chair or the Chair's designee when the appellant, other than a claimant who is not represented, does not comply with prescribed formatting, completion and service submission requirements;

(ii) By decision of the Board panel, when the appellant does not file the application within thirty days;

(iii) By decision of the Board panel, when the appellant does not properly file the application with the Board;

(iv) By decision of the Board panel, when the appellant does not provide proper proof of timely service upon a necessary party in interest other than a party who is not adverse to the appellant. When the appellant fails to supply proper proof of timely service upon a necessary party,

(A) When a rebuttal is submitted, the necessary party shall raise the issue of defective service in its rebuttal. Failure to raise the issue of defective service in the rebuttal shall constitute a waiver of the issue.

(B) When no rebuttal is filed, the Board may consider whether the application was defectively served, and if so, the Board may deny review without decision.

(v) Where the appellant did not interpose a specific objection or exception to a ruling or award by a workers' compensation law judge.

(A) Where a decision is made at a hearing, the appellant did not preserve a specific objection to the ruling or award at the hearing on the record.

(B) Where proceedings occur off-calendar, such as at a deposition, the appellant did not preserve objections on the record at the start of or conclusion of the proceeding as to qualifications of the deponent, or admissibility of any medical report or report of independent medical examination.

(C) No objection to findings made by reserved decision that have not been previously made at a hearing, need be interposed prior to filing of an application for review.

c. Rebuttal. A party adverse to the application for administrative review may file a rebuttal to such application for review. The rebuttal shall be in writing and, for parties other than an unrepresented claimant, shall be accompanied by a cover sheet in the format prescribed by the chair. The rebuttal shall conform to the requirements for requests for administrative review set forth in subdivision (b) herein. Such rebuttal shall be served on the Board and all necessary parties within thirty days after service of the application for review together with proof of service upon all necessary parties in the form and format prescribed by the Chair.

d. The Board shall have the verbatim records of all hearings and proceedings placed in the case file it maintains in a readable, viewable or audible format where the issue or issues raised in the application for review were covered, and the case file shall only be considered by a Board Panel after the verbatim records covering the disputed issues are inserted in the case file.

e. Stay of Payments. There is no stay of any payment due to the claimant or the Board upon a filing of an application for full Board review.

f. When a claimant is not represented, the Board shall have discretion to waive the requirements contained in this section. An unrepresented claimant, who subsequently retains counsel, may have the procedural requirements of this section waived for the time when he or she was unrepresented.

Revised rule compared with proposed rule: Substantial revisions were made in section 300.13(b)(1).

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

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

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

Revised Regulatory Impact Statement

A revised Regulatory Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The proposed changes to the proposed rule clarify that a claimant's representative must receive copies of applications for review and rebuttals; clarify that a no-fault carrier may be a necessary party of interest; removes a redundant sentence regarding stays when an application for review is pending; clarify that failure to serve an optional party does not require that an application be found defective; clarify that the Chair may prescribe the format for applications and rebuttals; and, corrects an error in numeration. The proposed revised rule also changes the maximum length of an application for review and describes when a defective application may be denied by letter and when a defective application may be denied by decision of the Board Panel.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis for Small Business and Local Governments is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The proposed changes to the proposed rule clarify that a claimant's representative must receive copies of applications for review and rebuttals; clarify that a no-fault carrier may be a necessary party of interest; removes a redundant sentence regarding stays when an application for review is pending; clarify that failure to serve an optional party does not require that an application be found defective; clarify that the Chair may prescribe the format for applications and rebuttals; and, corrects an error in numeration. The proposed revised rule also changes the maximum length of an application for review and describes when a defective application may be denied by letter and when a defective application may be denied by decision of the Board Panel.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The proposed changes to the proposed rule clarify that a claimant's representative must receive copies of applications for review and rebuttals; clarify that a no-fault carrier may be a necessary party of interest; removes a redundant sentence regarding stays when an application for review is pending; clarify that failure to serve an optional party does not require that an application be found defective; clarify that the Chair may prescribe the format for applications and rebuttals; and, corrects an error in numeration. The proposed revised rule also changes the maximum length of an application for review and describes when a defective application may be denied by letter and when a defective application may be denied by decision of the Board Panel.

Revised Job Impact Statement

A revised Statement in Lieu of Job Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The proposed changes to the proposed rule clarify that a claimant's representative must receive copies of applications for review and rebuttals; clarify that a no-fault carrier may be a necessary party of interest; removes a redundant sentence regarding stays when an application for review is pending; clarify that failure to serve an optional party does not require that an application be found defective; clarify that the Chair may prescribe the format for applications and rebuttals; and, corrects an error in numeration. The proposed revised rule also changes the maximum length of an application for review and describes when a defective application may be denied by letter and when a defective application may be denied by decision of the Board Panel.

Assessment of Public Comment

The 45-day public comment period with respect to Proposed Rule I.D. No. WCB-45-15-00020 commenced on November 10, 2015, and expired on December 28, 2015. The Chair and the Workers' Compensation Board (Board) received and accepted formal written public comments on the proposed rule through January 4, 2016.

Six comments were received by the Board between November 16, 2015 and December 28, 2015. The breakdown of the entities submitting comments are as follows: four comments were from law firms, one was from an insurance carrier, and one from a lobbying group that represents employers.

The majority of comments concerned the page limit for applications for review. The comments contend that the five page limit is inadequate for appeals with multiple or complex issues. It was suggested that summarizing the record involving multiple physicians and lay witnesses and

highlighting key points of the record is crucial to a party's due process rights. An inference was suggested that an informed decision based on an abbreviated record is more difficult as the decision maker is more likely to miss key parts of evidence in the record and may subject a decision to further review by the courts. One commenter offered the argument that a page limit would pose ethical violations for attorneys who are bound to fully present the facts and legal arguments supporting their clients' positions. It was also mentioned that there is no corresponding limit on rebuttals to applications for review. One comment suggested an alternate limit of 15 pages in 12 point font. As a basis for its alternate limit, Court Rule 1000.4(f)(3) was cited for the Appellate Division, Third Department which permits an appellant brief of 70 pages with no restriction on font size. Another comment suggested eliminating the limit altogether. Another comment noted that there does not appear to be any prohibition on submitting each issue as a separate appeal when multiple issues are involved.

In response to these comments, the Board has made two changes. The revised proposed regulation increases the maximum page limit to eight pages and fifteen in the event of complex issues. The revised proposed regulation also clarifies that rebuttals must conform to the same rules as applied to requests for administrative review.

Other comments addressed the status of attorneys and hearing representatives as not necessary parties of interest to an application for review. The revised proposed regulation clarifies that service of the claimant's legal representative is required.

One commenter objected to the change in § 300.13(b) that requires an application for review to be filled out completely by the appellant. SIF's concern is that this would cause otherwise meritorious applications to be rejected or denied because of the omission of one or more insubstantial or immaterial details. No change has been made is response to this comment. The proposed regulation contains an exception when a claimant is not represented. Attorneys and licensed representatives may be held accountable for completely filling out the form.

One commenter made several additional points, suggesting that it is improper to permit the Board to deny review when an application contains documents already in the Board file, requiring an affidavit when new evidence is introduced with a request for review and permitting imposition of WCL 114-a(3) penalties when duplicate filings of the same request are filed. No change has been made in response to these comments. The filing of duplicate documents or applications are a serious issue causing unwarranted increases in scanning fees to the Board and the taxpayers of New York. Duplicate filings of requests for review also require unnecessary review by Board attorneys of each filing. Contrary to the commenters assertion, WCL § 114-a(3) penalties may be imposed to cover costs when a party proceeds without reasonable grounds. Filing duplicate applications may constitute such an action when the party knows how to properly file a request and files duplicate requests consuming Board staff time and resources to identify the duplicates. Similarly, when a party seeks to introduce new documents with a request for administrative review, it is appropriate for the Board to require an affidavit stating why such documents could not have been introduced at the hearing underlying the matter. Conducting hearings without all available evidence is a waste of the parties' time and Board resources. It is warranted to require an affidavit to support introduction of this evidence after the hearing. Accordingly, no change shave been made in response to these comments.

Finally, this commenter suggested that it is unwarranted to direct payment to the claimant when the case is the subject of a request for mandatory full Board review. No change has been made to this provisions as the Board believes this section is a clarification of the requirements contained in WCL § 23.

CHANGES TO THE REGULATION:

The revised regulation that is being proposed contains the following changes from the proposed rule published in the November 10, 2015 State Register:

- In section 300.13(a), "personal" service has been removed as the Board is not equipped to accept personally served applications.
- In section 300.13(a), no-fault carriers have been added to list of necessary parties and a sentence has been included mandating service on claimant's attorneys and licensed hearing representatives.
- In section 300.13(b), the maximum page lengths have been changed from five and eight to eight and fifteen respectively.
- In section 300.13(b), this sentence has been removed because it was redundant and unclear "For all payments stayed, the appellant shall indicate the issue on appeal that forms the legal basis for staying payments."
- In section 300.13(b), the language regrading "optional party of interest" has been removed and new language added that clarifies that failure to service a party adverse to the appellant may not render the appeal defective.
- In section 300.13(b), "may" was changed to "shall" to clarify that documents in the Board's electronic case folder are not permitted to be attached to a request for review or a rebuttal.
- In section 300.13(b), "manner" of fee requests has been changed to "format prescribed by the Chair" to conform the language in this regulation with language used in other Board regulations.
- In section 300.13(b), language regarding denials of review by the Board has been clarified to distinguish which appeals may be denied by letter and which must be denied by a decision of the Board panel.
- In section 300.13(b), language has been clarified as to the timing and mechanics for preservation of objections at depositions.
- The numbering of subparagraphs within subdivision (b) section 300.13 has been corrected from the prior proposal.