RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Requirements Applicable to Facilities That Manufacture Food for Human Consumption

I.D. No. AAM-13-17-00002-A
Filing No. 385
Filing Date: 2017-05-31
Effective Date: 2017-06-21

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

Action taken: Addition of Part 260 and sections 261.1(d) and 261.12 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 214-b

Subject: Requirements applicable to facilities that manufacture food for human consumption.

Purpose: To incorporate by reference 21 CFR Part 117, containing such requirements.

Text or summary was published in the March 29, 2017 issue of the Register, I.D. No. AAM-13-17-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Stephen D. Stich, Director, Food Safety and Inspection, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-4492, email: Stephen.Stich@agriculture.ny.gov

Assessment of Public Comment
The agency received no public comment.

Office of Alcoholism and Substance Abuse Services

NOTICE OF WITHDRAWAL

Ancillary Services and Therapies

I.D. No. ASA-52-16-00012-W

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

Action taken: Notice of proposed rule making, I.D. No. ASA-52-16-00012-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on December 28, 2016.

Subject: Ancillary Services and Therapies.

Reason(s) for withdrawal of the proposed rule: Revisions resulting from comments received and internal agency review.

Department of Environmental Conservation

NOTICE OF ADOPTION

Free Sportfishing Days

I.D. No. ENV-12-17-00002-A
Filing No. 388
Filing Date: 2017-06-02
Effective Date: 2017-06-21

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

Action taken: Amendment of section 180.6 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 11-0303 and 11-0305

Subject: Free Sportfishing Days.

Purpose: To specify additional free sportfishing days.

Text or summary was published in the March 22, 2017 issue of the Register, I.D. No. ENV-12-17-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Joelle Ernst, NYSDEC, 625 Broadway, Albany, NY 12233-4753, (518) 402-8891, email: joelle.ernst@dec.ny.gov

Additional matter required by statute: A Programmatic Impact Statement pertaining to these actions is on file with the Department of Environmental Conservation.

Initial Review of Rule
As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment
Comment: A free fishing license should be provided for people 65 years of age and older.

Response: The comment has been noted. These regulations are being promulgated to designate specific dates for the additional free fishing days. They do not provide the authority to waive fees for specific groups or to make any changes to the current license structure.

Comment: I think there should be free fishing days/weekends once a month from June through November.

Response: DEC was limited to specifying 4 additional free fishing days as part of this rulemaking. The days selected were those thought to best promote/encourage fishing participation in New York State.

Comment: Sportfishing as a whole should be free. Major holiday weekends should be the focus of free fishing days and then maybe a weekend in the winter (for ice fishing), a weekend in the fall (for the salmon run) and maybe a weekend spring around the first of April would be appreciated and best utilized. I would like to see a long term goal of removing fees for fishing or at least a program where low income people can apply and potentially get a fishing license for free (the same would be excellent for hunting.)

Response: The comment has been noted. This regulation only provides for the specification of 4 additional free fishing days. It does not provide the authority to waive fees for specific groups or to make any changes to the current license structure. DEC was limited to specifying 4 additional free fishing days as part of this rulemaking. With the exception of the early spring dates suggested which, depending upon the year, may be totally unfishable, the remainder of the suggested periods are covered by existing or the new free fishing days.

Comment: I would love to see Mother's day and Father's day be free fishing days. There are numerous Mother's and Father's that would love to spend those day's fishing with their kids but can't afford to buy a license just for that day.

Response: DEC was limited to specifying 4 additional free fishing days as part of this rulemaking. The days selected were those thought to best promote/encourage fishing participation in New York State. Father's Day was not considered because it is very close to the existing end of June Free Fishing Weekend. Mother's Day was considered, but it was desired to select dates when all fishing seasons were open and to include dates where anglers could try the sport of ice fishing.

Comment: All fishing in New York State should be free.

Response: The comment has been noted. This regulation only provides for the specification of 4 additional free fishing days. It does not provide the authority to waive fees for all anglers.

Comment: I do not feel that additional free day is necessary. Two days should give the person a chance to decide if it is FOR THEM IN THE FUTURE.

Response: Understood. However, restricting free fishing days to two dates in June does not allow individuals to experience the full range of fishing opportunities in New York State. It is felt that adding these new dates will better promote the fishing opportunities available in New York throughout the year.

Comment: I vote for National Hunting and Fishing Day.

Response: This date (4th Saturday in September) is one of the dates included in the new regulations.

Comment: People should buy a one day fishing license if someone wants to try fishing. If you want more people to fish, get rid of the laws you make about getting your own bait. That stopped a lot of people from fishing.

Response: Free Fishing Days are designed to provide a hassle-free, no cost opportunity for people to try fishing. Although the $7 one day license may not be much of a cost for a single individual, for larger families, who would need to purchase multiple licenses, it may be enough of a deterrent to reduce the # of individuals willing to give it a try.

These regulations are specific to the designation of additional free fishing days. The comment concerning baitfish restrictions has been noted.

Comment: Violations of fishing regulations and littering needs to be addressed.

Response: DEC does not believe that additional free fishing days will increase illegal fish harvest or littering. In fact, the various fishing education programs that are conducted during these days will provide an opportunity to advise anglers concerning regulations and the need to be good stewards of the waters they fish.

Comment: I do not like having a free day on Veterans Day. A couple reasons. Many people are volunteering and fundraising. There are parades and other activities. And also because you are into hunting seasons and you don't need the extra people out in the wilderness. And in Northern areas of the state, nothing is froze yet and cold weather pretty much curtails much fishing and it would be a waste of a free day for many people. I would like to suggest another day in the winter when ice fishing is going strong. When everything should be froze over. It would help promote the sport which needs it.

Response: This date was chosen as an additional way to recognize and reward the many veterans that have served this country. Early-mid November can often provide excellent fishing for many fish species, including excellent tributary fishing for steelhead, coho, Chinook and Atlantic salmon. The free fishing dates during Presidents Weekend will serve to promote ice fishing.

Comment: Instead of a free day, make it a free week.

Response: DEC is limited to specifying 4 additional free fishing days as part of this rulemaking. It should be understood that these days are intended to promote fishing and encourage sales of fishing licenses, not to provide an alternative to the purchase of a license.

Comment: It's a good idea but your days seem all messed up... why don't you do it ''early spring'' when people are thinking of fishing.. right around the time that they're stocking trout in the streams....have a free day here and there and then those people may go get a fishing license... nobody thinks of fishing in the middle of February except maybe one or two ice fishermen!!

Response: Early season dates were considered, but the weather can be very unpredictable during the early season and it was preferred to have dates when all fishing seasons are open. The President Weekend dates were selected to specifically encourage people to get out and enjoy the great family sport of ice fishing. Ice fishing continues to increase in popularity in New York State.

Comment: The September date is a good addition and likely would be meaningful to individuals and families. I question the true validity of selecting days in February and November as meaningful or valuable to the general public. The November date is a sentimental recognition for Veteran's, but the rhetoric attached demeans many disabled or older vets who wouldn't be able to get out in the late weather to take advantage of this thoughtfulness. Ice safety is also a concern with ice fishing.

Response: The February dates were selected to promote the sport of ice fishing, which continues to increase in popularity in New York State. Although winter weather can be very unpredictable, this mid-winter period usually coincides with good ice fishing conditions. As DEC and many angler groups also conduct clinics in association with free fishing dates, it will also provide an excellent opportunity to teach ice safety and basic ice fishing techniques.

Although no date will be perfect for all, the Veterans Day date was selected in recognition of our veterans and to provide a date that would coincide with the excellent fishing provided for trout and salmon in tributaries to the Great Lakes and Lake Champlain. Fishing for many warmwater species such as bass, walleye and northern pike can also be very good on this date that is a day off for many New Yorker's and school kids. It is understood that the November date may not provide the best opportunities for the elderly or anglers with disabilities due to potential cold weather conditions, but the September date and current end of June dates should accommodate their needs.

Comment: Fishing should be free for the month of September. That is the best time to get involved in the sport.

Response: Although it is true that September is a great month to fish, preference was given to dates when children would typically be out of school, encouraging family participation in the sport. This regulation change is limited to 4 days and cannot accommodate an entire month.

Comment: Those who get to fish for free have no such desire to do anything right or lawful.

Response: DEC does not believe that people who fish for free have any less desire to follow fishing regulations than those that purchase a license. The free fishing clinics commonly held in conjunction with these days provide the opportunity to reinforce the concepts of ethical angling and the need for fishing regulations.

Comment: Free fishing days for veterans with more than 40% disabled throughout the year for veterans that served in combat zones.

Response: Military disabled persons with a 40% disability are currently eligible for free/reduced fishing, hunting and trapping licenses. The first license is $5 and the remaining licenses are free of charge.

Comment: Veterans should be able to enjoy free fishing year round.

Response: This regulation only provides for the specification of 4 additional free fishing days and does not include any authorization to expand free fishing opportunities to specific user groups.

Comment: I thought I received a ''coupon'' for a free fishing day, any day I chose. Was I mistaken?

Response: The coupon you are describing does not waive the requirement for a fishing license. It is an invitation to take someone fishing.

Comment: I think it is a very good idea but a better idea is to reduce the age lower than what it is now to get a free license.

Response: This regulation only provides for the specification of 4 additional free fishing days and does not include authorization to provide for free fishing licenses.

Comment: I disagree with the dates selected which provide for poor fishing in Lake Ontario. President's Weekend is too cold for steelhead and ice fishing can be dangerous. I would recommend a day in May, a day in July and a day in August.

Response: The Veterans Day date was selected to recognize our veterans and to provide a free fishing day when people can experience good steelhead, Pacific salmon and/or Atlantic salmon fishing in Great Lakes and Lake Champlain tributaries. The September date is National Hunting and Fishing Day, a national celebration of hunting and fishing, and is consistent with a good fishing period for various species in New York waters. Although ice fishing conditions can vary from year to year, the mid-winter period selected should provide for safe ice conditions in a good portion of New York State. Ice fishing is increasing in popularity and these dates will provide an excellent opportunity to introduce more people to the sport. Given that numerous clinics are held on free fishing dates across the state, it will also provide an excellent opportunity to educate people on how to enjoy the sport safely.

Comment: Free fishing days – you unintentionally leave me out. Your proposal is great, but those who work weekends cannot take advantage of it. Also, many factors such as weather, or the sudden unavailability of a fishing partner can limit participation on specific dates. Why not add on free tags equal to the total amount of free fishing days allowed in NYS? I sign and date the tag before heading out, and give it to the new participant(s).

Response: The dates selected were designed to promote the variety of fishing opportunities available in New York. Weekend dates are selected because people are less likely to work on a weekend than a weekday, and children are out of school. The September date was also designed to coincide with National Hunting and Fishing Weekend, a national celebration of hunting and fishing across the country. The Veterans Day date was selected in recognition of our veteran's and does provide a weekday free fishing opportunity for those that work weekends.

Your idea concerning the provision of free fishing permits as part of the fishing license is interesting and has been noted. However, this regulation is restricted to the specification of 4 new free fishing days and does not provide the authority to modify the structure of our fishing licenses.

Comment: We strongly oppose any additional free sportfishing days in New York State. There is currently no license required to fish in the marine district, only the free registry, and anyone under the age of 16 does not need a fishing license. The cost of a fishing license is the least expense of a day of fishing. It is time to stop expecting the responsible license buying sportsmen and women to subsidize everyone else.

Response: These days are intended to promote fishing and encourage sales of fishing licenses, not to provide an alternative to the purchase of a license. The more fishing licenses that are sold, the more funding (both state and federal) that is available to improve fishing for all New Yorkers.

REVISED RULE MAKING HEARING(S) SCHEDULED

Solid Waste Management Regulations

I.D. No. ENV-11-16-00004-RP

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

Proposed Action: Repeal of Parts 360, 362, 363, 364 and 369; renumbering of Part 361 to Part 377; addition of new Parts 360, 361, 362, 363, 364, 365, 366 and 369; and amendment of Parts 370, 371, 372, 373, 374 and 621 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 8-0113, titles 3, 5, 7 and 8 of arts. 17, 19-0301,19-0303,19-0306, title 23 of art. 23, titles 1, 3, 5, 7, 9, 10, 13, 15, 18, 21, 23, 25, 26, 27, 29 of arts. 27, 27-1901, 27-1903, 27-1911, 54-0103, titles 5 and 7 of art. 54, title 1 of arts. 70, 71-2201, titles 27, 35, 40 and 44 of arts. 71 and 72-0502

Subject: Solid Waste Management Regulations.

Purpose: Amend the rules that implement the solid waste program in New York State to incorporate changes in law and technology.

Substance of revised rule (Full text is posted at the following State website: http://www.dec.ny.gov/regulations/ propregulations.html): This proposed rulemaking is a comprehensive revision to the State's existing solid waste management regulations. The existing solid waste rules are found in Part 360. The overarching purpose of this rulemaking is to reorganize the existing solid waste regulations and group regulations for facilities that are similar in nature, such as facilities that recycle and recover materials. As a result of this reorganization, the current Part 360 will be subdivided into Parts 360, 361, 362, 363, 365, and 366. The facilities covered by each proposed part are described below and the full text of the proposed rule is available at www.dec.ny.gov/regulations/propregulations.html. This rulemaking also include many enhancements to the existing rules that reflect the Department's collective experience in regulating solid waste management facilities since the last major update to the rules. In addition to reorganizing and enhancing Part 360, this rulemaking includes revisions to regulations governing waste transportation (Part 364) and state assistance grants to municipalities for solid waste management (Part 369). This rulemaking will also incorporate minor amendments to Parts 621, 370-374.

Part 360

Existing Part 360 is repealed and a new Part 360 is proposed which includes the general requirements for all solid waste management facilities. This includes definitions, general exemptions, variance criteria, financial assurance criteria, general permit application and operation standards, and provisions to petition the Department for a beneficial use determination (BUD); a jurisdictional determination that a material is not solid waste. Part 360 also includes BUD criteria for navigational dredge material and use of production brine. The proposed rules included a new section (360.13) to address the management of fill material, including criteria for the on-site use, off-site use, and disposal of the waste. The revised proposal substantially revised the requirements in section 360.13 so that the reuse of fill material is dictated by the extent of its contamination, if any. Many of the proposed definitions were also revised following public comment and several definitions were added to in response to changes throughout the proposed rules. The current proposal also extended the timeframe to transition existing facilities to new exemption, registration and permitting requirements.

Part 361 Material Recovery Facilities

Existing Part 361 is renumbered as Part 377, and a new Part 361 is proposed which includes subparts for: Recyclables Handling and Recovery Facilities; Land Application and Associated Storage Facilities; Composting and Other Organics Processing Facilities; Wood Debris and Yard Trimmings Processing Facilities, renamed Mulch Processing Facilities in the revised proposal; Construction and Demolition Debris Processing Facilities; Waste Tire Handling and Recovery Facilities; Metal Processing and Vehicle Dismantling Facilities, Used Cooking Oil and Yellow Grease Processing Facilities. A new subpart was added in the revised proposal for navigational dredged material handling.

For recycling and C&D debris processing facilities, the storage limit for material qualifying for a BUD was modified in the revised proposal and unprocessed recyclables can be stored for 180 days. The proposed rules for Subpart 361-3 and 361-4 were significantly reorganized and clarified in response to public comment. This includes changes in the rules for stacking, setbacks and separation of the requirements for anaerobic digestion and vector control into their own sections. Several changes were also made to the proposal for mulching facilities. Substantial revisions include a change in the distance required between piles, pile height, and setbacks. For C&D debris processing and recycling facilities, the threshold for registration was increased to 500 tons per day based on a weekly average and clarification was added on enclosure requirements.

Part 362 Combustion, Thermal Treatment, Transfer and Collection Facilities

Existing Part 362 is repealed and a new Part 362 is proposed which contains separate subparts for: Combustion Facilities and Thermal Treatment Facilities; Municipal Solid Waste (MSW) Processing Facilities; Transfer Facilities; and Household Hazardous Collection Facilities and Events.

The proposed revisions restrict several source-separated waste streams from being managed in combustors or thermal treatment facilities that accept MSW. The proposal requires combustors, thermal treatment facilities that process MSW, and transfer facilities that transport wastes out-of-state to install and utilize fixed radiation detectors to monitor incoming waste. To increase material recovery, the revisions will allow transfer facilities also authorized as recyclables handling and recovery facilities to accept particular source-separated waste streams for recycling. The revised rules adjusted the storage, pile height and stacking requirements for unprocessed and processed waste. Similar to other sections, the radiation detection rules were revised to require a notification to the Department within 24 hours of an alarm. The current household hazardous waste regulations located in Subpart 373-4 are proposed to be repealed and the rules would be incorporated into this new Part.

Part 363 Landfills

Existing Part 363 would be repealed and a new 6 NYCRR Part 363 addressing landfills is proposed. The original proposal included a requirement for active collection and destruction of landfill gas for all new MSW landfills and for subsequent landfill development. Instead, the revised rules will require that horizontal collection systems be installed and require submission of a greenhouse gas reduction plan. Part 363 also includes language to clarify the responsibilities of landfills owners after closure. Under the proposal, post-closure care activities including leachate collection and treatment; landfill cover maintenance and repair; regular landfill gas, water quality monitoring; and regular inspection must be conducted until the owner or operator can demonstrate that the landfill's potential threat to public health or the environment has been reduced to a level

where monitoring and maintenance can be reduced. The facility manual for a landfill will include a requirement for a custodial care plan. Throughout both the post-closure and custodial care periods, the owner or operator must maintain financial assurance to ensure post-closure and custodial care activities continue.

The revised proposal contains several clarifying changes, including the relocation of the hydrogeologic investigation requirements, addition of a prohibition on the disposal of fluids from oil and gas production, and clarification of landfill reclamation rules. The express terms also include an additional exemption for management of waste from municipal and state highway projects. The revised rules retained the limitation on tree disposal facilities to one acre in size in order for such facilities to be exempt from definition as a landfill. This exemption will not be available in Nassau and Suffolk counties.

The proposed rule included a limitation on exempt disposal of materials such as uncontaminated concrete and concrete products, asphalt pavement, brick, glass, soil, and rock. There are currently no volume or size restrictions associated with the existing exemption. The proposed rules would limit the exemption to no more than 5,000 cubic yards and that threshold was retained in the revised proposal. This exemption will not be available in Nassau and Suffolk counties.

The technical criteria for landfill construction has been updated to incorporate technological changes and other frequently variances conditions. The proposed revisions require that landfill liner integrity testing be conducted on both geomembrane liners of a double-composite liner system. The proposal will also require that the secondary leachate collection and removal system be designed to a minimum flowrate to ensure rapid detection of leaks. Public comment resulted in only minor changes to these proposals.

Part 363 would also require landfills to submit a sustainability plan with new applications. The plan will address ways to conserve landfill airspace, encourage diversion of natural resources, reduce receipt of organic wastes, utilize alterative operating cover materials, enhance waste mass stabilization, and utilize other sustainable landfill management techniques.

Part 364 Waste Transporters

Existing Part 364 would be repealed and replaced with a new Part 364. The new Part 364 has been revised to operate in concert with new Parts 360-363, and 365 and include tracking of wastes such as C&D debris, historic fill (now defined as fill material), and non-exempt drilling and production waste, and to exclude the permitting of wastes with little potential harm when transported. Regulated medical waste will continue to require a tracking form. Exemptions have been clarified and new exemptions added for electronics destined for recovery, elemental mercury and dental amalgam from dental facilities destined for mercury recovery, and regulated medical waste (RMW) transported by emergency rescue vehicles. Substantial revisions to proposed Part 364 include enhanced tracking fill material leaving New York City, an exemption for waste incidentally transported by a public utility, enhancement of the registration requirements for transporters, and several clarifying changes to avoid overlap with proposed Part 360.

Part 365 Regulated Medical Waste and Other Infectious Waste

The Department proposed to consolidate all the treatment and management of RMW in one location, and address all wastes that present a biological hazard under the umbrella term of biohazard waste. Proposed Part 365 included criteria for regulated medical waste, household medical waste sharps collection, biohazard-incident waste, and animal and contaminated food supply waste. The revised proposal substantially reorganized the requirements for RMW and separated requirements for generators from rules for treatment, storage and disposal facilities. Part 365 also eliminated the concept of biohazard waste and proposed separate subparts for the waste streams that are also biologically contaminated. Among other changes, the revised rules also simplified the requirements for autoclave testing, and removed any reference to contaminated foods.

Part 366 Local Solid Waste Management Planning

A new Part 366 is proposed. The current requirement for updates, modifications and biennial compliance reports for local solid waste management plans (LSWMPs) has been replaced with a mandatory requirement for a plan before waste may be accepted; detailed requirements for plans, and provisions for biennial updates. These updates will allow for evaluation and adjustment of the LSWMP, taking into account changes that will occur on a routine basis following initial LSWMP approval. Part 366 also clarifies the public's role in LSWMP preparation and approval. The streamlining and reorganization of the LSWMP process is intended to make the preparation and implementation of LSWMPs less complicated for municipalities, yet at the same time assist them in reducing the amount of waste they are disposing and increase the percentages of recyclables removed from the waste stream. Several substantial revisions were made to proposed Part 366 in response to comment, including default approval of plans if the Department does not meet review deadlines, reorganization of the approval process and several changes to the rules for biennial updates and withdrawal of an LSWMP.

Part 369 State Assistance Projects

Existing Part 369 would be repealed and a new Part 369 is proposed to address state assistance projects. Currently, state assistance programs for municipalities for waste reduction and recycling, landfill closure and household hazardous waste (HHW) were addressed in Parts 369, subpart 360-9, subpart 373-4, respectively. These various state assistance programs related to waste management will be consolidated into the new Part 369. The proposed rulemaking creates separate funding categories for capital waste reduction, recycling and household hazardous waste projects; waste reduction and recycling education and coordination projects; household hazardous waste collection and disposal; as well as establishment of an annual application process for education/coordination; and HHW collection programs to better control and direct available funding to municipalities in a timely manner. For the annually funded projects, should insufficient funds be available to provide 50% reimbursement, the department may either lower the percentage or set a dollar maximum on the funding level.

Due to changing technologies and evolving priorities, the department needs to have flexibility to help advance certain waste reduction and recycling activities and projects in the state. In order to accomplish this, the proposed revisions establish a targeted priority area assistance program that the Department can use as needed in accordance with available funding and program needs and priorities.

In order to ensure that funded projects are well thought out and part of a reasonable and structured program consistent with state and local waste reduction and recycling efforts, awarding of state assistance grants will be limited to municipalities guided by approved LSWMPs or Comprehensive Recycling Analyses (CRAs) or those found to be making substantial progress toward completion of an LSWMP or CRA, unless unique circumstances prevent the municipality from completing an LSWMP or CRA in a timely fashion.

Public hearing(s) will be held at: 1:00 p.m., July 13, 2017 at Department of Environmental Conservation, 625 Broadway, Albany, NY.

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

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

Revised rule compared with proposed rule: Substantial revisions were made in Parts 360, 361, 362, 363, 364, 365 and 366.

Text of revised proposed rule and any required statements and analyses may be obtained from Melissa Treers, Department of Environmental Conservation, Division of Materials Management, 625 Broadway, Albany, NY 12233-7260, (518) 402-8678, email: melissa.treers@dec.ny.gov

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

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

Additional matter required by statute: A Revised Draft Generic Environmental Impact Statement has been prepared to support the rulemaking and is available for review at: http://www.dec.ny.gov/regulations/propregulations.html

Summary of Revised Regulatory Impact Statement (Full text is posted at the following State website:http://www.dec.ny.gov/regulations/propregulations.html):

This proposed rulemaking is a comprehensive revision to the Department's existing solid waste management regulations, found in 6 NYCRR Part 360. The existing regulations impact every aspect of the waste process, from initial collection to reuse, recycling, processing, storage, treatment and ultimately, disposal. The overarching purpose of this proposed rulemaking is to reorganize and subdivide the solid waste management facility regulations into groups that are similar in nature, such as facilities that recycle and recover materials. As a result of this reorganization, the current Part 360 criteria will be found in Parts 360, 361, 362, 363, 365, and 366. This proposed rulemaking also includes revisions to regulations governing waste transportation (Part 364) and state funding of municipal waste reduction and recycling projects (Part 369). In addition to reorganizing existing regulations, the revised rulemaking proposes many enhancements to the existing rules which reflect the Department's collective experience in regulating solid waste management since the last major rewrite of the rules.

This rulemaking will also incorporate minor amendments to Parts 621, 361, 362, 363, 370, 371, 372, 373 and 374, to make existing rules consistent with the proposal. These changes include the repeal of Parts that are no longer supported by funding (existing Parts 362 and 363), removal of rules for used oil from existing Subpart 360-14 so that used oil is addressed in Subpart 374-2, and the relocation of rules that address household haz-

ardous waste and hazardous waste from small quantity generators into the new Subpart 362-4.

The Department's statutory authority to promulgate amendments to Part 360 and adopt new regulations is found in Environmental Conservation Law Sections 1-0101, 3-0301, 8-0113, Titles 3, 5, 7 and 8 of Articles 17, 19-0301,19-0303,19-0306, Title 23 of Article 23, Titles 1, 3, 5, 7, 9, 10, 13, 15, 18, 21, 23, 25, 26, 27, 29 of Articles 27, 27-1901, 27-1903, 27-1911, 54-0103, Titles 5 and 7 of Article 54, Title 1 of Articles 70, 71-2201, Titles 27, 35,40 and 44 of Articles 71, and 72-0502.

NEEDS AND BENEFITS

The last comprehensive revisions to the regulations governing solid waste management in New York State occurred 20 years ago in 1993. Many changes in law and technology have occurred in that time period that dictate the need for an overhaul of the regulations. In the last two decades the Department has gained expertise on the proper technical criteria for these facilities and this knowledge needs to be reflected in the regulations. Many new or expanded waste management facilities, particularly recycling facilities and landfills, have been constructed since the last comprehensive revision in 1993. Experience in regulating those facilities has demonstrated that many areas of the regulations would benefit from revision, clarification, or modification to allow for new, technically appropriate alternatives to the design and operation criteria for solid waste management facilities found in the existing regulations, and to streamline the regulatory process.

Although landfills may be the first solid waste facility that comes to mind when discussing solid waste management, there are many other facilities that also manage solid waste, from combustors to transfer facilities and commercial medical waste autoclaves. Some of these facility types did not even exist 20 years ago when the regulations were last revised or were much different than they are today. Therefore, new or revised regulations are needed at this time. Each type of facility has its own environmental characteristics and concerns that need to be reflected in the rules.

Reorganization of the entire set of rules will have distinct benefits to the regulated community and the Department. Presently, a facility may need to consult with several different Subparts of Part 360 in order to determine the full scope of rules applicable to their activities. For example, definitions applicable to solid waste management are located in several different places. As proposed, all definitions applicable for the entire set of rules will be located in one Part, eliminating questions over how terms may be defined in different sections. By breaking Part 360 apart and creating distinct Parts and Subparts for similar facilities, and following a consistent format in each Part, the regulated community and the Department will have a more user-friendly set of rules.

The proposed rules also include several enhancements to the existing rules, such as increased tracking requirements for construction and demolition (C&D) debris transport, a limitation on the amount of C&D debris that may be disposed without a permit, a more refined system for beneficial use determinations and a reorganized set of rules for regulated medical waste. As a result of public comment, several changes in the revised rules strengthen the benefits of the proposed rules by adding further clarification sought on proposals for, for example, definitions, exemption limits, proposed handling requirements for certain wastes, landfill construction requirements and financial assurance.

For landfills and other solid waste management facilities, updating the regulatory criteria does not mean more stringent criteria in all cases. If Department research and experience has found that a current regulatory requirement is too stringent or does not provide an environmental benefit, the rulemaking proposes relief from that requirement. In that regard, the proposed rules benefit the regulated community and the general public by reflecting conditions that exist today. In all cases, the goal of the revisions is to ensure the citizens of New York State are protected by the most up to date and appropriate solid waste management regulations.

In December of 2010, the Department adopted a new State Solid Waste Management Plan, entitled 'Beyond Waste: A Sustainable Materials Management Strategy for New York State' (http://www.dec.ny.gov/chemical/41831.html). This Plan sets forth multiple strategies to reduce the reliance on disposal facilities and increase waste reduction and recycling. The proposed rulemaking is therefore also needed to address the issues outlined in the State Solid Waste Management Plan and includes measures to further the environmental objectives set out in that Plan.

COSTS

For a number of facilities, such as mulch processing facilities and landfills, the proposed regulations will result in some additional costs for regulated parties, including local governments. For those rules which are being re-promulgated as a result of reorganization, no significant change from the current regulatory program costs is anticipated.

Cost to the Regulated Community:

The majority of the rules in the revised rulemaking are derived from the current regulatory program in Part 360. For the majority of involved industries the costs associated with complying will be similar or less than the costs currently incurred. However, the proposed rulemaking includes many enhancements to the existing program, which will increase costs for some facilities. Costs on the regulatory community will result from requirements to:

- install radiation detectors at MSW landfills, MSW combustion facilities, and MSW composting and organics processing facilities ($7,000 to $20,000 per unit depending on model specifications, plus $2,000-$3,000 for maintenance);
- obtain permits in case where rules lower permitting thresholds for existing registered facilities (recyclable handling facilities which process more than 250 tons, C&D facilities which process more than 500 tons per day), ($20,000 to $50,000 depending on complexity of proposal);
- test fill material ($900 to $1300 per sample);
- obtain a registration where rules lowered thresholds for currently exempt or permitted facilities ($3,000 to $5,000 in administrative costs);
- conduct landfill liner integrity testing ($2,000 to $3,000 per acre);
- install geosynthetic clay liner in the landfill's primary composite liner ($0.54 per foot);
- improve hydraulic capacity of secondary leachate collection system ($1.00 to $1.25 per square foot).

Costs to the Department and the State:

The cost to the State lies within the Department, for implementation and administration of the regulatory program. Since this is an existing regulatory program, it is not expected to be a significant increased cost to the Department.

Costs to Local Governments:

This proposal will not impose any direct costs on local governments in general. However, local governments who own and operate solid waste management facilities, such as landfills, may incur additional or reduced costs associated with the revised rulemaking as described above. With respect to solid waste management planning, no additional costs are anticipated and the proposed revisions are expected to result in a reduction of municipal expenses and staff time necessary in the preparation of Local Solid Waste Management Plans (LSWMPs) and LSWMP updates.

LOCAL GOVERNMENT MANDATES

The proposal does not directly mandate the expenditure of funds by any sector of local government. The rulemaking primarily updates existing regulatory criteria applicable to solid waste management facilities. If a local government or small business owns and operates a solid waste management facility, the costs associated with revisions to criteria for that facility apply, as discussed above. The proposed rulemaking is not expected to negatively affect local governments.

PAPERWORK

The proposed rulemaking, as revised, will impose some additional paperwork requirements for the regulated community. Those impacted include waste transporters of C&D debris, fill material, non-exempt drilling and production waste, and commercial waste. These facilities will be required to register under Part 364 and comply with reporting requirements. In addition, some facilities will have an annual reporting requirement that is not required by the existing program. This includes facilities whose waste activities are covered under a beneficial use determination, waste transporters, and registered facilities. In addition, facilities who submit a registration application to the Department would also have to submit a site plan, which is not required under the existing rules. The proposed regulations include criteria to reduce the burden of paperwork by reducing the quantity of information that must be submitted with permit applications and annual reports. Also, the proposed regulations allow electronic submissions whenever possible to ease the transfer of data and information. The Department intends to develop new forms to simplify and standardize electronic reporting requirements to ease the paperwork requirements imposed by the proposed regulations.

DUPLICATION

The proposed regulations are not intended to duplicate any other federal or State regulations or statutes. There are federal and state regulated medical waste labeling and packaging requirements promulgated by the federal Department of Transportation and the NYS Department of Health. However, the proposed rules are consistent with those requirements and are intended to complement those programs for facilities covered under proposed Part 365. There is no federal regulatory program covering most of the facilities governed by Parts 360-366 or 369.

ALTERNATIVE APPROACHES

The Department examined the "no-action" alternative, which would be to continue the existing set of rules for solid waste management. This program consists of existing Parts 360, 364 and 369, Division guidance memoranda, program policies, and interpretation of Division memoranda on solid waste management issues and topics. Continuing this approach would provide the Department with a wide degree of administrative discretion and allow for rapid changes in management to account for recent advances in solid waste management. However, this approach may result in inconsistent application of the program across the State due to variations

in the interpretation of Part 360 where other department guidance is not available. Additionally, the rulemaking is one of the key recommendations of the State Solid Waste Management Plan. For these reasons, the no-action alternative was rejected.

The rulemaking has been the subject of both extensive internal review and public review and discussion for several years. The result of this process is the subject proposed rulemaking that the Department considers protective of environmental resources in a manner that limits the cost to the regulated community. In many cases, the cost to adhere to the regulatory criteria has been reduced without any reduction in environmental protection.

FEDERAL STANDARDS

As stated above, there are no federal regulations for most of the facilities contained in the proposed rulemaking. The current and proposed regulations for landfills and biosolids recycling exceed the federal regulatory framework found in 40 CFR Part 258 and 503, respectively.

COMPLIANCE SCHEDULE

For new facilities, compliance will be required upon adoption of the final rule. For existing facilities, transition provisions are specified in proposed Section 360.4.

INITIAL REVIEW OF RULE

The Department will conduct an initial review of the rule within 3 years as required by SAPA Section 207.

Revised Regulatory Flexibility Analysis

The revised proposed rulemaking will modify the Department of Environmental Conservation's (Department) existing regulations governing a broad array of solid waste management activities including the transportation of waste, local solid waste management planning, and funding of costs associated with solid waste management, as well as the design and operation of solid waste management facilities.

1. EFFECT OF RULE:

The proposed rulemaking is not expected to negatively affect small business and local governments. The rulemaking primarily updates existing regulatory criteria applicable to solid waste management facilities. If a local government or small business owns and operates a solid waste management facility, the costs associated with revisions to criteria for that facility apply.

2. COMPLIANCE REQUIREMENTS:

The proposed rulemaking does not impose additional paperwork requirements for the regulated community. The proposed regulations include criteria to reduce the burden of paperwork by reducing the quantity of information that must be submitted with permit applications and annual reports. Also, the proposed regulations allow electronic submissions whenever possible to ease the transfer of data and information.

This proposed rulemaking will not directly impose any significant service, duty or responsibility upon any county, city, town, village, school district, fire district or small business. This proposal does not directly mandate the expenditure of funds by any sector of local government.

3. PROFESSIONAL SERVICES:

The need for additional professional services for small businesses and local governments is not anticipated. If a local government or small business is currently operating a solid waste management facility, they may already employ professional services to facilitate the operation of that facility and compliance with the regulatory requirements. The proposed revisions to the regulatory criteria are not expected to increase the level of professional services needed by those entities.

4. COMPLIANCE COSTS:

The proposed rulemaking does not impose additional paperwork requirements for most small businesses and local governments who operate solid waste management facilities or waste transportation businesses except for commercial waste transportation in quantities greater than 2000 pounds, and construction and demolition debris in quantities greater than 10 cubic yards. These transporters will be required to register and comply with certain reporting requirements under Part 364. However, the proposed regulations include criteria to reduce the burden of paperwork by reducing the quantity of information that must be submitted with permit applications and with annual reports. Also, the proposed regulations allow electronic submissions whenever possible to ease the transfer of data and information. The Department intends to develop new forms to simplify and standardize electronic reporting to ease the paperwork requirements imposed by the proposed regulations. Therefore, there will be no increase in cost for reporting.

This proposal will not impose any direct costs on small businesses or local governments. However, local governments and small businesses may own and operate solid waste management facilities or operate a waste transportation businesses. If a small business or local government owns and operates a solid waste management facility or waste transportation business, the costs associated with compliance with the revised rulemaking, including cost savings, are described below, organized by Part. As outlined below, in some cases the revisions will reduce cost associated with compliance. In others, the cost may increase.

Part 360 General Requirements:

-Clarification of criteria for beneficial use determinations, combined with the increased number of pre-determined beneficial use determinations in the revised proposed regulations, will help small businesses and local governments determine if their waste could be used in a beneficial manner, which could lead to cost savings through the reuse or sale of additional reused material.

-Specifying criteria for the use of dredged materials will help to facilitate the reuse of appropriate materials and reduce the cost associated with disposal.

Part 361 Material Recovery Facilities:

-An exemption for small-scale food scrap composting will reduce the cost of management. An increasing the size threshold of a facility requiring registration related to food scraps will have a similar positive effect.

-New standards for the processing and management of mulch may result in increased cost to a municipality or private firm due to the need for additional land for the quantity of material managed since pile size restrictions are included in the criteria. However, these criteria are not expected to affect most municipalities that have piles of mulch because they do not handle a significant amount of material.

-The registration criteria for used cooking oil and yellow grease will result in decreased costs to a small facility owner since they will not incur the cost of obtaining a permit.

Part 362 Combustion, Thermal Treatment, Transfer and Collection Facilities:

-Permitted transfer facilities from which waste is transported out-of-state and municipal solid waste processing facilities must install and operate a fixed radiation detection unit at a location appropriate for the monitoring of all incoming waste. The cost of purchasing this equipment ranges from $7,000 - $20,000 per unit depending on the level of capabilities that is desired. The cost of maintenance, including calibration is expected to be $2,000 - $3,000 annually.

-The registration for the combustion of limited amounts of waste tires, unadulterated wood, used cooking oil and yellow grease under prescribed conditions will result in decreased costs for a small facility owner since they will not incur the cost of obtaining a permit.

Part 363 Landfills:

-Elimination of the requirement to submit a site selection report for new landfill construction will result in cost savings of tens of thousands of dollars to landfill owners in preparation of this report.

-The requirement for adding electrical resistivity testing on the upper and lower liner system as part of a Construction Quality Assurance (CQA) Plan will add cost to the construction of new landfill cells. Costs associated with the requirement are expected to be between $2,000 - $3,000 per acre of geomembrane tested.

-The regulations require all landfills that receive municipal solid waste to install and operate a fixed radiation detection unit at a location appropriate for the monitoring of all incoming waste. The cost of purchasing this equipment ranges from $7,000 - $20,000 per unit depending on the level of capabilities that are desired. The cost of maintenance, including calibration is expected to be between $2,000 - $3,000 annually.

-The requirement for active collection and destruction of landfill gas for all new MSW landfills and for subsequent development at existing MSW landfills was removed in the revised regulations based on comments received. These provisions associated with landfill gas will revert back to what is required in the existing regulations so no impacts or added costs occur.

Part 364 Waste Transporters:

-There may be an increased cost for transporters that will be required to register and comply with recordkeeping and reporting requirements. There are no fees associated with registration, only minor costs associated with the completion of tracking forms and the completion and submission of an annual report similar to registered facilities.

-There will be a decrease in the cost of compliance for small transporters of regulated solid waste. The amount of material that can be transported without a permit will be increased from 500 to 2,000 pounds. Those transporters that mange between 500 and 2,000 pounds will save the cost of permitting under the waste transporter program while improving the economic efficiency of their business with the higher weight threshold.

Part 365 Regulated Medical Waste and Other Infectious Wastes:

-Most generators choosing to treat RMW or other infectious wastes on-site will incur no additional costs since many, especially those based in healthcare, academic or research institutions, already have autoclaves in place for processing their waste. Facilities that choose to treat waste on-site (that currently do not) may incur an initial cost increase to purchase treatment devices, but over the long term, will experience considerable cost savings over transportation and off-site processing costs.

-The regulations add provisions for other infectious wastes. Although these represent new costs for compliance, the Department has been working for a number of years with entities that generate these wastes to obtain voluntary compliance with these standards.

Part 366 Local Solid Waste Management Planning:

-A reduction in staff time and costs related to the development and reporting requirements to a local government is expected as a result of the changes in the regulations. Small businesses are not subject to the provisions of this Part.

Part 369 State Assistance Projects:

Small businesses are not subject to the provisions of Part 369. Changes in management of recycling education and coordination projects is anticipated to assist in providing funds to municipalities on a more routine and steady basis for their municipal waste reduction and recycling education and outreach programs. The original proposed rule-making revised the eligibility criteria for municipal state assistance projects affecting the payment for vehicles, equipment replacement and certain non-personal costs associated reimbursement of recycling educators and coordinators. However, due to comments received on the proposed rule-making these limitations have been removed from the revised proposed regulations such that there will be no significant change in cost to a local government located in a rural area when compared to the existing regulations.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rulemaking has been in development for many years and has been subject to significant public review and comment. The Department has focused on revising the regulations in a manner that is technically sound and economical. The proposed regulations that apply to facilities that are currently subject to regulation and the proposed changes are not expected to significantly alter the operation or costs associated with those operations. However, changes in law and technology required the addition of new facility requirements in the regulations, such as vehicle dismantling facilities and facility types that are not currently addressed in the regulations. Addition of these facility requirements should not result in increased costs to these facilities. In some cases, the proposed regulations include reduced regulatory oversight, through expanded exemptions, pre-determined beneficial use determinations, and registration provisions, which will reduce the costs associated with some solid waste facilities and activities.

6. MINIMIZING ADVERSE IMPACTS:

The proposed rulemaking is not expected to have adverse impacts on local governments or small businesses in New York State. The updated regulatory criteria for solid waste facilities, such as landfills, are not expected to significantly change the cost of the operation of that facility. Therefore, the residents and businesses will not see an increase in the cost of solid waste management due to the rulemaking.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The proposed rulemaking has been in development for many years. During that time period, the Department has published draft regulations, accepted and evaluated public comments, given public presentations on draft criteria in numerous venues, and met with potentially affected parties. Those solid waste facilities and other affected parties have been solicited for input on the proposed revisions. Both the regulated community and public were afforded a 180-day review period which resulted in significant helpful input on the proposed regulations. The revised proposed regulations has undergone significant changes based on the input received from the comments and additional stakeholder and outreach efforts undertaken with this rule-making.

8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION:

Pursuant to SAPA 202-b (1-a)(a) and (b), the proposed rulemaking includes transition provisions that provide adequate time for regulated parties to come into compliance with any new provisions. Otherwise there is no such cure period included in the rule because of the potential for adverse impacts on human health and the environment. Cure periods for the illegal management or disposal of solid waste are neither desirable nor recommended as compliance is required to ensure the general welfare of the public and the environment is protected.

9. INITIAL REVIEW OF RULE:

The Department will conduct an initial review of the rule within three years as required by SAPA Section 207.

Revised Rural Area Flexibility Analysis

The revised proposed rulemaking will modify the Department of Environmental Conservation's (Department) existing regulations governing solid waste management activities including facilities, waste transporters, local solid waste management planning, and state assistance projects. Since the last revision in 1993, there have been technological, legal, and policy changes that need to be reflected in the regulations. Solid waste management covers a variety of activities, including regulated medical waste and medical waste treatment, in addition to landfills and other facilities that are commonly associated with waste management. The Department does not expect the revisions to have a negative economic impact on rural areas.

1. TYPES AND NUMBERS OF RURAL AREAS AFFECTED

The proposed revisions apply statewide, including rural areas of the state. All areas of the state, including rural areas, generate solid waste and will be affected directly or indirectly by the proposed rulemaking.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

The proposed rulemaking does not impose additional paperwork requirements for the majority of facilities affected by this rulemaking, including facilities located in rural areas. The current regulations require annual reports from most solid waste management facilities, and these requirements continue under the proposed regulations. However, the revised proposed regulations include criteria to reduce the burden of paperwork by reducing the quantity of information that must be submitted with permit applications and annual reports. Also, the proposed regulations allow electronic submissions whenever possible to ease the transfer of data and information. The Department intends to develop new forms to simplify and standardize electronic reporting to ease the paperwork requirements imposed by the proposed regulations.

The proposed rulemaking will not directly impose any significant service, duty or responsibility upon any county, city, town, village, school district or fire district in a rural area. This proposal does not directly mandate the expenditure of funds by any sector of local government.

If a local government in a rural area chooses to own and operate a solid waste management facility in the State, the proposed rulemaking may require the additional expenditure of funds to comply with the requirements of Parts 360, 361, 362, 363, and 364, which govern those solid waste facilities.

3. COSTS

This proposal will not impose any direct costs on rural areas. However, rural area governments may own and operate solid waste management facilities such as transfer facilities and landfills. If a local government owns a solid waste management facility, the costs associated with compliance with the revised rulemaking are addressed below, organized by Part:

Part 360 General Requirements:

Clarification of criteria for beneficial use determinations will help local governments determine if their waste could be used in a beneficial manner, which could lead to cost savings. The revised regulations have added more predetermined beneficial use determinations which will allow for more solid waste materials to be more easily reused and will cease from being considered a solid waste when used in accordance with these provisions.

Specifying criteria for the reuse of navigational dredged materials will facilitate the use of appropriate materials and reduce the significant cost associated with disposal.

Part 361 Material Recovery Facilities:

An exemption for small-scale food scrap composting is included that will promote additional recycling and reduce the cost of management and disposal associated with this waste stream. An increase in the size threshold of a facility requiring registration related to food scraps will have a similar positive effect.

New standards for the production and management of mulch may result in increased cost to a municipality or private firm due to the need for additional land for the quantity of material managed since pile size restrictions are included in the criteria. However, these criteria are not expected to affect most municipalities in rural areas that have piles of mulch if they do not handle a significant amount of material.

The registration criteria for used cooking oil and yellow grease will result in decreased costs for a small facility owner since they will not incur the cost of obtaining a permit.

Part 362 Combustion, Thermal Treatment, Transfer and Collection Facilities:

Permitted transfer facilities from which waste is transported out-of-state and municipal solid waste processing facilities must install and operate a fixed radiation detection unit at a location appropriate for the monitoring of all incoming waste. The cost of purchasing this equipment ranges from $7,000 - $20,000 per unit depending on the level of capabilities desired. The cost of maintenance, including calibration is expected to be $2,000 - $3,000 annually.

The registration for the combustion of limited amounts of waste tires, unadulterated wood, used cooking oil and yellow grease under prescribed conditions will result in decreased costs for a small facility owner since they will not incur the cost of obtaining a permit.

Part 363 Landfills:

Elimination of the requirement to submit of a site selection report for new landfill construction will result in cost savings of tens of thousands of dollars to landfill owners in preparation of this report.

The requirement for adding electrical resistivity testing on the upper and lower liner system as part of a Construction Quality Assurance (CQA) Plan will add cost to the construction of new landfill cells. Costs associated with the requirement are expected to be $2,000 - $3,000 per acre of geomembrane tested. Based on the known liner system performance improvements gained through improved construction quality, it makes

sense to perform these evaluations routinely. The cost of performing the electrical resistivity testing on both upper and lower landfill liners will be borne by the landfill owner as part of the cost of constructing a landfill, but is a small fraction of the overall cost of constructing the entire landfill. Liner integrity testing will help pinpoint defects before construction continues. This will reduce defects overall and will reduce the cost of defect repairs. Over 50% of the recent landfill construction projects statewide have been utilizing leak detection and location technology in constructing the upper liner system with good results.

The regulations require all landfills that receive municipal solid waste to install and operate a fixed radiation detection unit at a location appropriate for the monitoring of all incoming waste. The cost of purchasing this equipment ranges from $7,000 - $20,000 per unit depending on the level of capabilities desired. The cost of maintenance, including calibration is expected to be $2,000 - $3,000 annually. Installation of radiation detectors at these facilities is the only means to ensure that radioactive waste will not be disposed of at landfills in the state.

Part 364 Waste Transporters:

There may be an increased cost for transporters that will be required to register and comply with recordkeeping and reporting requirements. There are no fees associated with registration, only minor costs associated with the completion of tracking forms and the completion and submission of an annual report similar to those now prepared by registered facilities.

There will be a decrease in the cost of compliance for small transporters of regulated solid waste. The amount of material that can be transported without a permit is increased from 500 to 2000 pounds. Those transporters that mange between 500 and 2000 pounds will save the cost of permitting under the waste transporter program and improve the economic efficiency of their businesses with the increased weight limits.

Part 365 Regulated Medical Waste and Other Infectious Wastes:

Most generators choosing to treat RMW or other infectious waste on-site will incur no additional costs since many, especially those based in healthcare, academic or research institutions, already have autoclaves in place for processing their waste. Facilities that choose to treat waste on-site (that currently do not) may incur an initial cost increase to purchase treatment devices, but over the long term, will experience considerable cost savings over transportation and off-site processing costs.

The regulations add provisions for management and disposal of other infectious wastes. Although these represent new costs for compliance, the Department has been working for a number of years with entities that generate and manage these wastes to obtain voluntary compliance with these standards.

Part 366 Local Solid Waste Management Planning:

A reduction in staff time and costs related to the development and reporting requirements to a local government is expected as a result of the changes in the regulations.

Part 369 State Assistance Projects:

Changes in management of recycling education and coordination projects is anticipated to assist in providing funds to municipalities on a more routine and steady basis for their municipal waste reduction and recycling education and outreach programs. The original proposed rule-making revised the eligibility criteria for municipal state assistance projects affecting the payment for vehicles, equipment replacement and certain non-personal costs associated reimbursement of recycling educators and coordinators. However, due to comments received on the proposed rule-making these limitations have been removed from the revised proposed regulations such that there will be no significant change in cost to a local government located in a rural area when compared to the existing regulations.

The majority of the action is derived from the present regulatory program as presented in existing Parts 360, 364 and 369 as well as various Department policies and actions which set forth Department interpretation of its authority and responsibility under the ECL to regulate solid waste management facilities in an environmentally protective manner. In most cases, therefore, the ultimate costs associated with complying with the existing regulatory program will be similar to those for the program established under the action.

4. MINIMIZING ADVERSE IMPACTS

The proposed rulemaking is not expected to have adverse impacts on rural areas of New York State. The updated regulatory criteria for solid waste facilities, such as landfills, that may be located in a rural area, are not expected to significantly change the cost of the operation of that facility. Therefore, the rural area residents will not see an increase in the cost of solid waste management due to the rulemaking.

5. RURAL AREA PARTICIPATION

The proposed rulemaking has been in development for many years. During that time period, the Department has published draft regulations, accepted and evaluated public comments, given public presentations on draft criteria in numerous venues, and met with potentially affected parties. Those solid waste facilities and other affected parties in rural areas have been solicited for input on the proposed revisions.

6. INITIAL REVIEW OF RULE

The Department will conduct an initial review of the rule within three years as required by SAPA Section 207.

Revised Job Impact Statement

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Parts 360-366 and 369. The regulations will apply statewide. With the revisions to the proposed regulations the Department does not expect the proposed regulations to have a negative impact on jobs and employment opportunities in the state.

The proposed rules will update the existing regulations that relate to solid waste management facilities, waste transportation, local solid waste management planning, and state assistance projects. Many new or expanded solid waste management facilities, particularly recycling facilities and landfills, have been constructed since the last comprehensive revision in 1993, providing the Department with experience in applying those regulations. This experience has demonstrated that many areas of the regulations would benefit from revision, clarification, or modification to allow new, technically appropriate alternatives to the design and operation criteria for solid waste management facilities found in the existing regulations, and to streamline the regulatory process.

1. NATURE OF IMPACT

As mentioned above, the Department does not expect the proposed regulations to have a negative impact on jobs and employment. The proposed regulatory revisions amend regulations that have been in place for more than 20 years. For the majority of the criteria in the proposed rule, there will be little or no impact on economic activity. Numerous predetermined beneficial use determinations have been added to the revised proposed regulations eliminating regulatory oversight for many solid waste streams when reused in commerce. These revised proposed regulatory provisions not only relieve burdens on the regulated community but also Department staff.

2. CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED

The revised proposed regulations themselves will not negatively affect employment opportunities. Although it is difficult to predict the number of facilities and jobs that will be gained as a result of the rulemaking, a few hundred new jobs statewide are likely.

3. REGIONS OF ADVERSE IMPACT

There are no regions of the State expected to be negatively impacted from the proposed rules although there may be more overall impact to the regulated community in New York City. Revisions to the solid waste management regulations are intended to modernize the regulations, to reflect current industry practices and address new facility types that have begun operating since the last comprehensive revision in 1993. The revisions include reduced regulatory burden on some food scrap composting facilities. The proposed regulations have imposed regulations requiring the testing for contaminated fill material excavated from areas within New York City in an effort to ensure that these fill materials are properly handled. However, as these new testing requirements are complemented with proposed revised regulations that open up more opportunities for eased reuse of the fill material excavated in New York City to be reused within New York City in an environmentally sound manner. These changes will result in reduced costs for handling these materials and will reduce construction related costs for development projects in New York City from the availability of locally sourced fill material. These changes will also improve the efficiency of fill material reuse within New York City and that in turn will help to ensure that jobs will not be adversely impacted.

4. MINIMIZING ADVERSE IMPACT

The proposed rules are not expected to have an adverse impact on jobs and employment. The Department already regulates the solid waste management activities covered by the proposed rules. For most facilities and activities, the proposed revisions will have no impact on jobs and employment.

5. SELF-EMPLOYMENT OPPORTUNITIES

The proposed rules are not expected to negatively impact self-employment opportunities.

6. INITIAL REVIEW OF RULE

The Department will conduct an initial review of the rule within three years as required by SAPA Section 207.

Summary of Assessment of Public Comment

The Department of Environmental Conservation proposed a major reorganization and revision of the State's solid waste management regulations and published notice of this rulemaking on March 16, 2016. Four public hearings and eleven public workshops were held across the State to inform the public about the proposed rules and to answer questions from both the regulated community and the general public. The Department received 235 formal written comments, and approximately 5000 form letters and emails during the 180 day public comment period, as well as hundreds of additional comments during the public hearings. Many comment submis-

sions raised distinct individualized issues, while many of the form letters, emails and mass mailings repeated the same general concern. Since many of the submissions raised multiple comments on different aspects of the proposed rules, the Department broke down each submission into smaller segments and grouped related comments together. This summary provides an overview of the comments and the Department's response while the full Assessment of Public Comment provides a response to each individual comment raised during the public comment period.

Proposed Part 360 contains the definitions used throughout proposed Parts 360 to Part 369. Comments were received on proposed definitions for solid waste, construction and demolition debris (C&D), historic fill, soil, among hundreds of others. In many cases, the revised proposed rules include changes in definitions made in direct response to comments because the Department agreed additional clarification was necessary. Additionally, the Department's proposed revised Part 360 rules include an enhanced regulatory scheme to address historic fill management and disposal. Many comments indicated that the original concept of historical fill management would be too difficult to implement because the definition characterized waste based on the date of its likely deposition. The original proposal also had the potential to favor landfilling of fill material and could prevent reuse of fill material at another site. In order to provide a mechanism for fill material to be reused, the revised proposed rules include standards for reuse of fill material depending on the quality of the fill after testing.

Another issue that many commenters raised concern with was the predetermined beneficial use of waste tires in agricultural practices. Many farmers, particularly dairy farmers, commented that no limit should be set on the number of tires that can be utilized per bunker on a farm, and that setting the limit on the number of tires to 1000 per bunker would result in negative consequences on agricultural operations. The proposed rules have been revised to require that the number of passenger tire equivalents used to secure tarps does not exceed.25 passenger tire equivalents per square foot of cover of bunker area, and requires that whole tires are cut in half or have sufficient number of holes drilled in them to prevent retention of water.

Part 360 also contains transition provisions that govern how the new rules would apply to existing facilities. Many commenters took issue with the timeframes to implement the new rules, citing the need for additional time. In response to public comment, the revised proposal extends the timeframe for existing facilities. This will allow the regulated community additional time to apply for a registration or permit, when needed, and to obtain the information needed to support an application to the Department.

Proposed Part 361 would regulate material recovery facilities including recyclables handing and recovery facilities, land application facilities, composting, mulching, C&D, waste tire handing and recovery facilities, and used cooking oil and yellow grease processing facilities. The majority of comments received on proposed Part 361 were focused on mulch processing facilities and C&D processing facilities. Commenters raised questions about the pile size restrictions and other criteria applicable to the storage of mulch prior to distribution. For C&D processing facilities, many comments from industry raised concerns that the 250 ton per day threshold was too low for many operations at registered facilities. Commenters indicated that the proposed thresholds for permitting would discourage the reuse of concrete, brick and asphalt, and that the proposed pile sizes and storage time limitations were not reflective of real-world conditions. In sum, the comments indicated the proposed rules would result in increased landfilling of recyclable material. In response to comments, the mulch pile size restrictions were modified and the threshold for registered construction and demolition debris handling and recovery facilities were expanded to facilities that receive less than 500 tons per day based on a weekly average of concrete, brick, rock and certain fill materials.

Proposed Part 362 would apply to facilities which use combustion to treat solid waste, municipal solid waste processors, transfer facilities and household waste collection activities. Comments on proposed Subpart 362-1, which would apply to combustion and thermal treatment facilities, focused on the proposed requirements for radiation detection. Comments from the regulated community indicated that the regulations were too restrictive and that frequency of testing and calibration would be excessive. Comments from the general public indicated that the regulations should be more restrictive, such as a requirement for automatic rejection of a load that triggers an alarm. The revised proposal includes a requirement for alarm triggers to be reported to the Department, which was not part of the original proposal. The reporting requirement would allow Department staff to more actively participate in decisions related to waste handling and disposal of waste which triggers an alarm.

Part 363 would apply to landfills, and will contain many of the existing regulatory requirements for landfills found in the existing Part 360. Several commenters asked that the Department reconsider the amount of alternative operating cover that can be counted toward the facility's annual tonnage. Based on comments from landfill operators, a legitimate variation in the percentage of alternative daily cover needed could not be readily specified. In order to minimize abuse of alternative daily cover provision, proposed revisions require that alternative operating cover be included in the list of waste quantities accepted at the landfill.

Several commenters also indicated that landfills which voluntarily collect and destroy landfill gas are eligible to market carbon offset credits related to that activity, and that adding a requirement which called for the active collection and destruction of landfill gas for all new MSW landfills and for subsequent development at existing MSW landfills would end their ability to market those credits. Based on these comments and the fact that almost all active MSW landfills in the state collect and destroy landfill gas in some fashion, the proposed regulations have been revised to remove the active gas requirement and instead require the installation of horizontal gas collection pathways at regular intervals in the waste mass. In addition, as part of their permit applications, landfills will be required to submit greenhouse gas reduction plans. These plans will not be restricted to gas collection and destruction but instead will provide wider options for reduction of greenhouse gas emissions from the landfills.

Hundreds of commenters objected to the receipt of drill cuttings or other drilling and production waste from natural gas well development in landfills, citing concerns about the potential radioactivity of such wastes. Many of the comments also continued to object to the disposal of liquid wastes from oil and gas production wells even though landfills are not currently allowed to accept bulk liquids for disposal. To strengthen and clarify the Department's position on this topic, a provision was added in the operating requirements for landfills that would prohibit landfill disposal of fluids produced from an oil or gas production well, including flow back water and production brine.

The Department proposed to re-promulgate the waste transporter permit program as Part 364. Numerous changes to proposed Part 364 were made as a result of public comment. In response to public comment, substantial revisions were made requiring enhanced waste tracking documents for C&D debris leaving New York City, creating an exemption for institutional waste and medical devices intended to be reprocessed or remanufactured, enhancing the exemption for waste transporter by public utilities to include waste incidentally transported by such entities and clarifying changes to avoid overlap in Part 360. Commenters also requested that registered transporters be subject to the vehicle identification requirements that apply to permitted transporters and that waste generators have no authority over choosing an alternative receiving location. These revisions have been made in Part 364. Additionally, commenters questioned why the exception for on-site transport was limited to generators and why transporters would be required to obtain a registration and a separate permit. This limitation was eliminated for the on-site transport exception and the language in Part 365 has been revised to allow registrations to become riders to permits.

Proposed Part 365 would apply to generators of RMW, facilities that store, transfer and treat RMW, and all other infectious wastes that are not RMW but pose similar risks. Commenters from the dairy and food industry raised concerns that the Part 365 regulations were too vague concerning other infectious wastes and could include routine lab analyses for food safety purposes. Part 365 has been significantly reworked, including terminology and criteria, to clarify that the provisions only apply to infectious wastes that need special treatment, not foodstuffs or associated laboratory sampling.

Proposed Part 366 would apply to the development of municipal local solid waste management plans. Commenters requested clarification and additional streamlining of requirements as well as timelines for Department review. The requested adjustments were incorporated into the proposed revisions.

Proposed Part 369 would apply to municipal State Assistance funding under the Environmental Protection Act for recycling projects, household hazardous waste collection and landfill closure and gas management projects. Commenters requested changes to limitations that the proposed regulations imposed on eligible funding criteria. In response, the proposed regulations were revised, eliminating the requirement that funded vehicles be fully dedicated to recycling, allowing funding for replacement of equipment, and removing the requirement that limited educator/coordinator personnel expenses to no more than non-personnel education and promotion costs.

To view the full assessment of public comment for all comments received on the revisions to the solid waste regulations, please visit the DEC website at http://www.dec.ny.gov/regulations/propregulations.html#public.

Department of Financial Services

EMERGENCY RULE MAKING

Establishment and Operation of Market Stabilization Mechanisms for Certain Health Insurance Markets

I.D. No. DFS-18-17-00020-E
Filing No. 387
Filing Date: 2017-06-02
Effective Date: 2017-06-02

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

Action taken: Amendment of Part 361 of Title 11 NYCRR.

Statutory authority: Financial Law, sections 202, 302; Insurance Law, sections 301, 1109 and 3233

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

Specific reasons underlying the finding of necessity: Insurance Law § 3233 requires the Superintendent of Financial Services ("Superintendent") to promulgate regulations to ensure an orderly implementation and ongoing operation of the open enrollment and community rating requirements in Insurance Law §§ 3231 and 4317, applicable to small groups and individual health insurance policies and contracts, including member contracts under Article 44 health maintenance organizations ("HMOs") and Medicare Supplemental policies and contracts. The regulations may include mechanisms designed to share risks or prevent undue variations in issuer claims costs. Pursuant to this mandate, the Superintendent promulgated 11 NYCRR 361 (Insurance Regulation 146), under which the Department established risk adjustment for community rated small group and individual health insurance and Medicare Supplemental policies and contracts. Subsequently, the federal Affordable Care Act ("ACA") required the Center for Medicare and Medicaid Services to administer a risk adjustment program for the individual and small group health insurance markets, but not for Medicare Supplemental policies and contracts. A state may establish its own risk adjustment program pursuant to 45 C.F.R. § 153.310(a)(1). In addition, a U.S. Health and Human Services interim final rule, dated May 11, 2016, invites states to examine local approaches under state legal authority to help ease the transition to new health insurance markets. See 81 Fed. Reg. at 29152. Starting with plan year 2014, the Superintendent suspended New York's risk adjustment program for individual and small group health insurance markets because of the ACA, and New York's individual and small group health insurance markets since have been subject only to the federal program.

This rule establishes a market stabilization pool for the small group health insurance market for the 2017 plan year to ameliorate a possible disproportionate impact that federal risk adjustment may have on insurers and HMOs (collectively, "carriers"), address the needs of the small group health insurance market in New York, and prevent unnecessary instability in the health insurance market.

Carriers soon will begin binding coverage for policies written outside of the health exchange. In addition, New York State of Health, the official health insurance marketplace, has set September 9, 2016 as the date by which carriers must commit to selling certain policies or contracts on the health exchange. In order to implement the rule for the 2017 plan year and to minimize market issues, it is imperative that this rule be promulgated on an emergency basis for the general welfare.

Subject: Establishment and Operation of Market Stabilization Mechanisms for Certain Health Insurance Markets.

Purpose: To allow for the implementation of a market stabilization pool for the small group health insurance market.

Text of emergency rule: The title of Part 361 is amended to read as follows:

ESTABLISHMENT AND OPERATION OF MARKET STABILIZATION MECHANISMS FOR [INDIVIDUAL AND SMALL GROUP] *CERTAIN* HEALTH INSURANCE [AND MEDICARE SUPPLEMENT INSURANCE] *MARKETS*

The title of Section 361.6 is amended to read as follows:

Section 361.6 Pooling of variations of costs attributable to high cost claims beginning in 2006 *through 2013* for individual and small group policies, other than Medicare supplement and Healthy New York policies.

Section 361.9 is added to read as follows:

Section 361.9 Market stabilization pools for the small group health insurance market for the 2017 plan year.

(a)(1) The superintendent has been assessing the federal risk adjustment program developed under the federal Affordable Care Act and its impact on the health insurance market in this State. In its simplest terms, the federal risk adjustment program requires that carriers whose insureds or members have relatively better loss experience pay into the risk adjustment pool and those with relatively worse experience receive payment from that pool. The broad purpose of the risk adjustment program is to balance out the experience of all carriers.

(2) In certain respects, however, the calculations for the federal risk adjustment program do not take into account certain factors, resulting in unintended consequences. The department has been working cooperatively with the Department of Health and Human Services and the Centers for Medicare and Medicaid Services (CMS) on risk adjustment. Recently, CMS has announced certain changes to the methodology. CMS has also stated that it will continue to review the methodology in the future.

(3) The federal risk adjustment program has led to a situation in which some carriers in this State are receiving large payments out of the risk adjustment program that are paid by other carriers. For many of these other carriers, the millions to be paid represent a significant portion of their revenue. The money transfers among carriers in this State under the federal risk adjustment program have been among the largest in the nation.

(4) CMS's changes and planned reviews are much appreciated and anticipated. The superintendent will continue to work with CMS and hopes that over time the federal risk adjustment program will be improved so that it fully meets its intended purposes. The federal risk adjustment methodology as applied in this State does not yet adequately address the impact of administrative costs and profit of the carriers and how this State counts children in certain calculations. These two factors are identifiable, quantifiable and remediable for the 2017 plan year in the small group market.

(5) This section applies only to risk adjustment experience in the small group health insurance market for the 2017 plan year to be applied to payments and receipts in 2018. The department will continue its review of the federal risk adjustment program and its impact on the individual and small group health insurance markets in this State. Among other issues, the department will continue to examine whether federal risk adjustment adequately accounts for demographic regional diversity in this State, as well as whether federal risk adjustment dissuades carriers from using networks and plan designs that seek to integrate care and deliver value. The superintendent will take all necessary and appropriate action to address the impact on both markets in the future.

(b)(1) The superintendent anticipates that the federal risk adjustment program will adversely impact the small group health insurance market in this State in 2017 to such a degree as to require a remedy. Several factors are expected to cause the adverse impact, including:

(i) the federal risk adjustment program results in inflated risk scores and payment transfers in this State because the calculation is based in part upon a medical loss ratio computation that includes administrative expenses, profits and claims rather than only using claims; and

(ii) the federal risk adjustment program results in inflated risk scores and payment transfers in this State because the program does not appropriately address this State's rating tier structure. For this State, the federal risk adjustment program alters the definition of billable member months to include a maximum of one child per contract in the billable member month count. This understatement of billable member month counts: (a) lowers the denominator of the calculation used to determine the statewide average premium and plan liability risk scores; (b) results in the artificial inflation of both the statewide average premium and plan liability risk scores; and (c) further results in inflated payments transfers through the federal risk adjustment program.

(2) Accordingly, if, for the 2017 plan year, the superintendent determines that the federal risk adjustment program has adversely impacted the small group health insurance market in the State and that amelioration is necessary, the superintendent shall implement a market stabilization pool for carriers participating in the small group health insurance market, other than for Medicare supplement insurance, pursuant to subdivision (e) of this section to ameliorate the disproportionate impact that the federal risk adjustment program may have on carriers, to address the unique aspects of the small group health insurance market in this State, and to prevent unnecessary instability for carriers participating in the small group health insurance market in this State, other than for Medicare supplement insurance.

(c) As used in this section, small group health insurance market means all policies and contracts providing hospital, medical or surgical expense insurance, other than Medicare supplement insurance, covering one to 100 employees.

(d) Following the annual release of the federal risk adjustment results

for the 2017 plan year, the superintendent shall review the impact of the federal risk adjustment program established pursuant to 42 U.S.C. section 18063 on the small group health insurance market in this State for that plan year.

(e) If, after reviewing the impact of the federal risk adjustment program on the small group health insurance market in this State for the 2017 plan year, including payment transfers, the statewide average premiums, and the ratio of claims to premiums, the superintendent determines that a market stabilization mechanism is a necessary amelioration, the superintendent shall implement a market stabilization pool in such market as follows:

(1) every carrier in the small group health insurance market that is designated as a receiver of a payment transfer from the federal risk adjustment program shall remit to the superintendent an amount equal to a uniform percentage of that payment transfer for the market stabilization pool. The uniform percentage shall be calculated as the percentage necessary to correct any one or more of the adverse market impact factors specified in subdivision (b)(1) of this section. The uniform percentage shall be determined by the superintendent based on reasonable actuarial assumptions and shall not exceed 30 percent of the amount to be received from the federal risk adjustment program;

(i) the superintendent shall send a billing invoice to each carrier required to make a payment into the market stabilization pool after the federal risk adjustment results are released pursuant to 45 CFR section 153.310(e);

(ii) each carrier shall remit its payment to the superintendent within ten business days of the later of its receipt of the invoice from the superintendent or receipt of its risk adjustment payment from the Secretary of the United States Department of Health and Human Services pursuant to 42 U.S.C. section 18063; and

(iii) payments remitted by a carrier after the due date shall include the amount due plus compound interest at the rate of one percent per month, or portion thereof, beyond the date the payment was due; and

(2) for the 2017 plan year:

(i) every carrier in the small group health insurance market that is designated as a payor of a payment transfer into the federal risk adjustment program shall receive from the superintendent an amount equal to the uniform percentage of that payment transfer, referenced in paragraph (1) of this subdivision, from the market stabilization pool;

(ii) the superintendent shall send notification to each carrier of the amount the carrier will receive as a distribution from the market stabilization pool after the federal risk adjustment results are released; and

(iii) the superintendent shall make a distribution to each carrier after receiving all payments from payors. However, nothing in this section shall preclude the superintendent from making a distribution prior to receiving all payments from payors.

(f) The superintendent may modify the amounts determined in subdivision (e) of this section to reflect any adjustments resulting from audits required under 45 CFR section 153.630.

(g) In the event the payments received by the superintendent pursuant to subdivision (e)(1) of this section are less than the amounts payable pursuant to subdivision (e)(2) of this section, the amount payable to each carrier pursuant to this section shall be reduced proportionally to match the funds available in the pool.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-18-17-00020-P, Issue of May 3, 2017. The emergency rule will expire July 31, 2017.

Text of rule and any required statements and analyses may be obtained from: Laura Evangelista, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 480-4738, email: Laura.Evangelista@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: Financial Services Law §§ 202 and 302 and Insurance Law §§ 301, 1109, and 3233.

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

Insurance Law § 1109 subjects health maintenance organizations ("HMOs") complying with Public Health Law Article 44 to certain sections of the Insurance Law and authorizes the Superintendent to promulgate regulations effecting the purpose and provisions of the Insurance Law and Public Health Law Article 44.

Insurance Law § 3233 requires the Superintendent to promulgate regulations to assure an orderly implementation and ongoing operation of the open enrollment and community rating requirements in Insurance Law §§ 3231 and 4317, which may include mechanisms designed to share risks or prevent undue variations in insurer claims costs.

2. Legislative objectives: Insurance Law § 3233 requires the Superintendent to promulgate regulations to assure an orderly implementation and ongoing operation of the open enrollment and community rating requirements in Insurance Law §§ 3231 and 4317, applicable to small group and individual health insurance policies and contracts, including member contracts under Article 44 HMOs and Medicare Supplement policies and contracts. The regulations may include mechanisms designed to share risks or prevent undue variations in claims costs. A risk adjustment program is intended, in part, to reduce or eliminate premium differences between insurers and HMOs (collectively, "carriers") based solely on expectations of favorable or unfavorable risk selection.

Pursuant to this mandate, the Superintendent promulgated 11 NYCRR 361 (Insurance Regulation 146), under which the Department established risk adjustment for community rated small group and individual health insurance and Medicare Supplement policies and contracts. Subsequently, the federal Affordable Care Act ("ACA") required the Center for Medicare and Medicaid Services ("CMS") to administer a risk adjustment program for the individual and small group health insurance markets, but not for Medicare Supplement policies and contracts. A state may establish its own risk adjustment program pursuant to 45 C.F.R. § 153.310(a)(1). In addition, a U.S. Health and Human Services ("HHS") interim final rule, dated May 11, 2016, invites states to examine local approaches under state legal authority to help ease the transition to new health insurance markets. See 81 Fed. Reg. at 29152. Starting with policy year 2014, the Superintendent suspended New York's risk adjustment program for individual and small group health insurance markets because of the ACA, and New York's individual and small group health insurance markets since have been subject only to the federal program.

This rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law § 3233 by establishing market stabilization pools for the small group health insurance market for the 2017 plan year to ameliorate a possible disproportionate impact that federal risk adjustment may have on carriers, address the unique aspects of the small group health insurance market in New York, and prevent unnecessary instability in the health insurance market.

3. Needs and benefits: In the early 1990s, the New York Legislature enacted Insurance Law § 3233 because it recognized the need for a mechanism to stabilize the health insurance markets and premium rates in New York so that premiums do not unduly fluctuate and carriers are reasonably protected against unexpected significant shifts in the number of insureds. More recently, the federal government recognized in the ACA that a federal risk adjustment mechanism would help provide affordable health insurance, reduce incentives for carriers to avoid enrolling less healthy people, and stabilize premiums in the individual and small group health insurance markets.

Prior to implementation of the ACA in 2014, the New York Department of Financial Services ("Department"), after consultation with carriers, concluded New York should use the federal risk adjustment program and the Superintendent suspended New York's risk adjustment program for the individual and small group health insurance markets. CMS conducted risk adjustment in 2014 and announced preliminary risk adjustment results for plan year 2015 in April 2016. These results have had a disproportionate impact on certain carriers in the New York market as a whole.

CMS has proposed changes to its programs and may make additional changes. The Superintendent will continue to work with CMS and hopes that by the 2018 plan year the federal risk adjustment program will be improved to better accomplish its intended purposes. However, the federal risk adjustment methodology does not yet adequately address the impact of administrative costs or profit of the carriers, or the manner in which New York counts children in certain calculations. These factors are identifiable, quantifiable and remediable for the 2017 plan year. The Superintendent anticipates that the federal risk adjustment program will adversely impact the small group health insurance market in this State in 2017 to such a degree as to require a remedy. Many factors are expected to cause the adverse impact, including:

(1) the federal risk adjustment program results in inflated risk scores and payment transfers in this State because the calculation is based in part upon a medical loss ratio computation that includes administrative expenses, profits and claims rather than only using claims; and

(2) the federal risk adjustment program results in inflated risk scores and payment transfers in this State because the program does not appropriately address this State's rating tier structure. For New York, the federal risk adjustment program alters the definition of billable member months to include a maximum of one child per contract in the billable member month count. This understatement of billable member month counts: (a) lowers the denominator of the calculation used to determine the statewide average premium and plan liability risk scores; (b) results in the artificial inflation of both the statewide average premium and plan li-

ability risk scores; and (c) further results in inflated payments transfers through the federal risk adjustment program.

This rule authorizes the Superintendent to implement a market stabilization pool for the New York small group health insurance market if, after reviewing the impact of the federal risk adjustment program on this market for the 2017 plan year, the Superintendent determines that a market stabilization mechanism is a necessary amelioration.

The rule requires a carrier designated as a receiver of a payment transfer from the federal risk adjustment program to remit to the Superintendent an amount equal to a uniform percentage of that payment transfer for the market stabilization pool. The Superintendent will determine the uniform percentage based on reasonable actuarial assumptions, which may not exceed 30% of the amount to be received from the federal risk adjustment program. Department actuaries considered the fact that (1) the federal risk adjustment program calculates risk scores and payment transfers based in part upon a medical loss ratio computation that includes administrative expenses, profits, and claims, and (2) it does not appear to fully address New York's rating tier structure. The actuaries determined that up to 30% of the amount to be received from the federal risk adjustment program is the maximum amount that would be necessary for a payment transfer under this rule.

The market stabilization mechanism under the rule is distinct from the federal risk adjustment and will provide a more accurate representation of the state's market. The state mechanism would merely fine-tune the federal mechanism to address the needs of the New York market, not serve to undo the federal mechanism. It would not hinder or impede the ACA's implementation because the federal risk adjustment still would be performed. A carrier is able to comply with both the federal risk adjustment program and this state's market stabilization mechanism because the state risk adjustment would be implemented after the federal risk adjustment.

4. Costs: This rule imposes compliance costs on carriers that elect to issue policies or contracts subject to the rule. The costs are difficult to estimate and will vary from carrier to carrier depending on the impact of the federal risk adjustment program on the market, including federal payment transfers, statewide average premiums, and the ratio of claims to premiums.

The Department will incur costs for the implementation and continuation of this rule. Department staff are needed to review the impact that the federal risk adjustment program will have on the market. Furthermore, if the Superintendent implements a market stabilization pool, the Department must then send a billing invoice to each carrier required to make a payment into the pool, collect the payments, notify each carrier of the amount the carrier will receive from the market stabilization pool, and distribute the payments from the pool. However, the Department should be able to absorb these costs in its ordinary budget. Under § 361.7 of the existing rule, the Superintendent also could hire a firm to administer the pool. The cost necessary to hire such a firm would have to be determined.

This rule does not impose compliance costs on state or local governments.

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

6. Paperwork: This rule requires carriers designated as receivers of a payment transfer from the federal risk adjustment program to remit a uniform percentage of that payment transfer to the Superintendent as determined by the Superintendent. The rule also requires the Superintendent to send a billing invoice to each carrier required to make a payment, collect the payments, notify each carrier of the amount the carrier will receive from the market stabilization pool, and make distributions from the pool to the carriers.

7. Duplication: This rule does not duplicate or conflict with any existing state or federal rules or other legal requirements. The rule supplements the federal risk adjustment mechanism under the ACA and merely serves to fine-tune that risk adjustment to meet the needs of the New York market.

8. Alternatives: The Department considered not establishing a market stabilization pool for the small group health insurance market for the 2017 plan year. However, the Department is concerned about the disproportionate impact that federal risk adjustment may have on carriers in the New York market and possible unnecessary instability in the health insurance market that would adversely impact insureds. As a result, the Department determined that it is necessary to establish a market stabilization pool for the small group health insurance market.

The Department also considered a cap of other than 30% of the amount to be received from the federal risk program, with regard to the uniform percentage of the payment transfer for the market stabilization pool under this rule. However, Department actuaries considered the fact that (1) the federal risk adjustment program calculates risk scores and payments transfers based in part upon a medical loss ratio computation that includes administrative expenses, profits, and claims, and (2) it does not appear to fully address New York's rating tier structure. The actuaries determined that up to 30% of the amount to be received from the federal risk adjustment program is the maximum amount that would be necessary for a payment transfer under this rule.

9. Federal standards: The rule does not exceed any minimum standards of the federal government for the same or similar subject areas. Rather, the amendment to the rule complements the federal risk adjustment program.

10. Compliance schedule: The Department is promulgating this rule on an emergency basis so that the Superintendent may establish a New York risk adjustment pool for plan year 2017 if the Superintendent determines that it will be necessary following CMS's annual release of the federal risk adjustment results for the 2017 plan year. If the Superintendent does establish the pool, carriers will have to comply in 2018.

Regulatory Flexibility Analysis

Small businesses: The Department of Financial Services finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at insurers and health maintenance organizations ("HMOs") that elect to issue policies or contracts subject to the rule. Such insurers and HMOs do not fall within the definition of "small business" as defined by State Administrative Procedure Act § 102(8), because in general they are not independently owned and do not have fewer than 100 employees.

Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at insurers and HMOs that elect to issue policies or contracts subject to the rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers and health maintenance organizations ("HMOs") (collectively, "carriers") affected by this rule operate in every county in this state, including rural areas as defined by State Administrative Procedure Act § 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule imposes additional reporting, recordkeeping, and other compliance requirements by requiring carriers, including carriers located in rural areas, designated as receivers of a payment transfer from the federal risk adjustment program, to remit a uniform percentage of that payment transfer to the Superintendent of Financial Services ("Superintendent") as determined by the Superintendent. However, no carrier, including carriers in rural areas, should need to retain professional services to comply with this rule.

3. Costs: This rule imposes compliance costs on carriers that elect to issue policies or contracts subject to the rule, including carriers in rural areas. The costs are difficult to estimate and will vary from carrier to carrier depending on the impact of the federal risk adjustment program on the market, including federal payment transfers, statewide average premiums, and the ratio of claims to premiums. However, any additional costs to carriers in rural areas should be the same as for carriers in non-rural areas.

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

5. Rural area participation: The Department of Financial Services ("Department") is promulgating this rule on an emergency basis because carriers soon will begin binding coverage for policies written outside of the health exchange. In addition, the New York State of Health, the official health insurance marketplace, has set September 9, 2016 as the date by which carriers must commit to selling certain policies or contracts on the health exchange. In order to implement the rule for the 2017 plan year and to minimize market issues, it is imperative that this rule be promulgated on an emergency basis. Carriers in rural areas will have an opportunity to participate in the rule making process when the proposed rule is published in the State Register and posted on the Department's website.

Job Impact Statement

This rule should not adversely impact jobs or employment opportunities in New York State. This rule authorizes the Superintendent of Financial Services ("Superintendent") to implement a market stabilization pool for the small group health insurance market if, after reviewing the impact of the federal risk adjustment program on this market, the Superintendent determines that a market stabilization mechanism is a necessary amelioration. This rule prudently ameliorates a possible disproportionate impact that federal risk adjustment may have on insurers and health maintenance organizations, addresses the needs of the small group health insurance market in New York, and prevents unnecessary instability in the health insurance market.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. DFS-25-17-00002-EP
Filing No. 391
Filing Date: 2017-06-05
Effective Date: 2017-06-05

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

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

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 2606, 2607, 2608, 3201, 3221(h), 3231(a), 3232(g), (h), 3240(b), (d), 4303(ll), 4317(a), 4318(g), (h) and 4328(b)(1)

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

Specific reasons underlying the finding of necessity: There is movement underway in Congress to repeal and replace the federal Affordable Care Act ("ACA"), including the requirement that issuers cover essential health benefits ("EHB"), such as benefits for maternity and newborn care and mental health and substance use disorder services, and the prohibition against discrimination in the issuance and rating of accident and health insurance because of factors such as race, color, national origin, sex, age, and disability. This rule would require every individual and small group accident and health insurance policy or contract (other than a grandfathered health plan) delivered or issued for delivery in New York that provides hospital, surgical, or medical expense coverage and every student accident and health insurance policy or contract delivered or issued for delivery in New York to provide coverage of at least the enumerated ten categories of EHB if the EHB provision in 42 U.S.C. § 18022 and 45 C.F.R. 156.100 et seq. are no longer in effect or are modified as determined by the Superintendent of Financial Services. This will ensure that people covered under individual, small group, and student accident and health insurance policies and contracts will continue to have coverage for these important benefits.

In addition, the rule would, with regard to an individual or small group accident and health insurance policy that provides hospital, surgical, or medical expense coverage and a student accident and health insurance policy or contract delivered or issued for delivery in New York State, reaffirm that an issuer is prohibited from discriminating because of race, color, creed, national origin, sex, age, marital status, disability, or a preexisting condition and to clarify the scope of such prohibitions.

For the public health and general welfare, the Department is promulgating this rule on an emergency basis in the event that Congress repeals the ACA.

Subject: Minimum standards for form, content and sale of health insurance, including standards of full and fair disclosure.

Purpose: To ensure coverage for essential health benefits in all individual, small group, and student accident and health policies.

Text of emergency/proposed rule: A new subdivision 52.1(q) is added as follows:

(q)(1) The federal Patient Protection and Affordable Care Act ("ACA") requires all individual and small group accident and health insurance policies delivered or issued for delivery in this State that provide hospital, surgical, or medical expense coverage and are not grandfathered health plans, and all student accident and health insurance policies delivered or issued for delivery in this State to include coverage for ten categories of essential health benefits. The essential health benefits provide a set of minimum standards that ensure that all individual and small group accident and health insurance policies that provide hospital, surgical, or medical expense coverage and are not grandfathered health plans, and all student accident and health insurance policies provide their insureds with comprehensive coverage for medically necessary care. Independent of the ACA, the Insurance Law and this Title include broad protections to ensure that all accident and health insurance coverage sold in this State is comprehensive and that insurers shall not discriminate against residents of this State based on race, color, creed, national origin, sex, age, marital status, disability, or preexisting condition.

(2) It is the policy of this State that all individual and small group accident and health insurance policies that provide hospital, surgical, or medical expense coverage and are not grandfathered health plans, and all student accident and health insurance policies provide insureds with essential health benefits and that insurers shall not discriminate against residents of this State based on race, color, creed, national origin, sex, age, marital status, disability, or preexisting condition, whether in issuing policies or setting premiums. Accordingly, irrespective of any changes to the essential health benefit rules in the ACA, as set forth in section 52.71 of this Part, this State will continue to require that individual and small group accident and health insurance policies that provide hospital, surgical, or medical expense coverage and are not grandfathered health plans, and student accident and health insurance policies cover the same essential health benefits and be subject to the same benchmark plan and model contract rules as currently apply. Similarly, irrespective of any changes to the anti-discrimination rules in the ACA, as set forth in section 52.72 of this Part, this State will continue to ensure that all New York insureds covered by individual and small group accident and health insurance policies that provide hospital, surgical, or medical expense coverage and student accident and health insurance policies are not subject to discrimination based on race, color, creed, national origin, sex, age, marital status, disability, or preexisting condition.

A new section 52.71 is added as follows:

§ 52.71 Essential health benefits.

(a) Every individual and small group accident and health insurance policy that provides hospital, surgical, or medical expense coverage and is not a grandfathered health plan, and every student accident and health insurance policy shall provide coverage of at least the following essential health benefits:

(1) ambulatory patient services, such as office visits, ambulatory surgical services, dialysis, radiology services, chemotherapy, infertility treatment, abortion services, hospice care, and diabetic equipment, supplies and self-management education;

(2) emergency services, such as emergency room services, urgent care services, and ambulance services;

(3) hospitalization, such as preadmission testing, inpatient physician and surgical services, hospital care, skilled nursing facility care, and hospice care;

(4) maternity and newborn care, such as delivery, prenatal and postnatal care, and breastfeeding education and equipment;

(5) mental health and substance use disorder services, including behavioral health treatment, such as inpatient and outpatient services for the diagnosis and treatment of mental, nervous and emotional disorders including maternal depression, screening, diagnosis and treatment for autism spectrum disorder, and inpatient and outpatient services for the diagnosis and treatment of substance use disorder;

(6) prescription drugs, such as coverage for generic, brand name and specialty drugs, enteral formulas, contraceptive drugs and devices, abortifacient drugs, and orally administered anti-cancer medication;

(7) rehabilitative and habilitative services and devices, such as durable medical equipment, medical supplies, prosthetic devices, hearing aids, chiropractic care, physical therapy, occupational therapy, speech therapy, and home health care;

(8) laboratory services, such as diagnostic testing;

(9) preventive and wellness services and chronic disease management, such as well child visits, immunizations, mammography, gynecological exams including cervical cytology screening, bone density measurements or testing, and prostate cancer screening; and

(10) pediatric services, including oral and vision care, such as preventive and routine pediatric vision and dental care, and prescription lenses and frames.

(b) The scope of the minimum benefits covered as essential health benefits pursuant to subdivision (a) of this section shall be equal to the benefits provided by the benchmark plan selected by the superintendent as the New York Benchmark Plan in accordance with this section.

(c) Subject to subdivisions (d) and (e) of this section, the superintendent may select the New York Benchmark Plan in consultation with the commissioner of health from any of the following plans:

(1) Small group market health plan. The largest health plan by enrollment in any of the three largest small group insurance products by enrollment in the small group market in this state;

(2) State employee health benefit plan. Any of the largest three employee health benefit plan options by enrollment offered and generally available to state employees in this state;

(3) FEHBP plan. Any of the largest three national Federal Employees Health Benefits Program (FEHBP) plan options by aggregate enrollment that is offered to all health-benefits-eligible federal employees under 5 U.S.C. section 8903;

(4) HMO. The coverage plan with the largest insured commercial non-Medicaid enrollment offered by a health maintenance organization operating in this State; or

(5) Any other plan identified by the superintendent as a typical employer plan providing the coverage of essential health benefits required by this section.

(d)(1) In order to be eligible to be selected as the New York Benchmark Plan, a plan shall provide coverage of at least the categories of benefits identified in subdivision (a) of this section.

(2) Coverage in each benefit category. A plan not providing any coverage in one or more of the categories described in paragraph (1) of this subdivision may be selected as the New York Benchmark Plan if the plan is supplemented as follows:

(i) General supplementation methodology. A plan that does not include items or services within one or more of the categories described in subdivision (a) of this section shall be supplemented by the addition of the entire category of such benefits offered under any other benchmark plan option described in subdivision (c) of this section unless otherwise described in this subdivision.

(ii) Supplementing pediatric oral services. A plan lacking the category of pediatric oral services shall be supplemented by the addition of the entire category of pediatric oral benefits from one of the following:

(a) The Federal Employees Dental/Vision Program ("FEDVIP") dental plan with the largest national enrollment that is described in and offered to federal employees under 5 U.S.C. section 8952; or

(b) The benefits available under that State's separate Children's Health Insurance Program ("CHIP") plan, if a separate CHIP plan exists, to the eligibility group with the highest enrollment.

(iii) Supplementing pediatric vision services. A plan lacking the category of pediatric vision services shall be supplemented by the addition of the entire category of pediatric vision benefits from one of the following:

(a) The FEDVIP vision plan with the largest national enrollment that is offered to federal employees under 5 U.S.C. section 8982; or

(b) The benefits available under the State's separate CHIP plan, if a separate CHIP plan exists, to the eligibility group with the highest enrollment.

(e) The superintendent may issue model contract language identifying the coverage requirements for all individual and small group accident and health insurance policies that provide hospital, surgical, or medical expense coverage and all student accident and health insurance policies delivered or issued for delivery in this State.

(f) The model language issued by the superintendent summarizes the federal and state laws and rules that are applicable to health insurance policies delivered or issued for delivery in this State, including the requirement that the policies include coverage for essential health benefits required by the federal Patient Protection and Affordable Care Act. Every individual and small group accident and health insurance policy that provides hospital, surgical, or medical expense coverage and every student accident and health insurance policy delivered or issued for delivery in this State shall comply with the federal and state laws and rules that are applicable to health insurance policies issued in New York State as set forth in the model language.

(g) Except for subdivisions (e) and (f) of this section, the provisions of this section shall not be applicable unless and until the essential health benefits provision in 42 U.S.C. section 18022 and 45 C.F.R. 156.100 et seq. are no longer in effect or are modified as determined by the superintendent.

A new section 52.72 is added as follows:

§ 52.72 Nondiscrimination on the basis of race, color, creed, national origin, sex, age, marital status, disability, or preexisting condition.

(a) With regard to an individual or small group accident and health insurance policy that provides hospital, surgical, or medical expense coverage and a student accident and health insurance policy delivered or issued for delivery in this State, no insurer shall, because of race, color, creed, national origin, sex, age, marital status, disability, or preexisting condition:

(1) make any distinction or discrimination between persons as to the premiums or rates charged for the policy or in any other manner whatever;

(2) demand or require a greater premium from any person than it requires at that time from others in similar cases;

(3) make or require any rebate, discrimination or discount upon the amount to be paid or the service to be rendered on any policy;

(4) insert in the policy any condition, or make any stipulation, whereby the insured binds his or herself, or his or her heirs, executors, administrators or assigns, to accept any sum or service less than the full value or amount of such policy in case of a claim thereon except such conditions and stipulations as are imposed upon others in similar cases; and any such stipulation or condition so made or inserted shall be void;

(5) reject any application for a policy issued or sold by it;

(6) cancel or refuse to issue, renew or sell such policy after appropriate application therefor; or

(7) fix any lower rate or discriminate in the fees or commissions of insurance agents or insurance brokers for writing or renewing such a policy.

(b) For the purposes of this section, "disability" shall have the same meaning set forth in Executive Law section 292(21).

(c)(1) Discrimination because of national origin shall include discrimination based on an individual's, or his or her ancestor's, place of origin (such as country or world region) or an individual's manifestation of the physical, cultural, or linguistic characteristics of a national origin group.

(2) Discrimination because of sex shall include discrimination on the basis of pregnancy, false pregnancy, termination of pregnancy, or recovery therefrom, childbirth or related medical conditions, sex stereotyping, and gender identity.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 2, 2017.

Text of rule and any required statements and analyses may be obtained from: Nathaniel Dorfman, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-5538, email: Nathaniel.Dorfman@dfs.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority: Financial Services Law §§ 202 and 302 and Insurance Law §§ 301, 2606, 2607, 2608, 3201, 3217, 3221(h), 3231(a), 3232(g) and (h), 3240(b) and (d), 4303(ll), 4317(a), 4318(g) and (h), and 4328(b)(1).

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

Insurance Law § 2606 prohibits discrimination because of race, color, creed, national origin, or disability, Insurance Law § 2607 prohibits discrimination because of sex or marital status, and Insurance Law § 2608 prohibits discrimination because of treatment for a mental disability.

Insurance Law § 3201 requires a policy form delivered or issued for delivery in New York to be filed with and approved by the Superintendent.

Insurance Law § 3217 requires the Superintendent to issue such regulations as the Superintendent deems necessary or desirable to establish minimum standards for the form, content and sale of accident and health insurance policies and subscriber contracts offered by a corporation authorized under Insurance Law Article 43 and entities licensed pursuant to Public Health Law article 43.

Insurance Law §§ 3221(h), 3240(d), 4303(ll), and 4328(b)(1) require an individual or small group health insurance policy or contract delivered or issued for delivery in New York, including a health maintenance organization ("HMO") contract (other than a grandfathered health plan), that provides hospital, medical or surgical expense coverage, and a student accident and health policy or contract delivered or issued for delivery in New York, to provide coverage for essential health benefits ("EHB") as defined in 42 U.S.C. § 18022(b).

Insurance Law §§ 3231(a) and 4317(a) require an individual and small group health insurance policy or contract, including an HMO contract, to be community rated.

Insurance Law §§ 3232(g) and (h), 3240(b), and 4318(g) and (h) prohibit an issuer from imposing any preexisting condition exclusion in any individual, group or blanket health insurance policy or contract, including an HMO contract, that provides hospital, medical or surgical expense coverage and is not an individual grandfathered health plan and any student accident and health insurance policy or contract.

2. Legislative objectives: Insurance Law §§ 3221(h), 3240(d), 4303(ll), and 4328(b)(1) require an individual or small group policy or contract delivered or issued for delivery in New York (other than a grandfathered health plan) that provides coverage for hospital, medical or surgical expense, and a student accident and health insurance policy or contract delivered or issued for delivery in New York, to provide coverage for EHB defined in 42 U.S.C. § 18022(b). In addition, Insurance Law §§ 3232(g) and (h), 3240(b), and 4318(g) and (h) prohibit an issuer from imposing any preexisting condition exclusion in any individual, group or blanket health insurance policy or contract that provides hospital, medical or surgical expense coverage and is not a grandfathered health plan and in any student accident and health insurance policy or contract. Insurance Law Article 26 prohibits discrimination because of race, color, creed, national origin, disability, sex, or marital status.

This rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law §§ 3221(h), 3240(d), 4303(ll), 4328(b)(1) by requiring every individual and small group accident and health insurance policy or contract delivered or issued for delivery in New

York that provides hospital, surgical, or medical expense coverage (other than a grandfathered health plan), and every student accident and health insurance policy or contract delivered or issued for delivery in New York, to provide coverage of at least the enumerated ten categories of EHB if the EHB provision in 42 U.S.C. § 18022 and 45 C.F.R. 156.100 et seq. are no longer in effect or are modified as determined by the Superintendent.

This rule also accords with the public policy objectives that the Legislature sought to advance in Insurance Law Article 26, which prohibits an issuer from discriminating because of race, color, creed, national origin, sex, age, marital status, disability, or a preexisting condition with respect to an individual or small group accident and health insurance policy or contract that provides hospital, surgical, or medical expense coverage or a student accident and health insurance policy or contract.

3. Needs and benefits: There is movement underway in Congress to repeal and replace the federal Affordable Care Act ("ACA"), including the requirement that issuers cover EHB, such as benefits for maternity and newborn care and mental health and substance use disorder services, and the prohibition against discrimination in the issuance and rating of accident and health insurance because of factors such as race, color, national origin, sex, age, and disability. This rule would require every individual and small group accident and health insurance policy or contract (other than a grandfathered health plan) delivered or issued for delivery in New York that provides hospital, surgical, or medical expense coverage and every student accident and health insurance policy or contract delivered or issued for delivery in New York to provide coverage of at least the enumerated ten categories of EHB if the EHB provisions in 42 U.S.C. § 18022 and 45 C.F.R. 156.100 et seq. are no longer in effect or are modified as determined by the Superintendent. This will ensure that people covered under individual, small group, and student accident and health insurance policies and contracts will continue to have coverage for these important benefits.

In addition, the rule would, with regard to an individual or small group accident and health insurance policy that provides hospital, surgical, or medical expense coverage and a student accident and health insurance policy or contract delivered or issued for delivery in New York State, reaffirm that an issuer is prohibited from discriminating because of race, color, creed, national origin, sex, age, marital status, disability, or a preexisting condition and to clarify the scope of such prohibitions.

4. Costs: This rule will not impose compliance costs on issuers because it only continues the existing protections provided under the ACA.

The Department will not incur costs for the implementation and continuation of this rule.

This rule does not impose compliance costs on state or local governments.

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

6. Paperwork: This rule does not impose any reporting requirements, including forms and other paperwork.

7. Duplication: With regard to the section in the rule that pertains to EHB, it does not duplicate or conflict with any existing state or federal rules or other legal requirements because it only applies if Congress repeals the ACA. With regard to the section in the rule that pertains to nondiscrimination, there is some duplication and overlap with Insurance Law Article 26.

8. Alternatives: The Department considered not promulgating the rule. However, the Department is concerned about the negative impact on consumers if the protections under the ACA are repealed. As a result, the Department determined that it is necessary to promulgate this rule requiring coverage of EHB and continuing to prohibit discrimination for the individual and small group health insurance markets and for student accident and health insurance.

Another alternative considered by the Department was to implement the amendment immediately. However, if the ACA remains in effect in its current form, then there is no need to implement mandating the EHB benefits in the regulation.

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

10. Compliance schedule: The Department is promulgating this rule on an emergency basis in the event that Congress repeals the ACA.

Regulatory Flexibility Analysis

Small businesses: The Department of Financial Services finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at insurers and health maintenance organizations ("HMOs"), which do not fall within the definition of a "small business" as defined by State Administrative Procedure Act § 102(8), because in general they are not independently owned and do not have fewer than 100 employees.

Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at insurers and HMOs.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers and health maintenance organizations ("HMOs") (collectively, "issuers") affected by this rule operate in every county in this state, including rural areas as defined by State Administrative Procedure Act § 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule does not impose additional reporting, recordkeeping, and other compliance requirements on issuers located in rural areas. An issuer in a rural area should not need to retain professional services to comply with this rule.

3. Costs: This rule will not impose compliance costs on issuers, including issuers in rural areas.

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

5. Rural area participation: The Department of Financial Services ("Department") is promulgating this rule on an emergency basis in the event that Congress repeals the ACA. Issuers in rural areas will have an opportunity to participate in the rule making process when the proposed rule is published in the State Register and posted on the Department's website.

Job Impact Statement

This rule should not adversely impact jobs or employment opportunities in New York State. This rule would require every individual and small group accident and health insurance policy or contract (other than a grandfathered health plan) delivered or issued for delivery in New York that provides hospital, surgical, or medical expense coverage and every student accident and health insurance policy or contract delivered or issued for delivery in New York to continue providing coverage of at least the enumerated ten categories of essential health benefits ("EHB") if the EHB provisions in 42 U.S.C. § 18022 and 45 C.F.R. 156.100 et seq. are no longer in effect or are modified as determined by the Superintendent of Financial Services. This will ensure that people covered under individual, small group, and student accident and health insurance policies and contracts will continue to have coverage for these important benefits.

In addition, the rule would, with regard to an individual or small group accident and health insurance policy that provides hospital, surgical, or medical expense coverage and a student accident and health insurance policy or contract delivered or issued for delivery in New York State, reaffirm that an issuer is prohibited from discriminating because of race, color, creed, national origin, sex, age, marital status, disability, or a preexisting condition and to clarify the scope of such prohibitions.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transportation Network Companies, Minimum Requirements for Financial Responsibility Policies and Other Requirements

I.D. No. DFS-25-17-00007-EP

Filing No. 394

Filing Date: 2017-06-06

Effective Date: 2017-06-06

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

Proposed Action: Amendment of Parts 27 (Regulation 41), 169 (Regulation 100), 216 (Regulation 64), Subparts 60-1, 60-2 (Regulations 35-A, 35-D), 65-1, 65-2, 65-3 (Regulations 68-A, 68-C, 68-D); and addition of Subpart 60-3 (Regulation 35-E) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 2115, 2118, 2305, 2307, 2334, 2335, 2601, 3420, 3455, 5102, 5105, 5406 and arts. 23 and 51; Vehicle and Traffic Law, sections 311, 1693 and 1694; L. 2017, ch. 59, part AAA

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

Specific reasons underlying the finding of necessity: Part AAA of Chapter 59 of the Laws of 2017, established a new Article 44-B of the VTL (Article 44-B), which was signed into law on April 10, 2017 and will be effective as of June 29, 2017, regarding transportation network companies (TNC) and amended or added other laws to implement new Article 44-B. A TNC is a company that uses a digital network, such as an application on a phone,

to connect people seeking rides with drivers who are interested in providing those rides. Although TNCs have several different models, the most typical model utilizes drivers that are not professional livery drivers and who use their own personal automobiles to provide those prearranged rides and it is that model that Chapter 59 recognizes. The new TNC laws necessitated a change to New York's motor vehicle financial responsibility requirements, including regulations promulgated by the Superintendent of Financial Services. In addition, the law provides that the Superintendent will establish the provisions for policies satisfying the new financial responsibility requirements of Article 44-B.

In order to implement the new law, regulations are required to establish the minimum requirements for policies satisfying the financial responsibility requirements of Article 44-B, as well as to coordinate with existing regulations in order to ensure that minimum insurance requirements are in place at all times with appropriate protections in order to protect the drivers and owners of the vehicles, as well as the general public.

It is critical for the protection of the public that appropriate rules and regulations be in place in advance of the effective date of Chapter 59. Due to the short time frame before the new laws go into effect, it is necessary to promulgate the rules on an emergency basis for the furtherance of the general welfare.

Subject: Transportation network companies, minimum requirements for financial responsibility policies and other requirements.

Purpose: Implements part AAA of chapter 59 of the Laws of 2017, providing for the operation of transportation network companies in New York.

Substance of emergency/proposed rule (Full text is posted at the following State website:http://www.dfs.ny.gov): The following sections are amended or added:

Section 27.5(d) is amended to address the excess line affidavit requirement in the context of a transportation network company (TNC) group insurance policy.

Section 27.10(a) is amended to prohibit legal expense coverage within limits or claims-made policies with respect to a TNC group insurance policy placed in the excess line market.

A new subdivision (i) is added to § 60-1.2 to permit a new exclusion in an owner's policy of liability insurance issued in satisfaction of the financial responsibility requirements of Vehicle & Traffic Law Article 6, when the vehicle is used as a TNC vehicle.

A new § 60-1.5(e)(6) to clarify that, for purposes of the rental vehicle coverage required under Insurance Law (IL) § 3440, the use of the vehicle as a TNC vehicle will not be deemed to be the business of carrying or transporting passengers.

The definitions in the rental vehicle endorsement specified in § 60-1.5(h) are amended to clarify that use of the vehicle as a TNC vehicle is not using the vehicle as a public or livery conveyance.

A new § 60-1.5(j) adds a new exclusion to the rental vehicle endorsement to make clear that coverage for the endorsement follows the liability coverage under the policy.

A new § 60-1.7 is added to permit higher limits in an owner's policy of liability insurance issued in satisfaction of the financial responsibility requirements of VTL Article 6 when the vehicle is used to satisfy the financial responsibility requirements of VTL Article 44-B.

A new § 60-1.8 is added to make clear that, when an owner's policy of liability insurance issued in satisfaction of the financial responsibility requirements of VTL Article 6 also provides coverage for use or operation of the vehicle as a TNC vehicle, no-fault and other required coverages will be provided for such use.

Section 60-2.0(a) is amended and a new subdivision (e) is added to add definitions and to include a reference to TNC coverage.

A new section 60-2.1(f) is added to address the mandatory inclusion of supplementary uninsured/underinsured motorists (SUM) coverage in a policy that provides liability coverage while the TNC driver is engaged in a TNC prearranged trip and the mandatory offer of SUM coverage in a policy that provides liability coverage while the driver is logged onto the TNC's digital network but is not engaged in a TNC prearranged trip.

Section 60-2.2(a) is amended to provide for the appropriate notices regarding SUM coverage.

Section 60-2.3(f), which contains the required SUM endorsement, is amended to address the use of the vehicle as a TNC vehicle.

A new Subpart 60-3 is added addressing policies covering the use or operation of a TNC vehicle. The new sections are:

Section 60-3 (purpose);

Section 60-3.1 (definitions);

Section 60-3.2 (general requirements for TNC policies);

Section 60-3.3 (mandatory provisions for TNC policies);

Section 60-3.4 (permissible exclusions for TNC policies);

Section 60-3.5 (discretionary provisions for TNC policies);

Section 60-3.6 (rules for payment to the insured when involved in an accident with an uninsured motor vehicle);

Section 60-3.7 (requirements that apply to a TNC group policy issued pursuant to IL § 3455);

Section 60-3.8 (the requirements when a TNC group policy is placed in the excess line market); and

Section 60-3.9, (minimum notice that must be provided by an insurer writing motor vehicle liability insurance in satisfaction of the financial requirements of Vehicle and Traffic Law article 6 or motor vehicle physical damage insurance).

Section 65-1.1(a) makes the no-fault regulations applicable to TNC policies issued in satisfaction of the VTL article 44-B requirements.

Section 65-1.1(d) amends the mandatory personal injury protection endorsement with respect to TNC policies issued in satisfaction of the VTL article 44-B requirements.

Section 65-1.3(c) amends the additional personal injury protection endorsement with respect to TNC policies issued in satisfaction of the VTL article 44-B requirements.

A new section 65-3.12(f) is added to make clear which insurer is the "insurer of such motor vehicle" as used therein.

New section 65-3.13(a)(6) and (c) are added to address disputes among insurers as to which insurer is liable for the payment of additional personal injury protection benefits when both have the same priority of payment.

Section 65-4.5(b)(1) and (2) are amended to address special expedited no-fault arbitrations.

Section 65-4.11(a)(1) and (2) are amended to address certain mandatory arbitrations of controversies between insurers with respect to no-fault.

Section 169.1(d)(1) is amended to prevent an insurer from surcharging the insured for an accident that occurs while the vehicle is being used or operated as a TNC vehicle and the insured is not convicted of a moving traffic violation, unless the policy provides coverage for such operation of the vehicle.

A new section 216.2(e) is added to make an unauthorized insurer that issues a group policy pursuant to IL § 3455 subject to unfair claims regulations.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 3, 2017.

Text of rule and any required statements and analyses may be obtained from: Nathaniel Dorfman, New York State Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 473-4824, email: nathaniel.dorfman@dfs.ny.gov

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

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

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

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"), sections 301, 2115, 2118, 2305, 2307, 2334, 2335, 2601, 3420, 3455, 5102, 5105, and 5406 and Articles 23 and 51 of the Insurance Law ("IL"), sections 1693, 1694 and 311 of the Vehicle and Traffic Law (VTL), and Part AAA of Chapter 59 of the Laws of 2017 (Part AAA).

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.

Part AAA established a new Article 44-B of the VTL (Article 44-B), which was signed into law on April 10, 2017 and will be effective as of June 29, 2017, regarding transportation network companies and amended or added other laws to implement new Article 44-B.

IL §§ 2105 and 2118 govern excess line brokers and excess line placements.

IL Article 23 applies generally to property/casualty insurance rates and forms. Sections 2305 and 2307 apply to prior approval of certain rates and policy forms. Rates for insurance coverage afforded under VTL Article 44-B are subject to prior approval. IL §§ 2334 and 2335 govern merit rating plans for non-commercial private passenger automobile insurance and surcharges on motor vehicle liability insurance rates with respect to certain accidents and traffic infractions.

IL § 2601 prohibits unfair claim settlement practices in this State.

IL § 3420 establishes the minimum provisions for liability policies in this state and governs uninsured and supplementary uninsured/underinsured motorist coverage.

IL § 3455 governs policies providing coverage to a transportation network company (TNC) and its drivers.

IL Article 51 governs no-fault. Sections 5102, 5105, and 5106 implement provisions regarding no-fault as they apply to use of motor vehicles through a transportation network company.

VTL § 311 establishes minimum financial responsibility requirements for motor vehicles used or operated in this State. Pursuant to § 311, the Superintendent is authorized to promulgate a regulation that establishes the minimum provisions for an owner's policy of liability insurance (11 NYCRR 60-1 (Insurance Regulation 35-A)). VTL §§ 1693 and 1694 similarly establish minimum requirements when a motor vehicle is used as a TNC vehicle and authorizes the Superintendent to promulgate regulations governing the minimum provisions for policies satisfying such requirements.

2. Legislative objectives: A TNC is a company that uses a digital network, such as an application on a phone, to connect people seeking rides with drivers who are interested in providing those rides. Although TNCs have several different models, the most typical model utilizes drivers that are not professional livery drivers and who use their own personal automobiles to provide those prearranged rides.

Part AAA now authorizes the TNC model to operate in New York outside of New York City subject to certain conditions and requirements, effective June 29. 2017. As stated in Section 1 of Part AAA, the Legislature's purpose in enacting the law was "to ensure the safety, reliability and cost-effectiveness of transportation network company (TNC) services within the state of New York and to preserve and enhance access to these important transportation options for residents and visitors to the state." TNCs must register with the Department of Motor Vehicles and, among other things, have financial responsibility insurance in place. A TNC vehicle is not considered to be livery and a TNC driver is not deemed to be in the business of carrying or transporting passengers under VTL Article 8, if the individual does so solely as a TNC driver. A TNC vehicle may not, however, initiate rides in New York City or any city or county that has enacted a local law or ordinance.

3. Needs and benefits: Motor vehicle insurance in New York is one of the most heavily regulated kind or type of insurance and numerous laws and regulations govern these types of policies.

Since 1956, New York's motor vehicle financial responsibility requirements have been governed by VTL Article 6 (originally Article 6-A). For livery and other for-hire vehicles, Article 8 has additional requirements. The most common method used to satisfy the financial responsibility requirements is an owner's policy of liability insurance, which must be issued by a New York authorized insurer. Pursuant to what is now VTL § 311, the Superintendent of Insurance (now the Superintendent of Financial Services) promulgated Regulation 35 on July 25, 1956. Effective January 1, 1959, Regulation 35-A repealed and replaced Regulation 35. Regulation 35-A was codified as 11 NYCRR 60, and subsequently renumbered as 11 NYCRR 60-1. Insurance Regulation 35-A establishes the minimum requirements for an owner's policy of liability insurance for vehicles registered in New York. Starting in 1958, with the addition of uninsured motorist coverage to IL § 167, now § 3420, New York's minimum requirements for motor vehicle insurance have expanded, including no-fault coverage under IL Article 51, rental vehicle coverage under IL § 3440, and mandatory offers for under supplementary uninsured/underinsured motorists insurance and other requirements. These coverages together provide comprehensive protection to not only the owners and operators of New York registered motor vehicles when used anywhere in the United States and Canada, but also any innocent third-parties who may be hurt or whose property is damaged by the use or operation of such vehicles.

While the law and regulations have allowed limited exceptions, in general, the insured would be protected by the owner's policy of liability insurance for any proper use of a vehicle would have insurance in place. In addition, while motor vehicle physical damage insurance is not required statutorily, there are numerous laws and regulations applying to these types of policies.

In recognizing TNCs in New York, Part AAA has established a new paradigm for motor vehicle financial responsibility requirements. For the first time, the permissible use of a New York motor vehicle will be subject to not just one policy, but a minimum of two and potentially more policies. While an insured's Article 6 owner's policy of financial responsibility must always be in place for the vehicle, it may exclude coverage when used as a TNC. Article 44-B has different insurance requirements during the two periods when the TNC must demonstrate that insurance is in place. Period 1 is when the driver is logged onto a transportation network company's digital network but is not engaged in a transportation network company prearranged trip. Period 2 is when the driver is engaged in a prearranged trip, which begins when the TNC driver accepts a passenger's request for a trip through the TNC's digital network and continues while the TNC transports the passenger in a TNC vehicle and ends when the last requesting passenger departs from the TNC vehicle.

When the vehicle is used or operated as a TNC vehicle, the TNC must have one or more group insurance policies in place to provide the coverage either under a primary or excess basis. It is anticipated that most underlying Article 6 insurers will exclude coverage, as permitted under the law. However, some insurers may choose to provide coverage under the driver's own Article 6 policy or as a separate policy.

The Superintendent was authorized by Article 44-B to promulgate regulations implementing the article's insurance requirements. Because of the complex layers of coverage now available, regulations are necessary to ensure that minimum insurance requirements are in place at all times with appropriate protections in order to protect the drivers and owners of the vehicles, as well as the general public. In addition, existing regulations must be modified to address the new Article 44-B coverage. To that end, a number of existing regulations were amended and a new regulation added to recognize that insurers may exclude coverage when the vehicle is used or operated as a TNC vehicle in Period 1 or 2; while also providing that coverage is afforded when required in such periods under a policy being used to satisfy Article 44-B requirements; and to coordinate such policies to prevent any gap in coverage. In addition, while only an authorized insurer may write an owner's policy of liability insurance under Articles 6 and 8, Article 44-B specifically recognizes that an unauthorized insurer may provide the coverage under the TNC group policy when the policy is placed through a New York licensed excess line broker and the coverage is unavailable from an authorized insurer. Accordingly, the regulations address the placement of coverage in the excess line market. While excess line insurers are excepted from certain of New York's laws, since they are providing financial responsibility insurance, the regulations make certain provisions applicable with respect to TNC group policies.

4. Costs: Costs to insurers will include the costs involved in filing new policy rates and forms. No insurer is required to submit new forms. While it is not expected that there will be many group insurance policy forms and rates filed, most insurers writing motor vehicle insurance may file exclusions to their policies for TNC use and some insurers may file endorsements expressly providing the coverage. In many cases, insurers may simply make the filings at the same as other rate and form filings, and thus minimize the costs of an additional filing.

The regulations require that certain notices be provided to insureds. Most notably, insurers writing motor vehicle insurance must provide notices to their insureds regarding whether the policies provide coverage when the vehicles are used as TNC vehicles and, if so, to what extent. In addition, the required notices under 11 NYCRR 60-3 (Insurance Regulation 35-E) are extended to policies providing coverage under new Vehicle and Traffic Law Article 44-B. Since these notices are to be provided when the policy is first issued and upon every renewal, it is not anticipated that these notices will add a significant cost to the insurers.

The regulations also implement the statutory requirements that they cooperate in sharing information with respect to accidents involving TNC vehicles. While there may be a cost to doing this, it should be minimal and would depend on how many times the insurer would be called on to share the information. In any event, the sharing requirement is imposed by the statute.

If an excess line broker is used to place the group policy, the broker is required to provide a written affirmation annually of the unavailability of coverage from an authorized insurer. This should present no significant additional costs to the broker since it should be communicating with the group policyholder anyway. The regulation also requires that the broker obtain certain commitments from the unauthorized insurer, but that too should not be a significant cost to the broker.

The main cost to the Department will be to review the new policy rates and forms that insurers may file to implement Part AAA of Chapter 59 of the Laws of 2017. While it is not expected that there will be many group insurance policy forms and rates filed, most insurers writing motor vehicle insurance may file exclusions to their policies for TNC use and some insurers may file endorsements expressly providing the coverage. The Department anticipates that existing personnel and line titles will handle all such filings.

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: As discussed under costs, the regulations require certain new notices to be provided to insureds. No new filings with or submissions to the Department are required.

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

8. Alternatives: No significant alternatives were considered.

9. Federal standards: There are no federal standards.

10. Compliance schedule: Part AAA of Chapter 59 of the Laws of 2017 takes effect on June 29, 2017. In order to facilitate the orderly implementation of the new law, the Superintendent is promulgating these regulations on an emergency basis.

Consolidated Regulatory Flexibility Analysis

1. Effect of rule: These rules amend existing requirements applicable to motor vehicle insurance and adopt new rules governing policies providing coverage pursuant to Vehicle and Traffic Law ("VTL") Article 44-B and new Insurance Law ("IL") section 3455. These rules apply to insurers providing motor vehicle insurance in New York.

Industry has asserted in the past that certain insurers, in particular mutual insurers, subject to the rule fall within the definition of a "small business" as defined by State Administrative Procedure Act § 102(8) because in general they are independently owned and have fewer than 100 employees.

Certain provisions of the rules also apply to excess line brokers. There are approximately 1,238 business entities and 2,392 individuals licensed as excess line brokers. Many of these may be small businesses but we do not know how many may be.

Total – 3,630

2. Compliance requirements: No local government will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the rule because the rule does not apply to any local government.

For the most part, the regulations do not impose any new reporting or recordkeeping requirement. Authorized insurers that wish to write transportation network company ("TNC") policies will have to comply with the usual filing and approval requirements under the Insurance Law for such policies. Insurers will also have to comply with the requirements regarding sharing of information with respect to accidents involving TNC vehicles. The regulation does require that insurers writing motor vehicle insurance policies provide a notice upon issuance and renewal regarding whether and, if so, to what extent, the policies provide coverage when the vehicle is used or operated as a TNC vehicle.

If an excess line broker is used to place the group policy, the broker is required to provide a written affirmation annually of the unavailability of coverage from an authorized insurer. The regulation also requires that the broker obtain certain commitments from the unauthorized insurer, but that too should not be a significant cost to the broker.

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

4. Compliance costs: While it is not expected that there will be many group insurance policy forms and rates filed, most insurers writing motor vehicle insurance may file exclusions to their policies for TNC use and some insurers may file endorsements expressly providing the coverage. In many cases, insurers may simply make the filings at the same as other rate and form filings, and thus minimize the costs of an additional filing.

Since these notices to the insureds are to be provided when the policy is first issued and upon every renewal, it is not anticipated that these notices will add a significant cost to the insurers.

While there may be a cost to the insurers having to share information, it should be minimal and would depend on how many times the insurer would be called on to share the information. In any event, the sharing requirement is imposed by the statute.

It is not anticipated that the additional notices and other requirements on excess line brokers would be a significant cost to the broker.

5. Economic and technological feasibility: This rule does not apply to any local government; therefore, no local government should experience any economic or technological impact as a result of the rule. No insurer that is a small business affected by this rule, if any, should experience any economic or technological impact as a result of the rule.

6. Minimizing adverse impact: There will not be an adverse impact on any local government because the rule does not apply to any local government. This rule should not have an adverse impact on an insurer that is a small business affected by the rule, if any, because the rule uniformly affects all insurers that are subject to the rule.

7. Small business and local government participation: In drafting the emergency regulations, the Department discussed the draft with interested parties, including those that represent small businesses. Small businesses and local governments will have a further opportunity to participate in the rule-making process when the proposed rule is published in the State Register and posted on the Department of Financial Services' website.

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 any 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: Interested parties, including those located in rural areas, will have an opportunity to participate in the rule-making process when the proposed rule is published in the State Register and posted on the Department of Financial Services' website.

Job Impact Statement

The Department of Financial Services finds that these rules should have no negative impact on jobs and employment opportunities. The rules implement Part AAA of Chapter 59 of the Laws of 2017, which recognize the operation of transportation network companies (TNC), to operate prearranged trips in New York and help ensure that the public will have appropriate insurance protection when utilizing a TNC vehicle. Part AAA should increase employment opportunities in New York as has been the case elsewhere in the country where TNCs operate.

NOTICE OF ADOPTION

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

I.D. No. DFS-06-17-00014-A

Filing No. 390

Filing Date: 2017-06-05

Effective Date: 60 days after filing

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

Action taken: Addition of sections 52.1(p), 52.2(y) and 52.16(o) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 3201, 3217, 3221, 4235, 4237 and 4303

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

Purpose: To ensure that medically necessary abortion coverage is maintained for all insureds.

Text of final rule: Subdivision 52.1(p) is added as follows:

(p)(1) Subject to certain limited exceptions, Insurance Law section 3217 and regulations promulgated thereunder (section 52.16(c) of this Part) have long prohibited health insurance policies from limiting or excluding coverage based on type of illness, accident, treatment or medical condition. None of the exceptions apply to medically necessary abortions. As a result, insurance policies that provide hospital, surgical, or medical expense coverage are required to include coverage for abortions that are medically necessary.

(2) Section 52.16(o) of this Part makes explicit that group and blanket insurance policies that provide hospital, surgical, or medical expense coverage delivered or issued for delivery in this State shall not exclude coverage for medically necessary abortions. Section 52.16(o) of this Part also provides for an optional, limited exemption for religious employers as provided in that section while ensuring that coverage is maintained for any insured seeking a medically necessary abortion.

Subdivision 52.2(y) is added as follows:

(y) Religious employer means an entity for which each of the following is true:

(1) The inculcation of religious values is the purpose of the entity.

(2) The entity primarily employs persons who share the religious tenets of the entity.

(3) The entity serves primarily persons who share the religious tenets of the entity.

(4) The entity is a nonprofit organization as described in Section 6033(a)(2)(A)i or iii, of the Internal Revenue Code of 1986, as amended.

Subdivision 52.16(o) is added as follows:

(o)(1) No policy delivered or issued for delivery in this State that provides hospital, surgical, or medical expense coverage shall limit or exclude coverage for abortions that are medically necessary. Coverage for in-network abortions that are medically necessary shall not be subject to copayments, or coinsurance, or annual deductibles, unless the policy is a high deductible health plan as defined in section 223(c)(2) of the Internal Revenue Code in which case coverage for medically necessary abortions may be subject to the plan's annual deductible.

(2) Notwithstanding any other provision of this Part, a group or blanket policy that provides hospital, surgical, or medical expense coverage delivered or issued for delivery in this State to a religious employer may exclude coverage for medically necessary abortions only if the insurer:

(i) obtains an annual certification from the group or blanket policyholder or contract holder that the policyholder or contract holder is a religious employer and that the religious employer requests a contract without coverage for medically necessary abortions;

(ii) issues a rider to each certificate holder (i.e., primary insured) at no premium to be charged to the certificate holder (i.e., primary insured)

or religious employer for the rider, that provides coverage for medically necessary abortions subject to the same rules as would have been applied to the same category of treatment in the policy issued to the religious employer. The rider must clearly and conspicuously specify that the religious employer does not administer medically necessary abortion benefits, but that the insurer is issuing a rider for coverage of medically necessary abortions, and shall provide the insurer's contact information for questions; and

(iii) provides notice of the issuance of the policy and rider to the superintendent in a form and manner acceptable to the superintendent.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 52.1(p)(2), 52.2(y)-(aa) and 52.16(o).

Text of rule and any required statements and analyses may be obtained from: Nathaniel Dorfman, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 709-5538, email: Nathaniel.Dorfman@dfs.ny.gov

Revised Regulatory Impact Statement

1. Statutory authority: Financial Services Law ("FSL") Sections 202 and 302 and Insurance Law ("IL") Sections 301, 3201, 3217, 3221, 4235, 4237, and 4303.

FSL Section 202 establishes the office of the Superintendent of Financial Services ("Superintendent"). FSL Section 302 and IL Section 301, in pertinent part, authorize the Superintendent to prescribe regulations interpreting the IL and to effectuate any power granted to the Superintendent in the IL, FSL, or any other law.

IL Section 3201 subjects policy forms to the Superintendent's approval.

IL Section 3217 authorizes the Superintendent to issue regulations to establish minimum standards, including standards for full and fair disclosure, for the form, content and sale of accident and health insurance policies and subscriber contracts of corporations organized under IL Article 32 and Article 43, and Public Health Law Article 44.

IL Section 3221 prohibits a policy of group or blanket accident and health insurance, except as provided in IL Section 3221(d), to be delivered or issued for delivery in New York unless it contains in substance the provisions set forth therein or provisions that are in the opinion of the Superintendent more favorable to the holders of such certificates or not less favorable to the holders of such certificates and more favorable to policyholders.

IL Section 4235 defines a group accident insurance policy, group health insurance policy, and group accident and health insurance policy.

IL Section 4237 defines a blanket accident insurance policy, blanket health insurance policy, and blanket accident and health insurance policy.

IL Section 4303 sets forth the benefits that every contract issued by a hospital service corporation or health service coverage must provide.

2. Legislative objectives: IL Section 3217 authorizes the Superintendent to issue regulations to establish minimum standards, including standards for full and fair disclosure, for the form, content and sale of accident and health insurance policies and subscriber contracts of corporations organized under IL Article 32 and Article 43, and Public Health Law Article 44. 11 NYCRR 52 (Insurance Regulation 62) was promulgated pursuant to this Section, and Section 52.16(c) of Regulation 62 prohibits a policy or contract from limiting or excluding coverage by type of illness, accident, treatment, or medical condition, except in certain limited circumstances.

This amendment accords with the public policy objectives that the Legislature sought to advance in IL Section 3217 by making explicit that individual, group and blanket accident insurance policies and contracts that provide hospital, surgical, or medical expense coverage delivered or issued for delivery in New York may not exclude coverage for medically necessary abortions and must provide such coverage at no cost sharing. The amendment also provides for an optional, limited exemption for religious employers while ensuring that medically necessary abortion coverage is maintained for any insured of a policy issued to a religious employer at no additional cost to the insured.

3. Needs and benefits: Section 52.16(c) of Regulation 62 already prohibits a policy or contract from limiting or excluding coverage by type of illness, accident, treatment, or medical condition, except in certain limited circumstances. None of the exceptions apply to medically necessary abortions. As a result, insurance policies and contracts that provide hospital, surgical, or medical expense coverage must include coverage for medically necessary abortions. This amendment makes explicit that individual, group and blanket accident insurance policies and contracts that provide hospital, surgical, or medical expense coverage delivered or issued for delivery in New York may not exclude coverage for medically necessary abortions and must provide such coverage at no cost sharing.

In addition, the amendment provides for an optional, limited exemption for religious employers. However, the amendment still ensures that medically necessary abortion coverage is maintained for any insured of a policy issued to a religious employer at no additional cost to the insured by requiring an insurer to issue a rider to each certificate holder of a policy issued to the religious employer that provides coverage for medically necessary abortions, at no premium to be charged to the certificate holder or religious employer.

4. Costs: Since insurers already are required to provide coverage for medical necessary abortions, insurers should not need to incur costs to file new policy or contract forms with the Superintendent. Insurers may incur costs to obtain annual certifications from religious employers that wish to exclude coverage for medically necessary abortions and to issue riders to each certificate holder at no premium to be charged to the certificate holder or religious employer under policies and contracts issued to such religious employers. However, these additional costs should be minimal.

This amendment is unlikely to impose compliance costs on the Department of Financial Services ("Department"). Any costs to the Department should be minimal and the Department expects to absorb the costs in its ordinary budget.

This amendment will not impose compliance costs on state or local governments.

5. Local government mandates: This regulation does impose a new mandate on any county, city, town, village, school district, ﬁre district or other special district.

6. Paperwork: Insurers may need to obtain annual certifications from religious employers that wish to exclude coverage for medically necessary abortions and issue riders that provide coverage for medically necessary abortions at no additional premium to each certificate holder of a policy issued to such a religious employer.

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

8. Alternatives: The Department considered adding an exemption for "qualified religious organization employer" but decided to use the current exemption because it is more analogous to existing state law.

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

10. Compliance schedule: The regulation will take effect 60 days after publication of the Notice of Adoption in the State Register.

Revised Regulatory Flexibility Analysis

1. Effect of rule: This amendment to the regulation applies to insurers in New York State that provide hospital, surgical, or medical expense coverage. Although most insurers are not small businesses, industry has asserted previously that certain insurers, in particular mutual insurers, subject to the regulation are small businesses but has not provided the Department of Financial Services ("Department") with specific insurers or the number of such entities. The amendment does not apply to local governments.

2. Compliance requirements: Since insurers that are small businesses already are required to provide coverage for medical necessary abortions, insurers should not need to file new policy or contract forms with the Superintendent of Financial Services ("Superintendent"). Any insurer that is a small business may need to file new policy or contract forms for any religious employer that wishes to exclude coverage for medically necessary abortions and would then need to issue riders providing coverage for medically necessary abortions to each certificate holder at no premium to be charged to the certificate holder or religious employer under policies and contracts issued to such religious employers.

No local government will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the regulation.

3. Professional services: It is not anticipated that any insurer that is a small business affected by this amendment will need to retain professional services, such as lawyers or auditors, to comply with this amendment.

4. Compliance costs: Since insurers that are small businesses already are required to provide coverage for medical necessary abortions, insurers should not need to incur costs to file new policy or contract forms with the Superintendent. Insurers that are small businesses may incur costs to file new policy or contract forms and obtain annual certifications from religious employers that wish to exclude coverage for medically necessary abortions and to issue riders to each certificate holder at no premium to be charged to the certificate holder or religious employer under policies and contracts issued to such religious employers. The Department has no current basis to estimate such additional costs but expects that any additional costs will be minimal.

5. Economic and technological feasibility: No insurer that is a small business affected by this amendment should experience any economic or technological impact as a result of the amendment.

6. Minimizing adverse impact: The Department considered the criteria in State Administrative Procedures Act ("SAPA") Section 202-b(1) but the Department could not design the amendment to minimize any adverse impact on insurers that are small businesses because: (A) insureds covered under policies and contracts issued by these insurers would not have the coverage to which insureds covered under policies and contracts issued by other insurers would be entitled; and (2) religious employers with policies

and contracts issued by these insurers would not have access to the optional, limited exemption to which other religious employers covered under policies and contracts issued by other insurers would be entitled.

7. Small business and local government participation: The Department complied with SAPA Section 202-b(6) by publishing the proposed amendment in the State Register and posting the proposed amendment on the Department's website.

Revised Rural Area Flexibility Analysis

The Department of Financial Services finds that this amendment, which (1) makes explicit that individual, group and blanket insurance policies and contracts may not exclude coverage for medically necessary abortions and must provide such coverage at no cost sharing, and (2) provides an optional, limited exemption for religious employers while ensuring that medically necessary abortion coverage is maintained for all insureds at no premium to be charged to the certificate holder or religious employer, does not impose any additional burden on persons located in rural areas, and will not have an adverse impact on rural areas. This amendment applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State. This amendment will not impose any additional costs on rural areas.

Revised Job Impact Statement

The Department of Financial Services finds that this amendment should have no negative impact on jobs or employment opportunities in this state. The amendment makes explicit that individual, group and blanket insurance policies and contracts that provide hospital, surgical, or medical expense coverage delivered or issued for delivery in New York may not exclude coverage for medically necessary abortions and must provide such coverage at no cost sharing. It also provides for an optional, limited exemption for religious employers while ensuring that medically necessary abortion coverage is maintained for all insureds at no premium to be charged to the certificate holder, religious employer, or qualified religious organization employer.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Department of Financial Services ("Department") received comments from two hundred and sixty nine interested persons in response to its proposed amendment to Insurance Regulation 62, some of which were incorporated into the rulemaking, discussed below.

Comment:

The vast majority of commenters requested that the Department limit the proposed exemption for religious employers and qualified religious organization employers contained in proposed subdivision 52.1(p), on the ground that such a broad exemption is not required by law. Most requested that the Department utilize only the religious employer exemption contained in the Women's Health and Wellness Act ("WHWA"). Some commenters called for the elimination of any exemption for any religious employers, asserting that New York law does not require an exemption. One commenter asserted that the religious exemption did not go far enough and should be strengthened.

Response:

In response to the hundreds of comments related to the exemption for religious employers, the Department has decided to modify the proposed amendment to reflect an approach offered by a majority of commenters and which balances the substantial interest of the state in providing meaningful access to health care services, the interests of religious employers, and the constitutional rights of women. The Department has directly incorporated the religious employer exemption from the WHWA and has removed any additional exemptions.

Neither State nor Federal law requires the Department to offer an exemption from this neutral regulation of general applicability. However, recognizing that the legislature saw fit, in enacting the WHWA, to provide a limited exemption for houses of worship and similar entities in the sphere of reproductive care and that this regulation nevertheless provides all insured women with access to contraceptive care, the Department has concluded that utilizing the same exemption in the context of abortion coverage is appropriate and provides adequate protection of both the rights of women and religious employers in New York.

While individuals and organizations have recently invoked the federal Religious Freedom Restoration Act ("RFRA") to assert religious objection to federal regulations of general applicability, most notably in the United States Supreme Court case of Burwell v. Hobby Lobby Stores, Inc., the RFRA does not apply to state law or regulation. The Department has determined that the interests of ensuring access to reproductive care, fostering equality between the sexes, providing women with better health care, and the disproportionate impact of a lack of access to reproductive health services on women in low income families weighs far more heavily than the interest of business corporations to assert religious beliefs in the provision of health insurance to their employees. This is especially true in that these businesses are making decisions about health insurance coverage for their employees, where employees have little to no power in guiding the decision and are not required to agree with the employer's religious beliefs.

Accordingly, the Department has maintained the religious employer exemption modeled after the WHWA but has eliminated the added exemption for other groups that was contained in the proposed regulation, but not in WHWA or otherwise found in New York law. This change is consistent with the requests of over two hundred commenters.

Comment:

One commenter requested that the Department eliminate the requirement that religious employers certify that they have religious objection to medically necessary abortions to receive the exemption. The commenter suggests that this requirement goes beyond the WHWA's requirement for an exemption from contraceptive coverage, where a religious employer need only request a policy without coverage.

Response:

The Department has made the suggested change as it achieves the Department's purpose of aligning the religious employer exemption under the proposed amendment with the WHWA exemption, in order to align coverage for medically necessary abortion services consistent with other reproductive health coverage in New York.

Comment:

Two commenters requested the Department to add language that indicates that the medical necessity determination is one which is solely within the discretion of the insured's physician.

Response:

Medical necessity determinations are regularly made in the normal course of insurance business by a patient's health care provider in consultation with the patient, subject to the utilization review and external appeal procedures in Article 49 of the Insurance Law and Article 49 of the Public Health Law. The Department has therefore clarified the proposed amendment to incorporate this standard and to also explicitly state that determinations of medical necessity cannot be made or impacted by any other individual including, without limitation, a patient's employer or the group policyholder or contract holder covering the patient.

Comment:

In a number of different contexts a few commenters asserted concerns over the proposed rider system for insureds whose employer qualifies for an exemption. These commenters suggested that the rider system does not adequately protect access to reproductive care.

Response:

With the changes made to the religious employer exemption the Department believes that the rider system will be utilized sparingly. Given that the rider must be provided at no cost to the insured and that the insured automatically receives the rider, the Department believes that the rider system as contained in the proposed amendment provides adequate protection of medically necessary abortion coverage while balancing the concerns of certain religious employers with an objection to providing medically necessary abortion coverage. The Department notes that a similar system, applicable to the same religious employers, works in the context of contraception. Therefore, the Department did not adopt any changes to the mechanics of the rider system in the rulemaking. The Department will utilize its full authority to ensure that woman have the insurance coverage required by law.

Comment:

One commenter requested that the Department delay the publication of the final regulation until November to align the effective date with the beginning of the calendar year. The commenter suggested that this would allow plans time to operationalize the regulation's requirements.

Response:

Existing policies must already include coverage for medically necessary abortions, and the new rules included in the proposed regulation will not impair existing policies or contracts. The Department has provided clarifying language in the rulemaking that further explains the amendment does not impair contracts in force and applies to policies and contracts issued, renewed, modified or amended after the effective date of the amendment.

Comment:

A limited number of commenters suggested that the proposed regulation exceeds the Department's authority. One commenter suggested that the Department lacked authority to promulgate this regulation at all. The commenter argued that Insurance Law Section 3217 limits the Department's ability to regulate as to minimum standards of health insurance policies to the five enumerated purposes set forth in subsection (b) of that statute. The commenter goes on to argue that Health Insurance Associa-

tion of America v. Corcoran is directly on point to the Department's regulatory authority under Section 3217 and precludes this regulation. One additional commenter suggested that the requirement that medically necessary abortions be covered at no cost exceeds the Department's authority.

Response:

The State Administrative Procedures Act does not require the Department to respond to conclusory legal arguments in the context of an Assessment of Public Comment. Nonetheless, construing these challenges to the Department's authority as a suggested alternative to the proposed amendment, namely that the Department do nothing, the Department rejects the suggestion.

The Department has determined that it is necessary that this amendment be made to protect consumers of health insurance products. Medically necessary abortion coverage is already required under the Insurance Law through regulations requiring coverage of all medically necessary surgeries, doctor visits, and prescriptions. To avoid consumer confusion and to provide clarity surrounding this coverage, the Department, in response to concerns observed in the markets that inconsistent plan application of the coverage for medically necessary abortions was leading to improper coverage exclusion and consumer misunderstanding, has proposed this necessary amendment to Regulation 62, which will provide clarity and simplification surrounding the coverage, and will align it more uniformly with other coverage for reproductive care in New York. The Department has authority to prescribe regulations and in doing so may interpret statutes: the amendment is entirely consistent with Section 3217 and with the public policy of ensuring and advancing women's full access to health care services, in particular reproductive care, which the Legislature has consistently set forth in the Insurance Law.

Indeed the elimination of cost sharing for medically necessary abortions and the religious employer exemption are taken directly from aspects of the Insurance Law where the Legislature signaled New York public policy of providing and advancing comprehensive reproductive and family planning coverage for women without cost sharing. The Department has the authority to promulgate this amendment, and has determined that this amendment is necessary to implement New York's policy and law supporting women's full access to health care services.

Comment:

One insurer commenter asked for clarification as to whether the rider required by this amendment could be bundled with other religious riders found in the group markets.

Response:

Given the important differences between this rider and other coverage riders, the Department has determined that a rider issued pursuant to an authorized exemption contained in the amendment may not be combined with other religious riders. Importantly, the rider for medically necessary abortion coverage must be provided at no charge to the insured and must be provided immediately. To combine the rider for medically necessary abortion coverage with other riders, such as a rider under the contraceptive mandate of the WHWA, which need only be offered, not provided, and must be paid for by the employee, presents too much potential for consumer confusion and insurer abuse.

Comment:

One insurer commenter requested that the Department modify the proposed amendment to allow all riders offered under the religious employer exemption to be uniform. Specifically, the commenter suggested that all riders provide medically necessary abortion services at no cost sharing, even plans that are HSA-eligible. The commenter suggests that without this change there will be a substantial administrative burden with a large number of different riders being required.

Response:

Given the changes to the religious employer exemption contained in the rulemaking, the Department does not share the concern that there will be a substantial administrative burden. As with the WHWA exemption, the burden on insurers to facilitate the limited rider system will be minimal. As the revisions contained in the rulemaking reduce the likelihood of varying riders, the Department did not adopt the commenter's suggested modification to the rulemaking.

Comment:

One commenter sought clarification from the Department whether an insurer has the discretion to permit the religious employer to use the exemption. The commenter drew from the language of the proposed amendment to suggest that the religious employer would request the exemption and the insurer has the discretion whether or not to grant it.

Response:

The discretion to avail themselves of the religious employer exemption rests with the religious employer, provided that the religious employer meets all requirements of the exemption. An insurer who is otherwise permitted to decline to write a policy may decline to write a policy that excludes coverage for medically necessary abortions, but does not have discretion whether or not to grant an exemption under the amendment if the requirements are met. The Department has determined that no further clarifying changes to the proposed amendment are necessary.

Department of Health

EMERGENCY RULE MAKING

Lead Testing in School Drinking Water

I.D. No. HLT-20-17-00013-E
Filing No. 386
Filing Date: 2017-06-01
Effective Date: 2017-06-01

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

Action taken: Addition of Subpart 67-4 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 1370-a and 1110

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

Specific reasons underlying the finding of necessity: Lead exposure is associated with impaired cognitive development in children. The known adverse health effects for children from lead exposure include reduced IQ and attention span, learning disabilities, poor classroom performance, hyperactivity, behavioral problems, and impaired growth. Although measures can be taken to help children overcome any potential impairments on cognition, the effects are considered irreversible.

Lead can enter drinking water from the corrosion of plumbing materials. Facilities such as schools, which have intermittent water use patterns, may have elevated lead concentration due to prolonged water contact with plumbing material. This source is increasingly being recognized as an important relative contribution to a child's overall lead exposure. Recent voluntary testing by school districts in New York State and other jurisdictions demonstrate the need to provide clear direction to schools on the requirements and procedures to sample drinking water for lead.

Every school should supply drinking water to students that meets or exceeds federal and state standards and guidelines. Although the federal Environmental Protection Agency ("EPA") has established a voluntary testing program—known as the "3Ts for Reducing Lead in Drinking Water in Schools"—there is no federal law that requires schools to test their drinking water for lead or that requires an appropriate response, if lead is determined to be present in school drinking water.

To help ensure that children are protected from lead exposure while in school, the Commissioner of Health has determined it necessary to file these regulations on an emergency basis. State Administrative Procedure Act § 202(6) empowers the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest.

Subject: Lead Testing in School Drinking Water.

Purpose: Requires lead testing and remediation of potable drinking water in schools.

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by Public Health Law sections 1370-a and 1110, Subpart 67-4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is added, to be effective upon filing with the Secretary of State, to read as follows:

SUBPART 67-4: Lead Testing in School Drinking Water

Section 67-4.1 Purpose.

This Subpart requires all school districts and boards of cooperative educational services, including those already classified as a public water system under 10 NYCRR Subpart 5-1, to test potable water for lead contamination and to develop and implement a lead remediation plan, where applicable.

Section 67-4.2 Definitions.

As used in this Subpart, the following terms shall have the stated meanings:

(a) Action level means 15 micrograms per liter (µg/L) or parts per billion (ppb). Exceedance of the action level requires a response, as set forth in this Subpart.

(b) Building means any structure, facility, addition, or wing of a school

that may be occupied by children or students. The terms shall not include any structure, facility, addition, or wing of a school that is lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(c) Commissioner means the State Commissioner of Health.

(d) Department means the New York State Department of Health.

(e) Outlet means a potable water fixture currently or potentially used for drinking or cooking purposes, including but not limited to a bubbler, drinking fountain, or faucets.

(f) Potable water means water that meets the requirements of 10 NYCRR Subpart 5-1.

(g) School means any school district or board of cooperative educational services (BOCES).

Section 67-4.3 Monitoring.

(a) All schools shall test potable water for lead contamination as required in this Subpart.

(b) First-draw samples shall be collected from all outlets, as defined in this Subpart. A first-draw sample volume shall be 250 milliliters (mL), collected from a cold water outlet before any water is used. The water shall be motionless in the pipes for a minimum of 8 hours, but not more than 18 hours, before sample collection. First-draw samples shall be collected pursuant to such other specifications as the Department may determine appropriate.

(c) Initial first-draw samples.

(1) For existing buildings in service as of the effective date of this regulation, schools shall complete collection of initial first-draw samples according to the following schedule:

(i) for any school serving children in any of the levels prekindergarten through grade five, collection of samples is to be completed by September 30, 2016;

(ii) for any school serving children in any of the levels grades six through twelve that are not also serving students in any of the levels prekindergarten through grade five, and all other applicable buildings, collection of samples is to be completed by October 31, 2016.

(2) For buildings put into service after the effective date of this regulation, initial first-draw samples shall be performed prior to occupancy; provided that if the building is put into service between the effective date of this regulation but before October 31, 2016, the school shall have 30 days to perform first-draw sampling.

(3) Any first-draw sampling conducted consistent with this Subpart that occurred after January 1, 2015 shall satisfy the initial first-draw sampling requirement.

(d) Continued monitoring. Schools shall collect first-draw samples in accordance with subdivision (b) of this section again in 2020 or at an earlier time as determined by the commissioner. Schools shall continue to collect first-draw samples at least every 5 years thereafter or at an earlier time as determined by the commissioner.

(e) All first-draw samples shall be analyzed by a laboratory approved to perform such analyses by the Department's Environmental Laboratory Approval Program (ELAP).

Section 67-4.4 Response.

If the lead concentration of water at an outlet exceeds the action level, the school shall:

(a) prohibit use of the outlet until:

(1) a lead remediation plan is implemented to mitigate the lead level of such outlet; and

(2) test results indicate that the lead levels are at or below the action level;

(b) provide building occupants with an adequate supply of potable water for drinking and cooking until remediation is performed;

(c) report the test results to the local health department as soon as practicable, but no more than 1 business day after the school received the laboratory report; and

(d) notify all staff and all persons in parental relation to students of the test results, in writing, as soon as practicable but no more than 10 business days after the school received the laboratory report; and, for results of tests performed prior to the effective date of this Subpart, within 10 business days of this regulation's effective date, unless such written notification has already occurred.

Section 67-4.5 Public Notification.

(a) List of lead-free buildings. By October 31, 2016, the school shall make available on its website a list of all buildings that are determined to be lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(b) Public notification of testing results and remediation plans.

(1) The school shall make available, on the school's website, the results of all lead testing performed and lead remediation plans implemented pursuant to this Subpart, as soon as practicable, but no more than 6 weeks after the school received the laboratory reports.

(2) For schools that received lead testing results and implemented lead remediation plans in a manner consistent with this Subpart, but prior to the effective date of this Subpart, the school shall make available such information, on the school's website, as soon as practicable, but no more than 6 weeks after the effective date of this Subpart.

Section 67-4.6 Reporting.

(a) As soon as practicable but no later than November 11, 2016, the school shall report to the Department, local health department, and State Education Department, through the Department's designated statewide electronic reporting system:

(1) completion of all required first-draw sampling;

(2) for any outlets that were tested prior to the effective date of this regulation, and for which the school wishes to assert that such testing was in substantial compliance with this Subpart, an attestation that:

(i) the school conducted testing that substantially complied with the testing requirements of this Subpart, consistent with guidance issued by the Department;

(ii) any needed remediation, including re-testing, has been performed;

(iii) the lead level in the potable water of the applicable building(s) is currently below the action level; and

(iv) the school has submitted a waiver request to the local health department, in accordance with Section 67-4.8 of this Subpart; and

(3) a list of all buildings that are determined to be lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(b) As soon as practicable, but no more than 10 business days after the school received the laboratory reports, the school shall report data relating to test results to the Department, local health department, and State Education Department, through the Department's designated statewide electronic reporting system.

Section 67-4.7 Recordkeeping.

The school shall retain all records of test results, lead remediation plans, determinations that a building is lead-free, and waiver requests, for ten years following the creation of such documentation. Copies of such documentation shall be immediately provided to the Department, local health department, or State Education Department, upon request.

Section 67-4.8 Waivers.

(a) A school may apply to the local health department for a waiver from the testing requirements of this Subpart, for a specific school, building, or buildings, by demonstrating in a manner and pursuant to standards determined by the Department, that:

(1) prior to the publication date of these regulations, the school conducted testing that substantially complied with the testing requirements of this Subpart;

(2) any needed remediation, including re-testing, has been performed; and

(3) the lead level in the potable water of the applicable building(s) is currently below the action level.

(b) Local health departments shall review applications for waivers for compliance with the standards determined by the Department. If the local health department recommends approval of the waiver, the local health department shall send its recommendation to the Department, and the Department shall determine whether the waiver shall be issued.

Section 67-4.9 Enforcement.

(a) Upon reasonable notice to the school, an officer or employee of the Department or local health department may enter any building for the purposes of determining compliance with this Subpart.

(b) Where a school does not comply with the requirements of this Subpart, the Department or local health department may take any action authorized by law, including but not limited to assessment of civil penalties as provided by law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-20-17-00013-P, Issue of May 17, 2017. The emergency rule will expire July 30, 2017.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authorities for the proposed regulation are set forth in Public Health Law (PHL) §§ 1110 and 1370-a. Section 1110 of the PHL directs the Department of Health (Department) to promulgate regulations regarding the testing of potable water provided by school districts and boards of cooperative education services (BOCES) (collectively, "schools") for lead contamination. Section 1370-a of the PHL authorizes the Department to establish programs and coordinate activities to prevent lead poisoning and to minimize the risk of exposure to lead.

Legislative Objective:

The legislative objective of PHL § 1110 is to protect children by requiring schools to test their potable water systems for lead contamination. Similarly, PHL § 1370-a authorizes the Department to establish programs and coordinate activities to prevent lead poisoning and to minimize the risk of exposure to lead. Consistent with these objectives, this regulation adds a new Subpart 67-4 to Title 10 of the New York Codes, Rules, and Regulations, establishing requirements for schools to test their potable water outlets for lead contamination.

Needs and Benefits:

Lead is a toxic material that is harmful to human health if ingested or inhaled.

Children and pregnant women are at the greatest risk from lead exposure. Scientists have linked lead exposure with lowered IQ and behavior problems in children. It is also possible for lead to be stored in bones and it can be released into the bloodstream later in life, including during pregnancy. Further, during pregnancy, lead in the mother's bloodstream can cross the placenta, which can result in premature birth and low birth weight, as well as problems with brain, kidney, or nervous system development, and learning and behavior problems. Studies have also shown that low levels of lead can negatively affect adults, leading to heart and kidney problems, as well as high blood pressure and nervous system disorders.

Lead is a common metal found in the environment. The primary source of lead exposure for most children is lead-based paint. However, drinking water is another source of lead exposure due to the lead content of certain plumbing materials and source water.

Laws now limit the amount of lead in new plumbing materials. However, plumbing materials installed prior to 1986 may contain significant amounts of lead. In 1986, the federal government required that only "lead-free" materials be used in new plumbing and plumbing fixtures. Although this was a vast improvement, the law still allowed certain fixtures with up to 8 percent lead to be labeled as "lead free." In 2011, amendments to the Safe Drinking Water Act appropriately re-defined the definition of "lead-free." Although federal law now appropriately defines "lead-free," some older fixtures can still leach lead into drinking water.

Elevated lead levels are commonly found in the drinking water of school buildings, due to older plumbing and fixtures and intermittent water use patterns. Currently, only schools that have their own public water systems are required to test for lead contamination in drinking water.

In the absence of federal regulations governing all schools, the Department's regulations require all schools to monitor their potable drinking water for lead. The new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the drinking water of school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and report results to the Department. The Environmental Protection Agency's "3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance" will be used as a technical reference for implementation of the regulation.

Compliance Costs:

Costs to Private Regulated Parties:

These regulations only applies to public schools. No private schools are affected.

Costs to State Government and Local Government:

These regulations applies to schools, which are a form of local government. There are approximately 733 school districts and 37 BOCES in New York State, which include over 5,000 school buildings that will be subject to this regulation.

The regulations require schools to test each potable water outlet for lead, in each school building occupied by children, unless the building is determined to be lead-free pursuant to federal standards. The cost for a single lead analysis ranges from $20 - $75 per sample. Initial monitoring requires one sample per outlet. The number of outlets will vary from building to building.

If lead is detected above 15 ppb at any potable water outlet, the outlet must be taken out of service and a remedial action plan must be developed to mitigate the lead contamination, at the school's initial expense. Remediation costs can vary significantly depending on the plumbing configuration and source of lead. The school will also incur minor costs for notification of the school community and local health department, posting the information on their website, and reporting electronically to the Department. Recently enacted legislation authorizes schools to receive State Aid through the State Education Department ("SED") to defray these costs.

Local health departments will also incur some administrative costs related to tracking local implementation, reviewing waiver applications, and compliance oversight. These activities will be eligible for State Aid through the Department's General Public Health Work program.

Local Government Mandates:

Schools, as a form of local government, are required to comply with the regulations, as detailed above.

Paperwork:

The regulation imposes recordkeeping requirements related to: monitoring of potable water outlets; notifications to the public and local health department; and electronic reporting to the Department.

Duplication:

There will be no duplication of existing State or Federal regulations.

Alternatives:

There are no significant alternatives to these regulations, which are being promulgated pursuant to recent legislation.

Federal Standards:

There are no federal statutes or regulations pertaining to this matter. However, the Department's regulations are consistent with the Unites States Environmental Protection Agency's guidance document titled 3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance (available at: https://www.epa.gov/sites/production/ files/2015-09/ documents/toolkit_leadschools_guide_3ts_ leadschools.pdf). EPA's document will serve as guidance to schools for implementing the program.

Compliance Schedule:

For existing buildings put into service as of the effective date of this regulation, all sampling shall be performed according to the following schedule:

(i) for any school serving children in any of the levels prekindergarten through grade five, collection of samples is to be completed by September 30, 2016;

(ii) for any school serving children in any of the levels grades six through twelve that are not also serving students in any of the levels prekindergarten through grade five, and all other applicable buildings, collection of samples is to be completed by October 31, 2016.

For buildings put into service after the effective date of this regulation, sampling shall be performed prior to occupancy.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

This regulation applies to schools, which are a form of local government. As explained in the Regulatory Impact Statement, the new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the drinking water of school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and report results to the Department. The Environmental Protection Agency's 3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance will be used as a technical reference for implementation of the regulation. Local health departments will also incur some administrative costs related to tracking local implementation and oversight of the regulation.

Additionally, the regulations require the services of a laboratory certified by the Department under its Environmental Laboratory Approval Program (ELAP). Some schools may also wish to hire environmental consultants to assist with compliance. Some labs and environmental consultants qualify as small businesses and, at least initially, their services will be in greater demand due to the new regulation.

Compliance Requirements:

As noted above, the new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the drinking water in school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and requiring reporting of results to the Department.

Reporting and Recordkeeping:

The regulation will impose new monitoring, reporting, and public notification requirements for schools.

Professional Services:

As noted above, the regulations require the services of a laboratory certified by the Department under its Environmental Laboratory Approval Program (ELAP). Some schools may also wish to hire environmental consultants to assist with compliance.

Compliance Costs:

The regulation will require schools to test each potable water outlet for lead, in each school building occupied by children. The cost for a single lead analysis ranges from $20 - $75 per sample. Initial monitoring requires one sample per outlet. The number of outlets will vary from building to building.

If lead is detected above 15 ppb at any potable water outlet, the outlet must be taken out of service and a remedial action plan must be developed to mitigate the lead contamination, at the school's expense. Remediation costs can vary significantly depending on the plumbing configuration and source of lead. The school will also incur minor costs for notification of

the school community and local health department, posting the information on their website, and reporting electronically to the Department. Recently enacted legislation authorizes schools to receive State Aid through the State Education Department ("SED") to defray these costs.

Local health departments will also incur some administrative costs related to tracking local implementation, reviewing waiver applications, and compliance oversight. These activities will be eligible for State Aid through the Department's General Public Health Work program.

Cost to Private Parties:

There are no costs to private parties.

Economic and Technological Feasibility:

The technology for lead testing of drinking water is well-established. With respect to schools' costs of compliance, State Aid will be available through the State Education Department to ensure that compliance is feasible. Local health department activities will be eligible for State Aid through the Department's General Public Health Work program.

Minimizing Adverse Impact:

Any school that has already performed testing in compliance with these regulations, as far back as January 1, 2015, does not need to perform sampling again. Further, consistent with the requirements of PHL § 1110, if a school has performed testing that substantially complies with the regulations, the school may apply to the Department for a waiver, so that additional testing is not required. In either case, the requirement to report sample results, and other requirements, remain in place.

School buildings that are determined to be "lead-free," as defined in section 1417 of the Federal Safe Drinking Water Act, do not need to test their outlets. School will be required to make available on their website a list of all buildings that are determined to be lead-free.

Small Business and Local Government Participation:

Although small businesses were not consulted on these specific regulations, the dangers of lead in school drinking water has garnered significant local, state, and national attention. The New York State School Board Association (NYSSBA) requested a meeting with the Department to discuss the impacts of the enabling legislation. NYSSBA provided feedback on testing, prior monitoring, and other matters. The Department took this feedback into consideration when drafting the regulation. The Department will also conduct public outreach, and there will be an opportunity to comment on the proposed permanent regulations. The Department will review all public comments received.

Rural Area Flexibility Analysis

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas. The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any disproportionate reporting, recordkeeping or other compliance requirements on the regulated entities in rural areas.

Job Impact Statement

Nature of Impact:

The Department expects there to be a positive impact on jobs or employment opportunities. Some school districts will likely hire firms or individuals to assist with regulatory compliance. Schools impacted by this amendment will require the professional services of a certified laboratory to perform the analyses for lead, which will create a need for additional laboratory capacity.

Categories and Numbers Affected:

The Department anticipates no negative impact on jobs or employment opportunities as a result of the proposed regulations.

Regions of Adverse Impact:

The Department anticipates no negative impact on jobs or employment opportunities in any particular region of the state.

Minimizing Adverse Impact:

Not applicable.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Hospital Indigent Care Pool Payment Methodology

I.D. No. HLT-25-17-00009-EP

Filing No. 396

Filing Date: 2017-06-06

Effective Date: 2017-06-06

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

Proposed Action: Amendment of section 86.1-47 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-k(5-d)

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

Specific reasons underlying the finding of necessity: The proposed amendment extends a distribution methodology for indigent care pool payments to general hospitals for another three year period, from January 1, 2016 through December 31, 2018.

Public Health Law Section 2807-k (5-d)(b) provides the Commissioner of Health with the authority to revise the regulation on an emergency basis. Emergency adoption of the proposed regulation with an effective date of January 1, 2016 is necessary to satisfy the statutory timeframe prescribed by Section 1 of Part E of Chapter 57 of the Laws of 2015 and to secure federal approval of the associated Medicaid State Plan Amendment. The State has unofficial approval of the Indigent Care Pool Extender State Plan Amendment.

The State has been making SFY 2016 hospital indigent care pool payments using the extender distribution methodology pursuant to statute while it seeks approval of both the proposed amendment and the associated Medicaid State Plan Amendment.

Subject: Hospital Indigent Care Pool Payment Methodology.

Purpose: To extend the methodology for indigent care pool payments to general hospitals for another 3 year period - 1/1/16 - 12/31/18.

Text of emergency/proposed rule: Subdivision (f) of section 86-1.47 is renumbered as subdivision (i) and amended to read as follows:

(i) (1) Funds reserved in the Financial Assistance Compliance Pool ("FACP") pursuant to § 2807-k(5-d)(b)(iv) of the Public Health Law for the calendar years 2014 [and 2015] *through 2018* shall be distributed to hospitals which demonstrate substantial compliance, as determined by the Commissioner, with the provisions of § 2807-k(9-a) of the Public Health Law (the "financial assistance law" or "FAL").

(2) Hospitals which are determined to be in substantial FAL compliance by the end of the 2013 calendar year shall receive their 2014 FACP payments as soon as practical in 2014 in accordance with subdivision (b) of this section. Hospitals which are determined to be in substantial FAL compliance by the end of the 2014 calendar year shall receive their 2015 FACP funds as soon as practical in 2015 in accordance with subdivision (b) of this section[,]. *Hospitals which are determined to be in substantial FAL compliance by the end of the 2015 calendar year shall receive their 2016 FACP payments as soon as practical in 2016 in accordance with subdivision (b) of this section. Hospitals which are determined to be in substantial FAL compliance by the end of the 2016 calendar year shall receive their 2017 FACP payments as soon as practical in 2017 in accordance with subdivision (b) of this section. Hospitals which are determined to be in substantial FAL compliance by the end of the 2017 calendar year shall receive their 2018 FACP payments as soon as practical in 2018 in accordance with subdivision (b) of this section* provided, however, that those hospitals which were determined to be not in such substantial compliance by the end of [2013] *2015 and 2016*, but which are determined to be in such substantial compliance by the end of [2014] *2017*, shall receive [both] their [2014] *2015, 2016* and [2015] *2017* FACP payments as soon as practical in [2015] *2018*.

Section 86-1.47 is amended by adding subdivisions (f), (g), and (h) to read as follows:

(f) For the 2016 calendar year, payments shall be made as follows:

(1) One hundred thirty nine million four hundred thousand dollars ($139,400,000) shall be distributed as Medicaid disproportionate share hospital ("DSH") payments to major public general hospitals, including the hospitals operated by public benefit corporations, on the basis of each hospital's uncompensated care nominal need, as determined in accordance with the provisions of subdivision (b) of this section, as a share of the aggregate uncompensated care nominal need for all major public general hospitals, further adjusted by a transition factor that shall be calculated such that no hospital shall experience a reduction in payments pursuant to this section that is greater than ten percent less than the average distributions such hospitals received pursuant to § 2807-k of the Public Health Law for the three year period January 1, 2010, through December 31, 2012.

(2) Nine hundred ninety four million nine hundred thousand dollars ($994,900,000) shall be distributed as Medicaid DSH payments to eligible general hospitals, other than major public general hospitals, on the basis of each hospital's uncompensated care need share, as determined in accordance with the provisions of subdivision (b) of this section, further adjusted by a transition factor that shall be calculated such that no hospital shall experience a reduction in payments pursuant to this section that is greater than ten percent less than the average distributions such hospitals received pursuant to § 2807-k and § 2807-w of the Public Health Law, excluding academic medical center grants received pursuant to § 2807-k(5-b)(b)(v) of the Public Health Law, and after any reductions made pursuant to § 2807-k(17) of the Public Health Law, for the three year period January 1, 2010, through December 31, 2012.

(3) Payments made pursuant to paragraphs (1) and (2) of this subdivision shall be further adjusted such that such payments made to hospitals that experience increases in payments, as compared to the average of such payments made pursuant to this section for the three year period January 1, 2010 through December 31, 2012, shall be further adjusted on a percentage basis, as determined by the Commissioner, sufficient to ensure, in conjunction with such other funding as may be made available, the full funding of the transition adjustments described in paragraphs (1) and (2) of this subdivision.

(g) For the 2017 calendar year, payments shall be made as follows:

(1) One hundred thirty nine million four hundred thousand dollars ($139,400,000) shall be distributed as Medicaid disproportionate share hospital ("DSH") payments to major public general hospitals, including the hospitals operated by public benefit corporations, on the basis of each hospital's uncompensated care nominal need, as determined in accordance with the provisions of subdivision (b) of this section, as a share of the aggregate uncompensated care nominal need for all major public general hospitals, further adjusted by a transition factor that shall be calculated such that no hospital shall experience a reduction in payments pursuant to this section that is greater than twelve and a half percent less than the average distributions such hospitals received pursuant to § 2807-k of the Public Health Law for the three year period January 1, 2010, through December 31, 2012.

(2) Nine hundred ninety four million nine hundred thousand dollars ($994,900,000) shall be distributed as Medicaid DSH payments to eligible general hospitals, other than major public general hospitals, on the basis of each hospital's uncompensated care need share, as determined in accordance with the provisions of subdivision (b) of this section, further adjusted by a transition factor that shall be calculated such that no hospital shall experience a reduction in payments pursuant to this section that is greater than twelve and a half percent less than the average distributions such hospitals received pursuant to § 2807-k and § 2807-w of the Public Health Law, excluding academic medical center grants received pursuant to § 2807-k(5-b)(b)(v) of the Public Health Law, and after any reductions made pursuant to § 2807-k(17) of the Public Health Law, for the three year period January 1, 2010, through December 31, 2012.

(3) Payments made pursuant to paragraphs (1) and (2) of this subdivision shall be further adjusted such that such payments made to hospitals that experience increases in payments, as compared to the average of such payments made pursuant to this section for the three year period January 1, 2010 through December 31, 2012, shall be further adjusted on a percentage basis, as determined by the Commissioner, sufficient to ensure, in conjunction with such other funding as may be made available, the full funding of the transition adjustments described in paragraphs (1) and (2) of this subdivision.

(h) For the 2018 calendar year, payments shall be made as follows:

(1) One hundred thirty nine million four hundred thousand dollars ($139,400,000) shall be distributed as Medicaid disproportionate share hospital ("DSH") payments to major public general hospitals, including the hospitals operated by public benefit corporations, on the basis of each hospital's uncompensated care nominal need, as determined in accordance with the provisions of subdivision (b) of this section, as a share of the aggregate uncompensated care nominal need for all major public general hospitals, further adjusted by a transition factor that shall be calculated such that no hospital shall experience a reduction in payments pursuant to this section that is greater than fifteen percent less than the average distributions such hospitals received pursuant to § 2807-k of the Public Health Law for the three year period January 1, 2010, through December 31, 2012.

(2) Nine hundred ninety four million nine hundred thousand dollars ($994,900,000) shall be distributed as Medicaid DSH payments to eligible general hospitals, other than major public general hospitals, on the basis of each hospital's uncompensated care need share, as determined in accordance with the provisions of subdivision (b) of this section, further adjusted by a transition factor that shall be calculated such that no hospital shall experience a reduction in payments pursuant to this section that is greater than fifteen percent less than the average distributions such hospitals received pursuant to § 2807-k and § 2807-w of the Public Health Law, excluding academic medical center grants received pursuant to § 2807-k(5-b)(b)(v) of the Public Health Law, and after any reductions made pursuant to § 2807-k(17) of the Public Health Law, for the three year period January 1, 2010, through December 31, 2012.

(3) Payments made pursuant to paragraphs (1) and (2) of this subdivision shall be further adjusted such that such payments made to hospitals that experience increases in payments, as compared to the average of such payments made pursuant to this section for the three year period January 1, 2010 through December 31, 2012, shall be further adjusted on a percentage basis, as determined by the Commissioner, sufficient to ensure, in conjunction with such other funding as may be made available, the full funding of the transition adjustments described in paragraphs (1) and (2) of this subdivision.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 3, 2017.

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Section 2807-k (5-d) of the Public Health Law (PHL), as amended by Section 1 of Part E of Chapter 57 of the Laws of 2015, which requires the Commissioner to promulgate regulations, including emergency regulations, with regard to the extension of a distribution methodology to make annual indigent care pool payments to general hospitals for the three-year period January 1, 2016 through December 31, 2018.

Legislative Objectives:

The legislation requires the Department of Health to develop an indigent care distribution methodology, for calendar years through 2018, which conforms to federal DSH ("Disproportionate Share Hospital") reform guidelines by targeting payments to hospitals which provide a disproportionate share of uncompensated care to the uninsured and Medicaid inpatient population and to also strengthen hospital compliance with the Financial Aid Law contained in Section 2807-k (9-a) of the Public Health Law.

The current regulation contains, for calendar years 2013-2015, the detailed calculations required to determine a hospital's relative uncompensated care need, incorporating both uninsured and Medicaid inpatient volume, which forms the basis for allocation of a proportional share of the total available pool funds. The proposed amendment would extend this methodology to calendar years 2016-2018, in conformance with amendments to PHL Section 2807-k (5-d).

The current regulation also provides, for calendar years 2013-2015, for a transition payment to ensure that no hospital experiences severe financial instability resulting from the redistribution of funding among the hospitals as a result of the indigent care distribution methodology. This transition payment establishes a minimum payment as a set percentage of the average indigent care pool payments received by the hospital in the years 2010-2012. Hospitals which experience gains have their distributions similarly capped by a set percentage of the average indigent care pool payments received in the years 2010-2012. The proposed amendment would extend the transition payments to calendar years 2016-2018, in conformance with amendments to PHL Section 2807-k (5-d).

The current regulation also requires, for calendar years 2013-2015, the Commissioner to withhold one percent of the total indigent care pool funds available to distribute to hospitals who demonstrate substantial compliance with the Financial Aid Law PHL Section 2807-k (9-a). The proposed amendment would extend the one-percent withholding and distribution to hospitals to calendar years 2016-2018, in conformance with amendments to PHL Section 2807-k (5-d).

Needs and Benefits:

The proposed amendment would extend, through calendar year 2018, the current indigent care distribution methodology, which replaced an outdated and complex distribution methodology that expired December 31, 2012. Public Health Law Section 2807-k (5-d) requires the Department to have such a methodology in place through 2018.

Benefits of the current methodology include a simpler, more transparent methodology which relates indigent care pool payments directly to care of the poor and provides incentives for hospitals to comply with the provisions of the Financial Aid Law. Further, federal DSH matching funds are optimized by the State's conformance with federal guidelines.

Costs:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. The Department utilizes audited information contained in hospitals' Institutional Cost Reports, which the hospitals are already required to submit to the Department on an annual basis.

Costs to State Government:

There is no increase in Medicaid expenditures anticipated as a result of this proposed amendment.

Costs to Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore,

there will be no additional costs to local governments as a result of this proposed amendment.

Costs to the Department of Health:

There will be no additional administrative costs to the Department of Health as a result of this proposed amendment.

Local Government Mandates:

The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

There are no new reporting requirements, forms or additional paperwork as a result of this proposed amendment.

Duplication:

This proposed amendment does not duplicate any existing federal, state or local regulations.

Alternatives:

No significant alternatives are available. The Department developed the distribution methodology with extensive input from the industry associations representing the hospitals subject to the proposed amendment. The regulation is mandated by PHL Section 2807-k(5-d).

Federal Standards:

The proposed amendment does not exceed any minimum standards of the federal government for the same or similar subject area.

Compliance Schedule:

The proposed amendment grants the Commissioner of Health the authority to withhold one percent of the total indigent care pool funds available for years 2016, 2017 and 2018. Hospitals must demonstrate compliance with the provisions of the Financial Aid Law contained in Section 2807-k (9-a) of the Public Health Law to receive their share of the one percent withheld funds for years 2016, 2017 and 2018. There are no additional compliance efforts required by the hospitals.

Regulatory Flexibility Analysis

Effect of Rule:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, five hospitals were identified as employing fewer than 100 employees.

Some hospitals subject to this regulation may see a decrease in their indigent care payments as a result of this regulation.

This rule will have no direct effect on local governments.

Compliance Requirements:

The proposed amendment requires the Commissioner of Health to withhold one percent of the total indigent care pool funds available for years 2016, 2017 and 2018. All hospitals must demonstrate compliance with the provisions of the Financial Aid Law as set forth in Section 2807-k (9-a) of the Public Health Law to receive their share of the funds held in this pool for years 2016, 2017 and 2018. No other compliance efforts are required.

A small business regulation guide will not be prepared.

The rule will have no direct effect on local governments.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendment.

Compliance Costs:

No additional compliance costs are anticipated as a result of this proposed amendment.

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this proposed amendment because there are no technological requirements other than the use of existing technology, and the overall economic aspect of complying with the requirements is expected to be minimal.

Minimizing Adverse Impact:

A transition payment will be provided, in each of the three years, to ensure that no hospital experiences severe financial instability resulting from the methodology. This transition payment will establish a minimum payment as a set percentage of the average indigent care pool payments received by the hospital in the three years 2010-2012.

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

Small Business and Local Government Participation:

The State filed a Federal Public Notice, published in the State Register on March 25, 2015, prior to the effective date of the change. The Notice provided a summary of the action to be taken and instructions as to where the public, including small businesses and local governments, could locate copies of the corresponding proposed State Plan Amendment. The Notice further invited the public to review and comment on the related proposed State Plan Amendment. In addition, contact information for the Department of Health was provided for anyone interested in further information.

Draft regulations, prior to filing with the Secretary of State, were shared with the industry associations representing hospitals and comments were solicited from all affected parties. Such associations include hospitals with 100 or fewer FTEs.

Rural Area Flexibility Analysis

Effect on 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 persons or less 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 eleven counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Monroe	Orange
Broome	Niagara	Saratoga
Dutchess	Oneida	Suffolk
Erie	Onondaga	

Compliance Requirements:

The proposed amendment requires the Commissioner of Health to withhold one percent of the total indigent care pool funds available for years 2016, 2017 and 2018. All hospitals must demonstrate compliance with the provisions of the Financial Aid Law as set forth in Section 2807-k (9-a) of the Public Health Law to receive their share of the funds held in this pool for years 2016, 2017 and 2018. No other compliance efforts are required.

Professional Services:

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

Compliance Costs:

No additional compliance costs are anticipated as a result of this proposed amendment.

Minimizing Adverse Impact:

A transition payment will be provided, in each of the three years, to ensure that no hospital experiences severe financial instability resulting from the methodology. This transition payment will establish a minimum payment as a set percentage of the average indigent care pool payments received by the hospital in the three years 2010-2012.

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

Rural Area Participation:

The State filed a Federal Public Notice, published in the State Register on March 25, 2015, prior to the effective date of the change. The Notice provided a summary of the action to be taken and instructions as to where the public, including rural area members and local governments, could locate copies of the corresponding proposed State Plan Amendment. The Notice further invited the public to review and comment on the related proposed State Plan Amendment. In addition, contact information for the Department of Health was provided for anyone interested in further information.

Draft regulations, prior to filing with the Secretary of State, were shared with the industry associations representing hospitals and comments were solicited from all affected parties. Such associations include members from rural areas.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. The proposed amendment extends

the hospital indigent care pool payment methodology for the three-year period January 1, 2016 through December 31, 2018. It is apparent, from the nature and purpose of the proposed amendment, that it will not have a substantial adverse impact on jobs or employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Communication Between Clinical Laboratory Physicians and Patients

I.D. No. HLT-25-17-00010-P

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

Proposed Action: Amendment of section 34-2.11 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 586 and 587

Subject: Communication Between Clinical Laboratory Physicians and Patients.

Purpose: To allow lab physicians to discuss the meaning and interpretation of test results with patients under certain circumstances.

Text of proposed rule: Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 586 and 587 of the Public Health Law, Section 34-2.11(b) of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is amended, to be effective upon publication of a Notice of Adoption in the State Register, to read as follows:

§ 34-2.11 Recall letters and reporting of test results.

(b) A clinical laboratory shall not communicate to a patient of a referring health services purveyor the results of a clinical laboratory test, including, but not limited to, a Pap smear. A clinical laboratory shall not prepare such communication for the health services purveyor to send, or otherwise facilitate the preparation or sending of such communication by the health services purveyor. Such communication or its facilitation shall be deemed consideration given for referral of specimens for performance of clinical laboratory services and is prohibited, except that:

* * *

(2) nothing in this subdivision shall prohibit a licensed physician from communicating with a patient:

(i) when requested by the referring health services purveyor;

(ii) when requested by the patient; or

(iii) when the referring health services purveyor, or other health services purveyor responsible for using the test results, cannot be reached and a critical value needs to be communicated to the patient.

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.

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

Regulatory Impact Statement

Statutory Authority:

Public Health Law (PHL) sections 586 and 587 set forth the duties and powers of the department related to clinical laboratory business practices. PHL sections 586(3) and 587(6) specifically authorize the Department to adopt regulations pertaining to clinical laboratory business practices.

Legislative Objectives:

The legislature enacted PHL sections 586 and 587 to prevent health services purveyors from splitting fees with clinical laboratories and to prevent payment for referrals. The Public Health and Health Planning Council and the Commissioner of Health are authorized to adopt and amend regulations necessary to effectuate the provisions and purpose of PHL sections 586 and 587. This proposed regulation is consistent with the legislative objective, as it will clarify for physicians and clinical laboratories allowable business practices.

Needs and Benefits:

Subpart 34-2 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) regulates the business practices of clinical laboratories. These regulations prohibit certain practices by clinical laboratories and health services purveyors. The intent of these regulations is to mitigate improper business practices that could, among other things, result in kickbacks to laboratories from hospitals, physicians, and other health services purveyors for the referral of patients or specimens.

Section 34-2.11 prohibits certain communications between a clinical laboratory and a patient of a referring health services purveyor to prevent kickbacks or other payments from being given for the referral of laboratory services. To prevent such kickbacks, section 34-2.11(b)(1)(iv) requires clinical laboratories to direct a patient's inquiries regarding the meaning or interpretation of test results to the referring health services purveyor.

Direct communication between pathologists and patients regarding test results is not always needed but in some instances, direct communication is crucial to providing safe, high quality, patient centered care. Traditionally, pathologists communicate with health care providers to help interpret test results or to guide further management of a patient. However, there are instances when patients may wish to obtain information from a pathologist concerning their test results. Pathologists may also need to communicate test results to a patient when a critical value is obtained by the testing laboratory, especially if the pathologist cannot reach the ordering physician, or other health services purveyor responsible for using the test results. Under these circumstances, a licensed physician working at the laboratory should be able to reach out to the patient to ensure that a critical value is communicated. The proposed regulation will add affirmative language to Section 34-2.11 to provide that, under specific circumstances, a licensed physician employed by a clinical laboratory may discuss the meaning and interpretation of test results directly with patients.

Costs:

Costs to Regulated Parties:

The new language allows, but does not require, licensed physicians to discuss the meaning and interpretation of test results with patients. The proposed regulation will not impose costs on regulated parties.

Costs to the Agency, State and Local Governments:

The proposed regulation will not impose additional costs on the New York State Department of Health or local governments.

Local Government Mandates:

The proposed regulation imposes no new mandates on any county, city, town or village government.

Paperwork:

The proposed regulation does not mandate new paperwork requirements. However, laboratory physicians should document all communications with patients.

Duplication:

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

Alternative Approaches:

One alternative is to not amend the regulation. However, this would prevent clinical laboratory physicians from communicating with their patients the meaning or interpretation of test results. The Department recognizes the importance of a pathologist-patient relationship as part of the spectrum of physician-patient relationships and its role in ensuring the delivery of safe, high quality, patient centered health care. Therefore, the Department rejected this alternative.

Federal Standards:

The proposed regulation does not exceed any minimum standards of the federal government.

Compliance Schedule:

The proposed regulation is permissive. Accordingly, regulated parties do not need to take any action to come into compliance.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

No Rural Area Flexibility Analysis is required pursuant to section 202-bb(4)(a) of the State Administration Procedure Act (SAPA). It is apparent from the nature of the proposed regulation that it will not impose any adverse impact on rural areas, and the rule does not impose any new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed regulation, that it will not have an adverse impact on jobs and employment opportunities.

Department of Motor Vehicles

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transportation Network Companies

I.D. No. MTV-25-17-00008-EP
Filing No. 395
Filing Date: 2017-06-06
Effective Date: 2017-06-06

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

Proposed Action: Addition of Part 80 to Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 1692(2), 1693(9), 1695(8), 1696(1)(d)(ii), (5), 1698(3) and 1699(2)

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

Specific reasons underlying the finding of necessity: It is necessary to adopt this amendment on an emergency basis to protect the safety and general welfare of New York State's citizens.

Part AAA of Chapter 59 of the Laws of 2017, creating New York State Vehicle and Traffic Law Article 44-B, establishes Transportation Network Companies (TNCs) in New York State, outside of New York City. This emergency regulation is necessary to place the applicants for TNC licenses on notice about the process to apply for such a license and the requirements related to the operation of a TNC in this State. Prior to operation, the TNCs must vet prospective drivers, demonstrate proof of insurance and comply with other regulatory mandates. By submitting this emergency regulation in advance of the effective date of the law, the TNC applicants and their potential drivers will have adequate time to take the necessary steps to be compliant with the law and operational on its effective date. The emergency rule is also necessary to insure that regulatory safeguards are in place so that passengers in TNC vehicles are operated by fully vetted drivers in properly insured vehicles. Additionally, TNC services may save lives by offering greater transportation options to those who, for example, may otherwise choose to drive while impaired or fatigued.

Subject: Transportation network companies.

Purpose: Establish guidelines for the operation of transportation network companies and their drivers.

Substance of emergency/proposed rule (Full text is posted at the following State website: https://dmv.ny.gov/about-dmv/proposed-dmv-regulation-changes-comment): Establishes the process and requirements to apply for a Transportation Network Company (TNC) license and sets forth the fee for such a license.

Establishes the insurance requirements for the TNCs and their drivers and requires TNC drivers to display proof of both Vehicle and Traffic Law Article 6 insurance and TNC insurance to a law enforcement officer. Provides that the TNC must assist the DMV in obtaining insurance information about a TNC driver who has been involved in a motor vehicle crash.

Provides that a TNC must display a distinctive trade dress consisting of a removable logo, insignia, or emblem at all times the driver is providing TNC services.

Provides that complaints may be filed with the DMV regarding an alleged violation of the TNC licensing requirements, pursuant to article 44-b of the Vehicle and Traffic Law or the Commissioner's regulations, using a form prescribed by the Commissioner, which shall be available on the Department's website. Complaints against a TNC driver must be filed with the TNC.

Provides that TNCs must conduct criminal background checks of all its drivers and retain a copy of such background check, subject to the audit of the DMV. The proposed rule describes the elements of the background check and requirements for enrolling qualified drivers in the DMV's License Event Notification Service.

Establishes the DMV's audit procedures to insure TNC compliance with Article 44-B of the Vehicle and Traffic Law and the Commissioner's regulations.

Provides that in addition to the penalties authorized by sections 1692(2)(a) and 1699(5) of the Vehicle and Traffic Law, the DMV may suspend or revoke a TNC license for failure to comply with any of the provisions of Article 44-B of the Vehicle and Traffic Law or the Commissioner's regulations.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 3, 2017.

Text of rule and any required statements and analyses may be obtained from: Heidi A. Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority: Section 215(a) of the Vehicle and Traffic Law (VTL) authorizes the Commissioner of Motor Vehicles to promulgate regulations which shall regulate and control the exercise of the powers of the Department of Motor Vehicles (DMV). Section 1692(2) of such Law authorizes the Commissioner to promulgate regulations related to the application process for a Transportation Network Company (TNC) license and to prescribe fees for such license. Section 1693(9) of such Law authorizes the Commissioner to prescribe the form of proof of insurance that must be carried by a TNC driver in a TNC operated vehicle connected to a TNC's digital network. Section 1695(8) of such Law provides that the Department must provide insurance coverage information related to a TNC vehicle that is involved in a motor vehicle accident. Section 1696(5) of such Law requires the Commissioner to promulgate regulations to ensure that each TNC vehicle is easily identified and the manner in which such form of identification shall be displayed in the vehicle. Section 1696(1)(d)(ii) of such Law authorizes the Commissioner to promulgate regulations authorizing additional LENS notifications as the Commissioner deems necessary to protect public health and safety. Section 1698(3) of such Law requires the Department to establish regulations for the filing of complaints against TNC drivers or a TNC. Section 1699(2) of such Law requires the Department to promulgate regulations regarding the method a TNC must use to conduct a criminal history background check.

2. Legislative objectives: Part AAA of Chapter 59 if the Laws of 2017 establishes the statutory framework for the operation of Transportation Network Company Services outside the City of New York in a new Article 44-B of the VTL. The proposed rule accords with the legislative objective of establishing procedures, requirements and guidelines to ensure that the TNCs and their drivers provide reliable and safe transportation services for their customers. The rule meets this objective by establishing regulations governing licensure of TNCs, acceptable proof of insurance, the trade dress used to identify a TNC vehicle, procedures to obtain insurance information regarding a TNC vehicle involved in a crash, procedures to file a complaint against a TNC or its drivers and the method a TNC must use to conduct criminal history background checks.

3. Needs and benefits: This proposed rule is necessary to implement Part AAA of Chapter 59 of the Laws of 2017, regarding the operation of Transportation Network Company Services outside the City of New York. The rule places applicants for a TNC license on notice about the requirements to both apply to for a TNC license and to maintain such license in good standing. As required by Article 44-B, the rule establishes requirements regarding proof of insurance, the trade dress indicia in a TNC vehicle, complaint procedures and the conduct of criminal history background checks of potential TNC drivers.

These regulations will benefit the TNC passengers, by insuring that TNC vehicles are properly maintained and insured and that the drivers of such vehicles meet strict qualification standards. The TNC, or a third party, must conduct a background check to review whether the applicant is on a sex offender registry, has a good driving record, is at least 19 years of age, and has not committed certain serious offenses set forth in the VTL or the Penal Law. The TNC will continue to monitor a TNC driver's performance by enrolling each driver in the Department's License Event Notification Service (LENS), which gives the TNC timely notice of traffic related violations.

This regulation represents a critical step in ensuring that TNCs and their drivers offer safe and reliable service to the general public.

4. Costs:

a. To regulated entities: An applicant for a TNC license must pay an application fee in the amount of 100,000 dollars and an annual renewal fee of 60,000 dollars. TNCs are also responsible for purchasing a group insurance policy, enrolling their drivers in the LENS system, and paying for the cost of background checks.

b. To State and local governments: There is no fiscal impact to local governments. Further, under a new section 182 of the Municipal Law,

every county, and any city with a population of 100,000 or more, may prohibit the operation of a TNC within their geographic boundaries.

The Department will need staff to review applications for a TNC license, review complaints regarding TNCs and their drivers, and monitor and audit the operation and compliance of the TNCs and their drivers.

c. Source: The Department's Office of Motor Carrier.

5. Local government mandates: There is no fiscal impact to local governments. Further, under a new section 182 of the Municipal Law, every county, and any city with a population of 100,000 or more, may prohibit the operation of a TNC within their geographic boundaries.

6. Paperwork: A TNC must apply for a license on a form designed by the Department. The Department has also created a new form to accept complaints against a TNC.

7. Duplication: The proposal does not duplicate or conflict with any State or Federal rule.

8. Alternatives: There are no known alternatives to implement the statutory mandate. A no action alternative was not considered.

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

10. Compliance schedule: The Department anticipates that all affected parties will be able to achieve compliance with the rule upon adoption.

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

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

This proposed rulemaking establishes requirements governing Transportation Network Companies (TNCs) in New York State. Since the Department is not aware of a prospective TNC that employs 100 or less individuals, this rule will have no impact on small businesses. The proposed rule has no adverse impact on local governments and does not apply in New York City. In fact, counties, and cities with a population of 100,000 or more, may choose to adopt a local law prohibiting the operation of TNCs in their locality. The proposed rule will not have a negative impact on rural areas of the State, nor will it impair job creation and development.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minor Rate Filing

I.D. No. PSC-25-17-00005-P

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

Proposed Action: The Commission is considering a proposal filed by Bristol Water Works Corporation to P.S.C. No. 3—Water to increase its annual revenues by $154,329 or 116%.

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

Subject: Minor rate filing.

Purpose: To consider an increase in annual revenues by $154,329 or 116%.

Substance of proposed rule: The Commission is considering tariff revisions filed by Bristol Water Works Corporation (Bristol or the Company) to P.S.C. No. 3 – Water to increase Bristol's annual revenues by approximately $154,329 or 116%. Bristol provides water service to approximately 360 customers in the Town of South Bristol, Ontario County. The Company states that the rate increase is necessary to provide sufficient revenues to enable the Company to continue providing safe and reliable service to its customers, including making necessary improvements, and to permit the Company's owners to earn a rate of return on investment in the Company that is commensurate with returns granted other comparable water companies under the Commission's jurisdiction. The proposed amendments have an effective date of October 1, 2017. The full text of the minor rate filing may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(17-W-0293SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-25-17-00006-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 Notice of Intent of The Charles Condominiums, LLC, to submeter electricity at 1355 First Avenue, New York, New York.

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

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent of The Charles Condominiums, LLC to submeter electricity at 1355 First Avenue, New York, NY.

Substance of proposed rule: The Commission is considering the Notice of Intent of The Charles Condominiums, LLC, filed on May 23, 2017, to submeter electricity at 1355 First Avenue, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The full text of the Notice of Intent may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(17-E-0290SP1)

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Local District Child Support Enforcement Unit

I.D. No. TDA-25-17-00001-P

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

Proposed Action: Amendment of section 347.3 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (j), 20(3)(d), 34(3)(f), 111-a, 111-c; title 42 of the United States Code, sections 651-657, 660, 663-664, 666-667; and title 45 of the Code of Federal Regulations, section 302.12

Subject: Local district child support enforcement unit.

Purpose: To afford social services districts greater flexibility in selecting a name for the local entity responsible for child support activities within each social services district, update current State regulation language to reflect current terminology, and correct regulatory citations.

Text of proposed rule: Section 347.3 of Title 18 of the NYCRR is amended to read as follows:

(a) Each social services district must establish a single organizational unit, designated as the "Child Support Enforcement Unit," or "Office of Child Support Enforcement," *or other name approved by OCSE, as defined in section 347.1 of this Part,* which must be responsible only for that *social services* district's activities in locating [absent] *noncustodial* parents and putative fathers, establishing paternity, and establishing, enforcing and collecting support obligations. The unit must be directly responsible to the local commissioner of social services, and must be directed by a full-time employee with administrative and supervisory capability, whose responsibilities are limited to the child support [enforcement] activities set forth in this Part, and/or Part 346 of this Title, and to the supervision of other employees assigned to carry out such activities on a full-time basis. Each *social services* district will implement procedures to [insure] *ensure* prompt referral of child support and paternity cases to the local child support enforcement unit within two [working] *business* days of furnishing aid. That unit must be staffed with employees who will perform exclusively the following child support [enforcement] functions:

(1) Receive referrals of all [ADC] *public assistance* cases in which the deprivation factor is the continued absence of a parent from the home, as specified in section 369.2 of this Title, and [ADC] *public assistance* cases in which paternity of a child has not been legally established from the [local income maintenance] *public assistance* unit, and accept applications for [Child Support Services] *child support services* from individuals not otherwise eligible, as required by section 347.17 of this Part.

(2) Maintain child support case [files] *records* which will include all information relating to the case, as required by section 347.18 of this Part.

(3) Maintain a record of all [absent] *noncustodial* parents and putative fathers whose location is unknown and register those individuals with the State Parent Locator Service, as required by section 347.7 of this Part.

(4) Conduct investigations to locate [absent] *noncustodial* parents and putative fathers, as required by section 347.7 of this Part.

(5) Obtain information regarding the income and resources of [absent] *noncustodial* parents and putative fathers as may be necessary to ascertain their ability to support or contribute to the support of their dependents.

(6) In appropriate cases, initiate paternity proceedings to establish the putative father's legal obligation to support his dependent child or children, as required by section 347.6 of this Part.

(7) Establish the amount of the [absent] *noncustodial* parent's support obligation by obtaining a court order of support, as required by section 347.8 of this Part. In addition, the child support enforcement unit must conduct reviews of such orders, and seek adjustments of such orders as appropriate, pursuant to section [347.26] *347.8* of this Part.

(8) [Insure] *Ensure* that procedures are in effect for the collection and disbursement of support monies, as required by Part 346 of this Title and sections 347.12 and 347.13 of this Part.

(9) Notify the [local income maintenance] *public assistance* unit of the amount of any child support collection received, in accordance with section 347.12 of this Part.

(10) Maintain effective controls and procedures to determine whether court orders of support are being complied with and, in cases of noncompliance, take action to enforce such orders, as required by section 347.9 of this Part.

(11) Maintain cooperative or contractual arrangements as applicable with the Family Court, probation department, county attorney or corporation counsel, and law enforcement officials, including written agreements entered into pursuant to section 347.4 of this Part, and provide pertinent information to such officials for the establishment of paternity, the location of [absent] *noncustodial* parents and putative fathers, and the enforcement and collection of support.

(12) Maintain records and prepare such reports as may be required by the [State Department of Social Services] *Office*, pursuant to section 347.18 of this Part.

(13) [Upon request, notify clients] *Notify applicants or recipients* who have assigned their support rights to the [department] *State and social services district* of the time, date and place of any paternity establishment and/or support proceedings involving such [clients] *applicants or recipients*. Such notice must state that the attorney initiating the proceeding represents the [department] *social services district*.

(14) Information describing available child support services, including the individual's rights and responsibilities, applicable fees, cost recovery and distribution policies, must be provided to applicants for or recipients of [ADC] *public assistance*, medical assistance and federally reimbursable foster care maintenance payments, no later than five [working] *business* days after referral to the child support enforcement unit.

(b) Each local child support enforcement unit (and its agents) shall cooperate with OCSE *as defined in section 347.1 of this Part* in its monitoring and review of all local child support functions and activities.

(c) No child support functions may be delegated by the local child support enforcement unit to title IV-A or XX caseworkers who also perform the assistance payments or social services functions under title IV-A or XX. Requests by a sparsely populated county for waiver of this requirement should document a lack of administrative feasibility in not utilizing staff of the IV-A agency and include sufficient reporting and cost allocation methods. Such requests are to be forwarded to the OCSE *as defined in section 347.1 of this Part*.

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

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

Regulatory Impact Statement

1. Statutory Authority:

Social Services Law (SSL) § 17(a)-(b) and (j) provides, 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-c requires each social services district to establish a single organizational unit which shall be responsible for such district's activities in assisting the State in the location of noncustodial parents, the establishment of paternity, and the enforcement and collection of support in accordance with OTDA regulations.

Title 42 of the United States Code (U.S.C.) §§ 651–657, 660, 663–664, and 666–67 sets forth authority for the title IV-D program and requires states, in part, to establish and maintain a State plan for child and spousal support, and sets forth guidelines for the establishment, modification and enforcement of support obligations as well as collection and distribution of child support funds.

Title 45 of the Code of Federal Regulations (C.F.R.) § 302.12 requires that the State plan provide for the establishment or designation of a single and separate organizational unit to administer the IV-D plan. The State IV-D agency may delegate any of the functions of the IV-D program to any other State or local agency or official, while retaining responsibility for securing compliance with the requirements of the State plan by such agency or official.

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 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 to 18 NYCRR § 347.3 are being advanced to provide social services districts with greater flexibility in the selection of a name for the local unit responsible for child support activities within the social services districts. The proposed regulatory amendments would enable a social services district to propose an alternate name for this entity subject to approval by the State Child Support Program within OTDA.

The proposed regulatory amendments would also update the current State regulatory language to reflect current terminology and correct a regulatory citation in accordance with federal and State law. The proposed regulatory amendments would also update the current State regulation to refer to "child support activities," thereby clarifying that the activities performed by the IV-D program are not limited solely to enforcement of a

support obligation. The proposed regulatory amendments would update the current State regulatory language to conform to that used in SSL § 2 by changing existing references from "district" to "social services district" where appropriate. Additionally, the proposed regulatory amendments would update the current State regulatory language by changing references from "working days" to "business days" to clarify the time frame for referrals to the local child support enforcement unit. The proposed regulatory amendments would also update the current State regulatory language by replacing existing references to "absent parents" with "noncustodial parents," existing references to "ADC" with "public assistance," and existing references to "files" with "records" to align 18 NYCRR § 347.3 with other regulations promulgated by OTDA. The proposed regulatory amendments would also make a technical change to 18 NYCRR § 347.3(a)(7) to correct the regulatory citation pertaining to the review and adjustment of court orders of support. The proposed regulatory amendments would replace existing references to the "local income maintenance unit" with references to the "public assistance unit" and existing references to the "New York State Department of Social Services (the Department)" with references to the "Office of Temporary and Disability Assistance (the Office)" or, where appropriate, to "social services district" to align this regulation with other regulations promulgated by OTDA. The proposed regulatory amendments would also update the current State regulatory language to require and clarify that "applicants or recipients of public benefits programs," be notified of the time, date and place of any paternity establishment and/or support proceedings involving such individuals. Finally, the proposed regulatory amendments would clarify the meaning of "OCSE" by adding a reference to 18 NYCRR § 347.1.

4. Costs:

The proposed amendments to the regulation would not require the social services districts to incur any initial capital costs or annual costs for maintaining compliance with the rule.

5. Local Government Mandates:

Social services districts would be required to comply with the proposed regulatory amendments by ensuring that the single organizational unit responsible for the social services district's activities in locating noncustodial parents and putative fathers, establishing paternity, and establishing, enforcing and collecting support obligations is properly designated, or by seeking approval from the State Child Support Program within OTDA for any alternative name. The proposed regulatory amendments are clarifying in nature and would be consistent with federal and State laws.

6. Paperwork:

No new paperwork or reporting requirements would be triggered by the proposed rule unless a name change is desired. In that case, a social services district opting to re-name its local entity responsible for supervision of the child support program would be required to seek approval from the State Child Support Program within OTDA by submitting a written request.

7. Duplication:

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

8. Alternatives:

There are no significant alternatives that would afford greater flexibility to social services districts than the proposed regulatory amendments.

9. Federal Standards:

The proposed regulatory amendments would not exceed minimum federal standards for the same subject.

10. Compliance Schedule:

It is anticipated that social services districts would be in compliance with the proposed regulatory amendments upon the effective date of the proposed regulatory amendments.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed regulatory amendments would apply to each of the 58 social services districts in New York State. However, the proposed regulatory amendments would not impact small businesses.

2. Compliance Requirements:

Social services districts would be required to comply with the proposed regulatory amendments by continuing to ensure that the single organizational unit responsible for each social services district's activities in locating noncustodial parents and putative fathers, establishing paternity, and establishing, enforcing and collecting support obligations is properly designated and that its child support functions are performed in full compliance with federal and State requirements. Where a social services district seeks to avail itself of the flexibility to re-designate such entity, approval must first be obtained from the State Child Support Program within the Office of Temporary and Disability Assistance. The proposed regulatory amendments would modernize the terminology used by the child support program consistent with federal and State laws and regulations.

3. Professional Services:

To the extent social services districts already comply with the current requirements regarding the designation of the single organizational unit and the location of noncustodial parents and putative fathers, the establishment of paternity, and the establishment, modification and enforcement of support obligations, the proposed regulatory amendments would not require the social services districts to obtain additional professional services.

4. Compliance Costs:

The proposed amendments to the regulations would not require the social services districts to incur any initial capital costs or annual costs for maintaining compliance with the proposed rule.

5. Economic and Technological Feasibility:

There are no technological issues associated with the proposed regulatory amendments, which seek to modernize and clarify terminology as well as to provide social services districts with flexibility in designating the local entity responsible for child support activities.

6. Minimizing Adverse Impact:

The proposed regulatory amendments would not have adverse economic impacts on social services districts or small businesses.

7. Small Business and Local Government Participation:

The requirement to establish a single organizational unit responsible for a social services district's activities in locating noncustodial parents and putative fathers, establishing paternity, and establishing, enforcing and collecting support obligations is already established in regulation. The proposed regulatory amendments are clarifying in nature, seeking to modernize the existing State regulation to reflect terminology currently used by the child support program. The proposed regulatory amendments are responsive to a request by a social services district for flexibility in designating the local entity responsible for child support activities.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The proposed regulations would apply to the 44 rural social services districts in New York State.

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

Social services districts in rural districts would be required to comply with the proposed regulatory amendments by ensuring that the single organizational unit responsible for each social services district's activities in locating noncustodial parents and putative fathers, establishing paternity, and establishing, enforcing and collecting support obligations is properly designated and that its child support functions are performed in full compliance with federal and State requirements. Where a social services district seeks to avail itself of the flexibility to re-designate such entity, approval must first be obtained from the State Child Support Program within the Office of Temporary and Disability Assistance. The proposed regulatory amendments would modernize the terminology used by the child support program and render the current State regulation consistent with existing federal and State laws and regulations.

3. Costs:

The proposed amendments to the regulations would not require the social services districts in rural areas to incur any initial capital costs or annual costs for maintaining compliance with the proposed rule.

4. Minimizing adverse impact:

The proposed regulatory amendments would not have an adverse economic impact on social services districts in rural areas.

5. Rural area participation:

The requirement for social services districts in rural areas to establish a single organizational unit responsible for the district's activities in locating noncustodial parents and putative fathers, establishing paternity, and establishing, enforcing and collecting support obligations is already established in regulation. The proposed regulatory amendments would modernize terminology in the current State regulation to reflect common usage across all social services districts, including rural social services districts. The proposed regulatory amendments would also provide increased flexibility for all social services districts, including rural social services districts, in selecting an appropriate name for the single organizational unit responsible for child support activities within each social services district.

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 to 18 NYCRR § 347.3 that they would have no substantive impacts on jobs and employment opportunities in either the public or private sectors of New York State. Furthermore, the jobs of the child support program personnel and the attorneys representing the social services districts would not be substantively impacted by the proposed regulatory amendments.

Workers' Compensation Board

EMERGENCY RULE MAKING

Workers' Compensation Benefits for Transportation Network Company Drivers

I.D. No. WCB-25-17-00004-E
Filing No. 392
Filing Date: 2017-06-06
Effective Date: 2017-06-06

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

Action taken: Addition of Part 319 to Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, section 117

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

Specific reasons underlying the finding of necessity: This amendment is adopted as an emergency measure because time is of the essence. On April 10, 2017, the New York Legislature adopted Chapter 59 of the Laws of 2017, which, among other things, created a system in which ride-sharing companies can be licensed to operate outside of the five boroughs of New York City as early as July 9, 2017. The law creates a new category of transportation vehicles, "transportation network companies" (TNCs), which are legally distinct from other transportation service providers, such as medallion cabs and borough taxis, livery cabs, black cars, and for-hire vehicles. Given the panoply of transportation service providers that will soon be operating in New York State, each having unique rules regarding workers' compensation coverage, the Chair of the Workers' Compensation Board (hereinafter, the Board) has adopted these emergency rules to ensure that all stakeholders, including TNCs and Board adjudicators, understand when a TNC driver has workers' compensation coverage, what type of coverage attaches, and the extent of that coverage. It is imperative that the Chair of the Board (hereinafter, the Chair) adopt these emergency regulations so that the workers' compensation rules relating to TNC drivers are clear before TNCs begin their operations.

Subject: Workers' compensation benefits for Transportation Network Company drivers.

Purpose: Clarify which drivers are covered and when they are covered by the Black Car Fund.

Text of emergency rule: Title 12 of the NYCRR is hereby amended to add a new Part 319, as follows:

Part 319. Transportation Network Companies

319.1 Definitions

(a) The terms "transportation network company" or "TNC", "TNC driver", "TNC vehicle", "TNC passenger", and "TNC prearranged trip" shall have the same meaning as set forth in section 1691 of article forty-four-B of the vehicle and traffic law.

(b) "Board" means the New York State Workers' Compensation Board.

(c) "Permitted" shall mean that the TNC driver is the holder of a valid TNC driver's permit, which has been issued pursuant to article 44-B of the vehicle and traffic law.

319.2 Exclusivity of TNC Services

For the purposes of the administration of article 6-F of the executive law, a TNC driver shall mean a TNC driver who is engaged in a TNC prearranged trip, or who otherwise meets the definition of a TNC driver as set forth in article 44-B and Part 319.3(a)(2) of this title, and who at the time of injury was not also acting as:

(a) a black car operator, as defined in paragraph 1 of section 160-cc of the executive law, who (1) may operate anywhere in the state of New York and (2) accepts passengers through means other than a TNC digital network;

(b) an independent livery operator, who satisfies the eligibility criteria set forth in paragraph c of section 309.2 of title 12 of the New York codes, rules, and regulations, and (1) accepts passengers from a central dispatch facility other than one that is a member of the New York Black Car Operators' Injury Compensation Fund, Inc., as defined article 6-F of the executive law, and (2) operates in the five boroughs of the city of New York or Westchester or Nassau counties;

(c) a medallion cab or a borough taxi operator, regulated pursuant to section 148-a of the vehicle and traffic law and section 19-502 of the administrative code of the city of New York; or

(d) a livery driver, who (1) is not a member of the Independent Livery Drivers Benefit Fund, the New York Black Car Operators' Injury Compensation Fund, Inc., or a medallion cab or borough taxi operator, and (2) accepts passengers through means other than a TNC digital network

(e) a for-hire vehicle operator, as defined in section 19-502 of the administrative code of the city of New York and regulated by the New York city taxi and limousine commission, who accepts passengers within the city of New York (New York, Kings, Queens, Bronx and Richmond counties).

319.3 Scope of Coverage

(a) For purposes of the administration of article 6-F of the Executive Law, a "Black car operator" shall include:

(1) any TNC driver that is engaged in a TNC prearranged trip and

(2) any TNC driver that is logged onto a TNC digital network and is not engaged in a TNC prearranged trip, provided:

(i) the TNC driver was permitted by the TNC on or before 11:59 PM of June 29, 2018, in accordance with criteria set forth in section 1696 of article forty-four-B of the vehicle and traffic law; and

(ii) at the time of the event giving rise to a claim for benefits from the New York Black Car Operators' Injury Compensation Fund, the TNC driver was engaged in an activity reasonably related to driving as a TNC driver taking into consideration the time, place and manner of such activity.

(b) For the purposes of this section, the time and date that a TNC driver is considered permitted shall be the earlier of:

(1) the date maintained in the TNC's records,

(2) the postmark date when the permit was mailed,

(3) the date the permit was electronically transmitted, or

(4) the date stamp provided to a TNC driver at the time of permitting.

(c) To determine whether a Black car operator, as defined pursuant to paragraph (b) of subdivision one of section 160-cc of the executive law, is engaged in an activity reasonably related to driving as a TNC driver, consideration by the board may include, but not be limited to, the following:

(1) Whether the TNC driver is in or near the TNC vehicle at the time of injury;

(2) Whether the injury occurred while actively seeking a TNC prearranged trip or immediately after a TNC prearranged trip; and

(3) The distance between the site of the accident and the TNC passenger drop-off location.

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 September 3, 2017.

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

Regulatory Impact Statement

1. Statutory authority:

The Chair is authorized to amend Title 12 of the NYCRR to add a new section 319. The Chair's authority is derived from WCL § 117(1), which authorizes the Chair to adopt reasonable regulations consistent with and supplemental to the provisions of the WCL and the Labor Law. Additionally, Section 24 of Chapter 59 of the Laws of 2017 authorized agencies designated to perform a function or duty pursuant to the act to adopt regulations consistent with its provisions.

2. Legislative objectives:

WCL § 117(1) authorizes the Chair to adopt reasonable regulations to supplement the WCL. The WCL was enacted for socio-economic remediation purposes to protect workers and their dependents from economic hardship in case of injury on the job (see Matter of Post v Burger & Gohlke, 216 NY 544 [1916]; see also Matter of LaCroix v Syracuse Exec. Air Serv., Inc., 8 NY3d 348 [2007]). The proposed rule will advance these objectives by ensuring that TNC drivers receive the full workers' compensation benefits they are due by clarifying when TNC drivers are entitled to coverage under the BCF and when an injury will be deemed to have occurred during the scope of employment as a TNC driver.

3. Needs and benefits:

On April 10, 2017, the New York Legislature adopted Chapter 59 of the Laws of 2017, which, among other things, created a series of laws to allow ride-sharing companies to operate outside of the five boroughs of New York City as early as July 9, 2017. The laws add a new section, Article 44-B, to the Vehicle and Traffic Law, and amend Article 6-F of the Executive Law to expand the types of bases that can become members of the BCF. Specifically, Vehicle and Traffic Law Article 44-B creates a new class of transportation service vehicles, TNCs, which are legally distinct from other transportation providers, such as medallion cabs and borough taxis, livery cabs, black cars, and for-hire vehicles. Given the panoply of

transportation service providers that will soon be operating in New York State, each having unique rules regarding workers' compensation coverage, it is the Chair's position that these proposed rules are necessary to ensure the effective and accurate disbursement of workers' compensation benefits, particularly when a TNC driver suffers a work-related injury. Therefore, the Chair has designed these regulations with the understanding that they will enable all stakeholders, including TNCs and Board adjudicators, to understand when a TNC driver has workers' compensation coverage, what type of coverage attaches, and the extent of that coverage.

4. Costs:

The proposed rule does not impose costs on any regulated parties, the Board, the State, or local governments for its implementation and continuation.

5. Local government mandates:

The proposed regulation does not impose any program, service, duty, or responsibility upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork:

The proposed rule does not require any entity to comply with any new reporting requirements.

7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

8. Alternatives:

One alternative discussed was to take no action. However, the Chair felt that it was more prudent to take action out of concern that failing to set forth clear criteria regarding when TNC drivers are covered, and by whom, would run the risk that some TNC drivers would wrongfully be denied coverage. The proposed regulations will also help insure that the proper insurance carrier is billed when a TNC driver is injured during the scope of his or her employment, particularly in situations where the TNC driver also works for another transportation provider, such as a livery base.

9. Federal standards:

There are no federal standards applicable to this proposed rule.

10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately insofar as no affirmative obligations have been imposed on any party, and the regulations merely clarify existing laws that were enacted in April 2017.

Regulatory Flexibility Analysis

1. Effect of rule:

This proposed rule will have no effect on small businesses or local governments. The proposal solely clarifies existing laws regarding workers' compensation coverage for TNC drivers, particularly the provisions set forth in Article 44-B of the Vehicle and Traffic Law and Article 6-F of the Executive Law. Specifically, the proposal aims to clarify the circumstances in which a TNC driver will be deemed to be insured under the BCF and how to determine whether an injury arose out of and in the course of employment as a TNC driver.

2. Compliance requirements:

There are no compliance requirements created as a result of this rule. The proposed regulation merely clarifies existing laws regarding workers' compensation coverage for TNC drivers, including Article 44-B of the Vehicle and Traffic Law and Article 6-F of the Executive Law.

3. Professional services:

The Chair believes that no professional services will be needed to comply with this rule. The proposed regulation merely clarifies existing laws regarding workers' compensation coverage for TNC drivers, including in Article 44-B of the Vehicle and Traffic Law and Article 6-F of the Executive Law. It does not create any new, affirmative obligations on any party.

4. Compliance costs:

This proposal will not impose compliance costs on any entity. The proposed regulation merely clarifies existing laws regarding workers' compensation coverage for TNC drivers, including Article 44-B of the Vehicle and Traffic Law and Article 6-F of the Executive Law. It does not create any new, affirmative obligations on any party.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments to comply with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments to comply with the rule.

6. Minimizing adverse impact:

The Chair does not anticipate that the proposed rule will have an adverse economic impact on small businesses or local governments, insofar as the proposal does not impose any new, affirmative obligations on small businesses or local governments. Indeed, the Chair expects that any impact would be positive because key stakeholders will better understand how the Board will decide contested workers' compensation claims filed by TNC drivers.

7. Small business and local government participation:

Because time is of the essence, the Chair has not yet had an opportunity to consult with small businesses or local governments during the rule-drafting process. However, the Chair anticipates that this rule will be published for public comment in the near, if not immediate, future, at which time the Chair will assess any comments made by the small business community and local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule concerns the applicability and scope of workers' compensation benefits as they relate to TNCs. Specifically, the proposed regulation serves to clarify that workers' compensation coverage will only be available to TNC drivers under the BCF when the TNC driver is exclusively acting as a TNC driver, given the Chair's expectation that some TNC drivers may also work for other transportation service providers, such as livery bases. The proposal also establishes guidelines to help insurance carriers and Board adjudicators uniformly determine whether a TNC driver was injured during the course of employment by assessing certain factors, such as the date the TNC driver received his or her TNC permit and the activities in which the TNC driver was engaged at the time of injury. Insofar as the law establishing TNCs (Article 44-B of the Vehicle and Traffic Law) allows TNCs to operate outside of the five boroughs of New York City, it is expected that the proposed regulations will benefit rural areas throughout the state by clarifying the workers' compensation rules pertaining to TNC drivers who may operate in those areas.

2. Reporting, recordkeeping and other compliance requirements:

There are no reporting, recordkeeping, or other compliance requirements associated with this rule. The rule solely clarifies existing laws regarding TNCs as they relate to workers' compensation benefits, including Article 44-B of the Vehicle and Traffic Law and Article 6-F of the Executive Law.

3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely clarifies existing laws regarding TNCs as they relate to workers' compensation, including Article 44-B of the Vehicle and Traffic Law and Article 6-F of the Executive Law.

4. Minimizing adverse impact:

This proposed rule is designed to minimize the adverse impact that TNC drivers may face when filing workers' compensation claims by setting forth clear criteria regarding the applicability and scope of their workers' compensation coverage. In particular, the proposal clarifies that workers' compensation coverage will only be available to TNC drivers under the BCF when the TNC driver is exclusively acting as a TNC driver. The proposed rule also establishes guidelines to help stakeholders and Board adjudicators determine whether a TNC driver was acting within the scope of employment at the time of injury. Therefore, the proposal will benefit TNCs and TNC drivers who operate throughout upstate New York, including those in rural areas.

5. Rural area participation:

Because time is of the essence, the Chair has not yet had an opportunity to consult with rural areas during the rule-drafting process. However, the Chair anticipates that this rule will be published for public comment in the near, if not immediate, future, at which time the Chair will assess any comments made by those in rural communities.

Job Impact Statement

The proposed regulation will not have an adverse impact on jobs. The regulation merely clarifies that workers' compensation coverage will only be available to TNC drivers under the New York Black Car Operators' Injury Compensation Fund (BCF) when the TNC driver is exclusively acting as a TNC driver. This rule also serves to establish guidelines to help workers' compensation insurance carriers and Board adjudicators uniformly determine whether a TNC driver was injured during the scope of employment. These regulations will ultimately benefit TNCs, particularly TNC drivers, as well as insurance carriers by setting forth clear criteria to determine which workers' compensation insurance attaches and when a TNC driver is covered.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Workers' Compensation Benefits for Transportation Network Company Drivers

I.D. No. WCB-25-17-00003-P

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

Proposed Action: Addition of Part 319 to Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, section 117

Subject: Workers' compensation benefits for Transportation Network Company drivers.

Purpose: Clarify which drivers are covered and when they are covered by the Black Car Fund.

Text of proposed rule: Title 12 of the NYCRR is hereby amended to add a new Part 319, as follows:

Part 319. Transportation Network Companies

319.1 Definitions

(a) The terms "transportation network company" or "TNC", "TNC driver", "TNC vehicle", "TNC passenger", and "TNC prearranged trip" shall have the same meaning as set forth in section 1691 of article forty-four-B of the vehicle and traffic law.

(b) "Board" means the New York State Workers' Compensation Board.

(c) "Permitted" shall mean that the TNC driver is the holder of a valid TNC driver's permit, which has been issued pursuant to article 44-B of the vehicle and traffic law.

319.2 Exclusivity of TNC Services

For the purposes of the administration of article 6-F of the executive law, a TNC driver shall mean a TNC driver who is engaged in a TNC prearranged trip, or who otherwise meets the definition of a TNC driver as set forth in article 44-B and Part 319.3(a)(2) of this title, and who at the time of injury was not also acting as:

(a) a black car operator, as defined in paragraph 1 of section 160-cc of the executive law, who (1) may operate anywhere in the state of New York and (2) accepts passengers through means other than a TNC digital network;

(b) an independent livery operator, who satisfies the eligibility criteria set forth in paragraph c of section 309.2 of title 12 of the New York codes, rules, and regulations, and (1) accepts passengers from a central dispatch facility other than one that is a member of the New York Black Car Operators' Injury Compensation Fund, Inc., as defined article 6-F of the executive law, and (2) operates in the five boroughs of the city of New York or Westchester or Nassau counties;

(c) a medallion cab or a borough taxi operator, regulated pursuant to section 148-a of the vehicle and traffic law and section 19-502 of the administrative code of the city of New York; or

(d) a livery driver, who (1) is not a member of the Independent Livery Drivers Benefit Fund, the New York Black Car Operators' Injury Compensation Fund, Inc., or a medallion cab or borough taxi operator, and (2) accepts passengers through means other than a TNC digital network.

(e) a for-hire vehicle operator, as defined in section 19-502 of the administrative code of the city of New York and regulated by the New York city taxi and limousine commission, who accepts passengers within the city of New York (New York, Kings, Queens, Bronx and Richmond counties).

319.3 Scope of Coverage

(a) For purposes of the administration of article 6-F of the Executive Law, a "Black car operator" shall include:

(1) any TNC driver that is engaged in a TNC prearranged trip and

(2) any TNC driver that is logged onto a TNC digital network and is not engaged in a TNC prearranged trip, provided:

(i) the TNC driver was permitted by the TNC on or before 11:59 PM of June 29, 2018, in accordance with criteria set forth in section 1696 of article forty-four-B of the vehicle and traffic law; and

(ii) at the time of the event giving rise to a claim for benefits from the New York Black Car Operators' Injury Compensation Fund, the TNC driver was engaged in an activity reasonably related to driving as a TNC driver taking into consideration the time, place and manner of such activity.

(b) For the purposes of this section, the time and date that a TNC driver is considered permitted shall be the earlier of:

(1) the date maintained in the TNC's records,

(2) the postmark date when the permit was mailed,

(3) the date the permit was electronically transmitted, or

(4) the date stamp provided to a TNC driver at the time of permitting.

(c) To determine whether a Black car operator, as defined pursuant to paragraph (b) of subdivision one of section 160-cc of the executive law, is engaged in an activity reasonably related to driving as a TNC driver, consideration by the board may include, but not be limited to, the following:

(1) Whether the TNC driver is in or near the TNC vehicle at the time of injury;

(2) Whether the injury occurred while actively seeking a TNC prearranged trip or immediately after a TNC prearranged trip; and

(3) The distance between the site of the accident and the TNC passenger drop-off location.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

The Chair is authorized to amend Title 12 of the NYCRR to add a new section 319. The Chair's authority is derived from WCL § 117(1), which authorizes the Chair to adopt reasonable regulations consistent with and supplemental to the provisions of the WCL and the Labor Law. Additionally, Section 24 of Chapter 59 of the Laws of 2017 authorized agencies designated to perform a function or duty pursuant to the act to adopt regulations consistent with its provisions.

2. Legislative objectives:

WCL § 117(1) authorizes the Chair to adopt reasonable regulations to supplement the WCL. The WCL was enacted for socio-economic remediation purposes to protect workers and their dependents from economic hardship in case of injury on the job (see Matter of Post v Burger & Gohlke, 216 NY 544 [1916]; see also Matter of LaCroix v Syracuse Exec. Air Serv., Inc., 8 NY3d 348 [2007]). The proposed rule will advance these objectives by ensuring that TNC drivers receive the full workers' compensation benefits they are due by clarifying when TNC drivers are entitled to coverage under the BCF and when an injury will be deemed to have occurred during the scope of employment as a TNC driver.

3. Needs and benefits:

On April 10, 2017, the New York Legislature adopted Chapter 59 of the Laws of 2017, which, among other things, created a series of laws to allow ride-sharing companies to operate outside of the five boroughs of New York City as early as July 9, 2017. The laws add a new section, Article 44-B, to the Vehicle and Traffic Law, and amend Article 6-F of the Executive Law to expand the types of bases that can become members of the BCF. Specifically, Vehicle and Traffic Law Article 44-B creates a new class of transportation service vehicles, TNCs, which are legally distinct from other transportation providers, such as medallion cabs and borough taxis, livery cabs, black cars, and for-hire vehicles. Given the panoply of transportation service providers that will soon be operating in New York State, each having unique rules regarding workers' compensation coverage, it is the Chair's position that these proposed rules are necessary to ensure the effective and accurate disbursement of workers' compensation benefits, particularly when a TNC driver suffers a work-related injury. Therefore, the Chair has designed these regulations with the understanding that they will enable all stakeholders, including TNCs and Board adjudicators, to understand when a TNC driver has workers' compensation coverage, what type of coverage attaches, and the extent of that coverage.

4. Costs:

The proposed rule does not impose costs on any regulated parties, the Board, the State, or local governments for its implementation and continuation.

5. Local government mandates:

The proposed regulation does not impose any program, service, duty, or responsibility upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork:

The proposed rule does not require any entity to comply with any new reporting requirements.

7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

8. Alternatives:

One alternative discussed was to take no action. However, the Chair felt that it was more prudent to take action out of concern that failing to set forth clear criteria regarding when TNC drivers are covered, and by whom, would run the risk that some TNC drivers would wrongfully be denied coverage. The proposed regulations will also help insure that the proper insurance carrier is billed when a TNC driver is injured during the scope of his or her employment, particularly in situations where the TNC driver also works for another transportation provider, such as a livery base.

9. Federal standards:

There are no federal standards applicable to this proposed rule.

10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately insofar as no affirmative obligations have been imposed on any party, and the regulations merely clarify existing laws that were enacted in April 2017.

Regulatory Flexibility Analysis

1. Effect of rule:

This proposed rule will have no effect on small businesses or local

governments. The proposal solely clarifies existing laws regarding workers' compensation coverage for TNC drivers, particularly the provisions set forth in Article 44-B of the Vehicle and Traffic Law and Article 6-F of the Executive Law. Specifically, the proposal aims to clarify the circumstances in which a TNC driver will be deemed to be insured under the BCF and how to determine whether an injury arose out of and in the course of employment as a TNC driver.

2. Compliance requirements:

There are no compliance requirements created as a result of this rule. The proposed regulation merely clarifies existing laws regarding workers' compensation coverage for TNC drivers, including Article 44-B of the Vehicle and Traffic Law and Article 6-F of the Executive Law.

3. Professional services:

The Chair believes that no professional services will be needed to comply with this rule. The proposed regulation merely clarifies existing laws regarding workers' compensation coverage for TNC drivers, including in Article 44-B of the Vehicle and Traffic Law and Article 6-F of the Executive Law. It does not create any new, affirmative obligations on any party.

4. Compliance costs:

This proposal will not impose compliance costs on any entity. The proposed regulation merely clarifies existing laws regarding workers' compensation coverage for TNC drivers, including Article 44-B of the Vehicle and Traffic Law and Article 6-F of the Executive Law. It does not create any new, affirmative obligations on any party.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments to comply with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments to comply with the rule.

6. Minimizing adverse impact:

The Chair does not anticipate that the proposed rule will have an adverse economic impact on small businesses or local governments, insofar as the proposal does not impose any new, affirmative obligations on small businesses or local governments. Indeed, the Chair expects that any impact would be positive because key stakeholders will better understand how the Board will decide contested workers' compensation claims filed by TNC drivers.

7. Small business and local government participation:

Because time is of the essence, the Chair has not yet had an opportunity to consult with small businesses or local governments during the rule-drafting process. However, during the public comment period the Chair will assess any comments made by the small business community and local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule concerns the applicability and scope of workers' compensation benefits as they relate to TNCs. Specifically, the proposed regulation serves to clarify that workers' compensation coverage will only be available to TNC drivers under the BCF when the TNC driver is exclusively acting as a TNC driver, given the Chair's expectation that some TNC drivers may also work for other transportation service providers, such as livery bases. The proposal also establishes guidelines to help insurance carriers and Board adjudicators uniformly determine whether a TNC driver was injured during the course of employment by assessing certain factors, such as the date the TNC driver received his or her TNC permit and the activities in which the TNC driver was engaged at the time of injury. Insofar as the law establishing TNCs (Article 44-B of the Vehicle and Traffic Law) allows TNCs to operate outside of the five boroughs of New York City, it is expected that the proposed regulations will benefit rural areas throughout the state by clarifying the workers' compensation rules pertaining to TNC drivers who may operate in those areas.

2. Reporting, recordkeeping and other compliance requirements:

There are no reporting, recordkeeping, or other compliance requirements associated with this rule. The rule solely clarifies existing laws regarding TNCs as they relate to workers' compensation benefits, including Article 44-B of the Vehicle and Traffic Law and Article 6-F of the Executive Law.

3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely clarifies existing laws regarding TNCs as they relate to workers' compensation, including Article 44-B of the Vehicle and Traffic Law and Article 6-F of the Executive Law.

4. Minimizing adverse impact:

This proposed rule is designed to minimize the adverse impact that TNC drivers may face when filing workers' compensation claims by setting forth clear criteria regarding the applicability and scope of their workers' compensation coverage. In particular, the proposal clarifies that workers' compensation coverage will only be available to TNC drivers under the BCF when the TNC driver is exclusively acting as a TNC driver. The proposed rule also establishes guidelines to help stakeholders and Board adjudicators determine whether a TNC driver was acting within the scope of employment at the time of injury. Therefore, the proposal will benefit TNCs and TNC drivers who operate throughout upstate New York, including those in rural areas.

5. Rural area participation:

Because time is of the essence, the Chair has not yet had an opportunity to consult with rural areas during the rule-drafting process. However, during this public comment period the Chair will assess any comments made by those in rural communities.

Job Impact Statement

The proposed regulation will not have an adverse impact on jobs. The regulation merely clarifies that workers' compensation coverage will only be available to TNC drivers under the New York Black Car Operators' Injury Compensation Fund (BCF) when the TNC driver is exclusively acting as a TNC driver. This rule also serves to establish guidelines to help workers' compensation insurance carriers and Board adjudicators uniformly determine whether a TNC driver was injured during the scope of employment. These regulations will ultimately benefit TNCs, particularly TNC drivers, as well as insurance carriers by setting forth clear criteria to determine which workers' compensation insurance attaches and when a TNC driver is covered.