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.

Adirondack Park Agency

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Adirondack Park Agency publishes a new notice of proposed rule making in the NYS *Register.*

Access to Agency Records

I.D. No.	Proposed	Expiration Date
APA-09-16-00005-P	March 2, 2016	March 2, 2017

Office of Alcoholism and Substance Abuse Services

NOTICE OF ADOPTION

Repeal 14 NYCRR Part 823 (Outpatient Chemical Dependency Services for Youth Programs and Services)

I.D. No. ASA-52-16-00014-A
Filing No. 155
Filing Date: 2017-03-06
Effective Date: 2017-03-22

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

Action taken: Repeal of Part 823 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 32.01 and 32.07(a)

Subject: Repeal 14 NYCRR Part 823 (Outpatient Chemical Dependency Services for Youth Programs and Services).

Purpose: Repeal of obsolete rules: Outpatient Chemical Dependency Services for Youth Programs and Services.

Text or summary was published in the December 28, 2016 issue of the Register, I.D. No. ASA-52-16-00014-P.

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

Text of rule and any required statements and analyses may be obtained from: Sara Osborne, Associate Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: Sara.Osborne@oasas.ny.gov

Assessment of Public Comment
The agency received no public comment.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Repeal Parts 321 and 1055; Add New Part 813 Regarding Financing Capital Improvements

I.D. No. ASA-52-16-00013-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 321 and 1055; addition of Part 813 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.21(b), 32.01, 32.05 and art. 25; L. 1968, ch. 359

Subject: Repeal Parts 321 and 1055; add new Part 813 regarding financing capital improvements.

Purpose: Repeal DSAS/DAAA regulations; consolidate provisions into new Part 813.

Substance of revised rule: The full text of the rule making can be viewed at https://www.oasas.ny.gov/regs/index.cfm. The Proposed Rule Repeals Parts 321 and 1055 and adds a new Part 813 (Financial Assistance for Capital Improvement Projects) to centralize in the Part 800 series requirements for eligible providers to access OASAS state aid and bond sale revenues through the Dormitory Authority of the State of New York (DASNY) to finance capital improvements and investments for the development and maintenance of treatment facilities.

Section 813.1 sets forth the Background and Intent of this new Part.
§ 813.2 indicates to whom this Part is applicable.
§ 813.3 sets forth the legal basis for the provisions in this Part.
§ 813.4 defines terms applicable to this Part.
§ 813.5 reviews the requirements for application for a state aid grant, or for a letter of understanding and intent to refinance a state aid grant via a DASNY loan.
§ 813.6 sets forth the requirements for a DASNY loan pursuant to the Facilities Development Corporation Act.
§ 813.7 Liens of the Office explains the mutual rights and obligations of the Office and eligible providers regarding security for a state aid grant or DASNY loan.
§ 813.8 States prohibitions against conflicts of interest where distribution of state funds are implicated.
§ 813.9 Provides for applications for a waiver of provisions of this Part.
§ 814.10 Standard severability clause.

Revised rule compared with proposed rule: Substantial revisions were made in sections 813.8 and 813.9.

Text of revised proposed rule and any required statements and analyses may be obtained from Sara Osborne, Associate Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: Sara.Osborne@oasas.ny.gov

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

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

Revised Regulatory Impact Statement

A Revised Regulatory Impact Statement is not provided because changes made to the last published rule at the request of the Assembly Administrative Regulations Review Commission (inclusion of existing provisions related to conflict of interest and regulatory waivers that were not previously carried forward from Part 321) do not necessitate revision to the previously published Impact Statement.

Revised Regulatory Flexibility Analysis

No Revised Statement in Lieu of Regulatory Flexibility Analysis for Small Businesses and Local Governments is being submitted because changes made to the last published rule at the request of the Assembly Administrative Regulations Review Commission (inclusion of existing provisions related to conflict of interest and regulatory waivers that were not previously carried forward from Part 321) do not necessitate revision to the previously published Statement in Lieu of Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Revised Rural Area Flexibility Analysis

No Revised Statement in Lieu of Rural Area Flexibility Analysis is being submitted because changes made to the last published rule at the request of the Assembly Administrative Regulations Review Commission (inclusion of existing provisions related to conflict of interest and regulatory waivers that were not previously carried forward from Part 321) do not necessitate revision to the previously published Statement in Lieu of Rural Area Flexibility Analysis.

Revised Job Impact Statement

A Revised Job Impact Statement (JIS) is not being submitted with this notice because it is evident from the subject matter of the regulation that it will have no impact on jobs and employment opportunities. Changes made to the last published rule do not necessitate revision to the previously published Statement in Lieu of a Job Impact Statement.

Assessment of Public Comment

OASAS received a comment letter jointly from Aravella Simotas, Assembly Chair of the Administrative Regulations Review Committee and Linda Rosenthal, Chair of the Assembly Committee on Alcoholism and Drug Use. They noted that provisions in Part 321 (§ 321.13 and § 321.14) related to conflict of interest and discretionary waivers were not carried forward into the new consolidated Part 813. They recommend that OASAS include this specific conflict of interest and waiver language in the final version of Part 813. The Revised Rulemaking reflects those changes.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-12-17-00004-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Alcoholism and Substance Abuse Services," by adding thereto the position of øRegional Director OASAS (1).

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-12-17-00005-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor under the subheading "State Insurance Fund," by deleting therefrom the position of øAffirmative Action Administrator 4 (1) and by adding thereto the position of øAffirmative Action Administrator 5 (1).

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-12-17-00006-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Financial Services, by deleting therefrom the positions of Financial Services Frauds Investigator 1 (32), Financial Services Frauds Investigator 2 (20), Financial Services Frauds Investigator 3 (10), Financial Services Frauds Investigator 4 (2) and øFinancial Services Frauds Investigator 5 (1) and by adding thereto the positions of Investigative Specialist 1 (Financial Fraud) (52), Investigative Specialist 2 (Financial Fraud) (10), Investigative Specialist 3 (Financial Fraud) (2) and øInvestigative Specialist 4 (Financial Fraud) (1); in the Executive Department under the subheading "Gaming Commission," by deleting therefrom the positions of øRacing and Wagering Investigator (10) and by adding thereto the positions of øInvestigative Officer 1 (10); in the Education Department, by deleting therefrom the positions of Principal Professional Conduct Investigator, Senior Professional Conduct Investigator and Supervising Professional Conduct Investigator and by adding thereto the positions of Investigative Specialist 1, Investigative Specialist 2 (Professional Conduct) and Investigative Specialist 4 (Professional Conduct); in the Department of Family Assistance under the subheading "Office of Children and Family Services," by deleting therefrom the position of Medicaid Investigator 3 (1) and by adding thereto the position of Investigative Specialist 2 (Medicaid) (1); in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by deleting therefrom the position of Medicaid Investigator 1 (1) and by adding thereto the position of Investigative Specialist 1 (1); in the Department of Health, by deleting therefrom the positions of Medicaid Investigator 2 (4) and øProfessional Medical Conduct Program Manager and by adding thereto the positions of Investigative Specialist 1 (4) and øInvestigative Specialist 4 (Professional Conduct); in the Department of Health under the subheading "Office of the Medicaid Inspector General," by deleting therefrom the positions of Medicaid Investigator 1 (32), Medicaid Investigator 2 (21), Medicaid Investigator 3 (11) and Medicaid Investigator 4 (5) and by adding thereto the positions of Investigative Specialist 1 (53), Investigative Specialist 2 (Medicaid) (11) and Investigative Specialist 4 (Medicaid) (5); in the Department of Labor under the subheading "State Insurance Fund," by deleting therefrom the positions of øInsurance Field Investigator, øPrincipal Insurance Field Investigator (1), øSenior Insurance Field Investigator and øSupervising Insurance Field Investigator (4) and by adding thereto the positions of øInvestigative Officer 1 (SIF), øInvestigative Officer 2 (SIF) (4) and øInvestigative Officer 3 (SIF) (1).

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-12-17-00007-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by increasing the number of positions of Special Assistant from 19 to 21.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-12-17-00008-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Environmental Conservation, by adding thereto the position of øDirector Environmental Permits (1).

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-12-17-00009-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision, by increasing the number of positions of Minority Business Specialist 1 from 1 to 3.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-12-17-00010-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Agriculture and Markets, by deleting therefrom the position of Investigator and by adding thereto the position of Investigator 1; in the Department of Corrections and Community Supervision, by deleting therefrom the positions of Investigator (15) and by adding thereto the positions of Investigator 1 (15); in the Department of Environmental Conservation, by deleting therefrom the position of Investigator and by adding thereto the position of Investigator 1; in the Executive Department under the subheading "State Board of Elections," by deleting therefrom the positions of Investigator (2) and by adding thereto the positions of Investigator 1 (2); in the Executive Department under the subheading "Gaming Commission," by deleting the positions of Investigator (22) and by adding thereto the positions of Investigator 1 (22); in the Executive Department under the subheading "Office of the State Inspector General," by deleting therefrom the position of Investigator and by adding thereto the position of Investigator 1; in the Executive Department under the subheading "Justice Center for the Protection of People with Special Needs," by deleting therefrom the position of Investigator and by adding thereto the position of Investigator 1; in the Executive Department under the subheading "Office of the Welfare Inspector General," by deleting therefrom the positions of Investigator (7) and by adding thereto the positions of Investigator 1 (7); in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by deleting therefrom the position of Investigator and by adding thereto the position of Investigator 1; in the Department of Financial Services, by deleting therefrom the positions of Investigator (11) and by adding thereto the positions of Investigator 1 (11); in the Department of Health, by deleting therefrom the positions of Investigator (2) and by adding thereto the positions of Investigator 1 (2); in the Department of Labor under the subheading "Administration - General," by deleting therefrom the position of Investigator and by adding thereto the position of Investigator 1; in the Department of Labor under the subheading "Workers' Compensation Board," by deleting therefrom the positions of Investigator (2) and by adding thereto the positions of Investigator 1 (2); in the Department of Law, by deleting therefrom the positions of Investigator (176) and by adding thereto the positions of Investigator 1 (176); in the Department of Law under the subheading "Medicaid Fraud Control Unit," by deleting therefrom the positions of Investigator (25) and by adding thereto the positions of Investigator 1 (25); in the Department of Mental Hygiene under the subheading "Office of Alcoholism and Substance Abuse Services," by deleting therefrom the position of Investigator and by adding the position of Investigator 1; in the Department of Mental Hygiene under the subheading "Office of Mental Health," by deleting therefrom the position of Investigator and by adding the position of Investigator 1; in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by deleting therefrom the positions of Investigator (7) and by adding the positions of Investigator 1 (6); in the Department of State under the subheading "Joint Commission on Public Ethics," by deleting therefrom the positions of Investigator (4) and by adding the positions of Investigator 1 (4); in the Department of Taxation and Finance, by deleting therefrom the positions of Investigator (10) and by adding the positions of Investigator 1 (10); and in the Labor Management Committees, by deleting therefrom the position of Investigator and by adding the position of Investigator 1.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Division of Criminal Justice Services

NOTICE OF ADOPTION

Pre-Employment Correction Training

I.D. No. CJS-51-16-00011-A
Filing No. 156
Filing Date: 2017-03-06
Effective Date: 2017-03-22

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

Action taken: Addition of Part 6019 to Title 9 NYCRR.

Statutory authority: Executive Law, sections 837-a(9) and 840(2-a)

Subject: Pre-Employment Correction Training.

Purpose: Allow employers to hire an individual who has already completed a large portion of the basic course, thereby saving resources.

Substance of final rule: Executive Law section 837-a(9) authorizes the Commissioner of the Division of Criminal Justice Services (Commissioner), in consultation with the State Commission of Correction (SCOC) and Municipal Police Training Council (Council), to establish and maintain training programs for correction officers. Executive Law section 840(2-a) empowers the Council, in consultation with SCOC, to promulgate regulations regarding the approval, or revocation thereof, of basic correctional training programs administered by municipalities; minimum courses of study, attendance requirements, and equipment and facilities to be required at approved correctional training programs; minimum qualifications for instructors at approved correctional training programs; and the requirements of a minimum basic correctional training program required by Executive Law section 837-a(9).

The Pre-Employment Correction Training program is an alternative method of completing the Basic Course for Correction Officers. The program is conducted in two phases. Phase 1 is designed to be completed by a civilian; and phase 2 is completed after an individual successfully completes the initial or pre-employment phase and is appointed as a sworn correction officer. In contrast, a conventional basic correctional course is completed in its entirety only by sworn correction officers. However, the Pre-Employment Correction Training program does not cover topics deemed appropriate only for sworn correction officers, such as firearms training.

A new Part 6019 is added to 9 NYCRR to read as follows:

PART 6019

Pre-Employment Correction Training

6019.1. Definitions. The following definitions were added: commissioner, council, pre-employment correction basic training course, pre-employment correction training school, director, municipality, college, university and junior college or two-year college.

6019.2. Statement of purpose. The purpose of this Part is to set forth minimum standards for a pre-employment correction basic training course, including, but not limited to, subject matter and time allotments, requirements for administration of the course-by-course directors, and rules governing attendance and completion of such course.

The pre-employment correction basic training course is an alternative method of correction officer basic training set forth in Part 6018 and is designed to be completed by civilians. An individual who successfully completes a pre-employment correction basic training course must complete additional training after appointment as a sworn correction officer in order to fulfill requirements set forth in section 2.30 of the Criminal Procedure Law. Provided, however, nothing in this Part shall preclude a sworn correction officer from attending a pre-employment correction basic training course.

Use of a pre-employment correction basic training course is not required and the determination to utilize this alternative method of training shall be within the discretion of each employer. An employer may require an individual who has been appointed as a sworn correction officer, and who previously successfully completed a pre-employment basic course, to complete the basic course for correction officers.

6019.3. Minimum standards for approval of a pre-employment correction basic training course and 6019.4. Requirements for approval of a pre-employment correction training school.

As the headers state, sections 6019.3 and 6019.4 respectively provide the minimum standards for approval of a pre-employment correction basic training course and the requirements for approval of a pre-employment correction training school. For instance, the course and school must be pre-approved by the Commissioner.

6019.5. Revocation or suspension of approval of a pre-employment correction training school. This section provides that the Commissioner may suspend or revoke the approval granted to a pre-employment correction training school for cause at any time. Reasons for such suspension or revocation may include, but not be limited to, violation of the program requirements.

6019.6. Term and renewal of pre-employment correction training school approval. This section provides that the pre-employment correction training school approval shall be valid for a period of two years from the date of approval, provided that the Council has not made any changes to the minimum qualifications. Such approval may be renewed by a pre-employment correction training school upon filing a copy of the current school qualifications and approval by the Commissioner.

6019.7. Requirements for conducting a pre-employment correction basic training course and 6019.8. Requirements for completion of a pre-employment correction basic training course.

As the headers state, sections 6019.7 and 6019.8 respectively provide the requirements for conducting a pre-employment correction basic training course and the requirements for completion of a pre-employment correction basic training course. For instance, within 10 days of the commencement of a pre-employment correction basic training program, the course director must forward a course roster to the Commissioner listing the names, and other information required by the Council, for all attendees. In addition, within 10 days after the conclusion of a basic course, the director must forward the course roster to the Commissioner denoting the performance of the respective trainees.

Further, pursuant to section 6019.8, the training completed pursuant to this Part shall remain valid for two years from the date of completion recorded on the transcript. An individual who has completed the pre-employment correction basic training course has two years from the date of completion recorded on the transcript to obtain employment as a sworn correction officer and, thereafter, complete the remaining training requirements prescribed by the Council in accordance with the requirements of Part 6018 for purposes of compliance with the provisions of section 2.30 of the Criminal Procedure Law. After 2 years from the date of completion recorded on the transcript, the training will no longer be valid for purposes of compliance with the provisions of section 2.30 of the Criminal Procedure Law.

6019.9. Limitations regarding pre-employment correction basic training courses. This section provides that the completion of a pre-employment correction basic training course not approved by the Commissioner and pre-employment correction training completed before the effective date of this regulation shall not be deemed to be successful completion of a pre-employment correction basic training course and shall not be recognized by the Council or the Commissioner for purposes of compliance with the provisions of section 2.30 of the Criminal Procedure Law.

Also, the completion of a pre-employment correction basic training course does not entitle or guarantee employment as a correction officer, nor affect, in any way, the applicability of the Civil Service Law or other provisions of law regarding the hiring and retention of correction officers.

Final rule as compared with last published rule: Nonsubstantive changes were made in Part 6019.

Text of rule and any required statements and analyses may be obtained from: Natasha M. Harvin-Locklear, Esq., NYS Division of Criminal Justice Services, Alfred E. Smith Building, 80 South Swan Street, (518) 457-8420, email: dcjslegalrulemaking@dcjs.ny.gov

Revised Regulatory Impact Statement

A revised RIS is not being submitted because it is not required. This is a technical amendment exempt from SAPA § 202-a.

Revised Regulatory Flexibility Analysis

A revised RFASBLG is not being submitted because the non-substantive changes to the proposed rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This is a technical amendment.

Revised Rural Area Flexibility Analysis

A revised RAFA is not being submitted because the non-substantive changes to the proposed rule will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This is a technical amendment.

Revised Job Impact Statement

A revised JIS is not being submitted because the non-substantive changes to the proposed rule will not impose a substantial adverse impact on jobs and employment opportunities. This is a technical amendment.

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

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Partial Match Policy

I.D. No. CJS-12-17-00003-P

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

Proposed Action: Amendment of Parts 6190, 6191, 6192 and 6193 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 837(13) and 995-b(9)

Subject: Partial Match Policy.

Purpose: Align language of the Partial Match Policy and regulations with current National DNA Index System (NDIS) operating procedures.

Substance of proposed rule (Full text is posted at the following State website: http://www.criminaljustice.ny.gov/): The DNA Subcommittee reviewed and discussed New York State's Partial Match Policy and related regulations. Changes were proposed to the workflow in order to allow local laboratories to calculate the Expected Match Ratio (EMR) and Expected Kinship Ratio (EKR) statistics. Changes were also proposed to align the language of the Policy and regulations with current National DNA Index System (NDIS) operating procedures. Additional changes were proposed to correct typographical errors, and/or to provide consistent language.

At its 2016 meeting, the DNA Subcommittee voted to issue a binding recommendation to the Commission on Forensic Science (Commission) to accept the proposed amendments to the Partial Match Policy and related regulations. The Commission formally adopted the changes on December 9, 2016. The following is a summary of the substance of the proposed rule which amends various sections in 9 NYCRR Parts 6190, 6191, 6192 and 6193.

Section 6190.1(a). Definitions are amended.
Section 6190.4(a)(1). Typographical error is corrected.
Section 6190.6(b)(4). Typographical error is corrected.
Section 6191.1(a). Definitions are amended.
Section 6191.3. Technical amendment.
Section 6192.1. Definitions are added, amended or deleted.
Section 6192.2. Typographical error is corrected.
Section 6192.3 is amended to read as follows:

(a) DNA databank shall be comprised of data generated from DNA testing methods approved in the NDIS [DNA Data Acceptance Standards] *Operating Procedures*. Loci required for the upload *to NDIS* of authorized DNA profiles [to the national system] shall be in accordance with the NDIS [DNA Data Acceptance Standards] *Operating Procedures*.

(b) [Casework evidence] *Forensic* DNA profiles to be maintained in the DNA databank shall be comprised of information for at least [six of] the *minimum required* STR loci or other combinations of loci using alternative technologies approved for use in the NDIS [DNA Data Acceptance Standards] *Operating Procedures*. This requirement for a minimum number of loci applies only to those [casework evidence] *forensic* DNA profiles which an authorized laboratory desires to have maintained in the forensic index of the DNA databank.

(c) For purposes of searches of the DNA databank, [a] *the* minimum [of four] loci *required* shall be provided by a laboratory requesting a forensic DNA profile search against the DNA databank. Generally, all available loci associated with a forensic DNA profile shall be searched in the DNA databank. Notwithstanding this requirement, the laboratory may, at its discretion, request that a search be performed using fewer loci if there is an investigative need and sufficient scientific reasons which support using fewer than [four] the required loci in a particular case. The scientific reasons shall include, but not be limited to, the apparent presence of mixtures, sample degradation or limited sample availability. The basis of the scientific reason(s) must be summarized [on] *in* the search request [form] whenever fewer than [four] *the required* loci are provided with a search request.

(d) DNA profiles that may be added to the DNA [database] *databank* by forensic DNA laboratories include [casework evidence,] *forensic* DNA profiles, convicted offender DNA profiles, subject DNA profiles, DNA profiles of missing persons, relatives of individuals reported missing, unidentified humans or human remains.

(e) In the event of a potential indirect association, laboratories should use Y-STR and/or mtDNA testing to help determine if the indirect association should be pursued further.

(f) [Upon notification by the] *Pursuant to* NDIS [Custodian that all applicable NDIS requirements have been satisfied], the division may release the [name] *identity* of an offender whose DNA profile has been indirectly associated through a national CODIS search with a DNA profile in another state's forensic index. *The State CODIS laboratory will review requests from NDIS participating laboratories and notify the division regarding the partial match request. The State CODIS laboratory will notify the NDIS participating laboratory and NDIS Custodian if a name is released.* Testing of additional loci of the offender sample may be required and may include Y-STR and/or mtDNA analysis.

(g) The division may release the name of an offender whose DNA profile has been indirectly associated through a State CODIS search with a forensic DNA profile when it has been determined that the information may lead to the identification of an individual related to the offender. For associations obtained from a State CODIS search, the following conditions must be met:

(1) The laboratory submitting the [crime scene] *forensic* DNA profile to the CODIS program shall complete an application to the division requesting the name of the offender and, as part of the application, confirm that:

(i) an LDIS search has been performed using the profile in the Forensic Index;

(ii) the forensic DNA profile derives from a single source and contains at least 10 of the CODIS core loci;

[(iii) the submitting agency and the appropriate prosecutor have committed to pursue further investigation of the case if the name is released. Such entities also agree to provide follow-up information to the division regarding the outcome of the case, which the division will provide to the DNA Subcommittee at six month intervals; and

(iv) the submitting laboratory has confirmed that release of the name will be followed by a report to the investigating agency.]

(iii) the Expected Match Ratio (EMR) and/or the Expected Kinship Ratio (EKR) for the four major ethnic groups in the FBI allele frequency databases (or equivalent likelihood ratio approved by the State DNA Subcommittee) was calculated by it and at least one of the four database values for EMR or EKR is greater than or equal to 1.0 and all the others are greater than or equal to 0.1 (or an equivalent pre-determined statistical measure approved by the DNA Subcommittee). If available and appropriate, additional DNA analysis (e.g.,Y-STR, mitochondrial) should be performed;

(iv) the submitting agency and the appropriate prosecutor have committed to pursue further investigation of the case if the name is released. Such entities also agree to provide follow-up information to the division regarding the outcome of the case, which the division will provide to the DNA Subcommittee at six month intervals; and

(v) the submitting laboratory has confirmed that release of the name will be followed by a notification to the investigating agency.

(2) The [report] *notification* from the submitting laboratory to the investigating agency shall indicate that:

(i) the [match] *association* is indirect;

(ii) the information provided is an investigative lead;

(iii) the available data suggests that the source of the [evidentiary] *forensic* DNA [pattern] *profile* is potentially a relative of the convicted offender but is not conclusive evidence of the same.

(3) [The division will provide the match information to the State DNA databank which, in turn, will calculate and report whether the appropriate statistical threshold approved by the DNA Subcommittee has been met] *A partial match request from a local CODIS laboratory that satisfies all criteria described above will be submitted to the State CODIS laboratory for verification. Upon receipt of such verification, the division will release the name of the offender to the local CODIS laboratory. If the criteria are not satisfied, the State CODIS laboratory will notify the division and the convicted offender's name will not be released.*

[(4) Upon receiving a completed application from the local participating CODIS laboratory and confirmation from the databank that the appropriate statistical threshold has been met, the division will release the name of the offender and supporting statistical data to the submitting laboratory. If the appropriate statistical threshold value is not supported by the available data, then additional testing may be required. If the subsequent testing does not meet the appropriate threshold, the databank will notify the division and the offender's name will not be released.]

Section 6192.4. Technical amendment.

Section 6192.5. Technical amendment.

Section 6192.6. Typographical error is corrected.

Section 6192.9. Technical amendment.

Section 6193.2. Typographical error is corrected.

Section 6193.3. Technical amendment.

Section 6193.4(a) is amended to state that an individual with a convicted offender DNA profile that has been included in the offender index of the DNA databank or an individual with a subject DNA profile that has been included in the offender index of the DNA databank pursuant to a plea agreement may request an expungement on the grounds that the conviction which formed the basis for such inclusion in the DNA databank was reversed or vacated or a pardon was granted.

Section 6193.4(a)(4) is amended to delete "including a certification of destruction of the subject's DNA sample".

Section 6193.4(b) is amended to state that an individual with a subject DNA profile that has been included in the offender index of the DNA databank as a condition for participation in a temporary release, CASAT, or shock incarceration program; or as a condition of release on parole, post-release, supervision, presumptive release, or conditional release on a definite or indeterminate sentence; or as a condition of probation or interim probation supervision may request expungement on the grounds that he or she no longer participates in a temporary release, CASAT, or shock incarceration program; or is no longer under the jurisdiction of the Division of Parole; or under probation supervision.

Section 6193.4(b)(1) is amended to delete "including a certification of destruction of the subject's DNA sample".

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin-Locklear, Esq., NYS Division of Criminal Justice Services, Alfred E. Smith Building, 80 South Swan Street, Albany, New York 12210, (518) 457-8420, email: dcjslegalrulemaking@dcjs.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Executive Law sections 837(13) and 995-b(9). Pursuant to Executive Law § 995-b(9), the Commission on Forensic Science (Commission), in consultation with the DNA Subcommittee, must promulgate a policy for the establishment and operation of a DNA Identification Index. The Commission is established pursuant to Executive Law § 995-a. Although it is technically an independent entity, the Commission has no staff or budget and relies on the Division of Criminal Justice Services (Division) for the staff, administrative assistance, and other resources necessary to carry out its powers and duties. Executive Law § 837(13) authorizes the Division to adopt, amend or rescind regulations "as may be necessary or convenient to the performance of the functions, powers and duties of the [D]ivision."

2. Legislative objectives: The Legislature authorized the Commission to promulgate a policy for the establishment and operation of a DNA Databank, and authorized the Division to establish the Databank. Thus, the Legislature clearly intended that the Commission and Division establish and maintain effective procedures governing the DNA Databank.

3. Needs and benefits: The DNA Subcommittee is a subcommittee of the Commission and is composed of scientists with expertise in the fields of molecular biology, population genetics, forensic science, and laboratory standards and quality assurance. The DNA Subcommittee has been granted authority, through binding recommendations to the Commission, regarding matters relating to the establishment and operation of the DNA Databank and, as required by this authority, reviewed and discussed changes to the New York State's Partial Match Policy and related regulations.

Recently, there was a CODIS (Combined DNA Index System) software update at the National DNA Index System (NDIS). CODIS is the Federal Bureau of Investigation's (FBI) program of support for criminal justice DNA databases. CODIS has three levels: NDIS (FBI), the State DNA Index System or SDIS (state laboratories), and the Local DNA Index System or LDIS (local laboratories). NDIS is comprised of uploaded casework evidence DNA profiles, convicted offender DNA profiles, DNA profiles from relatives of individuals reported missing and from the missing persons, and anonymous DNA profiles contributed to a population database from across the United States. The New York State Police Forensic Investigation Center (NYSP) maintains the New York SDIS and New York has eight local DNA laboratories.

In response to the CODIS software updates, changes were proposed to the workflow in order to allow local laboratories to calculate the Expected Match Ratio (EMR) and Expected Kinship Ratio (EKR) statistics. Previously this calculation was done by the State. The ability to perform this calculation by the eight local laboratories will increase the efficiency and effectiveness of confirming DNA hits.

Changes were also proposed to align the language of the Partial Match Policy and regulations with current NDIS operating procedures. All NDIS participating laboratories must comply with the Federal DNA Act, the NDIS Privacy Act Notice, the provisions of the NDIS Memorandum of Understanding (MOU) (including the sublicense to use the CODIS software) and the NDIS Operational Procedures Manual.

The Federal DNA Act specifies the type of DNA records that can be maintained and searched at the national level. The Act also describes the requirements for participation in NDIS. The Privacy Act Notice on NDIS contains a description of the individuals covered by the system, the types of DNA records that would be stored and searched in NDIS, the purpose and routine uses of the system, the practices for storing, accessing, and retaining the DNA records, as well as records access procedures. Operational and/or procedural issues not addressed by the Federal DNA Act are addressed in the NDIS Operational Procedures Manual. In accordance with the NDIS MOU, the designated state official is responsible for ensuring the compliance of the laboratories with the Federal law and NDIS operations and procedures. A laboratory's access to NDIS is subject to cancellation for noncompliance.

All states upload their DNA profiles to NDIS which allows an automatic search against profiles from other states. The FBI, as the national NDIS connection, links New York's SDIS with other state systems. New York's SDIS connection is in turn linked to New York's eight LDIS connections. This tiered approach allows for information sharing among federal, state and local agencies and databases. For instance, the eight local New York State laboratories upload their forensic samples to the State on a regular schedule, once a week. The NYSP will upload all DNA profiles to NDIS. This allows New York State to have its forensic samples automatically searched against those samples from federal and other state laboratories. If New York did not participate in NDIS, its laboratories would only be routinely searching against forensic samples in New York. This could prove to be problematic if an offender is possibly in another state. New York could request a manual keyboard search to compare a target DNA record against DNA records contained in NDIS; however, this request is intended to be used for exigent circumstances and not in place of the routine upload and search. Also, profiles are being continually added and, as a result, there may be no DNA hit during this manual search because the DNA sample was not added to the system until after the search. Furthermore, if no DNA hit is made, the crime may go unsolved.

Additional changes were proposed to correct typographical errors, and/or to provide consistent language.

At its 2016 meeting, the DNA Subcommittee voted to issue a binding recommendation to the Commission to accept the proposed amendments to the Partial Match Policy and related regulations. The Commission formally adopted the changes on December 9, 2016. As the administrative arm of the Commission, the Division intends to carry out its duty to maintain effective procedures governing the DNA Databank by adopting and promulgating the proposed regulations.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: None.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

c. The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The cost analysis is based on the fact that the amendments were proposed to align the language of the New York State Partial Match Policy and related regulations with current NDIS operating procedures, to correct typographical errors, and/or to provide consistent language.

5. Local government mandates: There are no new mandates.

6. Paperwork: There is no new paperwork required.

7. Duplication: The responsibilities of the FBI and the NDIS participants

are explained in the NDIS Operational Procedures Manual which details the operational methodologies and requirements of NDIS.

8. Alternatives: No alternatives were considered since compliance with NDIS Operational Procedures is a requirement for continued participation in NDIS.

9. Federal standards: The responsibilities of the FBI and the NDIS participants are explained in the NDIS Operational Procedures Manual which details the operational methodologies and requirements of NDIS.

10. Compliance schedule: Regulated parties are expected to be able to comply with the rule immediately upon Notice of Adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this Notice of Proposed Rule Making because the proposed rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

The proposed regulatory amendments are designed to align the language of the New York State Partial Match Policy and related regulations with current National DNA Index System (NDIS) operating procedures, to correct typographical errors, and/or to provide consistent language.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this Notice of Proposed Rule Making because the proposed rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

The proposed regulatory amendments are designed to align the language of the New York State Partial Match Policy and related regulations with current National DNA Index System (NDIS) operating procedures, to correct typographical errors, and/or to provide consistent language.

Job Impact Statement

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

The proposed regulatory amendments are designed to align the language of the New York State Partial Match Policy and related regulations with current National DNA Index System (NDIS) operating procedures, to correct typographical errors, and/or to provide consistent language.

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Free Sport Fishing Days

I.D. No. ENV-12-17-00002-P

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

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

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

Subject: Free Sport Fishing Days.

Purpose: To expand and establish four additional free sport fishing days.

Text of proposed rule: Title 6 NYCRR Part 180 is amended to read as follows:

180.6 Free sport fishing days.

The term free sport fishing days shall mean the *last full* weekend (Saturday and Sunday) [which includes the last Saturday] in the month of June, *the weekend immediately preceding Presidents Day in the month of February, the fourth Saturday in the month of September, and the official United States public holiday known as Veterans Day observed on November 11*. On free sport fishing days, the sport fishing license requirement of the Fish and Wildlife Law is suspended. All other provisions of such law with respect to sport fishing shall remain in full force and effect during free sport fishing days. Any and all other rules, regulations and permit requirements shall also remain in full force and effect.

Text of proposed rule and any required statements and analyses may be obtained from: Joelle Ernst, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8891, email: joelle.ernst@dec.ny.gov

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

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

Additional matter required by statute: A programmatic impact statement pertaining to these actions is on file with the Department of Environmental Conservation.

Regulatory Impact Statement

1. Statutory Authority

The proposed amendment to 6 NYCRR Part 180 and Section 180.6 seeks to specifically designate four additional Free Sport Fishing Days that will occur throughout the year. Section 3-0301 of the Environmental Conservation Law (ECL) establishes the general functions, powers and duties of the Department of Environmental Conservation (Department or DEC) and the Commissioner, including general authority to adopt regulations. DEC is also empowered to guarantee the beneficial use of the environment without risk to health and safety (ECL Section 1-0101(3)(b)). ECL Section 11-0303(1) provides that the Fish and Wildlife Law vests in the Department the efficient management of the fish and wildlife resources of the State, including the maintenance and improvement of such resources as natural resources of the State and the development and administration of measures for making them accessible to the people of the State.

2. Legislative Objectives

Consistent with Governor Cuomo's New York Open for Fishing and Hunting Initiative, the proposed amendment to 6 NYCRR Part 180/Section 180.6 will reduce barriers to outdoor recreation. Increasing the number of designated free sport fishing days will provide more opportunities for both those new to fishing and those that would like to get back into it.

Governor Cuomo signed legislation in June 2014 authorizing an increase in statewide free fishing days from two to eight. Currently, the weekend (Saturday and Sunday) which includes the last Saturday in June is established in regulation, and the six additional days have yet to be designated.

The Department is requesting that the following four free sport fishing days be added to complement the existing free sport fishing days:

- Presidents Day Weekend (the weekend immediately preceding Presidents Day in the month of February) – These two days coincide with winter recess for schools, making it ideal for families to try ice fishing.
- National Hunting and Fishing Day (1 day) - Takes place annually on the 4th Saturday in September and links to many promotional events taking place nationwide. Fishing at this time of year is generally good for many species, including the very popular Fall salmon fishing in the Great Lakes tributaries.
- Veteran's Day (1 day) – Fishing is considered one of the most therapeutic outdoor activities, making it the ideal tribute to veterans and those currently serving. Although Governor Cuomo officially designated Veteran's Day as a free fishing day in 2015, our proposal would make it a permanent free fishing day.

In addition, to avoid any confusion concerning the existing free fishing days in June, the Department is requesting the current wording in regulation be changed from "the weekend which includes the last Saturday in June," to the "last full weekend in June."

3. Needs and Benefits

Defining specific free fishing days will avoid future potential date changes and will allow the Department to more effectively promote these days well in advance of their occurrence, ultimately increasing public participation. In addition to DEC's website, the Freshwater Fishing Regulations Guide is a major resource for disseminating information, including currently designated free fishing days, to hundreds of thousands of sportsmen and women. Considering that the regulations guide is designed six or more months in advance of these dates, having specific dates for free fishing days would be beneficial. Having a designated set of free fishing days that do not vary from year to year will also allow those planning vacations around these dates to do so without issue.

In summary, establishing additional Free Sport Fishing Days will benefit tourism and promote fishing in New York State.

4. Costs

No cost to DEC, local governments, or the general public.

5. Local Government Mandates

These amendments of 6 NYCRR will not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district, or fire district.

6. Paperwork

No additional paperwork will be required as a result of these proposed changes in regulations.

7. Duplication

There are no other State or Federal regulations which govern the establishment of free sport fishing days.

8. Alternatives

Different dates could be specified each year. Doing so would risk fail-

ing to provide consistency from year to year, making it especially difficult to effectively promote these events in advance.

Dates other than those listed could be designated. After careful internal review, free fishing days that logically tie into other opportunities, such as National Hunting and Fishing Day and Presidents Day Weekend (in conjunction with school recess and ice fishing season) were recommended by Division of Fish and Wildlife staff and supported by the informal review.

9. Federal Standards

There are no minimum federal standards that apply to the expansion of free sport fishing days.

10. Compliance Schedule

This regulation, if adopted, will become effective immediately.

Regulatory Flexibility Analysis

The purpose of this rule making is to amend and update the Department of Environmental Conservation's (Department or DEC) regulation governing free sport fishing days. This amendment will designate four of the six additional days provided in the legislation signed by Governor Cuomo in June 2014 authorizing an increase in statewide free fishing days from two to eight. Change to this regulation is intended to provide more opportunities for both those new to fishing and those that would like to get back into it. In addition, this amendment will change the current wording of the already established June free sport fishing days from "the weekend which includes the last Saturday in June," to the "last full weekend in June." Doing so should alleviate any confusion concerning the actual dates.

The Department has determined that the proposed regulation will not impose an adverse impact or any new or additional reporting, record-keeping or other compliance requirements on small businesses or local governments. Small businesses may, and town or village clerks do issue fishing and sportsman licenses. However, the Department's rule making proposal does not change this process since a free sport fishing days waive the requirement of a fishing license.

The proposed amendment to 6 NYCRR Part 180.6 designating six new free sport fishing days will likely provide an overall positive impact on small businesses statewide. Increased tourism, increased fishing equipment and tackle sales and the potential to increase the number of fishing licenses sold in New York State are major benefits associated with this proposed rulemaking.

Based on the above, the Department has determined that a regulatory flexibility analysis is not required for this regulatory proposal.

Rural Area Flexibility Analysis

The purpose of this rule making is to amend and update the Department of Environmental Conservation's (Department or DEC) general regulation governing free sport fishing days. This amendment will designate four of the six additional days provided in the legislation signed by Governor Cuomo in June 2014 authorizing an increase in statewide free fishing days from two to eight. Change to this regulation is intended to provide more opportunities for both those new to fishing and those that would like to get back into it. In addition, this amendment will change the current wording of the already established June free sport fishing days from "the weekend which includes the last Saturday in June," to the "last full weekend in June." Doing so should alleviate any confusion concerning the actual dates.

The Department has determined that the proposed regulation will not impose an adverse impact or any new or additional reporting, record-keeping or other compliance requirements on small businesses or local governments. The proposed regulation may in fact reduce the workload of small businesses and local governments that sell fishing licenses, as anglers would not be looking to purchase a fishing license during free fishing periods.

The proposed amendment to 6 NYCRR Part 180.6 designating six new free sport fishing days will likely provide an overall positive impact on rural areas statewide. Increased tourism, increased fishing equipment and tackle sales and the potential to increase the number of fishing licenses sold in New York State are major benefits associated with this proposed rulemaking.

Based on the above, the Department has determined that a rural area flexibility analysis is not required for this regulatory proposal.

Job Impact Statement

The purpose of this rule making is to amend and update the Department of Environmental Conservation's (Department or DEC) general regulation governing free sport fishing days. This amendment will designate four of the six additional days provided in the legislation signed by Governor Cuomo in June 2014 authorizing an increase in statewide free fishing days from two to eight. Change to this regulation is intended to provide more opportunities for both those new to fishing and those that would like to get back into it. In addition, this amendment will change the current wording of the already established June free sport fishing days from "the weekend which includes the last Saturday in June," to the "last full weekend in June." Doing so should alleviate any confusion concerning the actual dates.

Overall, the proposed regulation will not have an adverse impact on jobs or employment in New York State. Providing additional fishing opportunities in New York will have a positive impact on jobs associated with this form of recreation. The Department therefore concludes that a job impact statement is not required.

Department of Financial Services

EMERGENCY RULE MAKING

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

I.D. No. DFS-12-17-00011-E

Filing No. 154

Filing Date: 2017-03-06

Effective Date: 2017-03-06

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

Action taken: Amendment of Part 361, section 361.6; and addition of section 361.9 to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 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 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 June 3, 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 liability 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.

Department of Health

EMERGENCY RULE MAKING

Lead Testing in School Drinking Water

I.D. No. HLT-12-17-00001-E
Filing No. 153
Filing Date: 2017-03-03
Effective Date: 2017-03-03

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 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 June 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

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 requir-

ing 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.

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: 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 of Rule:

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.

Assessment of Public Comment

The agency received no public comment

NOTICE OF ADOPTION

Medical Use of Marihuana – Chronic Pain

I.D. No. HLT-51-16-00006-A

Filing No. 157

Filing Date: 2017-03-07

Effective Date: 2017-03-22

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

Action taken: Amendment of sections 1004.1 and 1004.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 3360 and 3369-a

Subject: Medical Use of Marihuana – Chronic Pain.

Purpose: To add any severe debilitating or life-threatening condition causing chronic pain.

Text or summary was published in the December 21, 2016 issue of the Register, I.D. No. HLT-51-16-00006-P.

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

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

Assessment of Public Comment

The New York State Department of Health ("Department") received public comments in response to the proposed changes to Title 10 NYCRR sections 1004.1 and 1004.2, which would allow practitioners to certify patients for medical marijuana for any severe debilitating or life-threatening condition that the practitioner determines causes the patient chronic pain which degrades the health and functional capability of the patient. Comments were received from various stakeholders, including but not limited to professional associations, practitioners, registered organizations and the general public. These comments and the Department's responses are summarized below:

COMMENT: A commenter noted that there is very little scientific literature on the use of medical marijuana for medical conditions, especially chronic pain. The commenter stated that the use of medical marijuana to treat chronic pain may be inconsistent with national treatment guidelines established by the Centers for Disease Control and Prevention (CDC) and reported by the Institute of Medicine (IOM). The commenter also stated that as the federal administration changes, the continuation of the United States Department of Justice's position is questionable. Because enforcement actions are performed by both state and federal agencies, there is a desire to not expose healthcare providers to additional liability and prosecutorial actions without explicit federal protection.

RESPONSE: The Department conducted a thorough review of available scientific literature before determining that chronic pain should be included as a condition that may qualify a patient for the use of medical marijuana. Because the federal government classifies medical marijuana as a Schedule 1 Controlled Substance, neither the CDC nor the IOM has established guidelines for its medical use. Nevertheless, New York State has established a medical marijuana program that provides a comprehensive regulatory framework that includes, but is not limited to, strict guidelines for manufacturing, quality control, security, reporting, and prevention of diversion of marijuana.

COMMENT: A number of comments were received seeking to expand the definition of chronic pain to allow for increased access to medical marijuana.

• Several commenters shared personal stories of illnesses that resulted in chronic pain and of the negative impact caused by long-term use of opioids. Numerous commenters urged that the provision requiring contraindications, intolerable side effects, or failure of other therapeutic options, as a requirement for medical marijuana certification, be eliminated because such options may involve use of prescription opioids. Many commenters stated that this might cause patients to try what they considered more dangerous treatment involving prescription opioids, and to fail or be harmed by them, before qualifying for the safer alternative of medical marijuana. Commenters stated that patients and their physicians should not be required to try other medications before qualifying for medical marijuana. Commenters stated that severe pain can wreak devastation on the lives of patients, and that having marijuana as an option when a physician first sees a patient would make patients' lives more manageable.

• Commenters claimed that chronic pain is a qualifying condition in other states that have legalized medical marijuana, that in nearly all of these states medical marijuana can be recommended in the first instance, and that there are no added requirements that patients suffer contraindications, intolerable side effects or failure of other therapeutic options causing a significant diminution in their quality of life for at least three months.

• Commenters suggested that the proposed regulation be revised to allow any patient with "severe pain" to access medical marijuana when their practitioner recommends it, without any other conditions. One commenter suggested that any amount of pain experienced on a daily basis should be able to be treated initially by medical marijuana.

• Several commenters referred to studies or data that they argued demonstrate that medical marijuana is a safer alternative to other medications, and that it may help people suffering from chronic pain to reduce opiate use.

RESPONSE: The proposed regulation does not steer practitioners or their patients toward any medication or type of treatment. The regulation acknowledges the many therapeutic treatment options available for severe, debilitating pain, while recognizing the absence of available guid-

ance on the use of medical marijuana as a first option for treating pain. When reviewing the scientific literature on the potential benefits of the use of medical marijuana by patients suffering from chronic pain, the Department evaluated the availability of conventional treatments. Such treatments include, but are not limited to: physical or occupational therapy, massage therapy, acupuncture, the use of non-steroidal anti-inflammatory medications (NSAIDs), acetaminophen, topical creams or ointments and Transcutaneous Electro-Nerve Stimulator Units (TENS). The Department expects that the certifying practitioner will attempt one or more treatments appropriate for a patient, prior to recommending medical marijuana. However, there is no requirement that opioids, surgery or other specific treatments be attempted. Also, a practitioner with an established patient relationship may already have documentation related to the patient's pain lasting three months or longer. Further, under the regulation, the practitioner may determine that, in their professional medical judgment, they "reasonably anticipate such pain to last three months or more beyond onset." No revisions were made to address these comments.

COMMENT: Comments were received in support of the proposed regulation as follows:

• A commenter claimed that chronic pain has already been approved as a qualifying condition for medical marijuana treatment in a number of other states.

• A commenter suggested that the proposed amendment would have the effect of relieving long-term, debilitating pain and suffering of individuals with serious medical conditions while also reasonably protecting public health and safety.

• A commenter stated that the proposed change would likely stimulate a significant number of severe pain patients to participate in the medical marijuana program, oftentimes in lieu of opioid-based pain therapy. The commenter further speculated that this would result in an increased amount of taxes and fees collected by the State, a reduction in the harm caused by opioid addiction and diversion, and an increase in medical marijuana-related jobs and employment opportunities for New York residents.

• A commenter claimed that many medical marijuana patients have been able to reduce or eliminate the use of addictive and dangerous pharmaceuticals that have far more severe side effects than marijuana. The commenter further noted that the proposed rule retains strict standards for patients to qualify for medical marijuana, which are more stringent than those of many other states. The commenter predicted that the program would provide relief for thousands of patients suffering from pain and from the negative and harmful effects of opiates, anti-seizure medicines, anti-depressants and other potentially deadly drugs commonly prescribed for pain. The commenter stated that each day, more individuals begin using addictive prescription drugs for pain. Others become ill, suffer permanent damage, or die from their use. The commenter urged that the Department immediately enact this rule change.

RESPONSE: The Department acknowledges the comments in support of the regulatory amendment. No revisions are necessary to address these comments.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Amendments to the UBP

I.D. No. PSC-12-17-00012-P

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

Proposed Action: The Commission is considering amendments to Sections 1, 2 and 5 of the Uniform Business Practices (UBP), incorporating protections to prevent early termination or cancellation fees.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (2), (3), (5) and (8)

Subject: Amendments to the UBP.

Purpose: To consider amendments to the UBP.

Substance of proposed rule: The Public Service Commission is considering amendments to Sections 1, 2 and 5 of the Uniform Business Practices (UBPs). The proposed modifications to the UBPs would incorporate protections to prevent early termination or cancellation fees in the event of energy account holders death before the end of the contract term and address other related matters and housekeeping items. In addition, a Notice Seeking Comments on Revisions to the Uniform Business Practices, issued on March 8, 2017, 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 requested and may resolve related matters.

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

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

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

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

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

(98-M-1343SP24)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-12-17-00014-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by Sheepshead Bay Road Owner, LLC, to submeter electricity at 1501 Voorhies Avenue, Brooklyn, New York.

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

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent to submeter electricity at 1501 Voorhies Avenue, Brooklyn, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by Sheepshead Bay Road Owner, LLC (Owner) on December 12, 2016, to submeter electricity at 1501 Voorhies Avenue, Brooklyn, 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.

(16-E-0699SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Amendments to the UBP

I.D. No. PSC-12-17-00017-P

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

Proposed Action: The Commission is considering a petition filed on

October 7, 2016 by Green Mountain Energy Company requesting amendments to the Uniform Business Practices (UBP).

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (2), (3), (5) and (8)

Subject: Amendments to the UBP.

Purpose: To consider the petition for amendments to the UBP.

Substance of proposed rule: The Public Service Commission is considering a petition filed on October 7, 2016 by Green Mountain Energy Company requesting amendments to Sections 10(C)1.(b).1, 10(C)1.(c) and 10(C)1.(d) of the Uniform Business Practices (UBPs). The proposed modifications to the UBP would eliminate the appearance of an ESCO representative's full name on the identification badge worn by the marketer while soliciting to potential customers. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief requested and may resolve related matters.

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

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

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

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

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

(98-M-1343SP23)