RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Certification of Industrial Hemp Seed

I.D. No. AAM-43-18-00002-P

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

Proposed Action: This is a consensus rule making to add Part 119 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 141 and 142

Subject: Certification of Industrial Hemp Seed.

Purpose: To establish standards for certification of industrial hemp seed.

Text of proposed rule: 1 NYCRR is amended by adding thereto a new Part 119, to read as follows:

PART 119
Industrial Hemp Seed Certification Standards
119.1 Application of general certification standards.

(a) The general seed certification standards, as adopted by the Association of Official Seed Certifying Agencies in the 2018 edition of the Seed Certification Handbook, pages 6-7 and 65-67, are basic and constitute the standards for certification of industrial hemp seed.

(b) A copy of pages 6-7 and 65-67 of the 2018 edition of the Seed Certification Handbook, published by the Association of Official Seed Certifying Agencies, are available for public inspection and copying in the office of the Director of Plant Industry, Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, and in the office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, New York 12231.

Text of proposed rule and any required statements and analyses may be obtained from: Christoper Logue, Director, Division of Plant Industry, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 485-2383, email: Christopher.Logue@agriculture.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Consensus Rule Making Determination

The proposed rule, if adopted, will allow the Department of Agriculture and Markets to certify industrial hemp seed using standards generally accepted by growers, dealers, and consumers. The proposed rule incorporates by reference such standards, set forth in the 2018 edition of the Seed Certification Handbook, a widely-recognized authoritative resource. As such, the Department believes that the proposed rule will not be controversial and there will be no opposition thereto.

Job Impact Statement

The proposed rule will not have an adverse impact upon employment opportunities.

The proposed rule will allow the Department of Agriculture and Markets to certify industrial hemp seed using standards generally accepted by growers, dealers, and consumers. The proposed rule incorporates by reference such standards, set forth in the 2018 edition of the Seed Certification Handbook, a widely-recognized authoritative resource.

The proposed rule will facilitate the growing, cultivation, sale, and distribution of industrial hemp seed; as such, the Department believes that the proposed rule will have a beneficial impact upon jobs.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-24-18-00001-A
Filing No. 951
Filing Date: 2018-10-05
Effective Date: 2018-10-24

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the June 13, 2018 issue of the Register, I.D. No. CVS-24-18-00001-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-24-18-00002-A
Filing No. 952
Filing Date: 2018-10-05
Effective Date: 2018-10-24

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the June 13, 2018 issue of the Register, I.D. No. CVS-24-18-00002-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-24-18-00004-A
Filing No. 949
Filing Date: 2018-10-05
Effective Date: 2018-10-24

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the June 13, 2018 issue of the Register, I.D. No. CVS-24-18-00004-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-24-18-00005-A
Filing No. 950
Filing Date: 2018-10-05
Effective Date: 2018-10-24

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the non-competitive class.
Text or summary was published in the June 13, 2018 issue of the Register, I.D. No. CVS-24-18-00005-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-24-18-00006-A
Filing No. 953
Filing Date: 2018-10-05
Effective Date: 2018-10-24

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the non-competitive class.
Text or summary was published in the June 13, 2018 issue of the Register, I.D. No. CVS-24-18-00006-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-24-18-00007-A
Filing No. 955
Filing Date: 2018-10-05
Effective Date: 2018-10-24

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete a position from and classify a position in the exempt class.
Text or summary was published in the June 13, 2018 issue of the Register, I.D. No. CVS-24-18-00007-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-24-18-00008-A
Filing No. 954
Filing Date: 2018-10-05
Effective Date: 2018-10-24

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the non-competitive class.
Text or summary was published in the June 13, 2018 issue of the Register, I.D. No. CVS-24-18-00008-P.

Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-18-00002-A
Filing No. 957
Filing Date: 2018-10-05
Effective Date: 2018-10-24

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete positions from and classify positions in the non-competitive class.
Text or summary was published in the July 18, 2018 issue of the Register, I.D. No. CVS-29-18-00002-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-18-00003-A
Filing No. 959
Filing Date: 2018-10-05
Effective Date: 2018-10-24

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the July 18, 2018 issue of the Register, I.D. No. CVS-29-18-00003-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-18-00004-A
Filing No. 958
Filing Date: 2018-10-05
Effective Date: 2018-10-24

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the July 18, 2018 issue of the Register, I.D. No. CVS-29-18-00004-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-18-00005-A
Filing No. 961
Filing Date: 2018-10-05
Effective Date: 2018-10-24

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the July 18, 2018 issue of the Register, I.D. No. CVS-29-18-00005-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-18-00006-A
Filing No. 956
Filing Date: 2018-10-05
Effective Date: 2018-10-24

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the July 18, 2018 issue of the Register, I.D. No. CVS-29-18-00006-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-18-00007-A
Filing No. 960
Filing Date: 2018-10-05
Effective Date: 2018-10-24

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the July 18, 2018 issue of the Register, I.D. No. CVS-29-18-00007-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Corrections and Community Supervision

NOTICE OF ADOPTION

Double-Cell Housing in Correctional Facilities

I.D. No. CCS-26-18-00004-A

Filing No. 965

Filing Date: 2018-10-09

Effective Date: 2018-10-24

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

Action taken: Amendment of sections 1701.3, 1701.4, 1701.5, 1701.6, 1701.7 and 1701.9 of Title 7 NYCRR.

Statutory authority: Correction Law, sections 112 and 138

Subject: Double-Cell Housing in Correctional Facilities.

Purpose: The rule is to provide protocols for the management of double-cell housing. The amendments are virtually all cosmetic.

Text or summary was published in the June 27, 2018 issue of the Register, I.D. No. CCS-26-18-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Kevin P. Bruen, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue, Harriman State Campus, Albany, NY 12226-2050, (518) 457-4951, email: Rules@DOCCS.ny.gov

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

EMERGENCY RULE MAKING

Supplementary Uninsured/Underinsured Motorists Insurance

I.D. No. DFS-22-18-00002-E

Filing No. 963

Filing Date: 2018-10-05

Effective Date: 2018-10-05

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

Action taken: Amendment of Subpart 60-2 (Regulation 35-D) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302; Insurance Law, sections 301 and 3420(f)(2-a)

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

Specific reasons underlying the finding of necessity: On December 18, 2017, Governor Andrew M. Cuomo signed into law Chapter 490 of the Laws of 2017, which added a new Insurance Law § 3420(f)(2-a). On April 18, 2018, Governor Cuomo signed into law Chapter 15 of the Laws of 2018, which amended Chapter 490.

Insurance Law § 3420(f)(2-a) requires an insurer that issues a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, to provide supplemental uninsured/underinsured motorists (SUM) insurance coverage for bodily injury, in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless the first named insured declines the SUM insurance or selects a lower amount of coverage through a written, signed waiver. Insurance Law § 3420(f)(2-a)(B) requires an insurer to provide an insured with a written notice advising that the insurer must provide SUM limits equal to the bodily injury liability insurance limits of coverage provided under the policy unless a first named insured declines the SUM coverage or selects a lower amount of coverage through a written waiver signed by the first named insured.

Because of the changes to the law, the required notices provided by insurers pursuant to Insurance Regulation 35-D must be modified with respect to new non-commercial motor vehicle insurance policies issued on and after June 16, 2018. This amendment changes the notice requirements going forward for such policies and clarifies that all commercial and renewals of non-commercial policies must continue to comply with existing notice requirements. The amendment also clarifies how the new law applies to transportation network company policies with respect to SUM coverage.

Insurers need to immediately make changes to their procedures to ensure that proper notices are provided as of the effective date of the law for the protection of the public. Accordingly, it is necessary to promulgate the rules on an emergency basis for the furtherance of the general welfare.

Subject: Supplementary Uninsured/Underinsured Motorists Insurance.

Purpose: To conform 11 NYCRR 60-2 to new Insurance Law section 3420(f)(2-a).

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

Section 60-2.0 is amended to expand the preamble, set forth the applicability of the Subpart, and add definitions.

Section 60-2.1(e) is amended to provide an exception as set forth in Section 60-2.1(f) and to move language in Section 60-2.1(e)(4) to new Section 60-2.1(h).

Section 60-2.1(f) is re-lettered as Section 60-2.1(g), and a new Section 60-2.1(f) is added to provide that, with regard to a motor vehicle liability insurance policy originally entered into, on, or after June 16, 2018, other than a commercial risk insurance policy, an insurer must provide supplementary uninsured/underinsured motorists ("SUM") limits in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless a first named insured declines the SUM coverage or selects a lower amount of coverage through a written waiver signed by the first named insured, subject to the requirements of Insurance Law Section 3420(f)(2-a)(B); provided, however, that the insurer may require the insured's SUM coverage limit to be equal to the insured's bodily injury liability insurance limit under the policy.

This section also states that a first named insured's written, signed waiver declining SUM coverage, or selecting a lower amount of SUM coverage, will apply to all subsequent renewals of coverage and to all policies or endorsements that extend, change, supersede, or replace an existing policy issued to the first named insured, unless changed in writing by a first named insured. Whenever SUM coverage is declined, the policy must provide the mandatory uninsured motorists ("UM") coverage required by Insurance Law Section 3420(f)(1). The insurer, on subsequent renewals, must provide to the insured the applicable notice required by Section 60-2.2(a).

Section 60-2.1(g) adds a reference to subdivision (f) and states that an insurer providing coverage in satisfaction of the financial responsibility requirements of Vehicle and Traffic Law ("VTL") Article 44-B must, if the policy provides liability coverage as required by VTL Section 1693(2): (1) offer SUM coverage as provided in Section 60-2.1(e) under an insurance policy, other than an insurance policy described in Section 60-2.1(g)(2), while the driver is logged onto the transportation network company's ("TNC's") digital network but is not engaged in a TNC prearranged trip; or (2) provide SUM coverage as provided in Section 60-2.1(f) under an insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, while the driver is logged onto the TNC's digital network but is not engaged in a TNC prearranged trip.

Section 60-2.2(a)(1) is amended to require that every insurer writing

motor vehicle liability insurance that satisfies the requirements of VTL Article 6 or 8, with respect to all new and renewal policies, provide a written notice in concise language that includes, for the initial written notice, with regard to a motor vehicle liability insurance policy originally entered into on or after June 16, 2018 other than a commercial risk insurance policy: (1) a statement that the insurer must provide SUM limits in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability policy unless a first named insured declines the SUM coverage or selects a lower amount of coverage through a written waiver signed by the first named insured, subject to the requirements of Insurance Law Section 3420(f)(2-a)(B), provided, however, if the insurer requires that the SUM coverage limit be equal to the policy's bodily injury liability insurance limit, then the written waiver must only provide for the first named insured's option to decline SUM coverage under the policy; and (2) a statement that the first named insured's written, signed waiver declining SUM coverage or selecting a lower amount of SUM coverage will apply to all subsequent renewals of coverage and to all policies or endorsements that extend, change, supersede, or replace an existing policy issued to the first named insured, unless changed in writing by a first named insured.

Section 60-2.2(a)(2) is amended in a similar manner as Section 60-2.2(a)(1) with regard to every insurer writing motor vehicle liability insurance providing liability insurance coverage in satisfaction of the financial responsibility requirements of VTL Article 44-B.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-22-18-00002-EP, Issue of May 30, 2018. The emergency rule will expire December 3, 2018.

Text of rule and any required statements and analyses may be obtained from: Paul Zuckerman, Department of Financial Services, One State Street, 20th Floor, New York, NY 10004, (212) 480-5286, email: Paul.Zuckerman@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301 and 3420(f)(2-a).

Financial Services Law Section 202 establishes the office of the Superintendent of Financial Services ("Superintendent").

Financial Services Law Section 302 and Insurance Law Section 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 Section 3420(f)(2-a) requires an insurer that issues a motor vehicle liability insurance policy, other than a commercial risk insurance policy, insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any natural person arising out of the ownership, maintenance and use of a motor vehicle, by the insured, where the policy is originally entered into on or after June 16, 2018, to provide supplementary uninsured/underinsured motorists ("SUM") insurance coverage for bodily injury, in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless the first named insured declines the SUM insurance or selects a lower amount of coverage through a written, signed waiver. However, the insurer may require that the insured's SUM coverage limit equal the insured's bodily injury liability insurance limit under the policy.

2. Legislative objectives: On December 18, 2017, Governor Andrew M. Cuomo signed into law Chapter 490 of the Laws of 2017, which added a new Insurance Law Section 3420(f)(2-a). On April 18, 2018, Governor Cuomo signed into law Chapter 15 of the Laws of 2018, which amended Chapter 490. Insurance Law Section 3420(f)(2-a) requires an insurer that issues a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, to provide SUM insurance coverage for bodily injury, in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless the first named insured declines the SUM insurance or selects a lower amount of coverage through a written, signed waiver. However, the insurer may require that the insured's SUM coverage limit equal the insured's bodily injury liability insurance limit under the policy.

Insurance Law Section 3420(f)(2-a)(B) requires an insurer to provide an insured with a written notice advising that the insurer must provide SUM limits equal to the bodily injury liability insurance limits of coverage provided under the policy unless a first named insured declines the SUM coverage or selects a lower amount of coverage through a written waiver signed by the first named insured.

This rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law Section 3420(f)(2-a) by updating Subpart 60-2 to comply with Chapters 490 and 15.

3. Needs and benefits: Chapter 490 of the Laws of 2017 added a new Insurance Law Section 3420(f)(2-a) and Chapter 15 of the Laws of 2018 made amendments thereto. Insurance Law Section 3420(f)(2-a) requires an insurer that issues a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, to provide SUM insurance coverage for bodily injury, in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless the first named insured declines the SUM insurance or selects a lower amount of coverage through a written, signed waiver. This rule amends Subpart 60-2 to comply with Chapters 490 and 15. The rule also clarifies which policies are commercial risk policies and which are not, as well as how the law applies to transportation network company policies.

4. Costs: This rule may impose compliance costs on insurers because an insurer must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding SUM coverage, consistent with Insurance Law Section 3420(f)(2-a)(B), and likely will need to draft a waiver form. The Department has not estimated the cost to insurers for developing the new notice and waiver. However, these requirements are a consequence of Chapters 490 and 15, which impose the written notice and waiver requirements. Moreover, the insurer is already required under the law and Subpart 60-2 to provide a notice when issuing the policy. Therefore, once the notice is revised there should be no additional costs incurred. With respect to renewal policies, existing requirements continue without change and the rule imposes no additional costs on insurers for renewal policies.

The Department of Financial Services will not incur costs for the implementation and continuation of this rule. This rule does not impose compliance costs on any local government.

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

6. Paperwork: An insurer may incur additional paperwork because an insurer must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding SUM coverage, consistent with Insurance Law Section 3420(f)(2-a)(B), and likely will need to draft a waiver form. However, the insurer is already required under the law and Subpart 60-2 to provide a notice; therefore, this amendment creates no additional requirement. Moreover, this amendment is a consequence of Chapters 490 and 15, which impose the written notice and waiver requirements.

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

8. Alternatives: There were no significant alternatives to consider.

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

10. Compliance schedule: Chapters 490 and 15 took effect on June 16, 2018. The Superintendent is promulgating these regulations on an emergency basis to facilitate the orderly implementation of the new law.

Regulatory Flexibility Analysis

1. Effect of the rule: On December 18, 2017, Governor Andrew M. Cuomo signed into law Chapter 490 of the Laws of 2017, which added a new Insurance Law Section 3420(f)(2-a). On April 18, 2018, Governor Cuomo signed into law Chapter 15 of the Laws of 2018, which amended Chapter 490. Insurance Law Section 3420(f)(2-a) requires an insurer that issues a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, to provide supplementary uninsured/underinsured motorists ("SUM") insurance coverage for bodily injury, in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless the first named insured declines the SUM insurance or selects a lower amount of coverage through a written, signed waiver. However, the insurer may require that the insured's SUM coverage limit equal the insured's bodily injury liability insurance limit under the policy.

Insurance Law Section 3420(f)(2-a)(B) requires an insurer to provide an insured a written notice advising that the insurer must provide SUM limits equal to the bodily injury liability insurance limits of coverage provided under the policy unless a first named insured declines the SUM coverage or selects a lower amount of coverage through a written waiver signed by the first named insured.

This rule reflects the amendments to the Insurance Law by Chapters 490 and 15. As such, it should not affect local governments.

Industry asserts that certain domestic insurers, in particular co-operative insurers and mutual insurers, subject to the rule are small businesses. However, the law, rather than the rule, imposes the written notice and waiver requirements. The rule cannot vary a requirement imposed by law.

2. Compliance requirements: No local government must undertake any

reporting, recordkeeping, or other affirmative acts to comply with the rule because the rule does not apply to any local government. An insurer that is a small business affected by this rule, if any, may be subject to reporting, recordkeeping, or other compliance requirements because the insurer must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding SUM coverage, consistent with Insurance Law Section 3420(f)(2-a)(B), and likely will need to draft a waiver form. However, this is a consequence of Chapters 490 and 15, which impose the written notice and waiver requirements.

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

4. Compliance costs: No local government will incur any costs to comply with this rule because the rule does not apply to any local government. An insurer that is a small business affected by this rule, if any, may incur additional compliance costs because the insurer must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding SUM coverage, consistent with Insurance Law Section 3420(f)(2-a)(B), and likely will need to draft a waiver form. The Department of Financial Services ("Department") has not estimated the cost to insurers for developing the new notice and waiver. However, these requirements are a consequence of Chapters 490 and 15, which impose the written notice and waiver requirements. Moreover, the insurer is already required under the law and Subpart 60-2 to provide a notice when issuing the policy. Therefore, once the notice is revised there should be no additional costs incurred. With respect to renewal policies, existing requirements continue without change and the rule imposes no additional costs on insurers for renewal policies.

5. Economic and technological feasibility: This rule does not apply to any local government; therefore, no local government should experience any economic or technological impact because of the rule. No insurer that is a small business affected by this rule, if any, should experience any economic or technological impact because of the rule. Furthermore, this rule merely implements Chapters 490 and 15, which impose written notice and waiver requirements regarding SUM coverage.

6. Minimizing adverse impact: There will not be an adverse impact on any local government because the rule does not apply to any local government. This rule should not have an adverse impact on an insurer that is a small business affected by the rule, if any, because the rule uniformly affects all insurers that are subject to the rule and merely implements Chapters 490 and 15, which impose written notice and waiver requirements regarding SUM coverage.

7. Small business and local government participation: Small businesses and local governments have had an opportunity to participate in the rulemaking process since the notice of emergency adoption and proposed rulemaking was published in the State Register and posted on the Department's website.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers affected by this rule operate in every county in this state, including rural areas as defined by State Administrative Procedure Act Section 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule imposes additional reporting, recordkeeping, and other compliance requirements because an insurer, including an insurer in a rural area, must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding supplementary uninsured/underinsured motorists ("SUM") insurance coverage, consistent with Insurance Law Section 3420(f)(2-a)(B), and likely will need to draft a waiver form. However, this is a consequence of Chapters 490 of the Laws of 2017 and Chapter 15 of the Laws of 2018, which impose the written notice and waiver requirements.

An insurer in a rural area should not need to retain professional services to comply with this rule.

3. Costs: The rule may result in additional costs to insurers, including insurers located in rural areas, because an insurer must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding SUM coverage, consistent with Insurance Law Section 3420(f)(2-a)(B), and likely will need to draft a waiver form. The Department of Financial Services ("Department") has not estimated the cost to insurers for developing the new notice and waiver. However, these requirements are a consequence of Chapters 490 and 15, which impose the written notice and waiver requirements. Moreover, the insurer is already required under the law and 11 NYCRR Subpart 60-2 to provide a notice when issuing the policy. Therefore, once the notice is revised there should be no additional costs incurred. With respect to renewal policies, existing requirements continue without change and the rule imposes no additional costs on insurers for renewal policies.

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

5. Rural area participation: Insurers in rural areas have had an opportunity to participate in the rule-making process since the notice of emergency adoption and proposed rulemaking were 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. The amendment merely conforms the rule to Chapter 490 of the Laws of 2017 and Chapter 15 of the Laws of 2018, which added and amended, respectively, new Insurance Law Section 3420(f)(2-a).

Assessment of Public Comment

The agency received no public comment.

EMERGENCY RULE MAKING

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

I.D. No. DFS-43-18-00003-E
Filing No. 962
Filing Date: 2018-10-05
Effective Date: 2018-10-06

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

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

Statutory authority: Banking Law, art. 12-D

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

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

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

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

Purpose: To require that persons or entities which service mortgage loans on residential real property on or after July 1, 2009 be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks).

Substance of emergency rule (Full text is posted at the following State website: http://www.dfs.ny.gov/legal/regulations/emergency/banking/emergbanking.htm): Section 418.1 summarizes the scope and application of Part 418. It notes that Sections 418.2 to 418.11 implement the requirement in Article 12-D of the Banking Law that certain mortgage loan servicers ("servicers") be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), while Sections 418.12 and 418.13 set forth financial responsibility requirements that are applicable to both registered and exempt servicers. Section 418.14 sets forth the transitional rules.

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

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

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

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

Section 418.6 covers the fees for application for registration as a servicer, including processing fees for applications and fingerprint processing fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as 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 January 2, 2019.

Text of rule and any required statements and analyses may be obtained from: George Bogdan, Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 480-4758, email: george.bogdan@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

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

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

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

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

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

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

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

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

Section 596 was amended by the Subprime Law to extend the Superintendent's examination authority over licensees and registrants to cover

mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

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

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

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

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

2. Legislative Objectives.

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

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

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

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

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

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

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

3. Needs and Benefits.

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

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

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

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

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

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

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

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

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

4. Costs.

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

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

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

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

5. Local Government Mandates.

None.

6. Paperwork.

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

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

7. Duplication.

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

An exemption was created under Section 418.13, from the otherwise applicable net worth and surety bond requirements, for entities that are subject to the capital requirements applicable to insured depository institutions and are considered adequately capitalized.

8. Alternatives.

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

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

9. Federal Standards.

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

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

10. Compliance Schedule.

The emergency regulation will become effective on October 6, 2018. Similar emergency regulations have been in effect since July 1, 2009.

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

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

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

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

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

3. Professional Services:

None.

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impacts:

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

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

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

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

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

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

Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations.

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

Of the servicers which operate in rural areas, it is believed that most are mortgage bankers, mortgage brokers or exempt organizations.

Additionally, in the case of servicers that operate in rural areas and are not otherwise exempted, the Superintendent has the authority to reduce, waive or modify the financial responsibility requirements for individuals that do a de minimis amount of servicing.

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

Job Impact Statement

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

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

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

New York State Gaming Commission

NOTICE OF ADOPTION

Blazing 7s Progressive Wager

I.D. No. SGC-32-18-00002-A

Filing No. 966

Filing Date: 2018-10-09

Effective Date: 2018-10-24

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

Action taken: Addition of Part 5324.11 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(g), 1335(5), (6) and (11)

Subject: Blazing 7s Progressive Wager.

Purpose: To set forth the practices and procedures for a blackjack table game feature called Blazing 7s Progressive.

Text or summary was published in the August 8, 2018 issue of the Register, I.D. No. SGC-32-18-00002-P.

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

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

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2023, 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.

Department of Health

REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS AND/OR JOB IMPACT STATEMENT

Office-Based Surgery Practice Reports

I.D. No. HLT-42-18-00008-P

This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement pertain(s) to a notice of Proposed Rule Making, I.D. No. HLT-42-18-00008-P, printed in the *State Register* on October 17, 2018.

Regulatory Impact Statement

Statutory Authority:

Section 230-d(4)(b) of the Public Health Law (PHL) authorizes the New York State Department of Health (Department) to require licensees who perform office-based surgery (OBS) to report data, such as procedural information as needed for the interpretation of adverse events.

Section 230-d(5) of the Public Health Law authorizes the Commissioner of Health to adopt rules and regulations to effectuate the purposes of section 230-d, under which the Department oversees OBS practices.

Legislative Objectives:

The Legislature's objective in enacting PHL § 230(d)(4)(b) was to provide the Department with more information about the number and types of procedures, complications sustained and other quality indicators occurring in OBS practices other than that derived from reported adverse event data, in order to provide context to the adverse event reports and to permit the Department to better assess the quality of care provided in OBS practices.

Current Requirements:

Pursuant to PHL §§ 230-d and § 2998(e), OBS practices must report adverse events and suspected health care disease transmission originating in their practices. OBS practices are not currently required to report general practice and procedure information. Guidance on current reporting requirements for OBS practices is provided on the Department's website but currently there are no applicable regulations.

Needs and Benefits:

PHL § 230(d)(4)(a) requires Office Based Surgery (OBS) practices to report adverse events to the Department within three business days of such adverse event, and PHL § 230(d)(4)(b) authorizes the Department to require licensees to report additional data such as procedural information as needed for the interpretation of adverse events. The Department is currently lacking a framework for understanding the quality of the care that is being provided in OBS practices, because the only data currently reported to the Department are adverse events.

The proposed regulations would require OBS practices to report the number and types of procedures that are performed by OBS practices. This will assist the Department in determining whether quality of care issues exist in certain OBS practices, or with specific types of procedures. This information is important to provide context to the adverse event reports and allow comparison of adverse event report rates to national

benchmarks and rates from other settings. For example, ambulatory surgery centers and other health care facilities licensed under PHL Article 28. In addition, this information will assist with the accomplishment of the Department's responsibilities related to ensuring patient safety. For example, the Department will be able to better assess the quality of an OBS practice if the Department knows the total number of procedures performed by the practice. The Department can currently ascertain the number of adverse events (numerator), but the Department needs to know the total number of procedures (denominator) to assess overall quality of care.

Additionally, the proposed changes would allow the Department to request additional information as needed to interpret adverse events. In the event the Department identifies a trend or opportunities for quality improvement through the collection of data, the proposed regulations would allow the Department to develop and implement guidelines and/or criteria for quality improvement related to the issues identified.

COSTS:

Costs to Private Regulated Parties:

The proposed regulation will result in minimal costs to OBS practices. Costs may include: maintaining a database to be able to report procedural information (if a database is not already maintained by the practice); staff time for completing practice reports; and the purchase of reference materials for determining applicable procedure codes to be reported to the Department, though no-cost reference materials are available on the internet.

Costs to Local Government:

The Department is not aware of any OBS practices operated by local governments.

Costs to the Department of Health:

The proposed regulations will require the Department to facilitate additional data collection, to maintain additional datasets and to perform additional data analyses. The Department intends to perform these functions with existing staff.

Costs to Other State Agencies:

There are no OBS practices operated by other State agencies.

Local Government Mandate:

The proposed regulations impose no new mandates on any county, city, town or village government.

Paperwork:

The proposed regulations will require OBS practices to report additional data to the Department under PHL § 230(d)(4)(b) as described above. The reporting will be electronic; no paper reports will be required.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

An alternative considered by the Department was to continue without adopting regulations that mandate OBS practice reporting of practice and procedural information. However, this would hinder the Department's ability to enforce PHL § 230(d), which obligates the Department to collect information about the scope of adverse events in the context of all procedures performed in OBS settings. The Department recognizes the importance of ensuring patient safety and quality of care and it has determined that regulations are necessary to implement section 230-d.

Federal Standards:

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

Compliance Schedule:

The proposed regulation will take effect upon a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed regulations will apply to all Office Based Surgery (OBS) practices in New York State. This proposal will not impact local governments or small business unless they operate such OBS practices. Although the Department doesn't track the size of OBS practices, the agency understands that many will be small businesses under the definition of the State Administrative Procedure Act (SAPA). In such case, the flexibility afforded by the regulations is expected to minimize any costs of compliance as described below.

Compliance Requirements:

This regulatory amendment would require OBS practices to report the number and types of office based surgical procedures performed by such practices.

Professional Services:

This proposal is not expected to require any additional use of professional services.

Compliance Costs:

The proposed regulation will result in minimal costs to OBS practices that are small businesses. Costs may include: maintaining a database to be able to report procedural information (if a database is not already maintained by the practice); staff time for completing practice reports; and the purchase of reference materials for determining applicable procedure codes to be reported to the Department, though no-cost reference materials are available on the internet.

Economic and Technological Feasibility:

This proposal is economically and technically feasible. The costs associated with reporting procedural information not more than twice per year will not place an undue burden on OBS practices and many practices already maintain databases containing the information required by this regulation.

Minimizing Adverse Impact:

The impact of this proposal is expected to be minimal. This proposal will require minimal staff time to report procedural information as the proposal requires a reporting frequency of no more than twice per year, many practices have established methods of collecting and maintaining the information requested by the proposal, and the required information will be submitted using the Department's pre-existing Health Commerce System available to all prescribing providers in NYS at no cost.

Small Business and Local Government Participation:

The Department engaged the following entities prior to and during the development of this proposed regulation: The Medical Society of the State of New York (MSSNY), The New York State Society of Plastic Surgeons, the New York Chapter of the American College of Physicians and the OBS Advisory Committee, which is comprised of clinicians actively involved in OBS practices.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (http://quickfacts.census.gov). Approximately 22.4% of Office Based Surgery (OBS) practices are located in rural areas.

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

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

There are 206 OBS practices in rural areas.

Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:

Any impact is minimal, as this proposal can be incorporated into existing processes, and is not expected to substantially increase administrative burden or require additional use of professional services upon OBS practices as many practices already maintain the information requested by the proposed regulations in existing databases.

Costs:

The proposed regulation will result in minimal costs to OBS practices in rural areas. Costs may include: maintaining a database to be able to

report procedural information (if a database is not already maintained by the practice); staff time for completing practice reports; and the purchase of reference materials for determining applicable procedure codes to be reported to the Department, though no-cost reference materials are available on the internet.

Minimizing Adverse Impact:

The impact of this proposal is expected to be minimal. This proposal will require minimal staff time to report procedural information as the proposal requires a reporting frequency of no more than twice per year, many practices have established methods of collecting and maintaining the information requested by the proposal, and the required information will be submitted using the Department's pre-existing Health Commerce System available to all prescribing providers in NYS at no cost.

Rural Area Participation:

The proposed regulation will have a 60-day public comment period.

Job Impact Statement

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. No adverse impact on jobs and employment opportunities is expected as a result of these proposed regulations.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Operation of Crisis Residences in New York State

I.D. No. OMH-43-18-00001-P

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

Proposed Action: Amendment of Part 589 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 31.04

Subject: Operation of Crisis Residences in New York State.

Purpose: To revise and update the categories of Crisis Residences to match what is currently operation in New York.

Substance of proposed rule (Full text is posted at the following State website: https://omh.ny.gov/omhweb/policy_ and_regulations/): The New York State Office of Mental Health along with County leadership has developed a shared vision of a coordinated behavior health crisis management system available to all New Yorkers, regardless of ability to pay. This system will integrate existing crisis infrastructure with newly available resources in managed care, Delivery System Reform Incentive Payment (DSRIP) and Value Based Payments (VBP). To inform this vision, an interagency workgroup comprised of State and local governmental subject matter experts received input from relevant stakeholders, including people with mental illness, people in recovery from substance use disorders, family members, the advocacy community, behavioral health providers, hospital systems, managed care plans, the child welfare systems and meetings with other states.

The goals of the crisis management system are to maintain people safely in the community, reduce unnecessary emergency room visits and inpatient hospitalizations, reduce risk of future crises and coordinate information sharing among clinicians, recipients and involved family members and identified supports to reflect recipient's preferences.

A continuum of crisis services available in a community allows for individuals to receive services at the right time and right place. An integral part of the crisis management system and continuum of crisis services are crisis residential programs.

At this time, the Office of Mental Health (OMH) is proposing amendments to 14 NYCRR Part 589 (regulations that guide the operations of crisis residences). OMH has revised Part 589 to update the language in the regulations and conform the regulations to more accurately reflect current practice related to the operation of crisis residences.

- The revision of the use of the phrases "mentally ill" to "persons experiencing mental illness" allows for the person to be defined separately from their illness in an effort to remove outdated language while conforming with the Mental Health Hygiene laws.
- The "background and intent" provision was updated to include a broader explanation of the purposes of crisis residences and to include the three types of crisis residences: Intensive Crisis Residence, Residential Crisis Support, , and Children's Crisis Residence. These types of residences reflect the current provision of residential crisis services.
- The "legal base" and "applicability" provisions contain no substantive changes, only minor technical changes to update the language.
- The "definitions" section was updated to include staffing and program components, with the intention of consolidating this information and including it in one section. The definition of residential programs was also revised to reflect the three types of crisis residences.
- The "certification" provision was similarly updated to reflect purpose of the crisis residences, as well as the population, and services that are included in each of the three types of residences.
- The "organization and administration" provision was revised to reflect the additional populations under discrimination and to include specific cultural and linguistic competency in staff training. It also includes policies and procedures for staff supervision, visiting, and identifying and mandatory reporting of child abuse and neglect for the children's crisis residences.
- The "written plan for services and staff composition" provision now includes a plan for continuity and integration of care within the mental health system, and other systems of care under written plans for services and staff composition.
- There is also the inclusion of background checks and additional staffing requirements for children's crisis residences that specifies minimum staffing and allows for an adequate volume of professional and nursing staff to ensure the continuous provision of treatment services—this is included in "staffing." There are also case record requirements included under the individual services plan and included in the children's crisis residence requirements.
- In the "quality assurances" provision, the language was updated to include monitoring of program performance and OMH monitoring of program quality. This monitoring process allow for oversight of the care of recipients and identify actions that can be taken if programs are in violation of its operating certificate, applicable statute, standard, rule or regulation.
- The language in the "utilization review" provision now includes review of admission and continued stay and over-utilization and under-utilization of services.
- The revised regulations add a "rights of recipients" provision that outlines the rights of recipients residing in a residential program and a grievance process which ensures the timely review and resolution of complaints.
- The "premises" provision includes changes to the safety requirement, which also removes space heaters as a prohibited fire hazard if pre-approved by OMH. The revised regulations also include carbon monoxide detectors to the safety requirements.
- Finally, technical/logistical amendments were made to change the numbering of the "statistical records and reports" provision, and to eliminate subparts 589-1 and 589-2.

Text of proposed rule and any required statements and analyses may be obtained from: Kelly E. Grace, Esq. (Senior Attorney), Office of Mental Health, 44 Holland Avenue, Albany, New York, (518) 474-1331, email: Kelly.Grace@omh.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority: Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

2. Legislative objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs.

3. Needs and benefits: The revision of part 589 is necessary to update new categories of crisis residential programs. The programs are designed to provide short-term crisis support to individuals experiencing a mental health crisis; the description of requirements for the establishment and operation of crisis residence programs; establishes requirements for admission and discharge; specifies staffing, service planning, quality assurance, record keeping and certification; establishes standards for three types of crisis residences: Residential Crisis Support, Intensive Crisis Residence and Children's Crisis Residence and provides for the active involvement of identified supports in all aspects of the admission, treatment and discharge of that individual.

4. Costs:

(a) Cost to State government: The crisis residence program will be reimbursed, in part, under the 1115 Crisis Intervention Demonstration benefit for Medicaid managed care enrollees along with state and local funds. The cost of these programs should be viewed against the benefits acquired with the development of admission alternative program. Such programs, in the long term, will reduce the dependence on costly inpatient services.

(b) Cost to local government: There are no new costs to local government as a result of these amendments.

(c) Cost to regulated parties: For providers that obtain licensure and offer these services, there are no new costs to providers as a result of these amendments.

5. Local government mandates: The provision of this service is not required. These regulatory amendments will not involve or result in any additional imposition of duties or responsibilities upon county, city, town, village, school, or fire districts.

6. Paperwork: For providers that wish to be licensed to provide this service, written plans must be submitted for approval by the Office.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The only alternative considered to the proposed amendment was to leave Part 589 as is currently written. OMH chose not to do this because there are no crisis residences licensed in the state in the outdated categories currently in Part 589. The proposed amendment provides an updated structure and standards for those programs wishing to operate a crisis residence.

9. Federal standards: There are currently no federal standards specific to the provision of these crisis residential services.

10. Compliance schedule: The amendments would be effective upon adoption.

Regulatory Flexibility Analysis

The proposed amendments to 14 NYCRR Part 589 are intended to establish basic standards for all licensed providers of services licensed or operated by the Office of Mental Health that wish to be licensed, or have been licensed to offer residential crisis services. The provision of these services is not required, and do not create new local government mandates. There will be no adverse economic impact on small businesses or local governments as a result of these amendments because at this time, there are no crisis residences licensed in the outdated categories in Part 589. The amendments simply update and reissue the standards for new crisis residence models to conform to the current practice in the field.

Rural Area Flexibility Analysis

The proposed amendments to 14 NYCRR Part 589 are intended to establish basic standards and parameters to license residential crisis providers. The provision of these services is not required. The proposed rule will not impose any adverse economic impact on rural areas because there are currently no crisis residences licensed in the outdated Part 589 categories; therefore, a Rural Area Flexibility Analysis is not necessary with this notice.

Job Impact Statement

The amendments to 14 NYCRR Part 589 are intended to establish basic standards and requirements for the licensure of residential crisis providers. The provision of these services is not required. There will be no adverse impact on jobs and employment opportunities as a result of these amendments because there are currently no crisis residences licensed in the outdated Part 589 categories, therefore a Job Impact Statement is not necessary with this notice.