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.

Delaware River Basin Commission

INFORMATION NOTICE

Notice of Proposed Rulemaking and Public Hearing

Proposed Amendments to the Rules of Practice and Procedure Concerning Regulatory Program Fees and to the Basin Regulations – Water Supply Charges Concerning Rates

Summary: The Commission will hold a public hearing to receive comments on proposed amendments to the Rules of Practice and Procedure to adopt a new project review fee structure and to the Basin Regulations – Water Supply Charges to provide for automatic inflation adjustments. These changes also are proposed to be incorporated into the Commission's Comprehensive Plan.

Dates: The public hearing will be held at 1:00 P.M. on Wednesday, July 27, 2016. The hearing will continue until all those wishing to testify have had an opportunity to do so. Written comments will be accepted and must be received by 5:00 P.M. on Friday, August 12, 2016.

Addresses: The public hearing will be held at the Commission's office building located at 25 State Police Drive, West Trenton, NJ. As Internet mapping tools are inaccurate for this location, please use the driving directions posted on the Commission's website.

Oral Testimony and Written Comments: Persons wishing to testify at the hearing are asked to register in advance by phoning Paula Schmitt at 609-883-9500, ext. 224. Written comments may be submitted as follows: If by email, to paula.schmitt@drbc.nj.gov; if by fax, to Commission Secretary at 609-883-9522; if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; and if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. Comments also may be delivered by hand at any time during the Commission's regular office hours (Monday through Friday, 8:30 A.M. through 5:00 P.M. except on national holidays) until the close of the comment period at 5:00 P.M. on Friday, August 12, 2016. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and "Fees Rulemaking" in the subject line.

For Further Information, Contact: An FAQ document explaining this proposal in further detail is available on the Commission's website, www.drbc.net. For queries about the rulemaking process, please contact Pamela Bush at 609-477-7203.

Supplementary Information:

Background. The Delaware River Basin Commission ("DRBC" or "Commission") is a federal interstate compact agency charged with managing the water resources of the Delaware River Basin on a regional basis without regard to political boundaries. Its members are the governors of the four basin states – Delaware, New Jersey, New York and Pennsylvania – and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government. DRBC is proposing a comprehensive revision of its project review fee structure, including an automatic annual indexed inflation adjustment for most fees. The inflation adjustment is also proposed for DRBC's water supply charges rates applicable to consumptive and non-consumptive surface water withdrawals.

Current fees. DRBC's current project review fee structure was adopted by the Commission in 2009 by (uncodified) Resolution No. 2009-2. For projects involving total costs of $250,000 or less, it consists of a flat project review fee of $1,000 for privately sponsored projects and $500 for publicly sponsored projects. For projects with total costs greater than $250,000, DRBC's current project review fee is based upon a percentage of the costs of the project attributable to project components physically located within the basin, and is capped at $75,000. However, projects for which the review is exceptionally involved may be charged DRBC's actual costs, which may exceed $75,000. The current fee structure generates an uneven revenue stream that produced average annual revenues of $610,843 for the years 2011 through 2015. The Commission's total cost associated with project reviews required by the Delaware River Basin Compact and DRBC regulations is estimated to equal $1.15 million annually. This estimate takes into consideration administrative cost savings expected to accompany implementation of the One Process/One Permit Program (also "One Process/One Permit"), recently authorized by the Commission through its adoption of the one permit program rule, 18 CFR 401.42.

DRBC's water supply charges are used to pay debt service, annual operation and maintenance costs, and the costs of required improvements, repairs and replacements associated with water supply storage owned by the Commission in two reservoirs – Blue Marsh and Beltzville – located in Pennsylvania and operated by the U.S. Army Corps of Engineers. Water supply charges revenues also support DRBC activities related to water supply planning and operations. DRBC's current water supply charges rates, in effect since January 1, 2011, are $80 per million gallons for consumptive use and $0.80 per million gallons for non-consumptive use. The previous rates, $60 per million gallons for consumptive use and $0.60 per million gallons for non-consumptive use, were adopted in 1978 and remained unchanged for more than 30 years. DRBC's water supply charges revenues have lagged significantly behind inflation.

Proposed changes. The proposed project review fee restructuring includes: for wastewater discharge projects, elimination of DRBC project review fees for applications that undergo coordinated review pursuant to the One Process/One Permit Program; and for water withdrawal projects, (1) for those projects for which DRBC continues to act as lead review agency, replacement of the current fee structure with fees based on monthly water allocation limits; and (2) for renewals subject to coordinated review under One Process/One Permit, elimination of the project review fee. DRBC is simultaneously proposing an Annual Monitoring and Coordination Fee for all water withdrawal and wastewater discharge projects subject to DRBC review and approval, including projects that receive permits from a signatory party agency

under the One Process/One Permit Program. The annual fee will range from $300 to $1,000 per year, depending upon the permitted discharge capacity or monthly water allocation. The fee for DRBC's review of "Other" projects – those that involve no ongoing withdrawals or discharges – will continue to be calculated on the basis of project cost. The Annual Monitoring and Coordination Fee will not apply to such "Other" projects. In instances where the Commission's activities and related costs associated with the review of an existing or proposed project are expected to involve extraordinary time and expense, the Executive Director will continue under the proposed rule to have the discretion to impose an Alternative Review Fee equal to the Commission's actual costs. Finally, an annual, indexed, automatic inflation adjustment is proposed for most project review fees.

The proposed regulatory program fees structure is expected to provide a more predictable and sustainable source of revenues and to help close the annual gap in funding needed to support DRBC's project review program.

No increase is proposed to DRBC's current water supply charges rates, set forth at 18 CFR 420.41. However, an annual, indexed, automatic inflation adjustment is proposed, applicable to both the consumptive and non-consumptive use rates for surface water withdrawals.

For the reasons set forth in the preamble, the Delaware River Basin Commission proposes to amend parts 401 and 420 of title 18 of the Code of Federal Regulations and the corresponding sections of the New York Codes, Rules and Regulations (21 NYCRR Ch. XVIII, Subchapters A and D), as set forth below. Note that although the affected NYCRR sections are indicated in the paragraphs introducing the proposed rule text, the rule text itself, including internal references, is shown with Code of Federal Regulations numbering. When proposed amendments are adopted in final form, NYCRR numbering will be applied.

Part 401 – Rules of Practice and Procedure (21 NYCRR Ch. XVIII, Subchapter A) is proposed to be amended by the addition of a new § 401.43 (21 NYCRR 833.12) to read as follows:

§ 401.43 Regulatory program fees.

(a) Purpose. The purpose of this section is to provide an adequate, stable and reliable stream of revenue to cover the cost of the Commission's regulatory program activities, an important means by which the Commission coordinates management of the shared water resources of the Basin. Activities to be covered by the fees include the review of applications for projects that are subject to review under the Delaware River Basin Compact and implementing regulations; and ongoing activities associated with such projects, including but not limited to, effluent and ambient monitoring, data analysis, hydrodynamic and water quality modeling, and coordination with state and federal agencies.

(b) Types of fees. The following types of fees are established by this section:

(1) Docket Application Fee. Except as set forth in paragraph (b)(1)(iii) of this section, the Docket Application Fee shall apply to:

(i) Any project that, in accordance with the Delaware River Basin Compact and DRBC regulations, requires a Commission-issued docket or permit, whether it be a new or existing project for which the Commission has not yet issued an approval or a project for which the renewal of a previous Commission approval is required.

(ii) Any project that in accordance with section 11 or section 13.1 of the Delaware River Basin Compact and DRBC regulations must be added to the Comprehensive Plan (also, "Plan"). In addition to any new project required to be included in the Plan, such projects include existing projects that in accordance with section 13.1 of the Compact are required to be included in the Plan and which were not previously added to the Plan. Any existing project that is changed substantially from the project as described in the Plan shall be deemed to be a new and different project for purposes of this section.

(iii) Exemptions. The Docket Application Fee shall not apply to:

(A) Any project for which the Signatory Party Agency serves as lead under the one permit program rule (§ 401.42), unless such project must be added by the Commission to the Comprehensive Plan.

(B) Any project for which an agency, authority or commission of a signatory to the Compact is the primary sponsor. Projects sponsored by political subdivisions of the signatory states shall not be included in this exemption. For purposes of this section "political subdivisions" shall include without limitation municipalities, municipal utility authorities, municipal development corporations, and all other entities not directly under the budgetary and administrative control of the Commission's members.

(2) Annual Monitoring and Coordination Fee. An Annual Monitoring and Coordination Fee shall apply to each withdrawal and/or discharge project for which a water allocation or wastewater discharge approval issued pursuant to the Compact and implementing regulations is in effect, regardless of whether the approval was issued by the Commission in the form of a docket, permit or other instrument, or by a Signatory Party Agency under the one permit program rule (§ 401.42). The fee shall be based on the amount of a project's approved monthly water allocation and/or approved daily discharge capacity.

(3) Alternative Review Fee. In instances where the Commission's activities and related costs associated with the review of an existing or proposed project are expected to involve extraordinary time and expense, an Alternative Review Fee equal to the Commission's actual costs may be imposed. The Executive Director shall inform the project sponsor in writing when the Alternative Review Fee is to be applied and may require advance payment in the amount of the Commission's projected costs. Instances in which the Alternative Review Fee may apply include, but are not limited to, matters in which:

(i) DRBC staff perform a detailed pre-application review, including but not limited to the performance or review of modeling and/or analysis to identify target limits for wastewater discharges;

(ii) DRBC staff perform or review complex modeling in connection with the design of a wastewater discharge diffuser system;

(iii) DRBC manages a public process for which the degree of public involvement results in extraordinary effort and expense, including but not limited to costs associated with multiple stakeholder meetings, special public hearings, and/or voluminous public comment;

(iv) DRBC conducts or is required to engage third parties to conduct additional analyses or evaluations of a project in response to a court order.

(4) Additional fees.

(i) Emergency approval. A request for an emergency certificate under § 401.40 to waive or amend a docket condition shall be subject to a minimum fee in accordance with paragraph (e) of this section. An Alternative Review Fee also may be charged in accordance with paragraph (b)(3) of this section.

(ii) Late filed renewal application. Any renewal application submitted fewer than 120 calendar days in advance of the expiration date or after such other date specified in the docket or permit or letter of the Executive Director for filing a renewal application shall be subject to a Late Filed Renewal Application charge in excess of the otherwise applicable fee.

(iii) Modification of a DRBC approval. Following Commission action on a project, each project revision or modification that the Executive Director deems substantial shall require an additional Docket Application Fee calculated in accordance with paragraph (e) of this section and subject to an Alternative Review Fee in accordance with paragraph (b)(3) of this section.

(iv) Name change. Each project with a docket or permit issued by the DRBC or by a Signatory Party Agency pursuant to the one permit program rule (§ 401.42) will be charged an administrative fee as set forth in paragraph (e) of this section.

(v) Change of ownership. Each project that undergoes a "change in ownership" as that term is defined in section 5.2.1 E.2 of the Commission's Water Supply Charges Regulations will be charged an administrative fee as set forth in paragraph (e) of this section.

(c) Indexed adjustment. On July 1 of every year, beginning July 1, 2017, all fees established by this section will increase commensurate with any increase in the annual April 12-month Consumer Price Index (CPI) for Philadelphia, published by the U.S. Bureau of Labor Statistics during that year.[1] In any year in which the April 12-month CPI for Philadelphia declines or shows no change, the Docket Application Fee and Annual Monitoring and Coordination Fee will remain unchanged. Following any indexed adjustment made under this paragraph, a revised fee schedule will be posted on the Commission's website. Interested parties may also obtain the current fee schedule by contacting the Commission directly during business hours.

(d) Late payment charge. When any fee established by this section remains unpaid 30 calendar days after the payment due date provided on the Commission's invoice, an incremental charge equal to 2% of the amount owed shall be automatically assessed. Such charge shall be assessed every 30 days thereafter until the total amount owed, including any late payment charges, has been paid in full.

(e) Fee schedules. The fees described in this section shall be as follows.

DOCKET APPLICATION FILING FEE

Project Type	Docket Application Fee	Fee Maximum
Water Withdrawal	$400 per million gallons/ month of allocation[1], not to exceed $15,000[1]. Fee is doubled for any portion to be exported from the basin.	Greater of: $15,000[1] or Alternative Review Fee

Wastewater Discharge	Private projects: $1,000[1] Public projects: $500[1]	Alternative Review Fee
Other	0.4% of project cost up to $10,000,000 plus 0.12% of project cost above $10,000,000 (if applicable), not to exceed $75,000[1]	Greater of: $75,000[1] or Alternative Review Fee

[1] Subject to annual adjustment in accordance with paragraph (c) of this section.

ANNUAL MONITORING AND COORDINATION FEE

	Annual Fee	Allocation
Water Withdrawal	$300[1]	< 4.99 mgm
	$450[1]	5.00 to 49.99 mgm
	$650[1]	50.00 to 499.99 mgm
	$825[1]	500.00 to 9,999.99 mgm
	$1,000[1]	> or = to 10,000 mgm
	Annual Fee	Discharge Design Capacity
Wastewater Discharge	$300[1]	< 0.05 mgd
	$610[1]	0.05 to 1 mgd
	$820[1]	1 to 10 mgd
	$1,000[1]	>10 mgd

[1] Subject to annual adjustment in accordance with paragraph (c) of this section.

ADDITIONAL FEES

Proposed Action	Fee	Fee Maximum
Emergency Approval Under 18 CFR 401.40	$5,000	Alternative Review Fee
Late Filed Renewal Surcharge	$2,000	--
Modification of a DRBC Approval	At Executive Director's discretion, Docket Application Fee for the appropriate project type.	Alternative Review Fee
Name change	1,000[1]	--
Change of Ownership	$1,500[1]	--

[1] Subject to annual adjustment in accordance with paragraph (c) of this section.

Part 420 – Basin Regulations – Water Supply Charges (21 NYCRR Ch. XVIII, Subchapter D) is proposed to be amended by revising § 420.41 (21 NYCRR 883.1) to read as follows:

§ 420.41 Schedule of water charges.

The schedule of water charges established in accordance with § 420.22 shall be as follows:

(a) $80 per million gallons for consumptive use, subject to paragraph (c) of this section; and

(b) $0.80 per million gallons for non-consumptive use, subject to paragraph (c) of this section.

(c) On July 1 of every year, beginning July 1, 2017, the rates established by this section will increase commensurate with any increase in the annual April 12-month Consumer Price Index (CPI) for Philadelphia, published by the U.S. Bureau of Labor Statistics during that year.[1] In any year in which the April 12-month CPI for Philadelphia declines or shows no change, the water charges rates will remain unchanged. Following any indexed adjustment made under this paragraph, revised consumptive and non-consumptive use rates will be posted on the Commission's website. Interested parties may also obtain the current rates by contacting the Commission directly during business hours.

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[1] Consumer Price Index – U / Series ID: CWURA102SA0 / Not Seasonally Adjusted / Area: Philadelphia-Wilminton-Atlantic City, PA-NJ-DE-MD / Item: All items / Base Period: 1982-84=100.

Dated: May 6, 2016
PAMELA M. BUSH
Commission Secretary

Department of Environmental Conservation

NOTICE OF ADOPTION

Aquatic Invasive Species Spread Prevention

I.D. No. ENV-50-15-00010-A
Filing No. 474
Filing Date: 2016-05-05
Effective Date: 2016-05-25

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

Action taken: Addition of Part 576 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 9-1710 and 03-0301

Subject: Aquatic Invasive Species Spread Prevention.

Purpose: To require that ''reasonable precautions'' are taken prior to placing watercraft into public waters to prevent the spread of AIS.

Text of final rule: A new 6 NYCRR Part 576 is added in Chapter V, Subchapter C to read as follows:

6 NYCRR Part 576 Aquatic Invasive Species Spread Prevention

576.1 Purpose, scope and applicability.

(a) The purpose of this Part is to establish reasonable precautions such as removing visible plant or animal matter, washing, draining or drying that must be taken by persons launching watercraft or floating docks into public waterbodies to prevent the spread of aquatic invasive species.

(b) The regulations in this Part apply to persons who launch, or attempt to launch, a watercraft or floating dock into public waterbodies.

(c) The regulations set forth in this Part shall be in addition to the provisions found in Titles 9 and 6 of the New York Code of Rules and Regulations and local laws relating to the prevention of aquatic invasive species in New York. Those provisions shall apply, unless in conflict, superseded or expressly stated otherwise in this Part.

576.2 Definitions. As used in this Part, the following words and terms shall be defined as follows:

(a) Animal means all vertebrate and invertebrate species, in any stage of development, including but not limited to mammals, birds, reptiles, amphibians, fish, mollusks, arthropods, insects, and their eggs, larvae or young, but excluding human beings, dog or other companion animal defined in section 350 of the Agriculture and Markets Law.

(b) Commissioner means the Commissioner of the Department of Environmental Conservation as well as meaning the Commissioner's designated agent.

(c) Department means the New York State Department of Environmental Conservation.

(d) Floating dock means a removable buoyant platform supported by floating devices or suspended over the surface of a waterbody by anchors or other devices.

(e) Invasive species means a species that is nonnative to the ecosystem under consideration, and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

(f) Launch means to place a watercraft or floating dock into a public waterbody or any inlet or outlet to such waterbody for any purpose, including by trailer or other device or carrying by hand a watercraft into the waterbody.

(g) Launch site means the specific location along the shoreline of a public waterbody where a watercraft or floating dock is launched.

(h) Marine and coastal district waters means the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the state, including the Hudson River up to the Governor Malcolm Wilson Tappan Zee Bridge.

(i) Nonnative species means a species not indigenous to an ecosystem under consideration or to New York State, and includes an individual specimen.

(j) Person means any individual, firm, co-partnership, association, or corporation, other than the state or a public corporation, as the latter is defined in Article 2A section 66 of the General Construction Law.

(k) Personal watercraft means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel rather than in the conventional manner of sitting or standing inside the vessel.

(l) Plant means all plant species, in any stage of development, including, but not limited to trees, shrubs, vines, grasses, sedges, rushes, herbs, mosses, lichens, as well as submergent, emergent, free-floating or floating-leaf plants, and includes any part of the plant.

(m) Public waterbody or waterbody means lakes, bays, sounds, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(n) Reasonable precautions mean intentional actions that prevent or minimize the introduction or spread of aquatic invasive species, as specified in section 576.3 of this Part.

(o) Watercraft means every motorized or non-motorized boat, vessel or vehicle capable of being used or operated as a means of transportation or recreation in or on water.

576.3 Prohibitions. No person shall launch, or attempt to launch, a watercraft or floating dock into a public waterbody unless the following reasonable precautions of (a) cleaning, (b) draining, and (c) treating have been taken:

(a) Cleaning. Cleaning shall include all of the following reasonable precautions:

1. inspecting the watercraft or floating dock and removing any plant or animal, or parts thereof, visible to the human eye, in, on, or attached to any part of the watercraft or floating dock, including livewells and bilges, the motor, rudder, anchor or other appurtenant, equipment or gear on the watercraft or floating dock that may come in contact with the waterbody; or the trailer or any other device used to transport or launch a watercraft or floating dock that may come into contact with the waterbody before launching into a public waterbody; and

2. any plants, animals, and parts thereof, including bait or other fish parts, visible to the human eye, shall be disposed by depositing these materials in a refuse receptacle where available or other receptacle designated for invasive species disposal, or if no receptacle is available, disposing the materials upland from the mean high water mark of the waterbody and in a manner to avoid contact by the material with the waterbody; and

(b) Draining. Draining shall include all of the following reasonable precautions:

1. draining water from the watercraft and the watercraft's motor, bilge, livewell, bait wells and ballast tanks and other areas of the watercraft capable of holding water before launching a watercraft into a public waterbody at a distance from the waterbody and in such a manner to avoid contact of the drainage with the public waterbody; and

2. for personal watercraft only, draining water from the cooling system of personal watercraft immediately following its removal from the water by running the motor out of water for five seconds, unless advised differently by the manufacturer and at a distance from the waterbody and in such a manner to avoid contact of the drainage with the public waterbody; and

(c) Treating. Treating shall include at least one of the following reasonable precautions:

1. Drying method. Treatment by drying must include one of the following steps:

i. Removing any boat cover and air dry watercraft, trailer or floating dock out of the water and in an area exposed to the sun or in a heated building for a minimum of five (5) days; or

ii. Storing watercraft and trailer or floating dock in subfreezing temperatures for a minimum of three (3) days; or

iii. If the drying methods described in subparagraph (i) or (ii) above and the rinsing methods described in paragraph 2 below are not available prior to launching, towel dry portions of the watercraft hull, engine, trailer and associated equipment that have been in contact with the waterbody prior to launching in another waterbody; or

2. Rinsing method. Treatment by rinsing must include one of the following steps:

i. If equipment is available at the launch site or other reasonably accessible location prior to launching, consistent with manufacturer's directions, spraying/rinsing hull and other external areas or equipment with high pressure (2,500 psi) hot water (140 degrees F for 30 seconds) at a location that does not drain into a waterbody; and if equipment is available at the launch site or other reasonably accessible location prior to launching, consistent with manufacturer's directions, rinsing/flushing water cooled motors with water for two (2) minutes at a location that does not drain into a waterbody; or

ii. If equipment is available at the launch site or other reasonably accessible location prior to launching, consistent with manufacturer's directions, rinsing/flushing the bilge area, live wells, bait wells and other water-holding compartments with hot water at a temperature of 140 degrees F for 30 seconds at a location that does not drain into a public waterbody. If water is being drained via a pump, flushing the bilge area, live wells, bait wells and other water-holding compartments with the hottest water for which the pump is rated; or

iii. If hot water is not available at the launch site or other reasonably accessible location prior to launching, thoroughly rinsing the boat hull and flush water- holding compartments with the warmest water available at a location that does not drain into a waterbody. Cold water is acceptable only if it is the only water available; or

3. Painting method to be used prior to launching into marine and coastal district waters only.

Prior to launching a watercraft or floating dock into a public waterbody within marine and coastal district waters, treatment shall include the application and maintenance of anti-fouling paint, in accordance with applicable laws, rules and regulations, to watercraft hull, floating dock or any associated trailer or equipment being used to launch the watercraft or floating dock into marine and coastal district waters, and upon removing the watercraft from the water, inspecting the watercraft or floating dock and removing any attached plant or animals, or any part thereof, visible to the human eye.

576.4 Exemptions.

(a) The provisions of this Part shall not apply to the following:

1. Plants not otherwise defined in law or regulation as invasive species affixed to or transported in watercraft for use as camouflage for hunting or wildlife viewing purposes.

2. Bait or baitfish that can legally be used on a waterbody and is possessed consistent with all applicable laws and regulations.

3. Legally taken game as defined in section 11-0103(2) of the Environmental Conservation Law or fish as defined in section 11-0103(1)(a).

4. The use of plants or animals for habitat restoration, invasive species control, scientific research, aquaculture, landscaping, gardening, or other activity pursuant to express written approval by the department, consistent with all applicable laws and regulations related to their use, possession or harvest.

(b) The provisions of subdivision (c) of section 576.3 of this Part shall not apply to any watercraft and associated equipment or floating dock that is re-launched from a launch site into a public waterbody within the bounds of any permanent barriers impassible to watercraft which was, prior to launching, removed from the same launch site without having been launched into any other waterbody from any other launch site.

576.5 Penalties and enforcement.

Any person who violates the provisions of this Part shall be liable for all penalties and other remedies provided for in the Environmental Conservation Law including section 71-0703(10).

576.6 Severability.

If a provision of this Part or its application to any person or circumstance is determined to be contrary to law by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of this Part or the application to other persons and circumstances.

Final rule as compared with last published rule: Non-substantive changes were made in sections 576.1(b), (c) and 576.3(c), (2)(i)-(iv).

Text of rule and any required statements and analyses may be obtained from: Leslie Surprenant, NYS DEC, Division of Lands and Forests, 625 Broadway, Albany, NY 12233, (518) 402-8980, email: leslie.surprenant@dec.ny.gov

Additional matter required by statute: A Negative Declaration was prepared in compliance with Article 8 of the Environmental Conservation Law.

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

Non-substantive changes were made to the regulation that did not necessitate revision to the previously published RIS, RFA, RAFA and JIS. These minor changes consist of text clarification and grammatical corrections.

Initial Review of Rule

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

Assessment of Public Comment

The Department received 22 individual public comment letters during the public comment period held December 16, 2015 through February 1,

2016. Of these, 16 commenters supported the proposed regulations while 6 commenters opposed the regulations. A total of 134 issues were raised within the 22 comment letters.

In response to the comments received, staff made the following nonsubstantive changes to the Express Terms: Minor text change to Purpose, scope and applicability section 576.1 subdivisions (b) and (c); Minor change to Prohibitions section 576.3, subdivision (c), paragraph (2), subparagraphs (i-iv).

For a listing of all comments received and Department responses please contact the DEC Invasive Species Coordination Section at 519-402-9405 or see: http://www.dec.ny.gov/regulations/propregulations.html#recent

General comments

57 issues were raised, including the following:

Comment: As written, we opine that this draft proposal is unreasonable, and sabotages the intended, cooperative goal to curtail mechanical spread of AIS between water bodies.

Response: DEC staff disagree. Clean, Drain, Dry has been long recognized as the standard. The "reasonable precautions" were required in statute and draw from nationally recognized standard protocols including the ANS Task Force white paper "Voluntary Guidelines to Prevent Introduction and Spread of Aquatic Invasive Species: Recreational Activities".

Comment: Draft Part 576's focus solely on clean boats and docks omits addressing removals and other sources of 'infection'.

Response: The law which authorizes the development of these proposed regulations specifically indicates that "reasonable precautions" must be taken prior to launch, hence the focus of the regulation.

Comment: We are troubled by the State's own admission that the public/user is generally uneducated and unable to distinguish native from nonnative, so "all plant and animal material" become indictments if on or in watercraft. Our earlier comments endorsed programming to constructively educate boaters to be able to understand the consequences of introductions and to be better informed to identify the AIS plants of concern.

Response: By removing any plant or animal, or parts thereof, visible to the human eye, distinguishing between native and nonnative species is not required. DEC staff recognize the importance of education programs and provides significant AIS spread prevention and outreach on its website.

Comment: For this regulation "launching" and "removal" should be treated equitably in the context of the goal.

Response: The law which authorizes the proposed regulations specifically states that "reasonable precautions" must be taken by boaters prior to launch, hence the focus of the regulation.

Comment: While we advocate effective and efficacious protection of the ecosystem, we first want to see a substantive State effort in educating the general public.

Response: DEC recognizes the importance of education programs, such as boat steward programs and has implemented E/O and boat steward programs. The proposed regulations are required under statute.

Comment: On busy days such as holidays or during the summer the little added time it takes to do the terms provided will lead to a clogged launch site and angry boaters.

Response: The proposed regulations provide "reasonable precautions" that must be taken prior to launch. These activities do not all need to be accomplished on the launch itself.

Comment: We believe that the regulations, as proposed, do not fully comport with various observations made in the Regulatory Impact Statement, which we agree with, which states that the intent is to limit the requirements of the regulations to instances when watercraft, floating docks, trailers and equipment are transported from one waterbody to another.

Response: While transport between waterbodies is indeed a high risk, transport within a waterbody is also a risk with potential to spread aquatic invasive species. Hence, the treatment exemption stated in 576.4(b) is specific to subdivision (c) of section 576.3 of this Part and applies only to watercraft and floating docks that are re-launched from the same launch site previously removed from without having launched to any other waterbody.

Purpose, scope and applicability

6 issues were raised, including the following:

Comment: The use of the term "public waterbodies" makes the application of these regulations unclear. We would like to see the word "public" eliminated from the regulations entirely.

Response: The law which authorizes the proposed regulations specifies "public waterbody", hence the focus of the regulations.

Comment: Clarify the responsible party. By saying that the regulations apply to all sites, this implies that the site is responsible for taking reasonable precautions. It would be much clearer if the sentence read "The regulations in this Part apply to users of all sites from which a watercraft or floating dock can be launched into public waterbodies…"

Response: DEC staff agree, change will be made. In addition, 576.1 (a) states "The purpose of this Part is to establish reasonable precautions such as removing visible plant or animal matter, washing, draining or drying that must be taken by persons launching watercraft or floating docks into public waterbodies to prevent the spread of aquatic invasive species".

Definitions

20 issues were raised, including the following:

Comment: We would ask for clarification of the term "public waterbodies" to include all navigable waters.

Response: The definition of "public waterbody or waterbody" as used in the proposed regulation, is identical to the definition of "waters" or "waters of the State" in ECL 17-0105(2).

Comment: Many boaters and lake users may not be aware of current AIS, therefore it would be helpful to reference the Part 575 regulations lists.

Response: In addition to the list of prohibited and regulated invasive species identified in 6 NYCRR Part 575, other aquatic invasive species exist.

Comment: 576.2 (e) The trouble with this description is that it fails to address the three types of water that connect through New York State. Salt water, brackish water and fresh water have completely different ecosystems, and foster growth of specific species indigenous to those waters.

Response: DEC staff agree that salt, brackish and fresh water support different ecosystems and therefore largely different invasive species pose a threat to the three systems. However, the basic principles of Clean, Drain and Treat identified in the proposed regulations will greatly reduce potential introduction and spread of aquatic invasive species in all three systems.

Comment: In 576.2(l), the plant definition should also list algae.

Response: DEC staff believe the definition of "plant" to be adequate as written. The generally accepted definition of "algae" is any of a group of chiefly aquatic nonvascular plants with chlorophyll often masked by a brown or red pigment, hence they are included already by definition.

Comment: All accessories and gear used by those fishing, paddling, sailing, etc. that also come into contact with the water should be included. Create a separate definition and refer to "watercraft and all accessories".

Response: While DEC staff agree that accessories and gear may transmit invasive species, the law which authorizes the proposed regulations specifies "watercraft" and "floating docks", hence the focus.

Prohibitions

31 issues were raised, including the following:

Comment: Drying methods scripted impose an unreasonable burden on anglers and boaters entering the water on a daily basis.

Response: DEC staff disagree. DEC staff believe that the treatment methods included in the proposed regulations are practical and reasonable, and the proposed regulations will be effective if implemented.

Comment: Most boaters may not have access to high pressure (2500 PSI) hot water (140 degrees F 30 seconds) spray decontamination stations. Some of these boaters may use commercial self-service car wash stations. In that case, the water pressure is only 1100 PSI or lower. We may want to develop and establish some simple rinsing methods.

Response: DEC staff agree, hence the inclusion of several treatment options in the proposed regulations.

Comment: I have a boat I want to take out in marine waters but this means I would have to get my boat treated. This is a good idea but consider the cost of what this will cost the public.

Response: DEC staff acknowledge. No treatment is required, other than the maintenance of "anti-fouling paint" if such paint is selected as a spread prevention method; 576.3(c) provides additional treatment methods that may be selected, see 576(c)(1) –drying, and 576(c)(2) -rinsing.

Comment: In the section 576.3(c) "Treating", boaters have the option of choosing a listed method to treat their watercraft. All of the options posed are necessary to be effective and boaters should be required to do all of them.

Response: DEC staff believe that the treatment methods included in the proposed regulations are practical, but at the same time provide flexibility to the boating community, and will be effective if implemented.

Comment: The fact that antifouling paint remains classified as a pesticide in the State of New York has caused most small businesses to drop the practice of applying bottom paint. It should not be obligatory to use antifouling paint, provided that the bottom of the boat is applied with wax, or some other type of approved substance that allows hydrodynamic improvement and discourages fouling.

Response: DEC acknowledge. Use of antifouling paint is an option, not requirement, see "or" immediately prior. The regulations specifically only require that in treating the boat or floating dock that "at least one" of the three methods is used. See 576.3(c).

Exemptions

12 issues were raised, including the following:

Comment: Subdivision (b) of proposed 576.4 should either be expanded to exempt all watercraft and floating docks from all the requirements of

576.3 in its entirety if they are being relaunched into the same waterbody, or a new subdivision (c) should be added to provide that full exemption.

Response: DEC staff disagree because there is a risk of spreading AIS to other parts of that waterbody, and believe the current language in 576.4(b) is sufficient.

Comment: We believe that the State of New York should not be exempted from this legislation.

Response: The definition of "person" in the proposed regulation is constrained by Article 9 of the ECL in defining "person" in Part 576 regulations. While the State is exempted from this definition, State staff will take reasonable precautions that are consistent with these regulations to prevent the spread of AIS.

Penalties and enforcement

8 issues were raised, including the following:

Comment: This legislation is lacking in the enforcement of the prohibitions listed.

Response: DEC staff disagree, the law which authorizes the proposed regulation is quite specific in regard to enforcement as per 71-0703 subdivision 10.

Comment: A conversation with the public needs to start before the enforcement and regulation of this legislation. People need a chance to participate and understand the need for spread prevention of AIS before they are required to take immediate action.

Response: DEC staff recognize the importance of education programs such as boat stewards. DEC staff have conducted E/O related to AIS for several years, the agency web site contains significant E/O content focused on AIS and boat transport, existing boat steward programs utilize handouts developed by the DEC in collaboration with OPRHP.

Department of Financial Services

EMERGENCY RULE MAKING

Title Insurance Agents, Affiliated Relationships, and Title Insurance Business

I.D. No. DFS-21-16-00001-E

Filing No. 471

Filing Date: 2016-05-04

Effective Date: 2016-05-04

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

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

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

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

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

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

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

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

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

Substance of emergency rule: The following sections are amended:

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

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

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

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

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

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

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

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

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

Section 35.1 contains definitions for new Part 35.

Section 35.2 specifies forms for title insurance agent licensing applications.

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

Section 35.4 addresses affiliated business relationships.

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

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

Section 35.7 provides certain other minimum disclosure requirements.

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

Section 35.9 establishes record retention requirements for title insurance agents.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 1, 2016.

Text of rule and any required statements and analyses may be obtained from: Paul Zuckerman, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5286, email: paul.zuckerman@dfs.ny.gov

Consolidated Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority to promulgate these amendments and the new Part derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 107(a)(54), 301, 2101(k), 2109, 2112, 2113, 2119, 2120, 2122, 2128, 2129, 2132, 2139, 2314, and 6409 of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent as the head of the Department of Financial Services ("Department").

FSL section 302 and Insurance Law section 301 authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law, among other things.

Insurance Law section 107(a)(54) defines title insurance agent.

Insurance Law section 2101(k) defines insurance producer to include title insurance agent.

Insurance Law section 2109 addresses temporary licenses for title insurance agents and other insurance producers.

Insurance Law section 2112 addresses appointments by insurers of insurance agents and title insurance agents.

Insurance Law section 2113 requires that title insurance agents and persons affiliated with such title insurance agents provide certain disclosures to applicants for insurance when referring such applicants to persons with which they are affiliated. Section 2113 also requires the Superintendent to promulgate regulations to enforce the affiliated person disclosure requirements and to consider any relevant disclosures required by the federal real estate settlement procedures act of 1974 ("RESPA"), as amended.

Insurance Law section 2119 permits title insurance agents to charge fees for certain ancillary services not encompassed within the rate of premium provided its pursuant to a written memorandum.

Insurance Law section 2120 addresses the fiduciary responsibility of title insurance agents and other producers.

Insurance Law section 2122 addresses advertising by title insurance agents and other insurance producers.

Insurance Law section 2128 prohibits fee sharing with respect to business placed with governmental entities.

Insurance Law section 2132 governs continuing education for title insurance agents and other insurance producers.

Insurance Law section 2139 is the licensing section for title insurance agents.

Insurance Law section 2314 prohibits title insurance corporations and title insurance agents from deviating from filed rates.

Insurance Law section 2324 prohibits rebating, improper inducements and other discriminatory behavior with respect to most kinds of insurance, including title insurance.

Insurance Law section 6409 contains specific prohibitions against rebating, improper inducements and other discriminatory behavior with respect to title insurance.

2. Legislative objectives: Long-sought and critically needed legislation to license title insurance agents was enacted as part of Chapter 57 of the New York Laws of 2014, which was signed into law by the governor on March 31, 2014 and took effect on September 27, 2014. By way of background, title insurance agents in New York: (a) handle millions of dollars of borrowers' and sellers' funds, (b) record documents, and (c) pay off mortgages. Yet for years, title insurance agents have conducted business in New York without licensing or other regulatory oversight, standards or guidelines. Because, as a matter of practice in New York, the title insurance agents control the bulk of the title insurance business, including bringing in customers, conducting the searches and other title work, the title insurance corporations often have little choice but to deal with title insurance agents who they may otherwise consider questionable or unscrupulous. Without licensing or regulatory oversight, an unscrupulous title insurance agent who was fired by one title insurer could simply take the business to another title insurer, who is usually more than willing to appoint that title insurance agent.

This lack of State regulation over title insurance agents made for an alarming weakness in New York law, and specifically New York law addressing title insurance rebating and inducement. For example, lack of regulatory oversight and licensing created a gaping loophole, which led to serious breaches of fiduciary duties and exploitation by unscrupulous actors to commit fraud in the mortgage origination and financing process. Over the years, this gap in New York law and lack of regulatory oversight allowed these actors to freely engage in theft, abuse, charging of excessive fees, and illegal rebates and inducements to the detriment of consumers, with little fear of prosecution. These abuses cost consumers of the State millions of dollars and at least one New York title insurer became insolvent because of the activities of its title insurance agents.

3. Needs and benefits: Now that New York law requires title insurance agents to be licensed, a number of existing regulations governing insurance producers need to be amended in order include title insurance agents or to address unique circumstances involving them, including affiliated persons' arrangements and required consumer disclosures. Specifically, Insurance Regulation 9 addresses temporary licenses; Insurance Regulation 18 addresses appointment of insurance agents; and Insurance Regulation 29 regulates premium accounts and fiduciary responsibilities of insurance agents and insurance brokers; and each is amended to include references to title insurance agents. Insurance Regulation 87 addresses special prohibitions regarding sharing compensation with other licensees with respect to certain governmental entities and is amended to address a limited exception for title insurance business insuring State of New York Mortgage Agency and certain other circumstances. Insurance Regulation 194 addresses insurance producer compensation transparency and is amended to reflect specific requirements in new Insurance Law section 2113 for title insurance agents. Insurance Regulation 125 governs insurance agents and brokers that maintain multiple offices and is amended to clarify the applicability of the regulation to title insurance agents. Regulation 125 also is amended to address unique circumstances involving title insurance agents who are also licensed attorneys.

New Insurance Regulation 206 addresses a number of miscellaneous issues involving title insurance agents. Some of these changes simply add provisions that are similar to those that apply to other insurance producers; for example, it prescribes the form of applications and requires licensees to notify the Department of any change of business or residence address. Other provisions of Regulation 206 set forth the new disclosure requirements; require title insurance agents to comply with a rate service organization's annual statistical data call; and address the obligation of title insurance agents and title insurance corporations with respect to title closers. Of particular significance are provisions of the regulations that codify Department opinions regarding affiliated business relations with respect to the applicability of Insurance Law section 6409, which prohibits rebates, inducements and certain other discriminatory behaviors.

4. Costs: Regulated parties impacted by these rules are title insurance agents, which heretofore were not licensed by the Department, and title insurance corporations. They may need to provide new disclosures in accordance with the regulation if they are not already making such disclosures but they already have an obligation to make changes to notices pursuant to the legislation. There are also new reporting requirements to the Department but these are the same that apply with respect to other licensees. In any event, although the cost impact will likely vary among the agents and insurers affected by this regulation, the costs of these new disclosures and reporting requirements should not be significant.

Although the Department already was handling complaints and investigating matters regarding title insurance, because licensing title insurance agents is a new responsibility for the Department, anticipated costs to the Department are at this time uncertain. Existing personnel and line titles will handle any new licensing applications or enforcements issues initially.

These rules impose no compliance costs on any state or local governments.

5. Local government mandates: The new rules and amendments impose no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The amendments and new rules now apply certain requirements that are applicable to other insurance producers to title insurance agents as well. For example, title insurance agents are made subject to the same reporting requirements as other insurance producers when changing addresses, maintaining records, and submitting applications, and title insurers are required to file certificates of appointment of their title insurance agents with the Department. In addition, to reflect the specific notice requirements of Insurance Law section 2113, the disclosure requirements to insureds under Insurance Regulation 194 are modified for title insurance agents to reflect the statutory requirements. The new law also contains certain new disclosure requirements and the new rules implement those changes, and require certain other disclosures to applicants for insurance, such as a notice advising insureds or applicants for insurance about the different kinds of title policies available to them.

7. Duplication: The amendments do not duplicate any existing laws or regulations.

8. Alternatives: Prior to proposing the consolidated rules in July, 2014, the Department circulated drafts of the proposed rules to a number of interested parties and, as a result, the Department made a number of changes to the initial proposed new Regulation 206, particularly with respect to affiliated business relationships, and title insurance corporation or title insurance agent responsibility for title insurance closers. The Department initially submitted the regulation as a proposed rulemaking that was published in the State Register on July 23, 2014. Because of the critical need to have regulations in effect on and after the September 27, 2014 effective date of Chapter 57, the Department promulgated emergency regulations effective on that date. In response to comments received during the public comment period, the Department made additional changes that were incorporated into the emergency rules, in order to clarify or eliminate unnecessary requirements. Because the proposed regulation has expired, the Department anticipates submitting a new, revised proposal in 2016 that will incorporate additional public comments that the Department has received regarding the initial proposal. To prevent disruption and confusion in the industry until the rules are finalized, however, the emergency regulation is continued unchanged from the versions in effect since September 27, 2014.

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

consistent with New York law, provide greater consumer protection to the public.

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

Consolidated Regulatory Flexibility Analysis

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

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

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

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

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

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

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

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

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

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

7. Small business participation: The Department initially submitted the regulation as a proposed rulemaking on July 23, 2014. Prior to submission, interested parties, including an organization representing title insurance agents, were given an opportunity to comment on a draft version of these rules, in addition to their opportunity to review and comment on the proposed rulemaking when it was published. The proposed regulation has now expired and the Department anticipates submitting a new, revised proposal in 2016 that will incorporate additional public comments that the Department has received regarding the initial proposal. However, to prevent disruption and confusion in the industry until the rules are finalized, the emergency regulation is continued unchanged from the versions in effect since September 27, 2014.

Consolidated Rural Area Flexibility Analysis

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

Rural area participation: The Department initially submitted the regulation as a proposed rulemaking on July 23, 2014. Prior to submission, interested parties, including those located in rural areas, were given an opportunity to review and comment on a draft version of these rules, in addition to their opportunity to review and comment on the proposed rulemaking when it was published. The proposed regulation has now expired and the Department anticipates submitting a new, revised proposal in 2016 that will incorporate additional public comments that the Department has received regarding the initial proposal. However, to prevent disruption and confusion in the industry until the rules are finalized, the emergency regulation is continued unchanged from the versions in effect since September 27, 2014.

Consolidated Job Impact Statement

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

EMERGENCY RULE MAKING

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

I.D. No. DFS-21-16-00004-E
Filing No. 477
Filing Date: 2016-05-06
Effective Date: 2016-05-09

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

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

Statutory authority: Banking Law, art. 12-D

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

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

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

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

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

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

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

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

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

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

Section 418.6 covers the fees for application for registration as a

servicer, including processing fees for applications and fingerprint processing fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 3, 2016.

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

Regulatory Impact Statement

1. Statutory Authority.

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

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

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

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

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

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

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

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

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

making examination reports confidential are also extended to cover mortgage loan servicers.

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

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

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

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

2. Legislative Objectives.

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

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

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

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

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

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

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

3. Needs and Benefits.

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

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

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

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

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

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

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

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

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

4. Costs.

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

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

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

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

5. Local Government Mandates.

None.

6. Paperwork.

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

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

7. Duplication.

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

An exemption was created under Section 418.13, from the otherwise

applicable net worth and surety bond requirements, for entities that are subject to the capital requirements applicable to insured depository institutions and are considered adequately capitalized.

8. Alternatives.

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

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

9. Federal Standards.

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

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

10. Compliance Schedule.

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

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

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

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

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

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

3. Professional Services:

None.

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impact:

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

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

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

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

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

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

Applicants, registered MLSs and mortgage loan servicers exempted

from the registration requirement may incur costs in complying with the financial responsibility regulations.

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

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

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

Job Impact Statement

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

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

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

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Financial Services publishes a new notice of proposed rule making in the NYS *Register*.

Title Insurance Rates, Expenses and Charges

I.D. No.	Proposed	Expiration Date
DFS-18-15-00009-P	May 6, 2015	May 5, 2016

Department of Health

NOTICE OF ADOPTION

Supplementary Reports of Certain Birth Defects for Epidemiological Surveillance; Filing

I.D. No. HLT-08-15-00003-A
Filing No. 472
Filing Date: 2016-05-04
Effective Date: 2016-05-25

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

Action taken: Amendment of sections 22.3 and 22.9 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 206(1)(d), 225(5)(t) and 2733

Subject: Supplementary Reports of Certain Birth Defects for Epidemiological Surveillance; Filing.

Purpose: To increase maximum age of reporting certain birth defects to the Birth Defect Registry.

Text or summary was published in the February 25, 2015 issue of the Register, I.D. No. HLT-08-15-00003-P.

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

Revised rule making(s) were previously published in the State Register on February 17, 2016.

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

Summary of Revised Regulatory Impact Statement

Statutory Authority:

Section 206(1)(d) of the Public Health Law (PHL) authorizes the Commissioner to investigate the causes of diseases, epidemics, and the sources of mortality in New York State. PHL § 225(5)(t) provides that the State Sanitary Code may facilitate epidemiological research into the prevention of environmentally related diseases and require reporting of such diseases by physicians, medical facilities and clinical laboratories. PHL § 2733 requires that birth defects and genetic diseases be reported by physicians, hospitals, and persons in attendance at birth in a manner prescribed by the Commissioner. Information collected pursuant to such reports shall be kept confidential pursuant to the Personal Privacy Protection Act.

Legislative Objectives:

PHL § 206(1)(d) established the Commissioner's broad authority to investigate the causes of disease in New York State. As reflected in the Declaration of Policy, the Legislature enacted PHL § 2733 and related statutes to ensure that the Department maintains a central and comprehensive responsibility for developing and administering the State's policy with respect to scientific investigations and research concerning the causes, prevention, treatment and cure of birth defects and genetic and allied diseases. Finally, in enacting PHL § 225(5)(t), the Legislature directed that the State Sanitary Code contain regulations that facilitate epidemiological research into the prevention of environmental diseases, by pathological conditions of the body or mind resulting from contact with toxins, mutagens or teratogens and by requiring the reporting of such diseases or suspected cases of such diseases to the Department.

To these ends, the Department maintains the Congenital Malformation Registry (CMR) and has issued regulations requiring the reporting of structural, functional or biochemical abnormalities determined genetically or induced during gestation, and which are not due to birthing events.

Needs and Benefits:

The Department's proposal seeks to extend the case capture periods for certain diseases. Currently, health regulations require physicians and hospitals to report birth defects that are diagnosed within two years of a child's birth, yet many birth defects are not diagnosed until after age two. By extending the capture period for certain diseases listed below, the Department's proposal will enhance its epidemiologic surveillance and advance its understanding of birth defects and their environmental causes.

Fetal alcohol syndrome (FAS) is a serious but preventable birth defect that results from heavy maternal intake of alcohol during pregnancy. FAS is not uncommon, with national estimates of 5-20 cases per 10,000 live births. The annual prevalence of FAS reported by the CMR is about 10-fold less than national estimates. Studies indicate that FAS is more easily diagnosed from ages two to ten years.

Hereditary muscular dystrophies and other myopathies are a family of diseases that cause progressive and steady muscle weakness and wasting. The most common muscular dystrophy is Duchenne MD, followed by Becker MD. A recent US study indicated the prevalence of boys age 5 to 24 with Duchenne and Becker MD was 1.3 to 1.8 per 10,000 males. However, the CMR indicated an annual birth prevalence of only 0.08 per 10,000 live births. One study reported a mean age of diagnosis of 5 years for boys with Duchenne MD.

Congenital heart defects (CHDs) are the most common organ system malformations, and they remain the leading cause of infant deaths from birth defects. Approximately 1 out of every 115 to 150 babies is born with a heart defect. Minor defects are often not detected until later in life and can have serious consequences. One study indicates that 3% of children with CHDs are diagnosed from ages three to ten years old.

Genetic and Chromosomal Anomalies. The CMR was established prior to the sequencing of the human genome and the associated advances in the scientific community's understanding of the role genetics plays in causing birth defects. Because the field of genetics and birth defects is so new, there is little or no documentation about diagnostic timing for many of these syndromes. However, genetic and chromosomal anomalies are often not recognized until after two years of age, because it can require several years to observe a child prior to diagnosis.

The Department's proposal would also require reporting of birth defects diagnosed or identified during pregnancy. This reporting requirement is important due to the increase in routine prenatal screening. For many diseases, the CMR data suggests a prevalence rate in New York that is far below the expected range.

The proposed amendment also allows reporting by qualified health care professionals other than physicians—specifically, nurse practitioners and physician assistants. Over the past several years, a growing number of national, state and specialty-specific studies indicate that the physician workforce in the United States is facing current and future shortages. Moreover, the shortage of family physicians will be most acute in rural and underserved populations. These trends highlight the need to allow reporting by nurse practitioners and physician assistants. Indeed, anecdotal reports indicate that nurse practitioners and physician assistants are already filling this role because of the burden on physicians.

The regulation would also clarify the requirement that clinical laboratories performing diagnostic testing for birth defects must report to the CMR. This requirement is not new. In 1978, Commissioner Whalen issued a blanket order directing that all laboratories report birth defects to the Department pursuant to PHL § 2733. However, many clinical laboratories are not aware of the reporting requirement.

The Department's proposal adds granularity to the list of reportable diseases. Many diseases currently reported fall under broad categories, thereby limiting the Department's ability to receive information concerning the individual diseases within the category. For example, congenital leukemia and lymphangiomas are both currently reported under the broad classification of "congenital anomalies of the circulatory system." The Department's proposal lists these and other defects as separate reportable conditions.

Finally, the proposal replaces the term "congenital malformation" in favor of the term "birth defect" and renames the CMR the "New York Birth Defects Monitoring Program." In a nationally representative survey conducted in 2007, respondents were asked what their first choice would be to describe problems at birth that can result in physical or mental disabilities. The preferred term was "birth defects". This term was chosen over congenital malformations and congenital anomalies, among other choices. Using the term that is preferred by the public will enable positive engagement with affected families and improve the Department's communication with the public.

Costs to Regulated Parties:

The Department anticipates that, for the entire State, the regulatory changes will require annual reporting of an approximate additional 900 live born children by physicians, nurse practitioners, physician assistants, midwives, and hospitals (FAS: 100-200 cases; muscular dystrophy: 100 cases; cardiac heart defects in children past age two: 200 cases; genetic or chromosomal anomalies: 400 cases).

Approximately 160 New York hospitals and their associated physicians, nurse practitioners, physician assistants and midwives will be affected by this change. The Department anticipates that the costs to these parties will be minimal, primarily because the number of additional birth defects to be reported annually through hospitals (five to six cases per year, on average) will be small, relative to the number or reports already being submitted. Hospitals already report cases to the CMR electronically. The additional hospital staff time to enter six to seven additional cases per year may require 20-30 minutes annually. Alternatively, a hospital can incorporate the additional diagnoses into a monthly batch file. Hospitals are already familiar with the process of modifying batch files.

Reporting by smaller, community-based health care facilities and individual providers will result in some costs primarily because, while physicians have always been required to report birth defects, this requirement has not been enforced for providers who are not associated with New York hospitals. The Department has minimized the administrative costs associated with the reporting requirement by integrating the reporting process with technologies that healthcare providers already utilize. Healthcare providers currently rely on the Department's Health Commerce System (HCS) for communication and reporting to the Department. Within the HCS, the Department is implementing a comprehensive web-based reporting system known as the Child Health Information Integration (CHI2) project to be used as the central website to report and track newborn screening, immunizations, lead and newborn hearing screening. Reporting of birth defects will become a component of the CHI2 system in order to reduce the reporting burden of community-based healthcare facilities and providers.

Providers will be required to spend 3-5 minutes entering case information for each child or fetus diagnosed with a birth defect that is newly reportable under the updated CMR regulations. Statistically, this should involve very few cases for such providers. Because most providers already use and have free access to the online electronic reporting system, the proposed regulation will not impose any additional equipment or technology costs. The only costs will be in the amount of time required to use the CHI2 to report additional birth defects, which is expected to be negligible. The Department will assist any providers that currently do not have access to the web based reporting system.

With regards to extending the CMR reporting requirements to nurse practitioners, physician assistants and midwives, the Department does not expect that regulated parties will incur any associated direct costs. Rather, the Department expects that this change will relieve physicians and hospitals from being the only classes of healthcare providers authorized to submit a report when a child is diagnosed with a birth defect.

For clinical laboratories, the Department anticipates the regulatory change will require annual reporting of approximately 6,600 additional genetic or chromosomal anomalies recognized during pregnancy, and approximately 400 reports related to children diagnosed between the ages of 2 and 10 years old, for a total of 7,000 additional reports annually. The Department anticipates the ongoing costs to the roughly 50 clinical cytogenetic laboratories providing diagnostic testing for genetic and chromosomal anomalies to be minimal because these laboratories will report using the Electronic Clinical Laboratory Reporting System (ECLRS) as many already do. The Department estimates that the additional number of reports that these labs will make to ECLRS will cost approximately $1,400. Clinical laboratories may experience a one-time expense related to modifying the laboratory's software to identify the additional cases that must be reported, which the Department estimates will require a maximum of 16 hours of work by a computer specialist at an estimated rate of pay of $100/hour.

Costs to the Regulatory Agency:

The Department has been using a web-based electronic reporting system in place since 2006. Currently, the CMR receives and processes about 12,000 reports annually. Thus, annual cost to DOH to receive and process the additional 1,000-1,200 cases will be minimal.

Costs to the State Government:

There will be no costs to state government. For the last ten years, reporting to the CMR has been conducted electronically. Currently, the Department uses the Health Commerce System to receive CMR reports. Reporters upload cases individually or in batch reports. The electronic reporting system already includes automated processes to match and combine reports for the same child, to ensure de-duplication of data reported from multiple reporters. Additional data quality control processes are built into the system.

Costs to Local Government:

Hospitals owned by local governments would be affected but, as discussed above, the costs will be minimal because the additional reporting requirement is relatively small.

Local Government Mandates:

There are no mandates on local governments, other than the additional reporting requirements that would apply to hospitals owned by a local government.

Paperwork:

This change will generate very little physical paperwork because reporting will be performed electronically as is described under "Costs to Regulated Parties."

Duplication:

This change does not involve any duplication in laws. In terms of duplication of effort, the reporting software will prevent the repeated reporting of the same birth defect for a particular child.

Alternatives:

If no changes are made to this regulation, the Department will continue to collect incomplete reporting for birth defects, and prevalence estimates

will remain inaccurate. This will impede the Department's ability to detect and quantify environmental exposures that negatively impact the health of embryos and fetuses in New York State.

Concerning FAS, in particular, failure to change the reporting requirement will hamper prevention efforts and may cost New York more in the long-term. One study placed the nationwide annual cost of treating birth defects associated with FAS at $1.6 billion. Another study used a societal perspective and generated nationwide cost estimates of $9.69 billion. These costs included estimates of the value of productivity lost as a result of cognitive disabilities, as well as the cost of treatment and residential care. In addition to improving outcomes for affected children, early diagnosis and appropriate interventions are likely to generate significant costs savings over time.

Federal Standards:

There are no federal mandates for state-level reporting of birth defects. However, several of the 36 state birth defect surveillance programs require reporting of these birth defects past the age of 2 years, including Hawaii, Texas, Washington State and Colorado. At least eleven states receive reports of birth defects that occur during pregnancy.

Compliance Schedule:

Regulations will take effect immediately upon filing. The Department will continue its efforts to make reporting easier and more efficient, while simultaneously conducting outreach to understand and address any concerns that may arise.

Revised Regulatory Flexibility Analysis

Effect of Rule:

This amended rule will have limited impact on small businesses providing health care because many of these businesses are affiliated with a general hospital. These small businesses include community-based healthcare providers (pediatricians, family practitioners and maternal-fetal medicine specialists) and some laboratories with small offices.

The amended rule will have a small impact on those healthcare facilities that are owned by local governments and that also diagnose birth defects and genetic diseases. These healthcare facilities will be required to make additional reports to the CMR based on the updated list of reportable birth defects and genetic diseases. Although the Department does not maintain a listing of local government-owned facilities that would be required to report, the Greater NY Hospital Association estimated that the number is relatively few. Further, the Department reasonably expects the burden on such facilities to be small—only 3-5 minutes per additional case. The number of cases will vary depending on the size of the facility, but the Department estimates that such facilities will report an average of 5-6 newly reportable cases per year, per facility.

Compliance Requirements:

Because healthcare providers and facilities are transitioning to electronic record-keeping systems, reporting and record keeping are expected to be simple and require very little time. The Department publishes a CMR guide to assist hospitals with reporting. A guide will also be developed for other healthcare providers as well as clinical laboratories.

Professional Services:

No additional professional services are required under the amended rule.

Compliance Costs:

Staff working in small community-based healthcare providers and small clinical laboratories will need to learn how to report with the updated CMR requirements.

Economic and Technological Feasibility:

The amended rule is economically and technologically feasible because local governments and small businesses that are affected will continue submitting reports using their free access to the Department's electronic reporting system.

Minimizing Adverse Impact:

By offering free access to the electronic reporting system, the Department has minimized the costs and impact on local governments and small businesses operating in New York State.

Small Business and Local Government Participation:

The Department has reached out to the healthcare community to gather feedback on the proposed amended rule. Those contacted include: NYS American Academy of Pediatrics, NYS Academy of Family Physicians, Nurse Practitioner Association of NYS, NYS Nurses Association, NYS Society of Physician Assistants, NY Health Information Management Association, Greater NY Hospital Association, Healthcare Association of NYS, NYS March of Dimes, NYS Clinical Geneticists, Genetic Counselors, Midwives, Neurologists, Neuromuscular Specialists, and Pediatric Cardiologists. Additionally, the Department contacted other NYS agencies and programs which provide services to children affected by these birth defects, specifically fetal alcohol syndrome.

The Department received comments from two organizations that represent health care providers. The President of the New York State Society of Physician Assistants stated, "After soliciting input from our leadership, we wholeheartedly support this suggested regulatory change." No concern was expressed about costs. Greater New York Hospital Association (GNYHA), representing nearly 150 voluntary, not-for-profit, and public hospitals expressed concern that "raising the maximum reporting age to 10 … could potentially create an administrative burden for health care providers … already contending with a wide range of such requirements." GNYHA strongly recommended that the DOH work closely with providers to develop and implement a reporting system that places the least possible amount of administrative burden on those impacted by this potential regulatory change.

The Department also received positive support for these regulatory changes from non-profit organizations and other State agencies, including the NYS Council on Children and Families, the NYS Office of Alcoholism and Substance Abuse Services, the NY State Education Department's Office of Special Education, and the Long Island Council on Alcoholism and Drug Dependence. These organizations view the proposed regulatory change as positive steps for meeting the needs of children and families affected by these devastating birth defects.

The Department asked several maternal-fetal medicine practices for input concerning the proposed changes and received replies from three practices (Hudson Valley Perinatal Consulting, Harrison, NY; University GYN/OB, Inc, at Women and Children's Hospital of Buffalo, Buffalo, NY; and Fetal Testing Unit of Mercy Hospital Buffalo South, Buffalo, NY). As for access to the Department's web based reporting system, one had access, one did not, and the third was uncertain. All three expressed concerns about time required to report and assurances of patient confidentiality.

The Department reached out to the NYS Association of Licensed Midwives, who supported the amendment. In a survey sent to midwives, all respondents supported the regulatory amendment. The most common concern was the time required to comply, which the Department will minimize through its electronic reporting.

Public Health Law § 206(1)(j) ensures that diagnoses reported to the New York Birth Defects Monitoring Program shall be kept confidential and shall be used solely for the purposes of the Department's scientific research. The statute further provides that such records are not admissible as evidence in a court of law. Regarding time to report, the Department expects that some of these practices may not actually have to report separately but that their associated institution or hospital will be able to assume that responsibility, thus reducing the anticipated burden.

The Department is committed to minimizing the administrative burden of these new reporting requirements. By using the CHI2 system as a reporting tool, the administrative burden will not be significant.

The Department will continue to communicate with stakeholders throughout the regulatory process. Prior to adoption of the rule, all amendments will appear in the New York State Register for public comment.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Immediate Need for Personal Care Services (PCS) and Consumer Directed Personal Assistance (CDPA)

I.D. No. HLT-43-15-00003-A

Filing No. 473

Filing Date: 2016-05-05

Effective Date: 2016-07-06

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

Action taken: Amendment of sections 505.14 and 505.28 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 201(1)(v); Social Services Law, sections 363-a(2), 365-a(2)(e) and 365-f

Subject: Immediate Need for Personal Care Services (PCS) and Consumer Directed Personal Assistance (CDPA).

Purpose: To implement 2015 State law changes regarding Medicaid applicants and recipients with immediate needs for PCS or CDPA.

Substance of final rule: The proposed regulations amend the Department's personal care services regulations by adding paragraphs (7) and (8) to 18 NYCRR § 505.14(b). They also amend the Department's consumer directed personal assistance program regulations by adding subdivisions (k) and (l) to 18 NYCRR § 505.28.

New paragraph 505.14(b)(7) sets forth expedited procedures for social services districts' determinations of Medicaid eligibility and personal care services eligibility for Medicaid applicants with an immediate need for personal care services.

Clause 505.14(b)(7)(i)(a) defines the term "Medicaid applicant with an immediate need for personal care services." The term includes two groups of individuals who seek Medicaid coverage: those who are not currently authorized for any type of Medicaid coverage; and those who are currently authorized for Medicaid coverage but only for community-based coverage not including coverage for long-term care services such as personal care services. These individuals must provide the social services district with a physician's order for personal care services and a signed attestation, on a form required by the Department, that they have an immediate need for personal care services and that they have no informal caregivers, are not receiving personal care services from a home care services agency, have no adaptive or specialized equipment or supplies to meet their needs, and have no third party insurance or Medicare benefits available to pay for needed assistance.

Clause 505.14(b)(7)(i)(b) defines the term "complete Medicaid application." This term means a signed Medicaid application and all documentation necessary for the district to determine the applicant's Medicaid eligibility. An applicant who would otherwise be required to document his or her accumulated resources may attest to the current value of any real property and to the current dollar amount of any bank accounts. After the determination of Medicaid eligibility, if the commissioner or district has information indicating an inconsistency with the information to which the applicant had attested prior to being determined eligible for Medicaid, and the inconsistency is material to the individual's Medicaid eligibility, the district shall request documentation adequate to verify the resources.

Subparagraph 505.14(b)(7)(ii) requires the social services district to determine whether the Medicaid applicant has submitted a complete Medicaid application and, if not, notify the applicant of the additional documentation that the applicant must provide and the date by which the applicant must provide such documentation. When the applicant submits the Medicaid application together with the physician's order and signed attestation of immediate need, the district must provide the notice as soon as possible and no later than four calendar days after receipt of the Medicaid application, physician's order, and signed attestation. When the applicant submits the Medicaid application and subsequently submits the physician's order, the signed attestation, or both such documents, the district must provide the notice as soon as possible and no later than four calendar days after receipt of both the physician's order and the signed attestation.

Subparagraph 505.14(b)(7)(iii) requires the social services district to determine whether a Medicaid applicant with an immediate need for personal care services is eligible for Medicaid, including Medicaid coverage of community-based long-term care services, and notify the applicant of such determination. The district must make this determination and notify the applicant as soon as possible but no later than seven calendar days after receipt of a complete Medicaid application.

Subparagraph 505.14(b)(7)(iv) provides that, concurrently with determining the Medicaid eligibility of an applicant with an immediate need for personal care services, the social services district would determine whether the applicant, if found eligible for Medicaid, would be eligible for personal care services. As soon as possible after receipt of a complete Medicaid application from a Medicaid applicant with an immediate need for personal care services, but no later than twelve calendar days after receipt of the complete Medicaid application, the social services district would obtain or complete a social assessment, nursing assessment and an assessment of other services, and determine whether the Medicaid applicant, if determined eligible for Medicaid, would be eligible for personal care services and, if so, the amount and duration of services that would be authorized. Personal care services would not be authorized to be provided unless the individual is determined to be eligible for Medicaid, including Medicaid coverage of community-based long-term care services.

Subparagraph 505.14(b)(7)(v) requires social services districts to provide Medicaid applicants with the required attestation of immediate need form and such other information regarding the expedited Medicaid eligibility determination and personal care services assessment procedures set forth in paragraph 505.14(b)(7) as the Department may require.

The proposed regulations also add paragraph (8) to Section 505.14(b), which sets forth expedited personal care services assessment procedures for Medicaid recipients with an immediate need for personal care services.

Subparagraph 505.14(b)(8)(i) defines the term "Medicaid recipient with an immediate need for personal care services."

Under subclauses 505.14(b)(8)(i)(a)(1) and (2), a "Medicaid recipient with an immediate need for personal care services" means an individual who is exempt or excluded from enrollment in a managed long term care plan or managed care provider or an individual who is not exempt or excluded from enrollment in such a plan or provider but who has not yet been enrolled.

In addition, a "Medicaid recipient with an immediate need for personal care services" means an individual who also meets the criteria in either subclause (i)(b)(1) of Section 505.14(b)(8) or subclause (i)(b)(2) of Section 505.14(b)(8).

Under subclause (i)(b)(1) of Section 505.14(b)(8), a "Medicaid recipient with an immediate need for personal care services" means a recipient who was a "Medicaid applicant with an immediate need for personal care services" pursuant to paragraph 505.14(b)(7) and who was determined, pursuant to such paragraph, to be eligible for Medicaid and personal care services. Under subparagraph 505.14(b)(8)(ii), social services districts would be required to notify such a "Medicaid recipient with an immediate need for personal care services" promptly of the amount and duration of personal care services to be authorized and arrange for the provision of such services, which must be provided as expeditiously as possible. For recipients who are not exempt or excluded from enrollment in a managed care entity, the district would authorize services to be provided until the person is enrolled in such an entity.

Under subclause (i)(b)(2) of Section 505.14(b)(8), a "Medicaid recipient with an immediate need for personal care services" means a Medicaid recipient who has been determined to be eligible for Medicaid, including Medicaid coverage of community-based long-term care services, and who provides to the social services district a physician's order for personal care services and a signed attestation of immediate need on a form required by the Department. Under clause 505.14(b)(8)(iii)(a), social services districts would be required, as soon as possible after receipt of the physician's order and signed attestation of immediate need from such a recipient but no later than twelve calendar days after receipt of such documentation, to assess the recipient's eligibility for personal care services and determine whether the recipient is eligible for services and, if so, the amount and duration of services to be authorized. For recipients who are not exempt or excluded from enrollment in a managed care entity, the district would authorize services to be provided until the person is enrolled in such an entity.

Subparagraph 505.14(b)(8)(iv) requires social services districts to provide Medicaid applicants with the required attestation of immediate need form and such other information regarding the expedited personal care services assessment procedures set forth in paragraph 505.14(b)(8) as the Department may require.

The proposed regulations make similar revisions to the Department's regulations governing the consumer directed personal assistance program at 18 NYCRR § 505.28. New subdivision 505.28(k) sets forth expedited procedures for social services districts' determinations of Medicaid eligibility for applicants with an immediate need for consumer directed personal assistance. These expedited procedures are similar to those set forth in proposed new 505.14(b)(7) for Medicaid applicants with an immediate need for personal care services. In addition, new subdivision 505.28(l) sets forth expedited consumer directed assistance assessment procedures for Medicaid recipients with an immediate need for consumer directed personal assistance. These expedited assessment procedures are similar to those set forth at proposed new 505.14(b)(8) for Medicaid recipients with an immediate need for personal care services.

Section 505.14(b)(3) and Section 505.28(d)(3) would be amended to permit nursing assessments to be performed by additional registered professional nurses, those under contract with a social services district.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 505.14(b)(7), (8) and 505.28(k), (l).

Revised rule making(s) were previously published in the State Register on March 2, 2016.

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

Revised Regulatory Impact Statement

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

Revised Regulatory Flexibility Analysis

Effect of Rule:

The proposed regulations affect social services districts. There are 62 counties in New York State, but only 58 social services districts. The City of New York comprises five counties but is one social services district.

Compliance Requirements:

Pursuant to proposed new §§ 505.14(b)(7) and 505.28(k), social services districts would be required to perform expedited Medicaid eligibility determinations for Medicaid applicants who have an immediate need for personal care services ("PCS") or consumer directed personal assistance ("CDPA"). Medicaid applicants with an immediate need for PCS or CDPA include those who are not currently authorized for any type of Medicaid coverage as well as those who are currently authorized for Medicaid but only for community-based Medicaid coverage without coverage for long-term care services.

The social services district must determine whether the Medicaid applicant has submitted a complete Medicaid application and, if not, notify

the applicant of the additional documentation that the applicant must provide and the date by which the applicant must provide such documentation. When the applicant submits the Medicaid application together with the physician's order and signed attestation of immediate need, the district must provide the notice as soon as possible and no later than four calendar days after receipt of such documentation. When the applicant submits the Medicaid application and subsequently submits the physician's order, the signed attestation, or both such documents, the district must provide the notice as soon as possible and no later than four calendar days after receipt of the physician's order and the signed attestation of immediate need.

The proposed regulations also provide for concurrent Medicaid eligibility determinations and PCS or CDPA assessments of Medicaid applicants with an immediate need for PCS or CDPA. As soon as possible after receipt of a complete Medicaid application from a Medicaid applicant with an immediate need for PCS or CDPA, but no later than seven calendar days after receipt of a complete Medicaid application, the district must determine whether the applicant is eligible for Medicaid, including Medicaid coverage of community-based long-term care services, and notify the applicant of that determination. At the same time, the district must conduct a PCS or CDPA assessment of a Medicaid applicant with an immediate need for PCS or CDPA.

Specifically, as soon as possible after receipt of a complete Medicaid application from a Medicaid applicant with an immediate need for PCS or CDPA, but no later than twelve calendar days after receipt of a complete Medicaid application, the district must assess the Medicaid applicant and determine whether the applicant would be eligible for PCS or CDPA, if determined eligible for Medicaid. No PCS or CDPA would be authorized, however, unless the applicant is determined eligible for Medicaid, including Medicaid coverage of community-based long-term care services.

Notice to the individual of the PCS or CDPA for which the individual is authorized would be sent promptly after the individual has been determined eligible for Medicaid, including Medicaid coverage of community-based long-term care services. Authorized PCS or CDPA must be provided to these Medicaid recipients as expeditiously as possible. If the recipient is subject to enrollment in a managed long term care plan or managed care provider, the district would be required to authorize the services and arrange for their provision until the recipient is enrolled in such managed long term care plan or provider.

Pursuant to new Sections 505.14(b)(8) and 505.28(l), the proposed regulations also provide for expedited PCS or CDPA assessments of Medicaid recipients with immediate needs for PCS or CDPA who are also eligible for Medicaid coverage of community-based long-term care services. Medicaid recipients with immediate needs for PCS or CDPA may be exempt or excluded from enrollment in a managed long term care plan or a managed care provider or not so exempt or excluded but not yet enrolled in any such plan or provider. As soon as possible after receiving a physician's order for PCS or CDPA and a signed attestation of immediate need, but no later than twelve calendar days after receipt of such documentation, the social services district must conduct a PCS or CDPA assessment and determine whether the recipient is eligible for PCS or CDPA. The district must promptly notify the recipient of the district's PCS or CDPA eligibility determination. For those who are eligible for PCS or CDPA, the district must arrange for the provision of services, which must be provided as expeditiously as possible. If the recipient is subject to enrollment in a managed long term care plan or managed care provider, the district would be required to authorize the services and arrange for their provision until the recipient is enrolled in such managed long term care plan or provider.

Social services districts would be required to provide Medicaid applicants and recipients with the required attestation of immediate need form and such other information regarding the expedited Medicaid eligibility and expedited PCS and CDPA assessment procedures as the Department may require.

Professional Services:

Social services would need to have contracts with sufficient number of Medicaid-enrolled providers to furnish authorized PCS or CDPA to Medicaid recipients with immediate needs for such services. The proposed regulations would not otherwise require social services to obtain new or additional professional services.

Compliance Costs:

The proposed regulations would not impose capital costs on social services districts. Social services districts may incur administrative costs to comply with the proposed regulations. These administrative costs would be associated with districts' performance of expedited Medicaid eligibility determinations and PCS or CDPA assessments of Medicaid applicants with immediate needs for PCS or CDPA as well expedited PCS or CDPA assessments of Medicaid recipients with immediate needs for such services.

Economic and Technological Feasibility:

There are no additional economic costs or technology requirements associated with the proposed regulations.

Minimizing Adverse Impact:

The proposed regulations should not have an adverse economic impact on social services districts. Each social services district's share of the cost of total Medicaid expenditures for PCS and CDPA is limited to the district's Medicaid "cap" amount established pursuant to State law. The proposed regulations would not require social services districts to incur any additional Medicaid expenditures for PCS or CDPA in excess of their Medicaid cap amounts. In addition, the revised proposed regulations would permit districts to contract with additional registered professional nurses for the conduct of nursing assessments.

Small Business and Local Government Participation:

The Department shared the proposed regulations with social services districts prior to publication.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

Revised Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 or fewer persons per square mile.

The following 43 counties have populations of less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following nine counties have certain townships with population densities of 150 or fewer persons per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

Pursuant to proposed new §§ 505.14(b)(7) and 505.28(k), rural social services districts would be required to perform expedited Medicaid eligibility determinations for Medicaid applicants who have an immediate need for personal care services ("PCS") or consumer directed personal assistance ("CDPA"). Medicaid applicants with an immediate need for PCS or CDPA include those who are not currently authorized for any type of Medicaid coverage as well as those who are currently authorized for Medicaid but only for community-based Medicaid coverage without coverage for long-term care services.

Rural social services district must determine whether the Medicaid applicant has submitted a complete Medicaid application and, if not, notify the applicant of the additional documentation that the applicant must provide and the date by which the applicant must provide such documentation. When the applicant submits the Medicaid application together with the physician's order and signed attestation of immediate need, the district must provide the notice as soon as possible and no later than four calendar days after receipt of such documentation. When the applicant submits the Medicaid application and subsequently submits the physician's order, the signed attestation, or both such documents, the

district must provide the notice as soon as possible and no later than four calendar days after receipt of the physician's order and signed attestation of immediate need.

The proposed regulations also provide for concurrent Medicaid eligibility determinations and PCS or CDPA assessments of Medicaid applicants with an immediate need for PCS or CDPA. As soon as possible after receipt of a complete Medicaid application from a Medicaid applicant with an immediate need for PCS or CDPA, but no later than seven calendar days after receipt of a complete Medicaid application, the rural district must determine whether the applicant is eligible for Medicaid, including Medicaid coverage of community-based long-term care services, and notify the applicant of that determination. At the same time, the rural district must conduct a PCS or CDPA assessment of a Medicaid applicant with an immediate need for PCS or CDPA.

Specifically, as soon as possible after receipt of a complete Medicaid application from a Medicaid applicant with an immediate need for PCS or CDPA, but no later than twelve calendar days after receipt of a complete Medicaid application, the rural district must assess the Medicaid applicant and determine whether the applicant would be eligible for PCS or CDPA, if determined eligible for Medicaid. No PCS or CDPA would be authorized, however, unless the applicant is determined eligible for Medicaid, including Medicaid coverage of community-based long-term care services. Notice to the individual of the PCS or CDPA for which the individual is authorized would be sent promptly after the individual has been determined eligible for Medicaid, including Medicaid coverage of community-based long-term care services. Authorized services must be provided to these Medicaid recipients as expeditiously as possible. If the recipient is subject to enrollment in a managed long term care plan or managed care provider, the rural district would be required to authorize the services and arrange for their provision until the recipient is enrolled in such managed long term care plan or provider.

Pursuant to new Sections 505.14(b)(8) and 505.28(l), the regulations also provide for expedited PCS or CDPA assessments of Medicaid recipients with immediate needs for PCS or CDPA who are also eligible for Medicaid coverage of community-based long-term care services. Medicaid recipients with immediate needs for PCS or CDPA may be exempt or excluded from enrollment in a managed long term care plan or a managed care provider or not so exempt or excluded but not yet enrolled in any such plan or provider. As soon as possible after receiving a physician's order for PCS or CDPA and a signed attestation of immediate need, but no later than twelve calendar days after receipt of such documentation, the rural social services district must conduct a PCS or CDPA assessment and determine whether the recipient is eligible for PCS or CDPA. The district must promptly notify the recipient of the district's PCS or CDPA eligibility determination. For those who are eligible for PCS or CDPA, the district must arrange for the provision of services, which must be provided as expeditiously as possible. If the recipient is subject to enrollment in a managed long term care plan or managed care provider, the district would be required to authorize the services and arrange for their provision until the recipient is enrolled in such managed long term care plan or provider.

Rural social services districts would be required to provide Medicaid applicants and recipients with the required attestation of immediate need form and such other information regarding the expedited Medicaid eligibility and expedited PCS and CDPA assessment procedures as the Department may require.

Costs:

Rural social services districts would not incur initial capital costs to comply with the proposed regulations. Districts may incur administrative costs to comply with the proposed regulations. These administrative costs would be associated with districts' performance of expedited Medicaid eligibility determinations and PCA or CDPA assessments of Medicaid applicants with immediate needs for PCS or CDPA as well expedited PCS or CDPA assessments of Medicaid recipients with immediate needs for such services.

Minimizing Adverse Impact:

The proposed regulations should not have an adverse economic impact on rural social services districts. Each social services district's share of the cost of total Medicaid expenditures for PCS and CDPA is limited to the district's Medicaid "cap" amount established pursuant to State law. The proposed regulations would not require rural social services districts to incur any additional Medicaid expenditures for PCS or CDPA in excess of their Medicaid cap amounts. The revised proposed regulations would also permit districts to contract with additional registered professional nurses for the conduct of nursing assessments.

Rural Area Participation:

The Department shared the proposed regulations with rural social services districts prior to publication.

Revised Job Impact Statement

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

Assessment of Public Comment

The Department received comments from The Legal Aid Society; New York Legal Assistance Group; Empire Justice Center; Aytan Y. Bellin, Esq.; the Human Resources Administration of the City of New York; and Suffolk County Department of Social Services.

1. Comment: Comments were received regarding the attestation form to be submitted by Medicaid applicants or recipients who assert they have an immediate need for personal care services ("PCS") or consumer directed personal assistance ("CDPA"). One commentator asked that the Department design and issue the required attestation form. Another commentator stated that it hoped the Department would issue a "model" attestation form but suggested that applicants and recipients should not be required to use the model attestation form as long as the form they submit conveys the same information as the model form requires.

Response: The Department has revised the regulations in response to the first comment. As revised, the regulations require "a signed attestation on a form required by the Department." The Department will issue the attestation form and require its use. The Department considered, but did not adopt, the second comment. Permitting variants from the required form could result in unnecessary disputes regarding whether the applicant is a "Medicaid applicant with an immediate need for personal care services" for whom an expedited Medicaid eligibility determination is required. It is also a routine, common, and not unreasonable practice to require the use of a specific form.

2. Comment: A commentator suggested that Medicaid applicants should be able to obtain an expedited Medicaid eligibility determination if they attest to an immediate need for PCS or CDPA after they have applied for Medicaid.

Response: The Department has revised the regulations in response to the comment. As published on March 2, 2016, the proposed regulations contemplate that an applicant would submit the Medicaid application together with the physician's order and signed attestation of immediate need. As revised, the regulations also address Medicaid applicants who submit the physician's order and the signed attestation of immediate need after applying for Medicaid and before the Medicaid eligibility determination has been made.

3. Comment: The proposed regulations permit Medicaid applicants who are otherwise required to document accumulated resources to attest to the current value of real property and the current dollar amount of any bank accounts. They also provide that, after the determination of Medicaid eligibility, if the commissioner or the district has information indicating an inconsistency between the value or dollar amount of such resources and the value or dollar amount to which the applicant had attested prior to being determined eligible for Medicaid, and the inconsistency is material to the individual's Medicaid eligibility, the district shall request documentation adequate to verify the resources. A commentator asked that the Department clarify what action the district is expected to take in these cases.

Response: The Department has not revised the regulations in response to the comment. The Department will address the comments in a forthcoming administrative directive.

4. Comment: Commentators asked that the Department clarify the regulations to assure that Medicaid applicants who are eligible for a Modified Adjusted Gross Income ("MAGI") eligibility category do not need to provide any information regarding their resources since there is no resource test in MAGI-budgeting.

Response: The Department has not revised the regulations in response to the comments. The proposed regulations clearly provide that applicants "who would otherwise be required to document accumulated resources" may attest to the value of certain resources. By definition, this would not apply to Medicaid applicants in MAGI categories. Although the Department has not revised the regulations, the Department will provide guidance on this topic in its forthcoming directive.

5. Comment: Several commentators stated that the Department should allow spousal impoverishment budgeting to be applied to a married Medicaid applicant in immediate need of PCS or CDPA who would be eligible for enrollment in a managed long term care ("MLTC") plan even though the applicant is not yet enrolled in such a plan. They cite to a May 2015 State Medicaid Director letter issued by the federal Centers for Medicare & Medicaid Services ("CMS") interpreting Section 2404 of the Affordable Care Act. This provision temporarily revises the definition of "institutionalized spouse" to include individuals who are eligible for home and community based services under a Social Security Act § 1115 waiver, such as the MLTC program. According to the CMS guidance, spousal impoverishment budgeting is available to these individuals even if they are not actually receiving the home and community based services for which they are eligible.

Response: The Department has not revised the regulations in response to the comments. It is nonetheless considering this comment and may provide guidance in a forthcoming directive.

6. Comment: A commentator asked whether a "Medicaid applicant with an immediate need for personal care services" includes a Medicaid applicant with an immediate need for Level I personal care services.

Response: The Department has not revised the regulations in response to the comment. It is anticipated that most Medicaid applicants who assert an immediate need for PCS would be seeking Medicaid coverage for Level II "personal care functions," such as bathing, toileting, transferring and other Level II functions set forth in the Department's regulations rather than assistance only with Level I "nutritional and environmental support functions," such as shopping and simple meal preparation. Nonetheless, the Legislature has provided in Social Services Law ("SSL") § 366-a(12) that the expedited procedures for determining Medicaid eligibility apply to applicants with an immediate need for "personal care services." If the Legislature had intended to limit the expedited eligibility procedures only to those with an immediate need for Level II personal care services, it would presumably have so stated.

7. Comment: Commentators asked that the Department revise the regulations to require social services districts to accept and process Medicaid applications for coverage of community-based long term care services from hospital patients or nursing home residents who have applied for Medicaid coverage of hospital or nursing home care and who assert an immediate need for PCS or CDPA to return home. They also commented that Medicaid recipients who are hospitalized or in nursing homes and who assert an immediate need for PCS or CDPA to return home be permitted to apply for an expedited Medicaid eligibility determination for community-based coverage with long term care services.

Response: The Department has not revised the regulations in response to the comments. It is beyond the scope of these regulations to require districts to process applications for Medicaid coverage of community-based long term care services, such as PCS or CDPA, from Medicaid applicants who have applications pending for Medicaid coverage of hospital or nursing home care. With regard to Medicaid recipients in hospitals or nursing homes, the regulations do not prevent them from applying for Medicaid coverage of community-based long term care services and districts would be expected to accept and process these applications.

8. Comment: A few commentators renewed their previous suggestions that the Department abbreviate the PCS or CDPA assessment process for Medicaid applicants or recipients with an immediate need for such services. They again suggested alternatives, such as having the Department revert to a policy permitting physicians to recommend the number of hours of services that should be authorized and permitting districts to authorize services based only on the physician's order and the individual's attestation of immediate need or based only on the physician's order and the social assessment.

Response: The Department has revised the regulations in response to the comments. As revised, the regulations eliminate the requirement for referral to the district's local professional director. This would expedite the PCS and CDPA assessment process. It would apply only to districts' determinations of PCS and CDPA eligibility for Medicaid applicants or recipients with an immediate need for such services.

9. Comment: Several commentators stated that the proposed regulations must include a deadline by which a social services district must assure that PCS or CDPA are provided to Medicaid recipients whom the districts determine eligible for services. One commentator urged that the regulations require that the "outer limit" for authorizing and providing services should be "somewhere in the range of one to three calendar days," citing Insurance Law § 4914, governing expedited appeals of adverse health decisions.

Response: The Department has not revised the regulations in response to the comments. The Legislature has mandated the adoption of expedited procedures for approving PCS or CDPA for Medicaid recipients with an immediate need for such services. The regulations comport with this requirement while also mandating that services be furnished to eligible recipients "as expeditiously as possible." The commentator's analogy to the 72 hour time period set forth in Insurance Law § 4914 is inapt, as that is a clinical paper review only, relating neither to the individualized assessments necessary for determining the appropriateness of PCS or CDPA nor to the provision of the services themselves.

10. Comment: Commentators noted that the proposed regulations provide that, for Medicaid recipients who are neither exempt nor excluded from enrollment in a managed care entity, the district's authorization of PCS or CDPA is to continue until the recipient is enrolled in a plan. They suggested that the district's authorization of PCS or CDPA should continue even after the recipient has been enrolled in a plan and until the plan initiates services. Commentators also stated that the applicable transition of care policy should also apply to recipients who are in receipt of PCS or CDPA on a fee-for-service basis and who are enrolled in a plan.

Response: The Department has not revised the regulations in response to the comments. Payment for PCS or CDPA on a fee-for-service basis cannot continue after the recipient is enrolled in a managed care entity. This would result in duplicative Medicaid payments. Plans are required to provide PCS and CDPA as authorized by the district upon the recipient's enrollment in the plan. Further, plans are required to provide the district-authorized amount of PCS or CDPA for the applicable transition of care period. Any plan changes to such district-authorized PCS and CDPA after the applicable transition of care period are also subject to all applicable timely and adequate notice requirements.

11. Comment: Commentators stated that Medicaid applicants and recipients who are in immediate need of PCS or CDPA should receive priority in scheduling of any fair hearings they may request. Some stated that an expedited hearing right is required by SSL § 133, which provides that a social services district shall inform the person in writing of a right to an expedited hearing when "emergency needs assistance or care is denied."

Response: The Department has not revised the regulations in response to the comments. Regulations at 18 NYCRR § 358-3.2 already provide that priority in "scheduling of your hearing and determination" will be provided when "your circumstances warrant priority in scheduling" and the hearing is being scheduled because, among other reasons, there is an "urgent need for medical care, services or supplies" or personal care services are denied or are inadequate. With regard to SSL § 133, the Legislature has clarified that this statute does not apply to Medicaid. The Medicaid funded PCS and CDPA that would be authorized pursuant to the regulations is provided only pursuant to Title 11 of Article 5 of the SSL and not pursuant to SSL § 133.

12. Comment: Commentators stated that the proposed regulations did not contain provisions for notifying Medicaid applicants of the availability of expedited Medicaid eligibility determinations and expedited PCS or CDPA assessments for applicants in immediate need of such services.

Response: The Department has revised the regulations in response to the comments. The Department will also provide notice via its website and revisions to the Medicaid application.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

New York State Newborn Screening Panel

I.D. No. HLT-21-16-00003-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 69-1.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2500-a

Subject: New York State Newborn Screening Panel.

Purpose: To add adrenoleukodystrophy (ALD) and Pompe disease to the list of diseases and conditions on the newborn screening panel.

Text of proposed rule: Section 69-1.2(b) is amended as follows:

(b) Diseases and conditions to be tested for shall include: *adrenoleukodystrophy (ALD)*;

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phenylketonuria (PKU); *Pompe disease*;

****

and very long-chain acyl-CoA dehydrogenase deficiency (VLCADD).

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:

Public Health Law (PHL) Section 2500-a requires institutions caring for infants 28 days of age or under to cause newborns to be tested for phenylketonuria, branched-chain ketonuria, homocystinuria, galactosemia, homozygous sickle cell disease, hypothyroidism, and other diseases and conditions designated by the Commissioner of Health in regulation. Pursuant to PHL 2500-a, 44 genetic/congenital conditions and one infectious disease have been added to the newborn testing panel through regulation since initial enactment of this statute.

In addition, Chapter 56 of the Laws of 2013 amended PHL Section 2500-a to add a new subdivision (c) which requires the Commissioner to add, by regulation, adrenoleukodystrophy (ALD) to the list of diseases and conditions for which testing shall be performed.

Legislative Objectives:

In enacting PHL Section 2500-a, the Legislature intended to promote public health by mandating that every infant born in New York State have

screening to detect serious but treatable neonatal conditions and diseases and to ensure referral for medical intervention. Chapter 56 of the Laws of 2013 amended PHL Section 2500-a to add a new subdivision (c) which requires the Commissioner to add, by regulation, ALD to the list of diseases and conditions for which testing shall be performed.

Every state in the nation provides newborn screening for their population; however, state screening panels vary. New York State maintains one of the most comprehensive screening panels in the nation. The NYS Department of Health (Department) routinely reviews its current screening panel to ensure compliance with national recommendations.

The U.S. Secretary of Health and Human Services' Discretionary Advisory Committee on Heritable Disorders in Newborns and Children (sometimes referred to herein as DACHDNC) makes recommendations on screenings to be included on states' screening panels. Based on an objective evidence report and public health impact statements, DACHDNC has recommended the inclusion of screening for Pompe disease to the uniform panel. The Department has determined that it is appropriate to also add Pompe disease to the New York State newborn screening panel.

Moreover, the proposed regulation to amend the current list of 44 genetic/congenital disorders and one infectious disease by adding ALD and Pompe disease is consistent with the Legislature's intent to improve health outcomes by supporting early identification and medical intervention for the State's youngest citizens. Innovation in medicine and scientific advances challenge our public health programs to keep step. Continual assessment and transformative perspective ensures the Department's Newborn Screening Program maintains the legislative objectives which established the program.

Needs and Benefits:

Newborn screening is a highly successful comprehensive public health program that identifies rare genetic, congenital and functional disorders; endeavors to ensure follow-up for those affected; and ensures early medical management. The needs and benefits of this program are well established. Data compiled from several state programs have shown timely intervention and treatment for certain disorders drastically improves affected infants' survival chances and quality of life. Early medical intervention also provides the benefit of reducing overall lifetime treatment costs for an affected infant.

ALD, one of a group of genetic disorders called leukodystrophies, is an inherited metabolic storage disease whereby a defect in a specific enzyme results in the accumulation of very long-chain fatty acids (VLCFA) in tissues of the body, especially the brain and the adrenal glands. Ultimately the myelin sheath, an insulating membrane that surrounds nerve cells in the brain is destroyed causing neurologic problems, and the adrenal gland malfunction causes Addison's disease. ALD affects mostly males, although some women who are carriers can have milder forms of the disease.

In 2012, DACHDNC recognized ALD as a medically important disorder supported by a well-established clinical definition, screening, diagnostic and treatment protocols. Newborn screening for ALD has until recently been limited in implementation due to the lack of an accepted standard methodology. Innovative diagnostic methods combining the physical separation capabilities of liquid chromatography with the mass analysis capabilities of mass spectrometry have resulted in a powerful technique used for applications to detect conditions requiring very high sensitivity and selectivity such as ALD.

General health care costs attributable to treatment of ALD-confirmed infants, including those related to hematopoietic stem cell transplant are difficult to assess due to large variations in charges for the professional component of specialists' and ancillary providers' services, and the scope of potentially required donor-matching services. However, it is well established that overall health care costs would be reduced as a direct result since early diagnosis of ALD provides the opportunity to avoid medical complications, reduces the number and average length of hospital stays as well as emergency and intensive care services.

Pompe disease is an inherited metabolic and potentially fatal disorder that disables the heart and skeletal muscles. The prevalence of Pompe disease was previously estimated at 1 in every 40,000 births, however sources are now estimating the prevalence may be as high as 1 in 28,000. Incidence varies among different ethnic groups. Pompe disease is caused by mutations in an enzyme-producing gene, which is needed to break down glycogen. The severity of the disease and the age of onset are related to the degree of enzyme deficiency. With early onset of the disease, symptoms begin in the first months of life and include feeding problems, poor weight gain, enlarged heart, muscle weakness, floppiness and head lag. Respiratory difficulties are often complicated by lung infections. Most babies experience cardiac or respiratory complications before their first birthday.

Individuals with Pompe disease are best treated by a team of specialists (such as cardiologist, neurologist, and respiratory therapist) knowledgeable about the disease, who can offer care designed to manage symptoms. Scientific research on Pompe disease has led to rapid progress in understanding the biological mechanisms and properties of the enzyme. As a result, an enzyme replacement therapy (ERT) has been developed that has shown, in clinical trials with infantile-onset patients, to decrease heart size, maintain normal heart function, improve muscle function, tone, and strength, and reduce glycogen accumulation. Without ERT, the hearts of babies with infantile onset Pompe disease progressively thicken and enlarge. These babies may die before the age of one year from either cardio-respiratory failure or respiratory infection. For individuals with late onset Pompe disease, the prognosis is dependent upon the age of onset. In general, the later symptoms begin, the slower the progression of the disease.

Costs:

Costs to Private Regulated Parties:

Private regulated parties affected by the proposed regulation, including; birthing facilities, hospitals, and licensed health care providers would not incur new costs or new savings related to collection and submission of blood specimens to the Department's Newborn Screening Program. The same dried blood spot specimen currently collected for the newborn screening panel would be used for ALD and Pompe disease screening.

It is anticipated that affected birth facilities, hospitals and licensed health care providers would incur minimal additional costs related to fulfilling their responsibilities to refer screen-positive infants; such costs would be limited to human resources costs for less than 0.5 hour/per week. The cost can be estimated based on annual number of births and related expenses, and a referral rate of 1 infant per 3500 births related to ALD, 1 infant per 2500 births related to Pompe disease for clinical assessment and additional testing to confirm or refute screening results.

Costs for Implementation and Administration of the Rule:

Costs to State Government:

Medicaid costs will not increase with regard to referral costs, as such costs are included in rates for delivery-related services, and are not separately reimbursed. Health care costs associated with medical treatment for ALD and Pompe disease for Medicaid-eligible infants would generally be borne by Medicaid, as are current medical costs associated with care for undiagnosed infants who are Medicaid-eligible. However, there would likely be a net savings to Medicaid since early diagnosis provides the opportunity for appropriate disease-specific medical intervention. Accurate and timely diagnosis and treatment is proven to avoid medical complications for the infant, thereby eliminating unrelated testing and significantly reducing the number and average length of hospital stays, and emergency and costly intensive care services.

Costs to the New York State Department of Health:

In accordance with section 69-1.8 of Title 10 of the New York Codes, Rules and Regulations, the Department's Newborn Screening Program records diagnoses and case follow-up information submitted by health care providers and specialty care centers; maintains tracking records on identified cases; and provides educational activities and materials to parents and providers. Costs incurred by the Department's Newborn Screening Program for performing ALD and Pompe disease screening tests, providing short- and long-term follow-up, and supporting continuing research in neonatal and genetic diseases will be covered by State budget appropriations. The Program anticipates minimal laboratory instrumentation costs as necessary technology is available in the laboratory's current equipment inventory.

A system for follow-up and ensuring access to necessary treatment for identified infants is fully established. The Department will incur minimal administrative costs for notifying all New York State-licensed physicians and midwives, hospital chief executive officers (CEOs) and their designees, and other affected parties, by letter of the newborn screening panel expansion and providing information regarding positive ALD and Pompe disease screening results.

Costs to Local Government:

Medicaid costs incurred by counties will not increase with regard to referral costs, as such costs are included in rates for delivery-related services, and are not separately reimbursed. County Medicaid costs would not increase for Medicaid eligible infants with a Pompe disease or ALD diagnosis identified by newborn screening. There would likely be a net savings to Medicaid since early diagnosis provides the opportunity for appropriate disease-specific medical intervention. Accurate and timely diagnosis and treatment is proven to avoid medical complications for the infant, thereby eliminating unrelated testing and significantly reducing the number and average length of hospital stays, and emergency and costly intensive care services.

Local Government Mandates:

The proposed regulation imposes no new mandates on any county, city, town or village government; or school, fire or other special district.

Paperwork:

No increase in paperwork would be attributable to activities related to specimen collection. Affected parties required to submit newborn specimens will sustain minimal to no increases in paperwork, specifically,

only that necessary to conduct and document follow-up and/or referral of infants with abnormal screening results. Educational materials for parents and health care professionals and forms will be updated to include information on both ALD and Pompe disease and will be made available to the public on the Department's and Wadsworth Center's website.

Duplication:

These rules do not duplicate any other law, rule or regulation.

Alternatives:

Potential delays in detection of ALD or Pompe disease until onset of clinical symptoms could result in increased infant morbidity and mortality, and are therefore unacceptable given recent advances in laboratory diagnostic tools and medical treatment known to ameliorate adverse clinical outcomes in affected infants.

In addition, Chapter 56 of the Laws of 2013 requires the Department to add ALD to the screening panel through regulation. In light of this, the Department has determined that there are no alternatives to requiring newborn screening for ALD and Pompe disease.

Federal Standards:

DACHDNC has recommended a core newborn screening panel that represents a national standard newborn screening panel that states are encouraged to adopt. Every state in the nation provides newborn screening for their population; however state screening panels vary. New York maintains one of the most comprehensive screening panels in the nation and works proactively to ensure valid screening tests are included in the State's screening panel in a timely manner. ALD and Pompe disease have been nominated for inclusion in the Recommended Uniform Screening Panel for state newborn screening programs.

Compliance Schedule:

The Department will notify all New York State-licensed physicians and midwives by letter of this newborn screening panel expansion. The letter will also be distributed to hospital CEOs and their designees responsible for newborn screening, as well as to other affected parties.

The infrastructure and mechanisms for making the necessary referrals is already in place statewide. Consequently, regulated parties should be able to comply with the proposed regulation as of its effective date.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

The proposed regulation, which adds adrenoleukodystrophy (ALD) and Pompe disease to the list of diseases and conditions currently included on the New York State newborn screening panel, will affect hospitals, birthing centers, and physician and midwifery practices operating as small businesses, provided such facilities care for infants 28 days of age or under, or are required to register the birth of a child. However, the impact is minimal as the same dried blood spot specimen currently collected for the newborn screening panel would be used for ALD and Pompe disease screening. It is anticipated that regulated parties would incur minimal additional costs related to fulfilling their responsibilities to refer screen-positive infants, and for clinical assessment and additional testing to confirm or refute screening results.

New York State licenses approximately 82,000 physicians and 1,000 midwives, some of whom, specifically those in private practice, operate as small businesses. It is not possible, however, to estimate the number of these medical professionals operating an affected small business, primarily because the number of physicians involved in delivering infants cannot be ascertained. The Department estimates that three hospitals and one birthing center in the State meet the definition of a small business. The addition of ALD and Pompe disease to the Newborn Screening Panel will not place economic or regulatory burden on affected small parties.

Effects on local governments concern costs related to referral and treatment for affected infants. Medicaid costs incurred by counties will not increase with regard to referral costs, as such costs are included in rates for delivery-related services, and are not separately reimbursed. County Medicaid costs would not increase for Medicaid eligible infants with a Pompe disease or ALD diagnosis identified by newborn screening. There would likely be a net savings to Medicaid since early diagnosis provides the opportunity for appropriate disease-specific medical intervention. Accurate and timely diagnosis and treatment is proven to avoid medical complications for the infant, thereby eliminating unrelated testing and significantly reducing the number and average length of hospital stays, and emergency and costly intensive care services.

Compliance Requirements:

The Department expects that hospitals, birthing centers, and physician and midwifery practices operating as small businesses will not experience additional regulatory burdens in complying with the amendment's requirements, as functions related to mandatory newborn screening are already embedded in established policies and practices of affected institutions and individuals. Activities related to collection and submission of blood specimens to the Department's Newborn Screening Program will not change, since newborn dried blood spot specimens now collected and mailed to the Program for other currently performed testing would be used for ALD and Pompe disease screening.

Affected facilities and licensed health professionals would be required to refer infants screening positive for ALD or Pompe disease for medical evaluation, and additional testing and provide follow-up as they currently do for other conditions.

The anticipated increased burden will have a minimal effect on the ability of small businesses to comply. On average, hospitals, birthing centers, and physician and midwifery practices operating as small businesses, can expect to refer one to two additional infants per month for clinical assessment and confirmatory testing as a result of the proposed regulation. This increase is expected to have minimal effect on affected facilities and licensed health care providers' workload. It is anticipated that additional staffing resources are not required to comply with the proposed regulation.

The Department expects that regulated parties will be able to comply with the proposed regulation as of its effective date.

Professional Services:

No need for additional professional services is anticipated. Professional staff of regulated parties affected by the proposed regulation will assume any increase in workload resulting from the screening for ALD and Pompe disease and identification of screen-positive infants. Infants with positive screening tests would be referred to a facility employing a physician and other medical professionals with expertise in the respective disorder.

Compliance Costs:

Hospitals, birthing centers, and physician and midwifery practices operating as small businesses will not incur additional costs related to collection and submission of blood specimens to the Department's Newborn Screening Program, since the dried blood spot specimens now collected and mailed to the Program for the screening program currently operating would also be used to screen for the additional disorders proposed by this amendment. However, such facilities, and, to a lesser extent, at-home birth attendants, would likely incur minimal costs related to following up infants screening positive, primarily because the testing proposed under this regulation is expected to result in, on average, 1 to 2 referrals per month.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to any small businesses and local governments affected. The infrastructure for specimen collection and referrals of affected infants are already in place.

Minimizing Adverse Impact:

The addition of 2 disorders to the newborn screening panel will not impose a unique burden on hospitals, birthing centers, and physician and midwifery practices operating as small businesses. The proposed regulation will not have an adverse impact on the ability of small businesses to comply with statutory requirements for mandatory newborn screening, as full compliance would require minimal enhancements to present specimen collection, reporting, follow-up and recordkeeping practices.

Small Business and Local Government Participation:

The Department will notify all New York State-licensed physicians and midwives of this newborn screening panel expansion. An informational letter will also be distributed to hospital chief executive officers (CEOs) and their designees responsible for newborn screening, as well as to other affected parties. Regulated parties that are small businesses are expected to comply with screening and follow-up for ALD and Pompe disease on the effective date of the proposed regulation because the staff and infrastructure needed for specimen collection and referrals of affected infants are already in place. Small businesses and local governments will have the opportunity to participate in the rulemaking process by submitting comments during the public comment period following the publication of the Notice of Proposed Rulemaking.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, include towns with population densities of 150 persons or less per square mile. Forty three counties in New York State have a population less than 200,000, and nine other counties have certain townships with population densities of 150 persons or less per square mile.

The proposed regulation adds two disorders, adrenoleukodystrophy (ALD) and Pompe disease, to the list of genetic/congenital disorders for which every newborn in New York State must be tested. It will affect hospitals, alternative birthing centers and physician and midwifery practices located in rural areas to the extent that such facilities care for infants 28 days of age or under, or are required to register the birth of a child. Such facilities will not incur new costs related to collection and submission of blood specimens, as the same blood spot specimen that is currently collected would be used for ALD and Pompe disease screening. Facilities and practices may incur minimal additional costs related to fulfilling their responsibility to refer screen-positive infants.

Compliance Requirements:

The infrastructure to support the Newborn Screening Program is cur-

rently operational. The proposed regulation adds 2 genetic disorders to the current panel of disorders currently screened. Minimal reporting, record keeping, or other compliance requirements are being imposed as a result of the proposed regulation.

Professional Services:

No new additional professional services are required in order for providers in rural areas to comply with the proposed regulation.

Compliance Costs:

No initial capital costs will be imposed as a result of the proposed regulation, nor is there an annual cost of compliance.

Minimizing Adverse Impact:

New York State's Newborn Screening program was first implemented in 1965 and screened for a single metabolic disorder. With almost 50 years of experience, the program now conducts more than 12 million screens to identify congenital disorders and exposure to HIV on 250,000 babies annually. The proposed regulation expands diagnostic opportunity and improves health outcomes without increased burden to providers located in rural areas or otherwise. The goal is to ensure this highly successful, comprehensive public health program is made available to all newborns across New York.

The proposed regulation will not have an adverse impact on the ability of hospitals, alternative birthing centers and physician and midwifery practices located in rural areas to comply with statutory requirements for mandatory newborn screening, as full compliance would require no change to the collection of blood spot specimens as the same dried blood spot specimen currently collected for the newborn screening panel will be used for ALD and Pompe disease screening. The proposed regulation will require minimal enhancements to reporting, follow-up and recordkeeping practices. The minimal increase in workload attributed to referring affected infants is expected to be assumed by current personnel.

Opportunity for Rural Area Participation:

The proposed regulation adds two additional disorders to the list of disorders currently screened. It will not have an adverse impact on hospitals, alternative birthing centers and physician and midwifery practices located in rural areas, as implementation of an expanded disease screening panel will result in minimal new reporting, record keeping, or other compliance requirements. Public and private interests in rural areas will have the opportunity to participate in the rulemaking process by submitting comments during the public comment period following the publication of the Notice of Proposed Rulemaking.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Conforming Changes Related to Chapter 106 of the Laws of 2015

I.D. No. PDD-11-16-00005-A

Filing No. 480

Filing Date: 2016-05-10

Effective Date: 2016-05-25

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

Action taken: Amendment of section 633.21 of Title 14 NYCRR.

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

Subject: Conforming Changes Related to chapter 106 of the Laws of 2015.

Purpose: To make changes to regulations to conform to recent statutory changes set forth in chapter 106 of the Laws of 2015.

Text or summary was published in the March 16, 2016 issue of the Register, I.D. No. PDD-11-16-00005-EP.

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

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

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

Assessment of Public Comment

This document addresses comments submitted during the public comment period for emergency proposed regulations that implement Chapter 106 of the Laws of 2015. While OPWDD appreciates and has considered all feedback and information submitted by commenters, this assessment responds only to those comments specific to the content of the emergency proposed regulations.

Comment: Some Commenters advised that the emergency proposed regulations appear to exceed the legislative amendments in Chapter 106 of the Laws of 2015 by significantly restructuring the administrative hearing process, including the replacement of a three-person panel with a hearing officer, and by limiting safeguards for impartiality, fairness, and the due process rights of individuals. Additionally, some Commenters suggested that the proposed regulations will not effectively create a fair and impartial forum in which families can object to potentially inadequate services. Commenters urged OPWDD to modify the language of the regulations to ensure that individuals receive the care that they need and to ensure that families have a voice in the process.

Response: These regulations' provision for a single hearing officer rather than a three-person panel is consistent with OPWDD's management of other types of administrative hearings and likewise will ensure the delivery of an impartial and fair process for individuals and their families. OPWDD will issue guidance on the regulations that will address the many operational details necessary to implement the newly adopted regulatory authority including, but not limited to, notice requirements, the opportunity for parties to be represented by legal counsel, conduct of the hearing, admission of evidence and legal arguments, and the appeal procedure. Consequently, the regulations are being adopted as proposed.

Comment: Some Commenters suggested that existing OPWDD regulations in 14 NYCRR Part 602 pertaining to uniform hearing procedures be applied to out of state residential placements, and that affording individuals with the protections in Part 602 would better serve individuals than the proposed regulations.

Response: The due process protections in 14 NYCRR Part 602 primarily address hearings regarding the potential denial or loss of a property right such as the suspension or revocation of a service provider's operating certificate. As such, the construct posed by Part 602 would not apply to the individuals affected by the emergency proposed regulations, as a determination of the appropriateness of a proposed placement or services does not affect a property interest of that nature. However, individuals affected by the emergency proposed regulations will be offered appropriate due process protections that will be similar procedurally to those provided in Part 602. Those protections will be described in forthcoming guidance on the regulations. Consequently, the regulations are being adopted as proposed.

Comment: Some Commenters recommended that more rigorous hearing procedures be incorporated into the regulations, contending that there is no way to reverse the potential negative effects of a placement once it has been implemented.

Commenters recommend that the regulations be revised to include the following:

- Provide adequate notice of the details of the proposed transfer and the basis for considering it to be appropriate. Send offer of the placement to the family within sixty days of availability of the placement, providing the family with sufficient time to evaluate the placement, speak with staff at the proposed placement, and assist with development of a plan to best meet the needs of the individual.
- Carefully consider the characteristics and needs of the population. Commenters stated that the regulations lack requirements that the hearing officers be qualified to assess clinical evaluations, functional behavioral assessments, behavioral support plans, expert testimony, and other specialized evidence, in order to determine a suitable placement.
- Emphasize early and comprehensive consultation with individuals, their families, and advocates as any transfers from transitional funded or emergency funded care are being considered.
- Add provisions to ensure the independence and expertise of hearing officers. Require that the hearing officer be a licensed New York State attorney who works in private practice and who has not been previously employed by the State or similar agency for a period of at least five years before the hearing, and that the hearing officer have no interests or bias with respect to the final decision concerning placement.
- If a hearing is requested, the tribunal must be fair, competent, and impartial. Require the basic rules for an adversary hearing.
- Require that OPWDD provide a list of qualified individuals to serve as hearing officers, and that hearing officers will be assigned on a rotating, random basis.

• Provide family members with the right to question hearing officers, witnesses, OPWDD staff and the proposed agency staff involved in making the determination about the proposed placement, and anyone else with direct access to the individual, and obtain documentation necessary to evaluate the proposed placement and defend the individual's current program.
• Require that the only two parties involved in the hearing be the family member and OPWDD.
• Provide the right to be represented by legal counsel.
• Require the opportunity for relevant legal arguments.
• Require that OPWDD bear the burden of proof and show that the proposed program is capable of meeting the individual's needs.
• Provide the family the opportunity to challenge evidence and submit countervailing evidence.
• Require the development of a full evidentiary record.
• Require a decision by a fact finder who has expertise to assess the evidence.
• Require that if a hearing officer sustains the family's objection, that should be the final determination, and if the hearing officer sustains OPWDD's staff decision, the family should have the right to appeal to the Commissioner, whose appeal decision will be the final determination.

Response: In finalizing the emergency proposed regulations, OPWDD intends to implement an effective, impartial and efficient construct that considers each individual's need for an appropriate placement or services, and which will provide the individual and his/her family or advocates with effective due process protections. OPWDD will issue guidance on the regulations that will address the many operational details necessary to implement the newly adopted regulatory authority including, but not limited to, notice requirements, the opportunity for parties to be represented by legal counsel, conduct of the hearing, admission of evidence and legal arguments, and the appeal procedure. Consequently, the regulations are being adopted as proposed.

Comment: One Commenter asserted that the proposed regulations should establish clearly that the "basic rules and procedures of an adversary hearing regarding evidence, arguments, legal briefs, etc. should be followed."

Response: In adopting these regulations, OPWDD intends to establish the regulatory authority by which to develop an impartial and efficient hearing construct that will satisfy the parties' need for a more user-friendly forum that is not constrained by the more formal hearing requirements commonly attributed to hearings conducted in the manner required by Article 3 of the State Administrative Procedure Act (SAPA). Nonetheless, OPWDD will issue guidance on the regulations that will address clearly the hearings' many operational details of the hearing process. Consequently, the regulations are being adopted as proposed.

Comment: The same Commenter expressed concerns with OPWDD's intention to issue administrative guidance that will set forth details about the hearing procedures. The Commenter contended that a guidance document can be altered unilaterally by the agency without following SAPA rulemaking procedures, and that therefore it is incumbent upon OPWDD to amend the regulations to include details about the hearing procedures in order to give such procedures lasting effect.

Response: In adopting the regulations, OPWDD intends to establish the regulatory authority that will provide the basis for OPWDD's conduct of an effective process for the transition of the affected individuals to appropriate placements and services, which necessarily includes the administration of an effective adjudication process to address the concerns of those individuals and their families or advocates. That regulatory authority will provide the overall construct to achieve that goal, and will provide OPWDD with the authority to operationalize the specifics of the transfer process and the related hearing requirements in a manner compliant with those regulatory requirements. The inclusion of operational detail is not a prerequisite to adopting the overall construct that is the purpose of regulatory authority. Consequently, the regulations are being adopted as proposed.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Submeter Electricity

I.D. No. PSC-21-16-00006-P

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

Proposed Action: The Public Service Commission is considering the petition, filed by HV Housing, LLC, to submeter electricity at 45 Vanderburgh Avenue, Troy, 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: Petition to submeter electricity.

Purpose: To consider the petition of HV Housing, LLC to submeter electricity at 45 Vanderburgh Avenue, Troy, New York.

Substance of proposed rule: The Commission is considering the petition, filed by HV Housing, LLC on March 24, 2016, to submeter electricity at 45 Vanderburgh Avenue, Troy, New York, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid. 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-0184SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-21-16-00007-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by Affinity Potsdam Properties, LLC, to submeter electricity at 206 Outer Main Street, Building #67, Potsdam, 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 206 Outer Main Street, Building #67, Potsdam, New York.

Substance of proposed rule: The Commission is considering the petition, filed by Affinity Potsdam Properties, LLC on April 18, 2016, to submeter electricity at 206 Outer Main Street, Building #67, Potsdam, New York, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid. 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-0225SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

GE I-210+c with Silver Spring Network Interface Card (NIC) 510

I.D. No. PSC-21-16-00008-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 a petition filed by Aclara Technologies LLC on April 21, 2016, to use the GE I-210+c with a Silver Spring Networks Interface Card (NIC) 510.

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

Subject: GE I-210+c with Silver Spring Network Interface Card (NIC) 510.

Purpose: To consider the use of the GE I-210+c with Silver Spring Networks Interface Card (NIC) 510.

Substance of proposed rule: The Public Service Commission is considering the petition filed by Aclara Technologies LLC to use the GE I-210+c with a Silver Spring Networks Interface Card (NIC) 510, in residential metering applications. The Commission may approve, reject or modify the relief requested, and may consider other related matters.

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

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

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

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

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

(16-E-0242SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Establishment of Compensation for Nuclear Facilities Relative to a Zero-Emissions Credit Program

I.D. No. PSC-21-16-00009-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 filed by Constellation Energy Nuclear Group LLC, et al., to determine a compensation mechanism for certain nuclear facilities relative to a Zero-Emissions Credit program under a Clean Energy Standard.

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

Subject: Establishment of compensation for nuclear facilities relative to a Zero-Emissions Credit program.

Purpose: To preserve zero-emissions attributes of generation facilities serving New York electric customers.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed on May 9, 2016, by Constellation Energy Nuclear Group LLC, R.E. Ginna Nuclear Power Plant, LLC, and Nine Mile Point Nuclear Station, LLC (collectively, Petitioners), seeking to have the Commission consider certain financial data concerning the R.E. Ginna Nuclear Power Plant and the Nine Mile Point Nuclear Station and determine an appropriate compensation mechanism under a program the Petitioners anticipate will be adopted by the Commission as part of the Clean Energy Standard (CES) in Case 15-E-0302, and whether and/or how such facilities will qualify for compensation under such program. Petitioners request consideration of their petition and submitted cost data concurrently with the Commission's consideration of the CES program so that the lead time involved in planning and operating decisions for its nuclear plants can be accommodated, without additional risk that the facilities may cease operations prematurely. The CES program under consideration envisions providing eligible nuclear facilities with compensation for the zero-emission attributes of their production in the form of zero-emission credits ("ZECs") and is intended to serve as a bridge to the State achieving the reductions in greenhouse gas emissions ("GHG") envisioned by the State Energy Plan. In particular, the petition requests that the Commission appropriately consider certain financial data, identified by Petitioners as containing trade secret and/or confidential information, which may be used to establish nuclear generator costs relevant to the development of an appropriate compensation mechanism under a ZEC program. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve other related matters.

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

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

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

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

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

(16-E-0270SP1)

Department of Taxation and Finance

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Computation of Property Percentage for Personal Income Tax

I.D. No. TAF-21-16-00002-P

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

Proposed Action: Amendment of sections 132.15(d), 262.2(b)(3)(i)(*a*), (*b*) and (*c*) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 631(c), 697(a) and 1332(a); Code of the City of Yonkers, sections 15-108 and 15-118

Subject: Computation of property percentage for personal income tax.

Purpose: To clarify that the property percentage includes rented tangible personal property in the apportionment factor.

Text of proposed rule:

Section 1. Subdivision (d) of section 132.15 of such regulation is amended to read as follows:

(d) Property percentage.

(1) General. The property percentage is computed by dividing

(i) the average of the values, at the beginning and end of the taxable year, of real and tangible personal property *owned by or rented to the taxpayer, which is* connected with the business and located within New York State, by

(ii) the average of the values, at the beginning and end of the taxable year, of all real and tangible personal property*, owned by or rented to the taxpayer, which is* connected with the business and located both within and without New York State. For this purpose, real *and tangible personal* property includes real *and tangible personal* property rented to the taxpayer and used in the business. Real property the income or gain from which is allocated pursuant to section 132.16 of this Part is disregarded in computing the property percentage described in this paragraph.

(2) Rented real *and tangible personal* property.

(i) The fair market value of real *and tangible personal* property, both within and without New York State, which is rented to the taxpayer is determined by multiplying the gross rents payable during the taxable year by eight.

(ii) Gross rent, as used in this paragraph, is the actual sum of money or other consideration payable directly or indirectly by the taxpayer

or for [his]*the taxpayer's* benefit for the use or possession of the property, and includes:

(a) any amount payable for the use or possession of real *and tangible personal* property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise;

(b) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement;

(c) a proportionate part of the cost of any improvement to real *and tangible personal* property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement, based on the unexpired term of the lease commencing with the date the improvement is completed (or the life of the improvement if its life expectancy is less than the unexpired term of the lease); provided, however, that where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight, and the value of the building is determined in the same manner as if owned by the taxpayer. The proportionate part of the cost of an improvement (other than a building on leased land) is generally equal to the amount of amortization allowed in computing New York adjusted gross income, whether the lease does or does not contain an option of renewal.

(iii) Gross rents do not include:

(a) any portion of a payment or credit, to the proprietor of the business or to a partner in the partnership conducting the business, for the use of real *or tangible personal* property;

(b) amounts payable as separate charges for water and electric service furnished by the lessor;

(c) amounts payable for storage, where no designated space under the control of the taxpayer as a tenant is rented for storage purposes; or

(d) that portion of any rental payment which, in the discretion of the [Tax Commission]*Commissioner*, is applicable to property subleased by the taxpayer and not used by [him]*the taxpayer* in the carrying on of the business.

(3) *Other valuation methods.* If the general method outlined in this subdivision results in valuations which are inaccurate or which are not fair and equitable, any other method which will fairly and equitably reflect the value may be adopted by the [Tax Commission]*Commissioner*, either on [its]*the Commissioner's* own motion or on request of a taxpayer. A request by a taxpayer for an alternative method may be made at the time the New York State nonresident personal income tax return to which the request relates is filed. A request is made by using the proposed method in the personal income tax return. The proposed method must be fully explained in the personal income tax return. Any request must contain all facts with respect to the property forming the basis for the proposed valuation and also a computation of the value of the rented real *and tangible personal* property based on gross rents in accordance with paragraph (2) of this subdivision. Once approved by the [Tax Commission]*Commissioner*, such basis or such other method must be used for subsequent years until the facts upon which it is based are materially changed.

Section 2. Clauses (a), (b) and (c) of subparagraph (i) of paragraph (3) of subdivision (b) of section 262.2 of such regulation are amended to read as follows:

(a) General. The percentage computed by dividing (1) the average of the values, at the beginning and end of the taxable year, of real and tangible personal property *owned or rented to the taxpayer, which is* connected with net earnings from self-employment and located within the City of Yonkers, by (2) the average of the values, at the beginning and end of the taxable year, of all real and tangible personal property *owned by or rented to the taxpayer, which is* connected with the net earnings from self-employment and located both within and without the City of Yonkers. For this purpose, real property includes real property whether owned or rented to the taxpayer (also see section 262.3 of this Part). For this purpose, real and tangible personal property includes real and tangible personal property whether owned or rented to the taxpayer (also see section 262.3 of this Part).

(b) Rented real *and tangible personal* property.

(1) The fair market value of real *and tangible personal* property, both within and without the City of Yonkers, which is rented to the taxpayer, is determined by multiplying the gross rents payable during the taxable year by eight.

(2) Gross rents, as used in this clause, is the actual sum of money or other consideration payable directly or indirectly by the taxpayer or for [his]*the taxpayer's* benefit for the use or possession of the property, and includes:

(i) any amount payable for the use or possession of real *or tangible personal* property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profit or otherwise;

(ii) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement;

(iii) a proportionate part of the cost of any improvement to real *or tangible personal* property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement, based on the unexpired term of the lease commencing with the date the improvement is completed (or the life of the improvement if its life expectancy is less than the unexpired term of the lease); provided, however, that where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight, and the value of the building is determined in the same manner as if owned by the taxpayer.

(3) Gross rents do not include:

(i) any portion of a payment or credit to the proprietor of the business, or to a partner in the partnership conducting the business, for the use of real *or tangible personal* property;

(ii) amounts payable as separate charges for water and electric service furnished by the lessor;

(iii) amounts payable for storage where no designated space under the control of the taxpayer as a tenant is rented for storage purposes; or

(iv) that portion of any rental payment which, in the discretion of the [State Tax Commission]*Commissioner*, is applicable to property subleased by the taxpayer and not used by [him]*the taxpayer* in the carrying on of the business.

(c) *Other valuation methods.* If the general method outlined in this subdivision results in valuations which are inaccurate or which are not fair and equitable, any other method which will fairly and equitably reflect the value may be adopted by the [State Tax Commission]*Commissioner*, either on [its]*the Commissioner's* own motion or on request of a taxpayer. A request by a taxpayer for an alternative method may be made at the time the City of Yonkers earnings tax return to which the request relates is filed. A request is made by using the proposed method in the City of Yonkers earnings tax return. The proposed method must be fully explained in the City of Yonkers earnings tax return. Any request must contain all facts with respect to the property forming the basis for the proposed valuation, and also a computation of the value of the rented real *or tangible personal* property based on gross rents in accordance with clause (b) of this subparagraph. Once approved by the [State Tax Commission]*Commissioner*, such basis or such other method must be used for subsequent years until the facts upon which it is based are materially changed.

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist 1, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12, (518) 530-4153, email: Kathleen.OConnell@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

1. Statutory authority: Tax Law, sections 171, subdivision First; 631(c); 697(a), and 1332, and sections 15-108(a) and 15-118 of the Code of the City of Yonkers. Section 171, subdivision First authorizes the Commissioner to make reasonable rules and regulations that may be necessary for the exercise of the Commissioner's powers and performance of the Commissioner's duties. Section 697(a) authorizes the Commissioner to adopt regulations relating specifically to the personal income tax. Tax Law section 1332(a) and section 15-108(a) of the Code of the City of Yonkers provide that the City of Yonkers income tax surcharge shall be administered and collected by the Commissioner in the same manner as the tax imposed by Tax Law Article 22. Pursuant to Tax Law section 631(c), if a nonresident carries on a business, trade, profession or occupation partly within and partly without this state, as determined under regulations of the Department of Taxation and Finance, the items of income, gain, loss and deduction derived from or connected with New York sources shall be determined by apportionment and allocation under such regulations. Section 15-118 of the Code of the City of Yonkers also requires allocation of income earned within and without the City of Yonkers.

2. Legislative objectives: The statutory scheme for taxation of nonresident income derived from a business carried on partly within and partly without the state requires apportionment and allocation. This rule would amend 20 NYCRR 132.15(d) to clarify that both real and tangible personal property rented to the taxpayer are to be included in the property factor for apportionment and allocation purposes.

3. Needs and benefits: The purpose of these amendments is to clarify that the property percentage includes tangible personal property rented to the taxpayer, when apportioning and allocating income from a business carried on partly within and partly without New York State. The current regulation explicitly discusses the computation of the property factor with

regard to rented real property, but are silent on the treatment of rented tangible personal property. Because of this omission, there could potentially be some confusion as to the treatment of rented tangible personal property. The purpose of this rule is to avoid such confusion.

4. Costs:

(a) Costs to regulated parties: The rule does not impose any new compliance costs on the regulated parties; the proposed amendments reflect a clarification of existing regulation regarding the application of the property percentage provision with regard to rented tangible personal property. Pursuant to section 631(c) of the Tax Law, items of income, gain, loss and deduction derived from or connected with New York sources are to be determined by apportionment and allocation under regulations of the Commissioner. These amendments clarify the treatment of rented tangible personal property for purposes of apportionment and allocation under section 631(c). The amendments will not produce additional costs to the regulated parties in terms of additional capital costs or additional annual costs of complying with these amendments as defined by the State Administrative Procedures Act. It is further anticipated that there will be no impact on jobs or employment opportunities for residents of this state. There is likely no variation in such costs for public or private interests in rural areas.

(b) Costs to the agency and to the State and local governments: It is estimated that the implementation and continued administration of this rule will not impose any compliance costs upon this agency, New York State or its local governments. The rule merely clarifies existing policy of the Department.

(c) Information and methodology: This analysis is based on a review of the rule, and on discussions among personnel from the Department's Taxpayer Guidance Division, Audit Division, Office of Counsel, Office of Tax Policy Analysis, Office of Budget and Management Analysis, and the City of Yonkers.

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

6. Paperwork: This rule imposes no new reporting requirements, forms, or other paperwork upon regulated parties.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

8. Alternatives: The Department considered various alternatives, including inaction, but determined that the proposed clarifying rule is the best vehicle to avoid confusion regarding the treatment of rented real property in calculating the property factor for apportionment purposes.

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

10. Compliance schedule: These amendments will take effect when the Notice of Adoption is published in the State Register, and apply to taxable years ending on or after December 31, 2016.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because it will not impose any adverse economic impact or any additional reporting, recordkeeping, or other compliance requirement on small businesses or local governments. Pursuant to Tax Law section 631(c), if a nonresident carries on a business, trade, profession or occupation partly within and partly without this state, as determined under regulations of the Department of Taxation and Finance, the items of income, gain, loss and deduction derived from or connected with New York sources shall be determined by apportionment and allocation under such regulations. Tax Law section 1332(a) and section 15-108(a) of the Code of the City of Yonkers provide that the City of Yonkers income tax surcharge shall be administered and collected by the Commissioner in the same manner as the tax imposed by Tax Law Article 22. Section 15-118 of the Code of the City of Yonkers also requires apportionment and allocation of income earned within and without the City. This rule amends 20 NYCRR 132.15(d) and 262.2(b)(3)(i)(a), (b) and (c) to clarify that tangible personal property rented to the taxpayer is to be included in the computation of the property percentage.

For apportionment purposes, the term property typically includes real and tangible personal property owned or rented that is used in the production of income that is to be apportioned. The current regulations explicitly discuss the computation of the property factor with regard to rented real property, but are silent on the treatment of rented tangible personal property. Because of this omission, there could potentially be some confusion as to the treatment of rented tangible personal property. The purpose of this rule is to avoid such confusion.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on any rural areas. Pursuant to Tax Law section 631(c), if a nonresident carries on a business, trade, profession or occupation partly within and partly without this state, as determined under regulations of the Department of Taxation and Finance, the items of income, gain, loss and deduction derived from or connected with New York sources shall be determined by apportionment and allocation under such regulations. Tax Law section 1332(a) and section 15-108(a) of the Code of the City of Yonkers provide that the City of Yonkers income tax surcharge shall be administered and collected by the Commissioner in the same manner as the tax imposed by Tax Law Article 22. Section 15-118 of the Code of the City of Yonkers also requires apportionment and allocation of income earned within and without the City. This rule amends 20 NYCRR 132.15(d) and 262.2(b)(3)(i)(a), (b) and (c) to clarify that tangible personal property rented to the taxpayer is to be included in the computation of the property percentage.

For apportionment purposes, the term property typically includes real and tangible personal property owned or rented that is used in the production of income that is to be apportioned. The current regulations explicitly discuss the computation of the property factor with regard to rented real property, but are silent on the treatment of rented tangible personal property. Because of this omission, there could potentially be some confusion as to the treatment of rented tangible personal property. The purpose of this rule is to avoid such confusion.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse impact on jobs and employment opportunities.

The purpose of these amendments is to update the Personal Income Tax regulations to clarify that the property percentage includes tangible personal property rented to the taxpayer, when apportioning and allocating nonresident income from a business carried on partly within and partly without New York State or the City of Yonkers.

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Income Withholding of Child or Combined Child and Spousal Support

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

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

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

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

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

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

Substance of proposed rule (Full text is posted at the following State website: http://otda.ny.gov/legal/): The Office of Temporary and Disability Assistance (OTDA) is proposing the following amendments to the State regulations governing income withholding of child support or combined child and spousal support for persons who are not served by Part D of Title IV of the federal Social Security Act and for persons who are in receipt of Title IV-D services, respectively. The proposed changes to the State regulations will update Title 18 NYCRR Part 344 and § 347.9 to conform to recent federally-mandated changes to § 111-b of the Social Services Law (SSL) and §§ 5241 & 5242 of the Civil Practice Law and Rules (CPLR).

§ 344.1 Purpose.

Amend § 344.1 to make a conforming change indicating the applicability of this Part.

§ 344.2 Duties of the department.

Amend the title of § 344.2 to make a technical update to the name of the agency.

Amend § 344.2(a)–(e) to make technical updates regarding the name of

the agency and indicate that the duties of OTDA under this Part will now be carried out through its State disbursement unit.

Amend § 344.2(a) to make conforming changes by adding income executions as an additional type of income withholding order covered by this Part and adding a reference to Article 5-B of the Family Court Act.

Amend § 344.2(b) to make technical updates to language and make conforming changes to the time frame for the State disbursement unit's duties.

Amend § 344.2(c) to make technical updates to language.

Amend § 344.2(d) to make technical updates and conforming changes to the types of permissible income withholding mechanisms that apply to both child support or combined child and spousal support obligations.

Amend § 344.2(e) and (f) to make technical updates.

§ 344.3 Other requirements.

Amend § 344.3(a) to make conforming changes to the process and types of income withholding mechanisms.

Amend § 344.3(b) to make a conforming change to the types of permissible income withholding mechanisms, make technical updates to the name of the agency, and to indicate that requirements under this section will be carried out by the State disbursement unit.

Amend § 344.3(b)(1) to make a conforming change by adding an income payor as a potential remitter of payments and make technical updates to the name of the agency and to indicate that requirements under this section will be carried out by the State disbursement unit.

Amend § 344.3(b)(2) to make conforming changes that indicate the income withholding order must be on the form promulgated by OTDA and conform to 42 United States Code § 666(b).

Repeal paragraph (4) of § 344.3(b) and make a technical change to paragraph (3) of § 344.3(b).

§ 344.4 Employer responsibilities.

Amend the title of § 344.4 to read "Employer and income payor responsibilities."

Amend § 344.4 to make conforming changes by adding income payors and making a technical update to the references to the CPLR.

Amend § 344.4(a) to make technical updates indicating the role of the State disbursement unit and add a reference to the statutory authority in the CPLR which limits remittances in certain circumstances.

Amend § 344.4(b) to make a conforming change regarding who the employer or income payor must remit payment to and the information that must be included with each remittance.

Create a new § 344.4(c) to require the employer or income payor to include information as instructed in the income withholding order.

Reletter § 344.4(c)-(d) to § 344.4(d)-(e), make conforming changes by reducing the number of days to remit payments, and make a conforming update to reference the role of the State disbursement unit.

§ 347.9 Enforcement of support obligations and issuance of income executions.

Amend the caption of § 347.9 to read "Enforcement of support obligations and issuance of income withholding orders."

Amend § 347.9(a) to make a conforming change to the reference to the income execution for support enforcement as an income withholding order, such change to be applied to the entire section.

Amend § 347.9(a)(1) to make a conforming change to the name of the automated case records system, to make conforming changes to reference the income withholding order, and to make a conforming change by adding an income payor as a potential remitter of payments.

Amend § 347.9(a)(2) to make a technical update to the name of the agency and to make conforming changes to reference the income withholding order and the form for income withholding.

Amend § 347.9(a)(2)(iv) to make a conforming change to indicate the use of the federally-mandated form and clarify the method for inclusion of additional information.

Repeal § 347.9(a)(2)(iv)(a)-(b) to conform the State regulation to the requirements set forth in the CPLR and federal law.

Reletter clauses (c)-(j) of § 347.9(a)(2)(iv) as § 347.9(a)(2)(iv)(a)-(h), repeal clause (k), and renumber subclauses (1)-(10) of repealed clause (k) as subclauses (5)-(14) of relettered clause (h) to update the regulatory description of information required for inclusion on income withholding order forms.

Amend relettered § 347.9(a)(2)(iv)(b) to make a conforming change.

Amend relettered § 347.9(a)(2)(iv)(f)-(h) to make technical updates.

Amend relettered § 347.9(a)(2)(iv)(h)(5)-(7), (9)-(11), and (13)-(14) to make conforming changes and technical updates.

Amend § 347.9(b)(2)(i) to make a technical update to the name of the agency and to make conforming changes to refer to the income withholding order.

Amend § 347.9(b)(2)(v) to make a conforming change to indicate the use of a federally-mandated form and clarify the method for inclusion of additional information.

Repeal § 347.9(b)(2)(v)(a)-(b), and (f) to conform the State regulation to the requirements set forth in the CPLR and federal law.

Reletter § 347.9(b)(2)(v)(c)-(e) and (g)-(m) as § 347.9(b)(2)(v)(a)-(j).

Amend relettered § 347.9(b)(2)(v)(c), (f)-(g), and (i)-(j) to make technical updates.

Amend § 347.9(b)(3)(i) to make a conforming change to indicate the creation of the State disbursement unit and to make a conforming change to reference the income withholding order.

Amend § 347.9(b)(3)(ii) to make a conforming change to reference the income withholding order.

Amend § 347.9(d) to make a conforming change to reference the automated case record.

Amend § 347.9(e) to make a conforming change to the reference to the income execution as income withholding.

Amend § 347.9(e)(1), 347.9(e)(1)(ii), and 347.9(e)(4) to make technical updates by adding the word "support" and to make conforming changes to refer to the income withholding order.

Amend § 347.9(e)(5) to make a conforming change to reference the automated case record and a technical update.

Amend § 347.9(f) to make conforming changes to refer to the income withholding order.

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

Social Services Law (SSL) § 17(a)-(b) and (i) provide, in part, that the Commissioner of the Office of Temporary and Disability Assistance (OTDA) shall "determine the policies and principles upon which public assistance, services and care shall be provided within the [S]tate both by the [S]tate itself and by the local governmental units …", shall "make known his policies and principles to local social services officials and to public and private institutions and welfare agencies subject to his regulatory and advisory powers …", and shall "exercise such other powers and perform such other duties as may be imposed by law."

SSL § 20(3)(d) authorizes OTDA to promulgate regulations to carry out its powers and duties.

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

SSL § 111-a requires OTDA to promulgate regulations necessary to obtain and retain approval of its child support state plan, required to be submitted to the federal Department of Health and Human Services by Part D of Title IV of the federal Social Security Act.

SSL § 111-b(14) authorizes OTDA, or, pursuant to contract, its authorized fiscal agent, to collect and disburse any support paid pursuant to any order of child support or combined child and spousal support issued on or after January 1, 1994 pursuant to the provisions of Article 3-A or § 236 or § 240 of the Domestic Relations Law (DRL), or Article 4, 5, 5-A, or 5-B of the Family Court Act (FCA), for which a court has ordered such amounts to be paid pursuant to an income execution issued by the sheriff, the clerk of the court, or the attorney for the creditor pursuant to § 5241(c) of the Civil Practice Law and Rules (CPLR) or an income deduction order issued pursuant to CPLR § 5242 (c).

Title 42 of the United States Code (42 U.S.C.) §§ 651, 654b, 666(a)(8)(B)(iii), and 666(b)(6) set forth authority for the Title IV-D child support program (IV-D), authorize States to use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible for the collection and disbursement of support payments, and describe the procedures required to be used by the States relative to child support orders initially issued in the State on or after January 1, 1994 and by employers and income payors relative to withholding from income of amounts payable as support.

2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that child support enforcement services are provided to eligible persons to ensure that, to the greatest extent possible, parents provide financial support for their children.

3. Needs and Benefits:

The proposed regulatory amendments are intended to update the current State regulations to reflect the process and requirements for income withholding for persons not served by the IV-D child support program (non-IV-D) and income withholding for persons served by the IV-D child support program (IV-D), respectively, thereby conforming the current State regulations with changes to CPLR §§ 5241 and 5242 and SSL § 111-b(14), consistent with federal law.

The proposed regulatory amendments would conform the current State

regulations to recent changes to CPLR §§ 5241 and 5242 that require all income withholding in both IV-D and non-IV-D cases to be paid through the State disbursement unit and to use a federally-mandated form. Additionally, the proposed regulatory amendments would conform the current State regulations to recent changes in SSL § 111-b(14) which clarify the authority of OTDA, or its fiscal agent, to collect and disburse remittances based upon income withholding orders from any and all statutorily-authorized issuers, provided certain conditions are met by the issuer and creditor. The proposed regulatory amendments would also make technical changes to the time frames for various income withholding processes so as to render the current State regulations consistent across case types and in compliance with federal law as reflected in revised CPLR §§ 5241 and 5242. The proposed regulatory amendments would replace existing references to the "New York State Department of Social Services (the Department)" with references to the "State disbursement unit" or to the "Office of Temporary and Disability Assistance (the Office)" in 18 NYCRR Part 344 and § 347.9, where appropriate. The proposed regulatory amendments would also update the current State regulatory language to conform to that used in 42 U.S.C. § 654b and SSL § 111-b(14) by changing "receive" to "collect" and "transmit" to "disburse," as well as by changing references throughout to "creditor" and "debtor" consistent, with other regulations promulgated by OTDA in this area. The proposed regulatory amendments would also update the current State regulations to refer to "child support services," thereby clarifying that services provided by the IV-D program are not limited solely to enforcement of a support obligation and would acknowledge the one common form used for all income withholding in the state by using the umbrella term "income withholding order" ("IWO") rather than "income deduction order" or "income execution." By effectuating these changes, the proposed regulatory amendments would conform the State regulations to the recent changes in the CPLR and the SSL referenced above, make technical changes to the current State regulations by updating and clarifying the processes for income withholding, remove references to "the Department," and render the current State regulations more comprehensible to employers, income payors, child support debtors and creditors, and the issuers who are involved in the income withholding process.

Specifically, the proposed regulatory amendment to § 344.1 would clarify the procedures for income withholding of child support or combined child and spousal support for persons who are not in receipt of IV-D child support services consistent with CPLR §§ 5241 and 5242, State policy, and federal law.

The proposed regulatory amendment to § 344.2 would clarify the duties of the Office and that these duties will be carried out by its State disbursement unit. The proposed rule would reduce the time frame for disbursement of payments to a creditor from within five business days to within two business days of the State disbursement unit's receipt of a payment. This revised time frame is consistent with SSL § 111-b(14) and federal law. The proposed regulatory amendment would also update current regulatory references to the FCA by adding a reference to Article 5-B of the FCA, an article which did not exist in 1996, when the original rule was promulgated.

The proposed regulatory amendment to § 344.3 would clarify that an income withholding order for child support or combined child and spousal support must be made payable to the State disbursement unit, must be on the IWO form promulgated by OTDA for this purpose, and must be served, along with any supplemental documents required, upon the State disbursement unit. The proposed regulatory amendment would conform the current State regulations to the requirements contained in CPLR §§ 5241 and 5242, SSL § 111-b(14), and federal law.

The proposed regulatory amendment to § 344.4 would clarify that the responsibilities of employers extend to those designated as "income payors" in the income withholding process, as set out in CPLR §§ 5241 and 5242. The proposed regulatory amendment would also reduce the time frame in non-IV-D cases for an employer or income payor to remit payments to the State disbursement unit from ten calendar days to seven business days, thereby aligning this important time frame with the time frame already set forth in CPLR § 5241 for IV-D cases. The proposed regulatory amendment would also conform the existing State regulations to the newly-amended CPLR § 5242 and to federal law, 42 U.S.C. §§ 666(a)(8)(B)(iii) and 666(b)(6), which require the time frames to be consistent in IV-D and non-IV-D cases. Additionally, the proposed regulatory amendment explicitly sets forth the responsibilities of employers and income payors to include certain basic information with each remittance that is either required by federal law to permit monitoring for compliance with the statutory remittance time frame, or to otherwise specifically identify the case associated with the remittance and to process the payment.

Lastly, the proposed regulatory amendment to § 347.9, which governs the issuance of IWOs in IV-D cases, would clarify that the local Child Support Enforcement Unit, through its Support Collection Unit, must use the IWO form promulgated by OTDA, and that payments must be remitted to and through the State disbursement unit. Pursuant to the proposed regulatory amendment, the information required to be served with the IWO would be updated to reflect the use of the appropriate IWO form and would conform the current State regulations to the requirements set forth in CPLR § 5241 and federal law.

4. Costs:

There are no new costs associated with the proposed regulatory amendments.

5. Local Government Mandates:

The proposed regulatory amendments are clarifying in nature and consistent with State and federal laws. There will be no additional requirements resulting from the proposed regulatory amendments.

6. Paperwork:

The proposed regulatory amendments would require that income executions or income deduction orders for child support or combined child and spousal support must be on an IWO form promulgated by OTDA for the purpose of income withholding.

7. Duplication:

The proposed regulatory amendments would not duplicate, overlap, or conflict with any existing State or federal laws or regulations.

8. Alternatives:

An alternative to the proposed regulatory amendments is to leave 18 NYCRR Part 344 and § 347.9 intact. However, this alternative is not a viable option because the proposed regulatory amendments are necessary in order to render the State regulations consistent with CPLR §§ 5241 and 5242, SSL § 111-b (14), and federal law.

9. Federal Standards:

The proposed regulatory amendments would not conflict with federal standards for income withholding for child support or combined child and spousal support.

10. Compliance Schedule:

Relative to IV-D cases, OTDA anticipates that social services districts are already in compliance with the proposed regulatory amendments insofar as the required IWO form is centrally produced, and therefore, there would be no local generation of the form. In non-IV-D cases, OTDA worked with the Office of Court Administration (OCA) to make information about the required IWO forms available on the OCA website at www.nycourts.gov where it is accessible to all non-IV-D issuers of the IWO. OTDA anticipates that the availability of this information via the OCA website will facilitate compliance with the proposed regulatory amendments.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required because the proposed regulatory amendments will neither have an adverse impact upon, nor impose reporting, recordkeeping, or other compliance requirements upon small businesses or local governments. As it was evident from the proposed regulations that they would not have an adverse impact or impose reporting, recordkeeping, or other compliance requirements, no further measures were needed to ascertain those facts and, consequently, none were taken.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not required because the proposed regulatory amendments will neither have an adverse impact upon, nor impose reporting, recordkeeping, or other compliance requirements upon public or private entities in rural areas. As it was evident from the proposed regulations that they would not have an adverse impact or impose reporting, recordkeeping, or other compliance requirements, no further measures were needed to ascertain those facts and, consequently, none were taken.

Job Impact Statement

A Job Impact Statement is not required for the proposed regulatory amendments. It is apparent from the nature and the purpose of the proposed regulatory amendments that they would not have a substantial adverse impact on jobs and employment opportunities in either the public sector or the private sector in New York State. The proposed regulatory amendments are necessary to render the existing State regulations consistent with §§ 5241 and 5242 of the Civil Practice Law and Rules, Social Services Law § 111-b(14), and federal law. Thus, the proposed regulatory amendments would not have any adverse impact on jobs and employment opportunities in New York State.