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.

Office of Children and Family Services

EMERGENCY RULE MAKING

Specialized Secure Detention Facilities

I.D. No. CFS-31-18-00003-E
Filing No. 626
Filing Date: 2018-07-11
Effective Date: 2018-07-11

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

Action taken: Amendment of Part 180 of Title 9 NYCRR.

Statutory authority: Executive Law, section 503(9)

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

Specific reasons underlying the finding of necessity: The "Raise the Age" law (Chapter 59 of the Laws of 2017 (RTA)) amended Executive Law section 503(9) to mandate "the Office of Children and Family Services (OCFS) in consultation with the State Commission of Correction (SCOC) to jointly regulate, certify, inspect and supervise specialized secure detention facilities." The RTA also amended County Law section 218-a to mandate counties (including New York City) to "provide for adequate detention of alleged or convicted adolescent offenders in a specialized secure detention facility" and to provide that such facilities will be jointly administered by a designated county agency and the local county sheriff. The specialized secure detention facilities need to be operational by October 1, 2018 for the safe detention of any youth alleged to be an adolescent offender. In order for the new specialized secure detention facilities to be operational, they first need to be developed and constructed, and then certified. Approval of construction plans for a specialized secure detention facility by OCFS and SCOC is necessary before any construction/modifications can begin. In addition, applications for operating certificates and facility policies need to be approved before the facilities can open. OCFS, which is tasked with the role of jointly regulating, certifying, inspecting and supervising such facilities, must develop and implement regulations to guide the counties' efforts. Therefore, a new Subpart 180-3 of 9 NYCRR Part 180 is necessary to fulfill the requirements established by the enactment of Part WWW of chapter 59 of the Laws of 2017, referred to as the "Raise the Age Law" (RTA). The emergency rule making is necessary as the counties need to adequately budget, procure, and plan immediately to meet the requirements of the RTA. Emergency rule making is further necessary for counties to meet the health and safety needs of alleged adolescent offenders as required by the RTA by October 1, 2018.

Subject: Specialized secure detention facilities.

Purpose: To establish specialized secure detention facilities.

Substance of emergency rule (Full text is posted at the following State website: https://ocfs.ny.gov/main/legal/Regulatory/er/): A new Subpart 180-3 of 9 NYCRR Part 180 is necessary to fulfill the requirements established by the enactment of Part WWW of chapter 59 of the Laws of 2017, referred to as the "Raise the Age Law" (RTA). This proposed rule addresses the newly created need for specialized secure detention facilities, which will house youth alleged to be adolescent offenders, who will be youth sixteen and seventeen years of age who are accused of felonies. Specialized secure detention facilities can also house convicted adolescent offenders who are serving definite sentences for felony convictions of a year or less, and youth detained or sentenced on a vehicle and traffic violation who are sixteen or seventeen years old. The New York State Office of Children and Family Services (OCFS) in conjunction with the New York State Commission of Correction (SCOC) drafted the proposed rules, as both OCFS and SCOC are mandated by law to have regulatory oversight of the specialized secure detention facilities and these regulations meet that requirement. The proposed rule renumbers 9 NYCRR Part 180 as Subpart 180-1, to allow for the creation of a new Subpart 180-3 entitled "Specialized Secure Detention Facilities." The following is a summary of each section in proposed Subpart 180-3.

Section 180-3.1 Legal Authority – sets forth the legal authority for promulgation of the proposal.

Section 180.3.2 Definitions - defines the terms necessary for this section.

Section 180-3.3 Certification – establishes the procedure by which the local counties (New York City included as a single county for this purpose) may apply for certification to operate specialized secure detention facilities from OCFS, which shall require review and approval by OCFS and SCOC. Certifications will last for two years.

Section 180-3.4 Administration and Operation – establishes basic guidelines by which the local counties can operate the new specialized secure detention facilities, including a regionalized approach or contracting with a public or nonprofit child caring agency. This section also requires nondiscrimination policies and policies to prevent child abuse and abuse of vulnerable youth, and provides that a specialized secure detention facility shall be subject to and must comply with the requirements of the Prison Rape Elimination Act of 2003.

Section 180-3.5 Construction and Substantial Remodeling/Definition and Approvals – provides that any plans to construct or to substantially remodel a specialized secure detention facility must be approved by OCFS and SCOC prior to construction.

Section 180-3.6 Physical Plant Requirements – provides the physical plant requirements for a specialized secure detention facility, including the minimum design and security requirements for bathrooms, sleeping accommodations, recreation areas, school facilities, health facilities, screen-

ing and fencing, communication and monitoring, among other requirements.

Section 180-3.7 Records – requires a specialized secure detention facility to maintain current case records for each youth and establishes records retention requirements.

Section 180-3.8 Reports – requires a specialized secure detention facility to report incident through the Juvenile Detention Automated System (JDAS) or any other system or manner as required by OCFS and SCOC.

Section 180-3.9 Intake and Admissions Requirements – establishes the minimum assessment that must be performed when a youth first enters a specialized secure detention facility, to address the youth's well-being and proper placement, as well as the safety of others in the facility.

Section 180-3.10 Classification – describes how a specialized secure detention facility will determine classification, which results in a youth's proper placement and supervision in the facility.

Section 180-3.11 Staffing and Supervision of Youth – establishes the required staffing necessary for the adequate and continuous supervision, safety, health, proper care and treatment of youth under the care of a specialized secure detention facility, including staff to youth ratios, programmatic staff requirements, staffing qualifications, and staff training.

Section 180-3.12 Behavioral Support System – directs a specialized secure detention facility to create a policy for managing youth behavior that must be approved by OCFS.

Section 180-3.13 Education – requires a specialized secure detention facility to provide all educational programs required by section 112 of the Education Law and have alternative programs for youth who have a diploma, a high school equivalency diploma or aged out of compulsory attendance.

Section 180-3.14 Behavioral Intervention Policies – requires a specialized secure detention facility to have a policy and methods approved by OCFS that will direct staff on how to address instances of escalated behavior by youth. This section addresses de-escalation techniques, as well as the use of physical or mechanical restraints.

Section 180-3.15 Use of Physical Restraint – outlines requirements pertaining to the use of physical restraint. Staff who are expected to use physical restraints must be specially trained. Physical restraints shall not be used for discipline, punishment or administrative convenience.

Section 180-3.16 Use of Mechanical Restraints - provides requirements for the use of mechanical restrains. Staff who are expected to use mechanical restraints must be specially trained. Mechanical restraints shall not be used for discipline, punishment or administrative convenience.

Section 180-3.17 Room Confinement – requires a specialized secure detention facility to develop a procedure for room confinement approved by OCFS if room confinement is to be used. Room confinement may be used to calm or control acute physical behavior, but not be used for discipline, punishment or administrative convenience.

Section 180-3.18 Searches of Youth – this section requires a specialized secure detention facility to develop a policy that must be approved by OCFS and SCOC that outlines search parameters.

Section 180-3.19 - Waivers – provides that OCFS, in consultation with SCOC, may grant a waiver of a non-statutory requirement of this Subpart if the waiver does not affect the health, safety or welfare of the youth in the specialized secure detention facility.

Section 180-3.20 Case Management – requires a specialized secure detention facility to provide for case management and discharge services, establishes the minimum level of contact for case managers, and requires them to engage in discharge planning. Specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.21 Health Services – requires a specialized secure detention facility to provide access to health services for youth. The facility shall, at a minimum, require a comprehensive health assessment within seventy-two (72) hours of a youth's admission and provide for routine ambulatory care, emergency services, and other outside services as necessary. Specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.22 Behavioral Health Services – requires a specialized secure detention facility to provide access to behavioral health services for youth. The services, at a minimum, shall include: admission screening consistent with 180-3.9, a suicide prevention program, adequate space for interviews and treatment, and agreements with local behavioral health providers for emergency services. Specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.23 Conditions of Supervision of Youth – requires a specialized secure detention facility to provide for the supervision of youth at all times and to establish procedures for supervision of youth with special needs and restrictions on personal activities while engaged in supervision. Specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.24 Visits by OCFS Staff and Other Officials – provides that a specialized secure detention facility shall allow OCFS officials and agency representatives, including staff of the OCFS Office of the Ombudsman, to visit and inspect all areas of a facility, facility records, and speak to youth. It also allows for Youth Part Judges to visit the facility, review records and speak to youth.

Section 180-3.25 Telephone Access – requires a specialized secure detention facility to provide youth access to make telephone calls. Every youth shall be allowed telephone access at least once a week. Youth will be provided additional confidential telephone access with legal representatives and the OCFS Ombudsman's Office. Specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.26 Visiting – requires a specialized secure detention facility to allow visits to youth from family and community members. Youth must have an opportunity for a minimum of two hours of visitation per week and shall be permitted to visit with more than one person at a time. The facility shall determine the admission and identification process for visiting. Specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.27 Standards of Personal Hygiene for Youth – requires a specialized secure detention facility to provide for a youth's personal hygiene needs which, at a minimum, shall include: showers, shaving equipment, haircare, hygiene items (e.g., soap, toothbrush, deodorant), clothing, bedding, towels, and laundry service. Specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.28 Loss of Good Behavior Allowance for Sentenced Youth – requires a specialized secure detention facility to establish procedures for loss of good behavior allowance for youth who have been sentenced to a term of confinement in the facility. Specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.29 Facility Safety – Requires a specialized secure detention facility to develop a plan for fire prevention and safety, including but not limited to, inspections, drills, appropriately trained staff and recordkeeping. In addition, the facility will be required to have a plan for emergency preparedness, which shall be reviewed annually specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.30 Enforcement Powers – provides that OCFS' authority to enforce these regulations is derived from Social Services Law section 460-d and 18 NYCRR Part 343.

Section 180-3.31 OCFS Policies and Procedure – OCFS may develop policies and procedures related to the provisions of this subpart, which shall have the same force and effect as these regulations.

Section 180-3.32 Specialized Secure Detention Facility Policies and Procedures – requires a specialized secure detention facility to establish all policies and procedures as directed by this subpart and to maintain them in a facility manual. Additionally, the facilities will be required to develop policies and procedures to govern: food services; contraband; access to legal representatives; physical activity; recreation and leisure activities; religious services and practices; correspondence; review of printed material and publications; deathbed or funeral visit; and the maintenance of personal property.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 25, 2018.

Text of rule and any required statements and analyses may be obtained from: Leslie Robinson, Senior Attorney, Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 474-3333, email: regcomments@ocfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority:

The "Raise the Age" law (Chapter 59 of the Laws of 2017 (RTA)) amended Executive Law section 503(9) to mandate "the Office of Children and Family Services [(OCFS)] in consultation with the State Commission of Correction [(SCOC)] to jointly regulate, certify, inspect and supervise specialized secure detention facilities." The RTA also amended County Law section 218-a to mandate counties (including New York City) to "provide for adequate detention of alleged or convicted adolescent offenders in a specialized secure detention facility" and that the facility will be jointly administered by a designated county agency and the local county sheriff. When the RTA is fully implemented, adolescent offenders housed in specialized secure detention facilities will be youth ages sixteen and seventeen who are accused of felonies or who, in some cases, are serving definite sentences for felony convictions. The County Law acknowledges the certification by OCFS in conjunction with SCOC, as well as the need to have enhanced security features and specially trained staff at these new facilities. Counties can arrange for adequate specialized secure detention of adolescent offenders either by operating a specialized secure detention facility or contracting for beds in another county's facility.

2. Legislative Objectives:

The "raise the age" legislation was an initiative of Governor Andrew Cuomo for several years, as New York was one of only two States left that still considered all 16- and 17-year-olds automatically criminally responsible. Consistent with adolescent developmental needs and the Prison Rape Elimination Act (PREA), the RTA recognizes the potential vulnerability and treatment needs of younger persons who will remain criminally responsible for their actions. Thus, such persons are required to be housed in discrete local facilities (i.e. specialized secure detention facilities) that are not jails, pending adjudication and for short sentences, and in specially designated facilities operated by the Department of Corrections and Community Supervision for longer sentences. This proposed rule outlines requirements under the RTA for specialized secure detention facilities for older adolescents.

3. Needs and Benefits:

The proposed rule is needed to fulfill the statutory mandates of the RTA. As noted in the "Summary of the Proposed Rule," the RTA is a necessary change to New York State's laws to address how youth are processed through the criminal and juvenile justice systems.

4. Costs:

Initial cost outlay by county governments is necessary to implement the requirements of the RTA. However, the RTA adds a new section 54-m to the State Finance Law which provides that qualifying counties are eligible for reimbursement of one hundred percent of the costs associated with implementation of the RTA. Those counties that would not automatically qualify are those that have enacted a budget that is subject to the provisions of General Municipal Law section 73(c) that has exceeded the limits of that law, or counties that are not subject to General Municipal Law section 73(c). Regardless, such counties may qualify for such state aid with a hardship waiver. Additionally, section 104-a of Part WWW of Chapter 59 provides that funding shall be available for one hundred percent of a county's costs associated with the transport of youth by the sheriff that would not otherwise have occurred absent the provisions of chapter 59 of the laws of 2017. The State has appropriated $19 million to finance local detention costs and renovation. With respect to overall costs, it should be noted that this same population has been held in local jails, at county expense and has been maintained separately from older inmates due to the requirements of PREA. Thus, some expenses currently exist. In addition, in the event a county does not qualify for one hundred percent reimbursement under the RTA, reimbursement of the costs for new construction or substantial remodeling currently available for other juvenile detention facilities will be available for the same specialized secure detention outlays.

5. Local Government Mandates:

Counties must meet the deadlines established in the RTA to house 16-year-old adolescent offenders in specialized secure detention facilities beginning October 1, 2018 and 17-year-olds beginning October 1, 2019. In addition, New York City must transfer all 16- and 17-year-olds currently held at Rikers Island to a specialized juvenile detention facility established for that purpose by October 1, 2018. The counties will have opportunities to work jointly to create regional facilities, that may reduce the workload of a single county administering and operating a specialized secure detention facility. Counties may also engage an authorized child caring agency to operate specialized secure detention facilities.

6. Paperwork:

A county will need to obtain certification of the specialized secure detention facility every two years. There will also be paperwork associated with tracking costs and claiming reimbursement. Additionally, there will continue to be records retention requirements for the youth and reporting requirements related to incidents.

7. Duplication:

There should be no duplication of effort, as this is a single population that is being removed from the adult system to the juvenile system. This proposed rule does not duplicate other state or federal requirements. There were no significant alternative proposals to this rule, as the RTA mandates creation of specialized secure detention facilities and the proposal is consistent with the RTA's direction and prevailing standards.

8. Alternatives:

There were no significant alternative proposals to this rule, as the RTA mandates the creation of specialized secure detention facilities and the proposal is consistent with the RTA's direction and prevailing standards.

9. Federal Standards:

This proposed rule is consistent with federal standards.

10. Compliance Schedule:

Specialized secure detention facilities must be available to house 16-year-old youth who are alleged to have committed felonies on or after October 1, 2018 and 17-year-old youth by October 1, 2019. In addition, Correction Law section 500-p mandates that 16- and 17-year-old youth who are currently housed at Rikers Island must be moved to a specialized juvenile detention facility for that purpose by October 1, 2018.

Regulatory Flexibility Analysis

1. Effect of Rule:

Each county must have adequate specialized secure detention facilities available to meet the needs of their populations. Counites (including New York City) that choose to operate a specialized secure detention facility, either alone or in conjunction with other counties, are affected by the proposed rule. The most significant impact will be on a county agency that is appointed to jointly administer detention with the applicable sheriff. The exact number to be affected in this way is unknown, as it is not known how many counties will opt to operate a specialized secure detention facility. Counties may choose to participate in a regional approach with other counties instead of operating their own specialized secure detention facilities. As for small businesses affected, the extent to which counties will choose to contract nonprofit authorized child caring agencies to operate a facility is unknown.

2. Compliance Requirements:

The county sheriffs and New York City currently house 16-and 17-year-olds accused of and serving definite sentences for felonies in local jails in areas separate from adults offenders. To comply with the proposed rule, the counties will need to determine alternate locations to house such youth in specialized secure detention. Unlike the other counties, New York City will also be required to transfer all current 16- and 17-year- olds held at Rikers Island to one or more specialized juvenile detention facilities for that purpose by October 1, 2018.

3. Professional Services:

It is likely that significant services for the construction or substantial remodeling required for the creation of specialized secure detention facilities will be necessary to meet the obligations of the RTA and this proposed rule. Additionally, there will be several professional facility staff positions required at each facility, such as teachers, medical staff, and counseling staff. Some of these staff may already exist in the facilities where such adolescents are currently being served and will transfer to the new facility,but some portion of the new facilities will likely generate new positions or contractual services.

4. Compliance Costs:

Initial capital costs are not able to be determined as the construction or renovation costs will vary depending on which counties opt to operate a facility and what will be required for startup. However, the RTA provides state aid to qualifying localities for up to one hundred percent of the costs incurred for implementation. For counties that would not qualify, existing levels of state aid for construction of new or substantially remodeled detention facilities are carried over for specialized secure detention facilities. In addition, the RTA provides for reimbursement of one hundred percent of the increased cost of sheriff transport associated with the RTA.

5. Economic and Technological Feasibility:

The RTA requires the operation of specialized secure detention facilities. Currently, certain counties and New York City operate secure detention facilities pursuant to County Law section 218-a. This proposed rule permits collocation of specialized secure detention facilities with secure detention facilities so that operators of such facilities can take advantage of unused space. Technological resources exist to create buildings with the necessary security features. Moreover, as noted above, state aid is potentially available to defray costs. Therefore, the requirements of this proposal are economically and technically feasible.

6. Minimizing Adverse Impact:

This proposal minimizes adverse impact by permitting specialized secure detention facilities to be collocated with secure detention facilities, thus allowing for use of existing unused space. In addition, financial assistance available for costs will minimize adverse impact.

7. Small Business and Local Government Participation:

OCFS is the agency charged with certifying and regulating the specialized secure detention facilities in conjunction with the State Commission of Correction (SCOC); thus, the regulations and rules must come from OCFS with input from SCOC as mandated by section 503(9) of Executive Law. Prior to publication of this proposal, meetings were held with certain detention providers regarding forthcoming requirements. The proposal has been available to affected parties for comment.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas:

Each county must have adequate specialized secure detention facilities available to meet the needs of their populations. Counties serving rural areas that choose to operate a specialized secure detention facility, either alone or in conjunction with other counties, will be affected by the rule. The most significant impact for those counties choosing to operate a specialized secure detention facility will be on a county agency that is appointed to jointly administer detention with the applicable sheriff. This burden is the need to administer and operate these new facilities. The exact number to be affected in this way is unknown, as it is not known how many counties serving rural areas will opt to operate a specialized secure detention facility. Counties may choose to participate in a regional approach with other counties instead of operating their own specialized secure detention facilities.

2. Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

At this time, counties serving rural areas must meet the deadlines established in the RTA to house 16-year-olds in specialized secure detention facilities by October 2018 and 17-year-olds by October 2019. Counties serving rural areas will have opportunities to work jointly to create regional facilities, that may reduce the workload. Counties may also engage an authorized child caring agency to operate specialized secure detention facilities. Counties serving rural areas will need to obtain certification of a specialized secure detention facility every two years. There will also be paperwork associated with tracking costs and claiming reimbursement. Additionally, there are records retention requirements for the youth and reporting requirements related to incidents. It is likely that services for the construction or substantial remodeling required for the creation of specialized secure detention facilities will be necessary to meet the obligations of the RTA and this proposed rule. Additionally, there will be several professional facility staff positions, such as teachers, medical staff, and counseling staff. Some of these staff may already exist in the facilities where such adolescents are being served and will transfer to the new facility, but some portion of the new facilities will likely generate new positions or contractual services.

3. Costs:

Initial capital costs are currently undetermined as the construction or renovation costs will vary depending on which counties serving rural areas opt to operate a facility individually or jointly and required startup costs. However, the RTA provides state aid to qualifying localities for up to one hundred percent of the costs incurred for implementation. For counties serving rural areas that would not qualify, existing levels of state aid for construction of new or substantially remodeled detention facilities are carried over for specialized secure detention facilities. In addition, the RTA provides for reimbursement of one hundred percent of the increased cost of sheriff transport associated with the RTA.

4. Minimizing Adverse Impact:

This regulatory proposal minimizes adverse impact on rural areas by permitting specialized secure detention facilities to be collocated with secure detention facilities, thus allowing for use of existing unused space. In addition, the financial assistance available for costs associated with new construction or substantial remodeling, and one hundred percent reimbursement for costs associated with the RTA, will minimize adverse impact.

5. Rural Area Participation:

The regulatory proposal will be available to affected parties for comment and will be thoroughly addressed through statewide trainings and guidance documentation distributed to affected parties and counties, including those that serve rural communities.

Job Impact Statement

The newly created specialized secure detention facilities are not expected to have a negative impact on the job market. There may be a positive impact resulting from the need to contract for construction to create specialized secure detention facilities and ongoing employment to staff and service such facilities.

NOTICE OF ADOPTION

Specialized Secure Detention Facilities

I.D. No. CFS-51-17-00017-A

Filing No. 627

Filing Date: 2018-07-11

Effective Date: 2018-07-25

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

Action taken: Amendment of Part 180 of Title 9 NYCRR.

Statutory authority: Executive Law, section 503(9)

Subject: Specialized secure detention facilities.

Purpose: To establish specialized secure detention facilities.

Substance of final rule: A new Subpart 180-3 of 9 NYCRR Part 180 is necessary to fulfill the requirements established by the enactment of Part WWW of chapter 59 of the Laws of 2017, referred to as the "Raise the Age Law" (RTA). This proposed rule addresses the newly created need for specialized secure detention facilities, which will house youth alleged to be adolescent offenders, who will be youth sixteen and seventeen years of age who are accused of felonies. Specialized secure detention facilities can also house convicted adolescent offenders who are serving definite sentences for felony convictions of a year or less, and youth detained or sentenced on a vehicle and traffic violation who are sixteen or seventeen years old. The New York State Office of Children and Family Services (OCFS) in conjunction with the New York State Commission of Correction (SCOC) drafted the proposed rules, as both OCFS and SCOC are mandated by law to have the ultimate regulatory oversight of the specialized secure detention facilities and these regulations meet that requirement. The proposed rule renumbers 9 NYCRR Part 180 as Subpart 180-1, to allow for the creation of a new Subpart 180-3 entitled "Specialized Secure Detention Facilities." The following is a summary of each section in proposed Subpart 180-3.

Section 180-3.1 Legal Authority – sets forth the legal authority for promulgation of the proposal.

Section 180.3.2 Definitions - defines the terms necessary for this section.

Section 180-3.3 Certification – establishes the procedure by which the local counties (New York City included as a single county for this purpose) may apply for certification to operate specialized secure detention facilities from OCFS, which shall require review and approval by OCFS and SCOC. Certifications will last for two years.

Section 180-3.4 Administration and Operation – establishes basic guidelines by which the local counties can operate the new specialized secure detention facilities, including a regionalized approach or contracting with a public or nonprofit child caring agency. This section also requires nondiscrimination policies and policies to prevent child abuse and abuse of vulnerable youth, and provides that a specialized secure detention facility shall be subject to and must comply with the requirements of the Prison Rape Elimination Act of 2003.

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Section 180-3.19 - Waivers – provides that OCFS, in consultation with SCOC, may grant a waiver of a non-statutory requirement of this Subpart if the waiver does not affect the health, safety or welfare of the youth in the specialized secure detention facility.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 180-3.3, 180-3.4, 180-3.6, 180-3.7, 180-3.8, 180-3.9, 180-3.10, 180-3.11, 180-3.15 and 180-3.18.

Revised rule making(s) were previously published in the State Register on March 28, 2018.

Text of rule and any required statements and analyses may be obtained from: Leslie Robinson, Senior Attorney, Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 474-3333, email: regcomments@ocfs.ny.gov

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

OCFS received comments from a legal service provider, two county departments, a county employee and New York City. No substantial revisions to the regulations are necessary as a result of the comments. The comments and OCFS' responses are below.

Comment 1: Three commenters noted that section 180-3.3 was changed to allow female Adolescent Offenders (AO) to be collocated within the same housing area with female Juvenile Delinquents (JDs) and Juvenile Offenders (JOs). The commenters requested OCFS to consider allowing the same option for male AO youth with male JD and JO youth.

Response: The issue of co-located housing and commingling was previously discussed in comment 1 of the assessment of comments published March 7, 2018. The regulations do not allow co-location of AOs with JDs and JOs in the same housing area but do allow for commingling for purposes of education, infirmary, fire drills, transportation or as approved by OCFS and State Commission of Correction (SCOC). The countervailing concern with respect to the co-location of female AOs with female JDs and JOs in the same housing area is the potential for isolation of female AOs due to the projected overall small number of such youth in many jurisdictions. Thus, it was determined that co-location of them within the same housing area should be allowable, when necessary, to avoid the potential harmful effects of isolation. As the projected number of male AOs will not lead to isolation, there is no basis to make the requested change to permit similar co-location of males within the same housing areas.

Comment 2: One commenter noted that hardening of the walls in youth areas (referred to as "pods") is contrary to the purpose of the "Raise the Age" legislation which is to treat 16- and 17-year-olds like youth rather than jailed adults.

Response: Section 180-3.6(a) states that facility design shall be in a manner as to promote a pleasant, comfortable and secure atmosphere for youth. The requirement to provide for reinforced walls that discourage breakage, is a safety measure, but does not have to result in a "jail like" atmosphere. (See also, Comment #6 in the previous assessment of comment).

Comment 3: One commenter asked if section 180-3.8, regarding reporting, requires "critical incidents," which are defined as being those that must be reported to SCOC, must also be reported to OCFS (as well as to the Justice Center and/or the SCR, if appropriate). The follow up comment was that if that was the requirement, it should be clearly stated.

Response: All critical and non-critical incidents, as defined in the data dictionary, will be reported using the Juvenile Detention Automated System (JDAS) or any other system approved by OCFS and SCOC. The JDAS system will determine which of the reports are sent to SCOC. If an incident being reported is also reported to the Vulnerable Persons' Central Register (VPCR) or the Statewide Central Register of Child Abuse and Maltreatment (SCR) then the report to JDAS must indicate when the report was made to the VPCR/SCR and, include the reference number. OCFS reviewed the section and clarified the language.

Comment 4: The same commenter noted that while many of the "critical incidents" listed in section 180-3.8(d) are self-explanatory, several are quite vague, including (3) "employee misconduct," (11) "disturbances," and (12) "disruptions."

Response: As noted in the previous assessment of comments (See comment #12), a data dictionary will be provided to detention operators, which will define the terms.

Comment 5: Two commenters suggested that youth, who according to Correction Law 500-p are to be removed from Rikers, should not be required to be housed in a detention facility separate and apart from other detention facilities pursuant to section 180-3.10, particularly as some such youth will never be held at Rikers Island over the "gap" period while the "Raise the Age" provisions become fully effective. The commenters believe OCFS should reconsider separating 16 and 17-year-olds based on whether they were arrested before or after the applicable effective dates of the Raise the Age legislation (e.g. October 1, 2018 or October 1, 2019).

Response: The issue of housing youth removed from Rikers was previously discussed in comment 3 of the assessment of comments published March 7, 2018. Correction Law 500-p requires the 16 and 17-year-olds currently to be held at Rikers and those arrested before the applicable effective date of the RTA legislation to be held at a specialized juvenile detention facility for that purpose. All those youth have been or will be tried as adults in an adult criminal part. Separate specialized secure detention facilities for older adolescents are required to house, as of October 1, 2018, the newly arrested 16-year-old AOs and, as of October 1, 2019, the newly arrested 17-year-old AO offenders. While these two types of facilities could be collocated in the same building or on the same campus, by statute, the adult offenders cannot be co-located in a housing area with AOs, regardless of the fact that they may be the same age. However, the regulations have been revised to clarify that New York City could submit a waiver request, in accordance with Section 180-3.19 of the regulations, to OCFS for review and approval to authorize limited co-mingling of the adult offenders with AOs.

Comment 6: One commenter noted that Section 180-3.11(d) is written to prohibit the sharing of direct care staff across facility types in a co-located facility. The commenter asked if this was meant to prohibit the sharing of staff entirely, or just during a particular work shift. Finally, the commenter suggested the regulation should permit the co-located facilities to assign qualified direct care staff to the secure or specialized secure areas as needed, provided that staffing ratios are maintained, and so that direct care staff is not commingled within any shift.

Response: This issue was responded to previously, in comment #2 of the prior assessment of comments. As indicated, assuming the direct care staff are qualified, the staff can work in either facility, but they cannot do so during a single shift.

Comment 7: One commenter noted that section 180-3.11(d)(1)(i) requires one LMSW as the Director of Case Management, and asked if it could be amended so that a Forensic Mental Health Specialist II could be substituted for the LMSW.

Response: A facility can submit a waiver request pursuant to section 180-3.19 and the proposal will be reviewed to determine if a waiver is appropriate.

Comment 8: One commenter noted that section 180-3.11(d)(2)(i) states: "The physician shall be onsite a minimum of two times per week for sufficient time to sign orders, review consults, and provide oversight". The commenter asked if there is a medical director providing oversight who is a physician, can the onsite minimum of two times per week be fulfilled by a Nurse Practitioner or a Physician's Assistant.

Response: A facility can submit a waiver request pursuant to section 180-3.19 and the proposal will be reviewed to determine if a waiver is appropriate.

Comment 9: One commenter suggested that section 180-3.13(b), which "states that only certain programming must be provided to youth beyond the age of compulsory school attendance," may conflict with the requirements of Education Law sections 3202(1) and 3202(7), which entitle detained youth to school attendance until the youth receives a high school diploma or reaches the age of majority.

Response: First, this is a mischaracterization of the section 180-3(b), which requires facilities to provide programing to youth who have earned a high school diploma or a high school equivalency diploma or are beyond compulsory attendance. Clearly, the youth who have earned a high school diploma or a high school equivalency diploma do not need to attend school until the youth receives a diploma, thus programing is appropriate. Second, the youth who are beyond the compulsory age, if willing to attend school, would be covered by 180-3.13(a), which provides that the facility shall provide youth educational programs as required by section 112 of the Education Law, part 116 of Title 8 NYCRR and all other applicable laws.

Comment 10: One commenter noted that section 180-3.14(a)(2) has a physical restraint training requirement that states: Such may be retrained periodically as necessary, but shall be trained at a minimum annually. While the physical restraint training requirement in section 180-3.15(b) reads: Such staff shall be retrained periodically. The commenter noted the language is not consistent.

Response: The intent is for a facility to be able to retrain as needed after an individual is involved in an incident (periodically), but that all staff should have, at a minimum, annual retraining, regardless of involvement in an incident. OCFS has clarified the language.

Comment 11: One commenter noted that section 180-3.18(g) is inconsistent with the remainder of the regulation because the introductory sentence of the regulation requires that the search policy be approved by both OCFS and SCOC, while subdivision (g) requires that the policy be approved only by OCFS.

Response: The introductory sentence of the regulation's requirement for approval by OCFS and SCOC is accurate. Subdivision (g) is intended to add additional guidance in developing the policy as it relates to routine and non-routine personal searches. The reference to approval by OCFS is redundant and has been removed.

NOTICE OF ADOPTION

Specialized Secure Detention Facilities

I.D. No. CFS-15-18-00007-A

Filing No. 625

Filing Date: 2018-07-11

Effective Date: 2018-07-25

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

Action taken: Amendment of Part 180 of Title 9 NYCRR.

Statutory authority: Executive Law, section 503(9)

Subject: Specialized secure detention facilities.

Purpose: To establish specialized secure detention facilities.

Substance of final rule: Office of Children and Family Services (OCFS) submitted a Notice of Emergency Adoption and Proposed Rule Making, which added Subpart 180-3, sections 180-3.1 through 180-3.19 to 9 NYCRR relating to the certification, construction, staffing and basic operation of specialized secure detention facilities. The introduction of emergency regulations is required to meet the October 1, 2018 deadline set forth in the "Raise the Age" legislation (Part WWW of Chapter 59 of the Laws of 2017 (RTA)). This proposed rule adds new sections 180-3.20 through 180-3.32 to Subpart 180-3 and contains the necessary requirements for the day-to-day operation of specialized secure detention facilities. OCFS consulted with the New York State Commission of Correction (SCOC) to draft the following proposed rule. Both OCFS and SCOC are mandated by law to have regulatory oversight of the specialized secure detention facilities and these regulations meet that requirement. The following is a summary of each section.

Section 180-3.20 Case Management – requires a specialized secure detention facility to provide for case management and discharge services, establishes the minimum level of contact for case managers, and requires them to engage in discharge planning. Specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.21 Health Services – requires a specialized secure detention facility to provide access to health services for youth. The facility shall, at a minimum, require a comprehensive health assessment within seventy-two (72) hours of a youth's admission and provide for routine ambulatory care, emergency services, and other outside services as necessary. Specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.22 Behavioral Health Services – requires a specialized secure detention facility to provide access to behavioral health services for youth. The services, at a minimum, shall include: admission screening consistent with 180-3.9, a suicide prevention program, adequate space for interviews and treatment, and agreements with local behavioral health providers for emergency services. Specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.23 Conditions of Supervision of Youth – requires a specialized secure detention facility to provide for the supervision of youth at all times and to establish procedures for supervision of youth with special needs and restrictions on personal activities while engaged in supervision. Specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.24 Visits by OCFS Staff and Other Officials – provides that a specialized secure detention facility shall allow OCFS officials and agency representatives, including staff of the OCFS Office of the Ombudsman, to visit and inspect all areas of a facility, facility records, and speak to youth. It also allows for Youth Part judges to visit the facility, review records and speak to youth.

Section 180-3.25 Telephone Access – requires a specialized secure detention facility to provide youth access to make telephone calls. Every youth shall be allowed telephone access at least once a week. Youth will be provided additional confidential telephone access with legal representatives and the OCFS Ombudsman's Office. Specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.26 Visiting – requires a specialized secure detention facility to allow visits to youth from family and community members. Youth must have an opportunity for a minimum of two hours of visitation per week and shall be permitted to visit with more than one person at a time. The facility shall determine the admission and identification process for visiting. Specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.27 Standards of Personal Hygiene for Youth – requires a specialized secure detention facility to provide for a youth's personal hygiene needs which, at a minimum, shall include: showers, shaving equipment, haircare, hygiene items (e.g., soap, toothbrush, deodorant), clothing, bedding, towels, and laundry service. Specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.28 Loss of Good Behavior Allowance for Sentenced Youth – requires a specialized secure detention facility to establish procedures for loss of good behavior allowance for youth who have been sentenced to a term of confinement in the facility. Specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.29 Facility Safety – requires a specialized secure detention facility to develop a plan for fire prevention and safety, including but not limited to, inspections, drills, appropriately trained staff and recordkeeping. In addition, the facility will be required to have a plan for emergency preparedness, which shall be reviewed annually specialized secure detention facilities must develop policies and procedures to implement these requirements.

Section 180-3.30 Enforcement Powers – provides that OCFS' authority to enforce these regulations is derived from Social Services Law section 460-d and 18 NYCRR Part 343.

Section 180-3.31 OCFS Policies and Procedure – provides that OCFS may develop policies and procedures related to the provisions of this subpart, which shall have the same force and effect as these regulations.

Section 180-3.32 Specialized Secure Detention Facility Policies and Procedures – requires a specialized secure detention facility to establish all policies and procedures as directed by this subpart and to maintain them in a facility manual. Additionally, the facilities will be required to develop policies and procedures to govern: food services; contraband; access to legal representatives; physical activity; recreation and leisure activities; religious services and practices; correspondence; review of printed material and publications; deathbed or funeral visit; and the maintenance of personal property.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 180-3.21(a)(1), 180-3.25(1) and 180-3.32(b)(2).

Text of rule and any required statements and analyses may be obtained from: Leslie Robinson, Senior Attorney, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 474-3333, email: regcomments@ocfs.ny.gov

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

OCFS received comments from a legal service provider, New York City and one county. No substantial revisions to the regulations are necessary as a result of the comments. The comments and OCFS' responses are below.

Comment 1: One commenter suggested that section 180-3.20 should specify the qualifications for case management staff. Additionally, the commenter suggested that the section should provide more detailed requirements for case management meetings and discharge planning.

Response: The qualifications for the case management staff are contained in section 180-3.11(d)(1). Detail can be included in the policy written by the SSD and approved by OCFS.

Comment 2: Section 180-3.21(a)(1) addresses an SSD's response to a youth who has arrived for admission and presents with a need for immediate medical care. One commenter suggested that the current wording of ''seriously physically harmed'' is not sufficient and should be replaced with ''presents with an indication of an urgent medical need.'' Additionally, the commenter suggested the individual transporting the youth can report the need for an urgent medical need.

Response: The import of this section is to require SSDs to see to immediate needs that present when a youth arrives. This language has been included for clarification.

Comment 3: The commenter noted that the comprehensive health assessment in section 180-3.21(a)(2) should be done upon admission and that 72 hours should only be the outside limit for this to take place, as youth who arrive at facilities may have to take medication or have health conditions or restrictions that need to be known.

Response: Section 180-3.9 requires that an immediate screening interview for any medical, dental or mental health problems occur no later than one hour from a youth's arrival. This screen will determine medical conditions, determine medication currently being taken, and mental status, among other things. The comprehensive health assessment in 180-3.21, which includes a physical examination, vision screening, and testing for tuberculosis, sexually transmitted diseases, and hepatitis, is to gather a more detailed medical history. This more extensive assessment does not need to be done upon admission.

Comment 4: One commenter suggested that the list of outside services sufficient to meet the needs of the youth listed in section 180-3.21(a)(4) of health services, should also list mental health services.

Response: This concern is addressed in section 180-3.22, which is dedicated to behavioral health services, and requires an SSD to have an agreement with local behavioral health providers for emergency services.

Comment 5: One commenter suggested that section 180-3.21 did not specify health care staff qualifications and ratios and that these should be added.

Response: Section 180-3.11(d)(2) provides the requirements for both heath and behavioral health services staff. This section includes a Physician/Medical Director, Psychiatrist, Registered Nurse (with ratio to beds), Dietary Consultant, Dentist and Emergency orthodontic care services.

Comment 6: One commenter stated that section 180-3.21 lacks any requirement for proper storage, dispensation and administration of prescribed medication.

Response: Section 180-3.21(a)(3) specifically states that medication administration shall be done as authorized or prescribed by medical professionals. Section 180-3.6 "Physical Plant," (b)(12)(iv) requires all drugs, medicines and instruments to be kept in a suitable locked cabinet, inventoried and accessible only to medical staff.

Comment 7: One commenter noted that section 180-3.21(a)(7) which provides that "[a] youth's medical record shall be forwarded when a youth is transferred to a different facility or placement," could violate certain state and federal laws, including Mental Hygiene Law section 33.13, Correction Law section 601, Public Health Law section18 and Article 27-F and 42 C.F.R. Part 2. The commenter suggested this section should be amended to require that any medical provider must comply with applicable state and federal laws relating to protected health information when forwarding a youth's medical record and to allow for a summary of the youth's medical record to be provided. Another commenter suggested that a time frame for the transfer should also be included and suggested contemporaneously with the transfer of the youth but no later than 24 hours after the transfer.

Response: When a youth is transferring from one facility to another, the medical record will need to be transferred for the purposes of the continuity of care. Any transfer would be done in accordance with the law. While contemporaneously transferring records would be the ideal, there may be times when it is not achievable because a youth may be transferred directly from court.

Comment 8: One commenter noted that there is no provision in the regulations for the discharge of a youth with a supply of medication. The comments suggested that for transfers or placements there should be a 30-day supply.

Response: Given the nature of discharges, which can happen at the facility or directly from the court, it would be difficult to draft a single regulation to govern this issue. It is best addressed by SSDs in policy.

Comment 9: One commenter stated that the proposed regulation must be amended to require either direct mental health services or provide access to outside mental health services.

Response: Section 180-3.22(a)(1) states that if the initial screening done pursuant to 180-3.9 indicates a need, an immediate referral is made to a qualified mental health provider and the youth must be assessed within 24 hours. Pursuant to 180-3.22(a)(2) services must be provided by qualified mental health professionals and (a)(5) provides for agreements with local providers. Section 180-3.11(d)(2)(ii) requires each facility to have a board-certified, licensed psychiatrist available for consultation; on site a minimum of once a week with sufficient hours to provide assessments and prescribe medication as needed; and monitor all youth on medication.

Comment 10: One commenter noted that section 180-3.22(a)(5), which provides that ''[a]n SSD shall have an agreement with local behavioral health providers for emergency behavioral health services.'' The commenter would like the flexibility to provide these services directly and suggests changing the provision to read: "An SSD shall ensure that emergency behavioral health services are available."

Response: This provision is primarily for instances when a youth needs in-patient hospital level care. It is not contemplated that an SSD would be licensed to provide such care. The regulations require SSDs to provide other mental health services below the level of in-patient hospital care. There is nothing to preclude providing mental health services for youth with more acute needs, provided all legal requirements are satisfied.

Comment 11: Two commenters noted that section 180-3.23 reference SCOC regulations on youth supervision. The commenters asked about the SCOC regulations. One of the commenters suggested that this was an abdication of OCFS' role in supervision of the SSD in ''consultation'' with SCOC.

Response: The SCOC regulations were filed on June 18, 2018 and are available at http//www.scoc.ny.gov. Part 7306 covers security and supervision. County Law 218-a(A)(6), which requires the creation of SSDs, provides that OCFS and SCOC would act in conjunction, not in consultation. SCOC, having a background in supervising an older population, is taking the lead on defining the types of supervision required for these SSD facilities.

Comment 12: One commenter suggested that section 180-3.24, pertaining to visits by OCFS staff and other officials, be amended to explicitly state that visitors have access to facility staff and affirmatively require OCFS to visit and report its findings and that reports should be made available to all interested parties and the public.

Response: Section 180-3.3 states that no SSD can operate unless it possesses a valid certificate of operation issued by OCFS and SCOC. SSDs are subject to inspection by both agencies. The regulation establishes the fact that OCFS will be visiting and inspecting the SSDs and that the results of the inspections could result in a limitation, suspension or even a revocation of the SSDs operating certificate if there is noncompliance with the regulations. . With respect to access to reports, OCFS responds to requests for information as authorized by law.

Comment 13: One commenter expressed a ''…concern about the many restrictions on telephone access and visiting at SSDs.'' The commenter suggested that limiting outgoing telephone calls to once per week is unduly restrictive and guaranteeing only two hours of visiting per week severely limits the ability of family and others to see the youth.

Response: Sections 180-3.25 "Telephone Access" and 180-3.26 "Visiting," establish the minimum telephone access and visiting that a youth must be provided. An SSD can provide a youth with greater access than the minimum established by the regulations.

Comment 14: One commenter recommended that the regulations require that all outgoing calls be free of charge.

Response: There is nothing in the regulation that prohibits free phone calls.

Comment 15: One commenter recommended that calls with legal representatives and the OCFS ombudsman be unrestricted in number and duration, as well as confidential.

Response: Section 180-3.25 provides for additional confidential calls to legal representatives and OCFS ombudsman staff. However, to the extent feasible, such calls should not unduly disrupt the routine schedule of the youth, and the term "unrestricted" would limit discretion to address a problem in the rare event that it should occur.

Comment 16: One commenter recommended that a youth's list of preapproved callers should be developed by the case manager in conjunction with the youth's parents or legal guardian or another appropriate individual.

Response: OCFS used this approach in developing a youth's preapproved list of visitors and it would be consistent to do that with the preapproved list for callers. The change has been made.

Comment 17: One commenter noted that section 180-3.26(a)(1) requires that youth shall be permitted to have more than one visitor at a time. The commenter suggested that as a safety consideration, "shall" should be replaced with "may" so that the regulation is not ambiguous regarding the facility's ability to limit the number of visitors, at least when safety may be an issue.

Response: It is unnecessary to change "shall' to "may," as "shall" is already qualified by the clause that states: ''however, the facility may determine a maximum number based on factors such as…'' The ''shall'' provides a presumption for the youth to have visitors, which is an important presumption.

Comment 18: One commenter suggested that 180-3.26(a)(2) should be amended to require the visiting setting to be child and family-friendly.

Response: Section 180-3.6 regarding the physical plant requires the facility to be designed in a manner to promote a pleasant, comfortable and secure atmosphere, and is inclusive of the visiting room.

Comment 19: One commenter suggested that the regulations should require the SSD to post the visitation rules on its website and mail them to the youth's family.

Response: Section 180-3.26(a)(3) does require the SSD to establish and publish a schedule. The detail of how to publish, such as posting it on a website or mailing it to parent or guardian, are best left to each SSD's policy.

Comment 20: One commenter suggested that section 180-3.26(a)(4) be amended to specifically include members of the youth's legal team, as well as clergy for confidential visits.

Response: OCFS used the term legal representative not lawyer, so that all the members of a youth's legal team would be covered. As for confidential conversations with clergy, SSDs must provide religious services, including access to clergy or religious advisors as part of the programing.

Comment 21: One commenter suggested that section 180-3.26(a)(5) should be amended to allow for persons of significance, including non-family members, to be on the pre-approved list of visitors.

Response: Section 180-3.26(a) already allows for this by providing visits with family and community members. Thus, if a youth has a relationship with a person who provides significant support, they would be a good candidate for the pre-approved list.

Comment 22: One commenter noted that section 180-3.26(b) requires that an SSD shall provide sufficient space for a visiting room and for proper storage of visitors' coats, handbags, keys, phones, and other personal items not allowed into the visiting area. The commenter suggested that the regulation should state whether or not the facility is permitted to make policy concerning the prohibition of such items from the visiting area.

Response: The contraband policy required in Section 180-3.329b)(1)(ii) would address items prohibited from the facility.

Comment 23: One commenter recommended that section 180-3.26(c) pertaining to visiting be amended to provide resident notification of any suspension of privileges and information about the appeal and documentation in the resident file about the reason and length of the suspension.

Response: The regulation requires each SSD to establish criteria and procedures for determining any denial, revocation or limitation of visiting.

Comment 24: One commenter suggested that the visiting regulations should have a procedure for a visitor to file a complaint.

Response: The visiting policy developed by an SSD can provide a procedure for filing a complaint.

Comment 25: One commenter suggested that section 180-3.27 regarding personal hygiene should include a requirement that ''each facility shall provide programs, facilities and training necessary for the youth's daily needs and development regarding personal hygiene and general appearance.'' Also, it was suggested that paragraph (5) should require that clothing provided be in an adequate amount and of good quality and properly maintained for comfort and health. Finally, two commenters suggested paragraph (5)(v) be amended to allow the youth to wear their own clothing to court or be given appropriate clothing for court if they do not have access to their own.

Response: There is nothing in the regulation that prohibits facility staff from assisting youth in maintaining basic hygiene. Section 180-3.27(5) already references appropriateness and condition of the clothing and there is no prohibition on a youth being provided their own clothing for court.

Comment 26: One commenter suggested that section 180-3.28 does not set forth guidance on how good behavior allowances should be applied or, in the event of misconduct by an adolescent, how much of such allowances should be forfeited.

Response: There is statutory mathematical calculation (Penal Law § 70.30(4)) for the initial application of good time. Section 180-3.28 directs the facility to establish procedures for reviewing and dismissing charges, holding hearings and appeals. The loss of good behavior allowances can only be determined on a case by case basis, based on the established procedures.

Comment 27: One commenter suggested that the opening paragraph of section 180-3.28 pertaining to loss of good behavior allowance is vague and could lead to potential inconsistent implementation of the rule by counties.

Response: Section 180-3.28(a) clearly provides: "This sanction works in tandem with section 180-3.14, by providing an additional response for a sentenced youth who has a serious misbehavior. It does not take the place of the Behavioral Intervention Policies of the facility, as required by section 180-3.14 of this subpart.'' OCFS believes that it is clear that the loss of good behavior allowance would be for an action by a youth that is beyond the normal misbehavior that is handled by the Behavioral Intervention Policies.

Comment 28: One commenter suggested that section 180-3.28 specifically requires that the youth receive a written notice of the charge(s), the right to hearing, access to a youth assistant, and the right to appeal.

Response: Section180.28-3(e)(6) requires documentation of the hearing process.

Comment 29: One commenter noted that section 180-3.32(a) requires that all policies/procedures be maintained in a facility manual. The commenter asked if the ''facility manual'' must be a hard-copy paper document, or can it be electronic?

Response: The regulation does not prohibit use of an electronic manual.

Comment 30: One commenter noted that section 180-3.32(b)(2)(vi) pertaining to deathbed and funeral visits is limited to sentenced youth and that the policy should include detained youth and sick bed visits.

Response: The suggestion regarding unsentenced youth has been adopted. The suggestion to include sick bed visits is not consistent with other existing regulations governing this area.

Comment 31: One commenter suggested that the regulations are missing a policy on resident mail and a bill of rights for youth. Additionally, the commenter suggested that the regulations needed to protect the LGBTQI community by allowing youth to use a preferred name, have protected showers and prohibit conversion therapy.

Response: Overall the regulations contain protections for youth. Section 180-3.32(b)(2)(iv) requires the SSD to develop a correspondence policy. Section 180-3.4 (d) Non-Discrimination and (g) Prison Rape Elimination Act of 2003, as well as section 180-3.10 Classification all provide protections for the LBGTQI community.

Board of Commissioner of Pilots

NOTICE OF ADOPTION

Pilotage Fees for the Long Island Sound and Block Island Sound

I.D. No. COP-18-18-00002-A
Filing No. 619
Filing Date: 2018-07-10
Effective Date: 2018-07-10

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

Action taken: Amendment of section 55.3 of Title 21 NYCRR.

Statutory authority: Navigation Law, section 95

Subject: Pilotage Fees for the Long Island Sound and Block Island Sound.

Purpose: To assess fees for pilotage on the Long Island Sound and Block Island Sound.

Text or summary was published in the May 2, 2018 issue of the Register, I.D. No. COP-18-18-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Frank Keane, Board of Commissioner of Pilots of the State of New York, 17 Battery Place, Suite 1230, New York, NY 10004, (212) 425-5027, email: FWKeane@bdcommpilotsny.org

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment

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

Education Department

NOTICE OF EXPIRATION

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

Interstate Compact for Educational Opportunity for Military Children and Physical Education Requirements for a Diploma

I.D. No.	Proposed	Expiration Date
EDU-27-17-00006-P	July 5, 2017	July 5, 2018

Department of Environmental Conservation

NOTICE OF ADOPTION

Control of the Emerald Ash Borer

I.D. No. ENV-17-18-00004-A

Filing No. 621

Filing Date: 2018-07-10

Effective Date: 10 days after filing

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

Action taken: Repeal of section 192.7 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(3)(b), 3-0301(1)(b), (2)(m) and 9-1303

Subject: Control of the Emerald Ash Borer.

Purpose: To repeal existing restrictions on the movement of ash wood, logs, firewood, nursery stock and wood chips.

Text or summary was published in the April 25, 2018 issue of the Register, I.D. No. ENV-17-18-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Justin Perry, Chief, Invasive Species and Ecosystem Health, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-9425, email: justin.perry@dec.ny.gov

Additional matter required by statute: A Short EAF was prepared in compliance with Article 8 of the ECL and Part 617.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The 60 day public comment period from April 25, 2018 to June 25, 2018 resulted in two written comments via email.

First comment: The first comment was submitted by Scott Shupe. Mr. Shupe opines that the repeal of section 192.7 is wise, but also raises additional concerns as detailed below.

Issue/Concern: Mr. Shupe expresses the view that Departmental regulations on the movement of firewood also should be repealed, as in his view they too have failed to stop the spread of emerald ash borer (EAB).

Response: The Department disagrees regarding the firewood regulations. The unrestricted movement of firewood has been implicated in the introduction of several invasive forest pests around the world, and New York's restrictions on firewood movement, though roughly coincidental with EAB, are designed to reduce the risk of introduction of many invasive forest pests, and the potential threat of damage to New York's economy and environment that they pose.

Issue/Concern: Mr. Shupe further expresses that New York State should "be promoting greater use of our extensive wood resources. And to do so domestically, processing and transforming our hard and softwoods inside our borders rather than exporting timber and reimporting lumber and processed products from across the oceans."

Response: The issue of wood and wood products production, consumption and trade is a priority for the Department, and identified as one criterion in the Division of Lands and Forests' 2010 Statewide Forest Resource Assessment and Strategy. Several actions are outlined in that plan to increase availability, diversity and economic viability of markets for sustainable forest products and services. The Division's forest utilization program supports and promotes the idea that a healthy and diverse forest products industry, as well as broad knowledge and understanding of the timber resource, contributes to the economic and various other values of the forest. It is a responsibility and aim of the forest utilization program to promote the sustainable use of forest resources in New York.

Second Comment: The second comment was submitted by Debrah W. Kamau.

Issue/Concern: Ms. Kamau did not directly support, oppose, or comment on the repeal of section 192.7. Instead she offered comments on "many under-utilized methods that could assist in the control of the ash borer". Ms. Kamau suggested an increased focus on education and outreach, and an integrated pest management approach commonly known as SLAM (Slow Ash Mortality).

Response: Effective public education and outreach is always a goal of the Department, especially on issues of invasive species such as EAB. With regard to EAB, the Department has used both traditional and social media to educate the public about the risks and impacts of EAB. The Department has also encouraged the establishment of and participated in several local EAB Task Forces to improve local preparation for and response to EAB. The Department utilized the SLAM approach on a state infestation-wide basis from 2009 to 2013, until the infested area in New York grew too large for the approach to be practical at that scale. Integrated pest management of EAB is still supported by the Department through the programs and technical assistance offered by the Division of Lands and Forests Bureau of Invasive Species and Ecosystem Health.

Third Comment: The third comment was submitted by John K. Bartow, Jr., representing the Empire State Forest Products Association. Mr. Bartow expresses his support for the proposed repeal.

Issue/Concern: Mr. Bartow opines that "the timing for this repeal is right and the efforts to manage this invasive pest under these regulations has accomplished as much as we could have hoped for".

Response: The Department agrees.

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

Regulations Governing the Recreational Fishing of Scup and Summer Flounder (Fluke)

I.D. No. ENV-16-18-00004-E

This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement pertain(s) to a notice of Emergency rule making, I.D. No. ENV-16-18-00004-E, printed in the *State Register* on July 11, 2018.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 11-0303, 13-0105, 13-0340-b, and 13-0340-e authorize the Department of Environmental Conservation (DEC or the department) to establish by regulation the open season, size, catch limits, possession and sale restrictions and manner of taking for summer flounder and scup.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries to optimize resource use for recreational harvesters in a manner that is consistent with marine fisheries conservation and management policies and interstate fishery management plans.

3. Needs and benefits:

This rule making is necessary for New York State to liberalize the recreational harvest of scup and summer flounder by the start of the 2018 recreational fishing season, and remain in compliance with the Atlantic States Marine Fisheries Commission (ASMFC). The new proposed regulations were developed in response to ASMFC and the

Mid-Atlantic Fishery Management Council (MAFMC) increasing the recreational harvest limits for scup and summer flounder for 2018.This amendment proposes to address these increases to the recreational harvest limits for scup through changes to the size limit, and for summer flounder through a season extension and increase to the possession limit.

DEC is adopting these changes in order to protect the general welfare of New York state citizens by complying with ASMFC, and maintaining the sustainability of an important recreational fishery. The proposed rules are more liberal than recreational regulations that were in place during the 2017 fishing season for both species. However, the emergency rule that was in place for summer flounder during 2017 was not adopted and has expired. Current summer flounder regulations are not in compliance with ASMFC requirements. If ASMFC determines that New York is non-compliant, it notifies the U.S. Secretary of Commerce. The Secretary could then promulgate and enforce a complete closure of New York's summer flounder fishery if they concur with the non-compliance determination.

Ultimately, the proposed amendment is a relaxation of regulations in place during the 2017 fishing season which should stimulate interest from the recreational fishing community, and could result in increases in revenue to recreational fishing industries in New York.

4. Costs:

There are no new costs to state and local governments from this action. The department will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying recreational fishers, party and charter boat operators, and other recreational fishing associated businesses of the new rules.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

None.

7. Duplication:

The amendment does not duplicate any state or federal requirement.

8. Alternatives:

New York State marine recreational fishers had an opportunity to comment upon these new recreational fishing measures for scup and summer flounder, including the measures proposed in this rule making, during the Marine Resource Advisory Council (MRAC) meeting on March 6, 2018. Alternative management measures, which included various combinations of possession limits, size limits, and seasons, were suggested and discussed. While some fishers questioned why measures couldn't be even less restrictive, support was in favor of the measures included in this rule making when compared to alternative liberalization options. The proposed regulations in this rule making were agreed to by consensus of the Marine Resource Advisory Council members on March 6, 2018.

"No action" alternative: if New York were to not adopt these proposed regulations in 2018, New York State recreational anglers would be denied the potential benefits of increased recreational fishing opportunities. In addition, the emergency rule in place during 2017 for recreational summer flounder fishing has expired and current regulations are not in compliance with ASMFC requirements. An out of compliance determination by ASMFC could result in the complete closure of New York's summer flounder fishery.

9. Federal standards:

The amendments to Part 40 are in compliance with the ASMFC and MAFMC scup and summer flounder Fishery Management Plans.

10. Compliance schedule:

These regulations are being adopted by emergency rulemaking and therefore will take effect immediately upon filing with Department of State. Regulated parties must comply immediately and will be notified of the changes to the regulations through appropriate news releases, by mail, and through DEC's website.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule making will liberalize the harvest of scup and summer flounder in New York by implementing less restrictive fishing rules for recreational fishers compared to rules in place during 2017. The proposed amendment will adopt the following provisions: or recreational scup, it will lower the minimum size from 10 to 9 inches, and change the party and charter boat receipt requirement from 20 to 30 fish for September 1 through October 31. Recreational summer flounder had a previous emergency rule which expired at the end of the 2017 fishing season. The expired rule increased the minimum size to 19 inches and decreased the possession limit to 3 fish. The proposed rule will maintain the 19-inch size limit, but increase the possession limit to 4 fish, and extend the fishing season from May 4 through September 30.

The proposed rule is less restrictive than regulations in place during 2017. In 2017, there were 508 licensed party and charter businesses, and a number of retail and wholesale marine bait and tackle shops operating in New York State. Data available from 2016 New York State Vessel Trip Reports shows that there were 3,594 party and charter trips that caught and kept scup and/or summer flounder. These statistics do not include federally permitted recreational vessels operating out of New York State. The National Oceanic and Atmospheric Administration's Marine Recreational Information Program estimates that there were 439,765 recreational trips targeting scup and 1,371,102 trips targeting summer flounder in New York during 2016. The proposed amendment increases the number of days recreational fishers can fish for summer flounder and the amount of scup and summer flounder that can be kept. This will create more recreational fishing opportunities for recreational fishers in New York, and could result in an increase in revenue for bait and tackle shops and some party charter businesses.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry that complies with the proposed rule.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The proposed regulations may increase the income of some party and charter businesses, marinas, and marine bait and tackle shops that depend upon the recreational scup and summer flounder fisheries.

6. Minimizing adverse impact:

This rule making is necessary for New York State to liberalize the recreational harvest of scup and summer flounder, providing the maximum benefit to New York recreational fishers and associated industries, while maintaining compliance with the Fisher Management Plans (FMPs) for scup and summer flounder. Since these regulatory amendments are consistent with the Interstate FMPs, DEC anticipates that New York State will remain in compliance with the Atlantic States Marine Fisheries Commission and the National Marine Fisheries Service.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including party and charter boat fisheries, as well as wholesale and retail bait and tackle shops and other support industries for recreational fisheries. Failure to regulate and protect our natural resources could cause the collapse of a stock and have a severe, adverse impact on the commercial and recreational fisheries for that species as well as the supporting industries for those fisheries.

7. Small business and local government participation:

New York State marine recreational fishers had an opportunity to comment on these new recreational fishing measures for scup and summer flounder, including the measures proposed in this rulemaking, during the Marine Resource Advisory Council Meeting on March 6, 2018. Alternative management measures, which included various combinations of possession limits, size limits, and seasons, were suggested and discussed. While some fishers questioned why measures couldn't be even less restrictive, support was in favor of the measures

included in this rule making when compared to alternative liberalization options. The proposed regulations in this rule making were agreed to by consensus of the Marine Resource Advisory Council members on March 6, 2018.

8. (IF APPLICABLE) For rules that either establish or modify a violation or penalties associated with a violation:

Pursuant to the State Administrative Procedure Act § 202-b(1-a)(b) (SAPA), a cure period is not included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure that the general welfare of the public and the resource are both protected.

9. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

The department will conduct an initial review of the rule within three years as required by SAPA § 207(1)(b).

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. This rule making only affects the marine and coastal district of the State; there are no rural areas within the marine and coastal district. The scup and summer flounder fisheries are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the State. The proposed rule will not impose any reporting, record keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, DEC has determined that a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

This rule making will liberalize the harvest of scup and summer flounder in New York by implementing less restrictive fishing rules for recreational fishers compared to rules in place during 2017. The proposed amendment will adopt the following provisions: for recreational scup, it will lower the minimum size from 10 to 9 inches, and change the party and charter boat receipt requirement from 20 to 30 fish for September 1 through October 31. Recreational summer flounder had a previous emergency rule which expired at the end of the 2017 fishing season. The expired rule increased the minimum size to 19 inches and decreased the possession limit to 3 fish. The proposed rule will maintain the 19-inch size limit, but increase the possession limit to 4 fish, and extend the fishing season from May 4 through September 30.

2. Categories and numbers affected:

In 2017, there were 508 licensed party and charter businesses, and a number of retail and wholesale marine bait and tackle shops operating in New York State. Data available from 2016 New York State Vessel Trip Reports shows that there were 3,594 party and charter trips that caught and kept scup and/or summer flounder. These statistics do not include federally permitted recreational vessels operating out of New York State. The National Oceanic and Atmospheric Administration's (NOAA) Marine Recreational Information Program estimates that there were 439,765 recreational trips targeting scup and 1,371,102 trips targeting summer flounder in New York during 2016. NOAA's 2014 report on The Economic Contribution of Marine Angler Expenditures on Durable Goods in the United States estimates that there were 693,000 total recreational anglers that year. The report estimates that 2014 recreational angler expenditures contributed 7,417 jobs to the state's economy, and $567 million to the states gross domestic product, an unknown portion of which was the result of recreational scup and summer flounder fishing.

3. Regions of adverse impact:

The proposed regulation is less restrictive than rules in place for the 2017 fishing season and therefore should not result in any adverse impacts.

4. Minimizing adverse impact:

There will not be any substantial adverse impact on jobs or employment opportunities as a consequence of this rule making.

5. Self-employment opportunities:

Party and charter boat businesses, bait and tackle shops, and marinas are, for the most part, small businesses, owned and often operated by a single owner. The recreational fishing industry is mostly self-employed. This rule will likely have a positive effect upon businesses related to the recreational harvest of scup and summer flounder by providing more opportunities to fish for summer flounder, increasing the amount of summer flounder that can be kept, and increasing the chances of encountering a legal sized scup by lowering the minimum size limit.

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

The department will conduct an initial review of the rule within three years as required by SAPA § 207(b).

Department of Financial Services

EMERGENCY RULE MAKING

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

I.D. No. DFS-30-18-00002-E
Filing No. 617
Filing Date: 2018-07-09
Effective Date: 2018-07-09

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

Action taken: Addition of Part 418, 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 registra-

tion 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 October 6, 2018.

Text of rule and any required statements and analyses may be obtained from: George Bogdan, New York State 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 regulations will become effective on July 9, 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

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.

Rural Area 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.

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.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

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

I.D. No. DFS-30-18-00007-P

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

Proposed Action: Addition of section 52.1(r); amendment of sections 52.17(a)(36), (37), 52.18(a)(11) and (12) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302; Insurance Law, sections 301, 3216(i)(17), 3217, 3217-a, 3221(l)(8), (16), 4303(j), (cc), 4324; Public Health Law, section 4408

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

Purpose: To clarify requirements regarding coverage and disclosure of information for contraceptives.

Text of proposed rule: Section 52.1(r) is added as follows:

(r)(1) It is the policy of the State of New York to protect women's access to comprehensive and affordable contraception. One of the greatest impediments to gender equality is the inability to make justified reproductive health decisions or decide when and if to become a parent. Contraception has been a critical tool for women to gain economic and social independence. The use, accessibility and availability of contraception also reduces the rate of unintended pregnancy and abortion. Irrespective of whether the federal government rolls back access to reproductive health care, the State of New York will protect women's unassailable rights to their reproductive freedom.

(2) Currently, the insurance coverage mandates for contraception are in federal statutes, federal regulations, state statutes, and state regulations. Section 52.17(a)(36) and (37) and Section 52.18(a)(11) and (12) of this Part provide a comprehensive list of these coverage mandates for individual, small group and large group comprehensive health insurance coverage that include:

(i) an insurer shall cover contraceptive drugs, devices or other products for women approved by the Federal Food and Drug Administration ("FDA") and voluntary sterilization procedures for women;

(ii) an insurer shall cover the initial dispensing of the entire prescribed supply, up to 12 months, of a prescription contraceptive,

(iii) an insurer shall cover at least one form of contraception within each of the methods of contraception that the FDA has identified for women without annual deductibles or coinsurance, including co-payments (collectively "cost-sharing");

(iv) where a form of contraception is covered without cost-sharing, an insurer shall cover services for insertion or implantation and services related to follow-up and management of side effects, counseling for continued adherence, and device removal, without annual deductibles or coinsurance, including co-payments;

(v) If a woman's attending health care provider recommends a particular contraceptive item or service approved by the FDA, based on a determination of medical necessity, that is subject to cost-sharing, then the insurer shall cover that item or service without annual deductibles or coinsurance, including co-payments. An insurer shall defer to the attending health care provider's determination of medical necessity. The superintendent may develop a standard exception form with instructions that an attending health care provider may use to prescribe a particular FDA-approved contraceptive item or service based on a determination of medical necessity for an insured. The insurer shall accept the standard exception form submitted by the insured's attending health care provider;

(vi) An insurer shall provide coverage for emergency contraception without cost sharing when provided pursuant to an ordinary prescription, a non-patient specific regimen order, or when lawfully provided other than through a prescription or order;

(vii) An insurer shall not impose cost-sharing on in-network voluntary sterilization procedures for women;

(viii) An insurer shall not impose any restrictions or delays, including quantity limits, on any mandatory contraception coverage; and

(ix) An insurer shall publish an up-to-date, accurate, and complete list of all covered contraceptive drugs, devices and other products on its formulary drug list in an easily accessible manner.

Sections 52.17(a)(36) and (37) are amended as follows:

(36) *The Insurance Law mandates coverage for various contraceptive items and services*. For coverage of contraceptive items or services provided pursuant to Insurance Law section 3216(i)(17), 4303(j) or 4303(cc), an insurer shall allow coverage for the dispensing of [an initial three-month supply of a contraceptive to an insured. For subsequent dispensing of the same contraceptive covered under the same policy or renewal thereof, an insurer shall allow coverage for the dispensing of] the entire prescribed supply, up to 12 months, of the contraceptive to the insured at the same time.

(37)*(i)*For coverage of [in-network] contraceptive items or services provided pursuant to Insurance Law section 3216(i)(17) [or], 4303(j) *or 4303(cc)*, an insurer shall cover *contraceptive drugs, devices or other products for women approved by the Federal Food and Drug Administration or generic equivalents approved as substitutes by the Federal Food and Drug Administration, including (1) over-the-counter contraceptive drugs, (2) over-the-counter contraceptive devices or other products for women, under the prescription or order of a health care provider, and (3) voluntary sterilization procedures for women.*

(a) An insurer shall provide in-network coverage for at least one form of contraception within each of the methods of contraception that the Federal Food and Drug Administration has identified for women without annual deductibles or coinsurance, including co-payments. Additionally, where a form of contraception is covered pursuant to this paragraph without annual deductibles or coinsurance, including co-payments, an insurer shall cover services for insertion or implantation and services related to follow-up and management of side effects, counseling for continued adherence, and device removal, without annual deductibles or coinsurance, including co-payments. If a woman's attending health care provider recommends a particular contraceptive item or service approved by the Federal Food and Drug Administration, based on a determination of medical necessity, that is subject to [cost-sharing] *annual deductibles or coinsurance, including co-payments,* then the insurer shall cover that item or service without annual deductibles or coinsurance, including co-payments. The insurer shall defer to the attending health care provider's determination of medical necessity. *The superintendent may develop a standard exception form with instructions that an attending health care provider may use to prescribe a particular Federal Food and Drug*

Administration-approved contraceptive item or service based on a determination of medical necessity for an insured. The insurer shall accept the standard exception form submitted by the insured's attending health care provider.

(b) An insurer shall provide coverage for emergency contraception, without annual deductibles or coinsurance, including co-payments when provided pursuant to an ordinary prescription, a non-patient specific regimen order, over-the-counter, or when otherwise lawfully provided.

(c) An insurer shall not impose a deductible, coinsurance, copayment, or any other cost-sharing requirement on in-network voluntary sterilization procedures for women required to be covered pursuant to this subparagraph.

(ii) Except as otherwise authorized under this paragraph or paragraph (36) of this subdivision, a policy shall not impose any restrictions or delays, including quantity limits, on the coverage required under this paragraph.

(iii) An insurer shall publish an up-to-date, accurate, and complete list of all covered contraceptive drugs, devices and other products on its formulary drug list, including any tiering structure that it has adopted and any restrictions on the manner in which a drug may be obtained, in a manner that is easily accessible to insureds and prospective insureds. The formulary drug list shall clearly identify the contraceptive drugs, devices and other products that are available without annual deductibles or coinsurance, including co-payments, in compliance with subparagraph (i)(a) of this paragraph.

Sections 52.18(a)(11) and (12) are amended as follows:

(11) *The Insurance Law mandates coverage for coverage of contraceptive items or services.* For coverage of contraceptive items or services provided pursuant to Insurance Law section 3221(l)(8), 3221(l)(16), 4303(j) or 4303(cc), an insurer shall allow coverage for the dispensing of [an initial three-month supply of a contraceptive to an insured. For subsequent dispensing of the same contraceptive covered under the same policy or renewal thereof, an insurer shall allow coverage for the dispensing of] the entire prescribed supply, up to 12 months, of the contraceptive to the insured at the same time.

(12)*(i)* For coverage of [in-network] contraceptive items or services provided pursuant to Insurance Law section 3221(l)(8) [or]*, 3221(l)(16),* 4303(j) *or 4303(cc),* an insurer shall cover *contraceptive drugs, devices or other products for women approved by the Federal Food and Drug Administration or generic equivalents approved as substitutes by the Federal Food and Drug Administration, including (1) over-the-counter contraceptive drugs, (2) over-the-counter contraceptive devices or other products for women under the prescription or order of a health care provider, and (3) voluntary sterilization procedures for women.*

(a) An insurer shall provide in-network coverage for at least one form of contraception within each of the methods of contraception that the Federal Food and Drug Administration has identified for women without annual deductibles or coinsurance, including co-payments. Additionally, where a form of contraception is covered pursuant to this paragraph without annual deductibles or coinsurance, including co-payments, an insurer shall cover services for insertion or implantation and services related to follow-up and management of side effects, counseling for continued adherence, and device removal, without annual deductibles or coinsurance, including co-payments. If a woman's attending health care provider recommends a particular contraceptive item or service approved by the Federal Food and Drug Administration, based on a determination of medical necessity, that is subject to *annual deductibles or coinsurance, including co-payments* [cost-sharing], then the insurer shall cover that item or service without annual deductibles or coinsurance, including co-payments. The insurer shall defer to the attending health care provider's determination of medical necessity. *The superintendent may develop a standard exception form with instructions that an attending health care provider may use to prescribe a particular Federal Food and Drug Administration-approved contraceptive item or service based on a determination of medical necessity for an insured. The insurer shall accept the standard exception form submitted by the insured's attending health care provider.*

(b) An insurer shall provide coverage for emergency contraception, without annual deductibles or coinsurance, including co-payments when provided pursuant to an ordinary prescription, a non-patient specific regimen order, over-the-counter, or when otherwise lawfully provided.

(c) An insurer shall not impose a deductible, coinsurance, copayment, or any other cost-sharing requirement on in-network voluntary sterilization procedures for women required to be covered pursuant to this subparagraph.

(ii) Except as otherwise authorized under this paragraph or paragraph (11) of this subdivision, a policy shall not impose any restrictions or delays, including quantity limits, on the coverage required under this paragraph.

(iii) An insurer shall publish an up-to-date, accurate, and complete list of all covered contraceptive drugs, devices and other products on its formulary drug list, including any tiering structure that it has adopted and any restrictions on the manner in which a drug may be obtained, in a manner that is easily accessible to insureds and prospective insureds. The formulary drug list shall clearly identify the contraceptive drugs, devices and other products that are available without annual deductibles or coinsurance, including co-payments, in compliance with subparagraph (i)(a) of this paragraph.

Text of proposed rule and any required statements and analyses may be obtained from: Colleen Rumsey, Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 486-7815, email: colleen.rumsey@dfs.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.

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

Regulatory Impact Statement

1. Statutory authority: Financial Services Law ("FSL") sections 202 and 302; Insurance Law ("IL") sections 301, 3216(i)(17), 3217, 3217-a, 3221(l)(8) and (16), 4303(j) and (cc) and 4324; and Public Health Law ("PHL") section 4408.

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

IL sections 3216(i)(17), 3221(l)(8), and 4303(j) require every policy or contract delivered or issued for delivery in New York that provides hospital, surgical, or medical care coverage, except for a grandfathered health plan, to provide coverage for certain preventive care and screenings, including contraceptives, at no cost-sharing.

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

IL sections 3221(l)(16) and 4303(cc) require policies and contracts delivered or issued for delivery in New York that provide prescription drug coverage to provide coverage for all contraceptive drugs and devices approved by the Food and Drug Administration ("FDA") or generic equivalents when prescribed by a health care provider legally authorized to prescribe under Education Law Title VIII.

IL sections 3217-a and 4324 and PHL section 4408 contain minimum notice requirements in all comprehensive, expense-reimbursed health insurance contracts, managed care health insurance contracts, health maintenance organization ("HMO") subscriber contracts or certificates, and any other health insurance policy or contract for which the Superintendent or Commissioner of Health deems such disclosures appropriate.

2. Legislative objectives: IL sections 3221(l)(16) and 4303(cc) require policies and contracts that provide prescription drug coverage to provide coverage for all contraceptive drugs and devices approved by the FDA or generic equivalents when prescribed by a health care provider legally authorized to prescribe under Education Law Title VIII. IL sections 3216(i)(17), 3221(l)(8), and 4303(j) require all policies and contracts, except for grandfathered health plans as defined therein, to include coverage for certain preventive care and screenings, including contraceptives, at no cost-sharing.

This proposed amendment to 11 NYCRR 52 (Insurance Regulation 62) accords with the public policy objectives that the Legislature sought to advance in IL sections 3216(i)(17), 3217, 3221(l)(8) and (16), and 4303(j) and (cc) by:

(1) requiring coverage for emergency contraception with no cost-sharing when prescribed, through a non-patient specific order, or purchased over-the-counter;

(2) requiring insurers and HMOs to permit a woman to fill 12 months of a prescribed contraceptive at one time and removes the three-month trial period currently provided in the regulation;

(3) requires coverage for voluntary sterilization procedures for women and over-the-counter contraceptives without cost-sharing;

(4) provides that the Superintendent may develop a standard exception form with instructions that an attending health care provider may use to prescribe a particular FDA-approved contraceptive item or service based on a determination of medical necessity for an insured and that the insurer must accept the standard exception form submitted by the insured's attending health care provider;

(5) prohibits insurers and HMOs from placing restrictions, such as quantity limits, or delays on contraceptive coverage;

(6) requires grandfathered health plans to provide coverage of contraceptives without cost-sharing; and

(7) requires disclosure of information that must be provided in formularies regarding contraceptives, including noting which contraceptives are covered without cost-sharing.

3. Needs and benefits: It is the policy of New York to protect women's access to comprehensive and affordable contraception. One of the greatest impediments to gender equality is the inability to make justified reproductive health decisions or decide when and if to become a parent. Contraception has been a critical tool for women to gain economic and social independence. The use, accessibility and availability of contraception also reduces the rate of unintended pregnancy and abortion. Since the enactment of the Affordable Care Act, women in New York and across the country have enjoyed access to a wide range of contraceptives without cost-sharing. Irrespective of whether the federal government rolls back access to reproductive health care, the State of New York will protect women's unassailable rights to their reproductive freedom.

This amendment seeks to clarify certain requirements regarding contraceptives that the Department of Financial Services ("Department") has encountered while examining how insurers and HMOs are currently providing coverage for contraceptives. First, the amendment clarifies that insurers and HMOs must provide coverage for emergency contraception with no cost-sharing when prescribed, through a non-patient specific order, or purchased over-the-counter. This will ensure that there are no barriers to women obtaining the emergency contraception that they need.

This amendment also requires insurers and HMOs to permit a woman to fill 12 months of a prescribed contraceptive at one time and removes the three-month trial period currently provided in the regulation. As previously stated when the supply requirement was first codified in regulation, a greater supply of contraceptives dispensed at one time is associated with fewer pregnancy tests, fewer pregnancies, and less cost per insured. As the three-month trial period was a potential barrier to accessing a 12-month supply, this amendment removes the trial period to make prescribed contraceptives more accessible to women.

The amendment requires coverage for sterilization procedures for women and over-the-counter contraceptives without cost-sharing when prescribed or ordered by a health care provider. Although these contraceptives are already required to be covered by non-grandfathered plans without cost-sharing under the IL, some insurers and HMOs may not have been providing coverage of these contraceptives without cost-sharing. This amendment ensures that the requirement to provide coverage for sterilization procedures for women and over-the-counter contraceptives are clear and such coverage is being fully provided without cost-sharing.

Additionally, the amendment prohibits insurers and HMOs from placing restrictions or delays on contraceptive coverage not otherwise authorized under the regulation. Insurers and HMOs have placed quantity limits on the number of contraceptives that a woman may get within a certain period of time. This amendment clarifies that such quantity limits are not permitted.

This amendment requires grandfathered health plans to provide coverage of contraceptives without cost-sharing. Women covered under grandfathered health plans should have the same access to contraceptives without cost-sharing as women covered by non-grandfathered health plans. This amendment makes that change.

This amendment does not impact the ability of a religious employer, as defined in IL sections 3221(l)(16) and 4303(cc), to request a policy or contract without coverage for FDA-approved contraceptive methods that are contrary to the religious employer's religious tenets as long as the requirements in IL sections 3221(l)(16) and 4303(cc) are followed.

Lastly, this amendment codifies the disclosure of information required in formularies, including noting which contraceptives are covered without cost-sharing. Some insurers and HMOs have stated that this level of accuracy and detail is not required for their formularies, while others have been providing this information on their formularies. Women cannot access contraceptives without cost-sharing if they are not informed which ones are covered by their insurer or HMO without cost-sharing. While the Department has stated that current law requires such disclosure of information, this amendment clarifies that requirement.

4. Costs: Insurers and HMOs may incur costs because they may need to file new rates and policy forms or amend their formularies to comply with this amendment. However, any additional costs should be minimal because the insurers and HMOs are already providing coverage for contraceptives without cost-sharing, with the exception of grandfathered health plans. This amendment may impose compliance costs on the Department because the Department will need to review amended policy and contract forms and rates. However, any additional costs incurred by the Department should be limited. As such, the costs to the Department should be minimal and the Department expects to absorb the costs in its ordinary budget.

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

5. Local government mandates: This amendment does not impose a new mandate on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: As noted, insurers and HMOs may need to file new policy and contract forms and rates with the Superintendent and amend their formularies to comply with this amendment.

7. Duplication: This amendment, in part, duplicates current federal guidance but does not conflict with any existing state or federal rules or other legal requirements. The amendment also expands on such requirements to make contraceptives more accessible to women without cost-sharing. As states are permitted to exceed federal requirements, this amendment does not conflict with any federal requirements.

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

9. Federal standards: The amendment exceeds minimum standards of the federal government for the same or similar subject areas. As states are permitted to exceed federal requirements, this amendment does not conflict with any federal requirements.

10. Compliance schedule: The amendment will take effect immediately upon publication of the Notice of Adoption in the State Register and will apply to all policies and contracts issued, renewed, modified, or amended after that date.

Regulatory Flexibility Analysis

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

2. Compliance requirements: Any insurer or HMO that is a small business affected by this amendment may be subject to reporting, recordkeeping, or other compliance requirements as the insurer may need to file new policy and contract forms and rates with the Superintendent of Financial Services ("Superintendent") to provide the coverages and notices required under the policy.

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

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

4. Compliance costs: This amendment may impose compliance costs on insurers or HMOs that are small businesses because they may need to file new policy and contract forms and rates with the Superintendent and update their formularies to comply with this amendment. The Department has no current basis to estimate such additional costs but expects that any additional costs will be minimal because coverage for contraceptives without cost-sharing is already covered under a policy or contract, except for grandfathered health plans.

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

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

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

Rural Area Flexibility Analysis

The Department of Financial Services finds that this amendment to Part 52 does not impose any additional burden on persons located in rural areas, and will not have an adverse impact on rural areas. The amendment (1) requires coverage for emergency contraception with no cost-sharing when prescribed, through a non-patient specific order, or purchased over-the-counter; (2) requires insurers to permit a woman to fill 12 months of a prescribed contraceptive at one time and removes the three-month trial period currently provided in the regulation; (3) requires coverage for voluntary sterilization procedures for women and over-the-counter contraceptives without cost-sharing; (4) provides that the Superintendent of Financial Services may develop a standard exception form with instructions that an attending health care provider may use to prescribe a particular Federal Food and Drug Administration-approved contraceptive item or service based on a determination of medical necessity for an insured and that the insurer must accept the standard exception form submitted by the insured's attending health care provider; (5) prohibits insurers from plac-

ing restrictions, such as quantity limits, or delays on contraceptive coverage; (6) requires grandfathered health plans to provide coverage of contraceptives without cost-sharing; and (7) requires disclosure of information that must be provided in formularies regarding contraceptives, including noting which contraceptives are covered without cost-sharing. This amendment applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State. This amendment will not impose any additional costs on rural areas.

Job Impact Statement

The Department of Financial Services finds that this amendment to Part 52 should have no negative impact on jobs or employment opportunities in this state. The amendment (1) requires coverage for emergency contraception with no cost-sharing when prescribed, through a non-patient specific order, or purchased over-the-counter; (2) requires insurers to permit a woman to fill 12 months of a prescribed contraceptive at one time and removes the three-month trial period currently provided in the regulation; (3) requires coverage for voluntary sterilization procedures for women and over-the-counter contraceptives without cost-sharing; (4) provides that the Superintendent of Financial Services may develop a standard exception form with instructions that an attending health care provider may use to prescribe a particular Federal Food and Drug Administration-approved contraceptive item or service based on a determination of medical necessity for an insured and that the insurer must accept the standard exception form submitted by the insured's attending health care provider; (5) prohibits insurers from placing restrictions, such as quantity limits, or delays on contraceptive coverage; (6) requires grandfathered health plans to provide coverage of contraceptives without cost-sharing; and (7) requires disclosure of information that must be provided in formularies regarding contraceptives, including noting which contraceptives are covered without cost-sharing. Insurers should be able to absorb these requirements in their policies and not reduce their writings in this state.

Department of Health

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Prescription Contraceptive Drugs

I.D. No. HLT-30-18-00003-P

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

Proposed Action: Amendment of section 505.3(d) and (e) of Title 18 NYCRR.

Statutory authority: Social Services Law, section 365-a; Public Health Law, section 201(1)(v)

Subject: Prescription Contraceptive Drugs.

Purpose: Allow for a written order of prescription contraceptives for family planning purposes to be filled 12 times within one year.

Text of proposed rule: Subdivision (d) of Section 505.3 is amended to read as follows:

(d) Prescription refills.

(1) A written order may not be refilled unless the practitioner has indicated the number of allowable refillings on the order.

(2) No written order for drugs may be refilled more than six months after the date of issuance, nor more than five times within a six month period*, with the exception of prescription contraceptives for family planning purposes, which may be filled twelve times within one year after the date of issuance*.

(3) Refills must bear the prescription number of the original written order.

Subparagraph (ii) of paragraph (2) of subdivision (e) of Section 505.3 is amended to read as follows:

(e) Prescribed quantities.

(1) Drugs must be ordered in a quantity consistent with the health needs of the patient and sound medical practice.

(2) Dispensing limits for drugs.

(i) Except as provided in subparagraph (ii) of this paragraph, the maximum quantity of drugs dispensed is limited to the larger of:

(a) a 30 day supply; or

(b) 100 doses. One hundred doses is 100 units of a solid formulation.

(ii) The dispensing limit does not apply to long-term maintenance drugs. Long-term maintenance drugs are:

(a) drugs ordered or prescribed with one or more refills in quantities of a 30-day supply or greater. The quantity ordered or prescribed must be based on generally accepted medical practice. The ordering practitioner must be contacted if dispensing the supply specified in the prescription would result in the medical assistance recipient receiving a quantity of drugs which exceeds the manufacturer's labeling indications; or

(b) drugs ordered or prescribed without refills in quantities of a 60-day supply or greater. The quantity ordered or prescribed must be based on generally accepted medical practice. The ordering practitioner must be contacted if dispensing the supply specified in the prescription would result in the medical assistance recipient receiving a quantity of drugs which exceeds the manufacturer's labeling indications; or

(c) drugs ordered or prescribed for family planning purposes. The quantity ordered or prescribed must be based on generally accepted medical practice*. Prescription contraceptives for family planning purposes may be dispensed in a twelve-month supply at one time*; or

(d) prescriptions written and dispensed on the official New York State Prescription Form for up to a three-month supply when written in conformity with the Controlled Substance Act (Title IV of Article 33 of the Public Health Law).

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

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 365-a and Public Health Law (PHL) section 201(l)(v) provide that the Department is the single State agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, which shall be consistent with law, and as may be necessary to implement the State's Medicaid program. SSL section 365-a authorizes Medicaid coverage for specified medical care, services and supplies, together with such medical care, services and supplies as authorized in the regulations of the Department.

Legislative Objectives:

In 1974 the legislature amended Section 365-a of the Social Services law to ensure the availability of family planning services and supplies for eligible persons of childbearing age who desire them. The proposed changes to section 505.3 would ensure timely access to prescription contraception, furthering the objectives of SSL 365-a.

Needs and Benefits:

In New York State, a written order for prescription medication for a Medicaid enrollee may not be filled more than 6 months after the date of issuance. This regulation change allows for a written order of prescription contraceptives for family planning purposes to be filled up to 12 months after the date of issuance. Specifically, Section 505.3(d)(2) of Title 18 is being amended to allow for a written order of prescription contraceptives for family planning purposes to be filled twelve times within one year after the date of issuance. Section 505.3(e)(2) is amended to allow for the dispensing of a 12-month supply at once.

Costs:

There is no fiscal impact to the New York State Medicaid program.

Local Government Mandates:

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

Paperwork:

This rule imposes no new reporting requirements, forms, or other new paperwork.

Duplication:

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

Alternatives:

This change conforms with a recent change in statute and, as such, no other alternatives were considered.

Federal Standards:

There are no federal standards associated with this rule.

Compliance Schedule:

A written order of prescription contraceptives for family planning purposes may be filled twelve times within one year after the date of issuance, or may be dispensed as a 12-month supply at once, upon publication of the Notice of Adoption of these regulations.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. The proposed amendments will allow for a written order of prescription contraceptives for family planning purposes to be filled twelve times within one year after the date of issuance; and will allow for the dispensing of a 12-month supply at once if needed.

Job Impact Statement
A Job Impact Statement is not included because the proposed regulatory amendments will not have an adverse effect on jobs and employment opportunities. The proposed amendments will allow for a written order of prescription contraceptives for family planning purposes to be filled twelve times within one year after the date of issuance; and will allow for the dispensing of a 12-month supply at once if needed.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Voluntary Foster Care Agency Health Facility Licensure

I.D. No. HLT-30-18-00008-P

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

Proposed Action: Addition of Parts 769 and 770 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2999-gg

Subject: Voluntary Foster Care Agency Health Facility Licensure.

Purpose: To license Voluntary Foster Care Agencies to provide limited health-related services.

Substance of proposed rule (Full text is posted at the following State website: www.health.ny.gov/Laws & Regulations/Proposed Rulemaking): These regulations add a new Article 8 to State Hospital Code for implementing the requirements of Article 29-I of the Public Health Law regarding the licensure of voluntary foster care agency (VFCA) health facilities by the Department of Health (Department), by January 1, 2019. Authorized agencies that are approved by the Office of Children and Family Services (Office) to care for or board out children may become licensed to provide limited health-related services, as defined in these regulations.

Section 769.1 defines terms used in Article 8, including "behavioral health services," "limited health-related services," "residential program," "VFCA," and "VFCA Health Facility."

Section 769.2 establishes the process for obtaining a license to operate a VFCA Health Facility. Effective January 1, 2019, a VFCA may provide limited health-related services only if it is licensed under Article 8. A VFCA that operates a residential program may file an application for licensure describing the limited health-related services it intends to provide, a description of the physical plant where it will provide the services, and how it will staff the facility, including a medical director. VFCA Health Facilities will be licensed to provide core limited health-related services to children and youth in their care. VFCAs may also apply to become licensed to provide other limited health-related services to children and youth in the custody of the local department of social services (LDSS), and for up to one year after discharge from the custody of the LDSS.

Section 769.3 requires applicants to maintain an appropriate physical plant environment and equipment in order to provide the limited health-related services it will be providing. Section 769.4 establishes the process for revocation, suspension, limitation or annulment of a license by the Department.

Section 770.1 requires VFCA Health Facilities to provide core limited health-related services. The core services are: (1) behavioral health services, such as improving developmentally appropriate behavior to enable children and youth to function successfully in the home, school, and community; (2) nursing services, such as medication management and administration; (3) clinical consultation for, and supervision of, staff providing behavioral health and nursing services; (4) coordination of the services children and youth are receiving under an individualized treatment plan, including escorting them to where the services are being provided and ensuring that relevant information is shared among service providers; and (5) program administration and liaison with health plans to assist children and youth in appropriately utilizing benefits for which they are eligible. VFCA Health Facilities will be required to maintain records of services provided to children and youth under individualized treatment plans and to provide access to the records to those who have a right to access the records.

Section 770.2 allows VFCA Health Facilities to provide other limited health-related services authorized under the Medicaid program State Plan, such as immunizations, screening, diagnosis and treatment for episodic minor ailments, illnesses or injuries, and ongoing treatment of chronic illnesses. Other limited health-related services may also include therapy for the diagnosis and treatment of behavioral and developmental needs and clinical laboratory testing. Other limited health-related services shall not include: surgical services; dental services; orthodontic care, and emergency intervention for major trauma and treatment of life-threatening or potentially disabling conditions.

Section 770.3 specifically prohibits duplication of billing for services. Section 770.4 requires VFCA Health Facilities to have policies and procedures for 24 hours a day, 7 days a week on-call coverage to refer children and youth as needed for urgent and emergency care; and to make referrals, establish continuity of care, and make arrangements with hospitals for health and behavioral health care services, for children and youth whose needs exceed services that can be provided by the VFCA Health Facility.

Section 770.5 requires VFCA Health Facilities to arrange for limited health-related services consistent with 18 NYCRR § 441.22, in accordance with an individualized treatment plan. The individualized treatment plan must be recommended by and under the supervision and oversight of a physician, nurse practitioner, registered professional nurse, clinical nurse specialist, psychiatrist, psychologist, master social worker, clinical social worker, mental health counselor, marriage and family therapist, or psychoanalyst, as applicable, who meet state licensing requirements in accordance with applicable state law. The individualized treatment plans shall be re-evaluated annually, or as needed, to determine whether services have contributed to meeting goals.

Section 770.6 establishes the process for quality improvement activities. Section 770.7 requires VFCA Health Facilities to have policies and procedures for proper handling of medication and medical supplies. Section 770.8 requires VFCA Health Facilities to have systems, policies and administrative procedures in place that support the billing requirements for the operation of the VFCA Health Facility.

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

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

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

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

Regulatory Impact Statement
Statutory Authority:

Section 2999-gg of the Public Health Law authorizes the Commissioner of the Department of Health to adopt rules and regulations governing licenses for voluntary foster care agency health facilities to provide limited health related services to children in foster care. The statute allows the Commissioner to define the limited health-related services that may be provided, establish rules and criteria for the issuance of licenses and regulate the manner such limited health-related services shall be provided.

L. 2002, Ch. 420, § 9, as amended, creates a licensure exemption for social work (Education Law Article 154). L. 2002, Ch. 676, § 17 a, as amended, creates a licensure exemption for psychology (Education Law Article 153) and for mental health practitioners (Education Law Article 163, which includes mental health counseling, marriage and family therapy, and psychoanalysis). These chapter laws were amended most recently by L. 2018, Ch. 57, Pt. Y.

Legislative Objectives:

Part N of Chapter 56 of the Laws of 2017 added a new Article 29-I to the Public Health Law (Medical Services for Foster Children). Section 2999-gg of Article 29-I of the Public Health Law, establishes voluntary foster care agency health facilities. Voluntary foster care agencies established under section 460-b of the Social Services Law are regulated by the New York State Office of Children and Family Services (OCFS). Public Health Law section 2999-gg authorizes voluntary foster care agencies to be licensed by the Commissioner, as a new type of health care facility, to provide limited health-related services to children in foster care. Foster care children are categorically eligible for Medicaid.

The establishment of a license for voluntary foster care agency health facilities is intended to facilitate the transition of children in voluntary fos-

ter care agency facilities to managed care by allowing managed care plans to contract with volunteer foster care agencies to provide health services. Licensing the voluntary foster care agencies addresses corporate practice of medicine rules that require managed care plans to contract with licensed providers for the provision of health services. Public Health Law Article 29-I also gives the Department the authority to regulate these facilities.

Needs and Benefits:

The transition of children in foster care placed with Voluntary Foster Care Agencies (VFCAs) into Medicaid Managed Care is part of the Children's Medicaid System Transformation developed by the Governor's Medicaid Redesign Team (MRT). The transition and enrollment of VFCA children from fee-for-service Medicaid to Medicaid Managed Care, and the VFCA Health Facility license authorized by this regulation, will enable qualified Medicaid Managed Care Organizations and VFCAs throughout the State of New York to work together to comprehensively meet the needs of children and youth in foster care. The shift of the VFCA population to Medicaid Managed Care, along with other elements of the design of the Children's Medicaid System Transformation, will promote greater access to services and enhanced service utilization management, which will ultimately lead to improved services, better health outcomes, and greater accountability.

All VFCAs are required to provide or arrange for federal and State required assessments and ongoing treatment to children in foster care. To contract with and bill Medicaid Managed Care Organizations, and to comply with the corporate practice of medicine requirements, VFCAs must secure this license. Under Medicaid Managed Care, VFCAs will continue to receive reimbursement for the limited health services they are licensed to provide. This license will impact approximately 18,500 who are children placed with 91 VFCAs across New York State at any given time.

Background – Health Care for Children in Foster Care

Children placed with VFCAs have a complex set of health and behavioral health care needs. VFCAs have a long-standing, proven track record of being responsive to the multi-faceted needs of children in foster care and their families, as well as local, State and federal regulatory mandates. The State's child welfare system is characterized by a sophisticated set of relationships that includes Local Departments of Social Services (LDSS), VFCAs, community health care systems, and now Medicaid Managed Care Organizations.

As of 2015, the New York State foster care population was approximately 18,500 children, with roughly 30,000 passing through the foster care system each year. The number of children in foster care in New York State has decreased from 53,902 children in 1995 to 20,539 as of December 31, 2012, with enhanced community-based prevention services as well as enhanced services to children and youth who are placed in foster care that reduce length of stay.

Data has shown that children in the foster care system have higher rates of birth defects, developmental delay, and physical disability than children from similar socio-economic backgrounds. There is also a high prevalence of medical and developmental problems and use of inpatient and outpatient mental health services at a rate 15–20 times higher than the general pediatric Medicaid population. The impact of the trauma these children experience is profound.

Select Problems at Entry into Foster Care[1]

Select Problems at Entry into Foster Care	
Psychosocial Problems (with high percentage having experienced childhood adversity and trauma)	100%
Chronic physical health condition	35–45%
Birth defect	15%
Mental health problem	40–95%
Significant dental condition	20%
Family problems	100%
Developmental Delay in child <5 years	60%
Special education/underachievement	45%

Health care services to children in foster care must be delivered by professionals that have knowledge of the effects of abuse, neglect and trauma. It is essential that services are delivered in an effective and responsive trauma-informed primary, preventive, and behavioral health care environment that promotes the best outcomes for children in foster care.

Compliance with Medicaid Managed Care Regulatory Standards:

VFCAs are required to provide or arrange for an array of health and behavioral health care services to children in foster care. To maintain continuity of care and ensure compliance with federal and State mandates, VFCAs must be able to contract with Medicaid Managed Care Organizations. The prohibition on the corporate practice of medicine requires that Medicaid Managed Care Organizations contract with licensed organizations; these regulations support that requirement.

Costs:

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

VFCAs are only required to apply for a VFCA Health Facility license if they will be providing the health services described in these regulations. There is no cost to apply for a VFCA Health Facility license. VFCAs already deliver core limited health services, as defined in the regulation, to meet various state and federal requirements related to health services provided to children in foster care. By receiving a license, VFCAs will be able to bill Medicaid through managed care contracts for health services.

The requirements under section 770.5 of the new regulations, titled Assessments and Treatment Planning, are new and will require VFCAs some additional time to prepare. Additionally, some VFCAs that are not currently collecting data or performing quality improvement activities may incur some administrative costs related to meeting the quality improvement requirements of section 770.6 of the regulation.

However, the cost of these additional requirements is expected to be offset by the revenue received through billing Medicaid managed care. Accordingly, these regulations are not expected to result in net compliance costs.

Cost to State and Local Government:

See below for costs to State. There is no cost to local government.

Cost to the Department of Health:

The regulation will result in minimal additional costs to the Department of Health. It is anticipated that these new activities can be accommodated with the addition of approximately two positions to the existing resources of the Department.

Cost to the Office of Children and Family Services:

The 1915(c) waiver Program is transitioning to the Medicaid Managed Care environment. As such, OCFS staff in the Division of Child Welfare and Community Services who work in the Medicaid 1915c Bridges to Health Program will transition to the Article 29-I VFCA Health Facility Licensing Program.

Local Government Mandates:

There are no local government mandates in New York State related to this proposal.

Paperwork:

VFCAs are only required to apply for a VFCA Health Facility license if they will be providing the health services described in these regulations. The application forms will be available on the DOH and OCFS websites.

Duplication:

This proposal does not duplicate any State or federal regulation.

Alternatives:

Article 29-I of the Public Health Law, which provides for the licensure of VFCA is the only mechanism to that will allow VFCAs to contract with Medicaid Managed Care Organizations to provide medical services, as required by the corporate practice of medicine rules.

Federal Requirements:

There are no federal requirements associated with this regulation.

Compliance Schedule:

This license will go into effect January 1, 2019. For New York State to license VFCAs, and for VFCAs to contract with Medicaid Managed Care Organizations, it is essential that these Regulations go into effect October 31, 2018.

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[1] American Academy of Pediatrics Task Force on Health Care for Children in Foster Care, Fostering Health: Health Care for Children and Adolescents in Foster Care. (New York: American Academy of Pediatrics, 2005).; and Mark D. Simms, Howard Dubowitz and Moira A. Szilagyi, "Health Care Needs of Children in the Foster Care System," Pediatrics 2000;106(4 Suppl):909-918.; and Dutton M Fiori T, Karl A, Sobelson M. Medicaid managed care for children in foster care. In: Fund Medicaid Institute at United Hospital, editor: UHF; 2013

Regulatory Flexibility Analysis

Effect of Rule:

VFCAs are only required to apply for a VFCA Health Facility license if they will be providing the health services described in these regulations. There are 29 VFCAs that are small business (defined as 100 employees or less), independently owned and operated, affected by this rule.

Compliance Requirements:

All VFCAs licensed under Article 29-I will be required to comply with the regulations. As part of the application process, each VFCA will attest to meeting and maintaining compliance with standards.

There are no compliance requirements associated with the regulation that impact local governments including Local Department of Social Services (LDSS).

Professional Services:

It is not anticipated that facilities will need to hire additional staff to meet this mandate.

Compliance Costs:

Compliance costs for VFCAs that are small businesses will be the same as those identified in the Regulatory Impact Statement. VFCAs are only required to apply for a VFCA Health Facility license if they will be providing the health services described in these regulations. There is no cost to apply for a VFCA Health Facility license. VFCAs already deliver core limited health services, as defined in the regulation, to meet various state and federal requirements related to health services provided to children in foster care. By receiving a license, VFCAs will be able to bill Medicaid through managed care contracts for health services.

The requirements under section 770.5 of the new regulations, titled Assessments and Treatment Planning, are new and will require VFCAs some additional time to prepare. Additionally, some VFCAs that are not currently collecting data or performing quality improvement activities may incur some administrative costs related to meeting the quality improvement requirements of section 770.6 of the regulation.

However, the cost of these additional requirements is expected to be offset by the revenue received through billing Medicaid managed care. Accordingly, these regulations are not expected to result in net compliance costs.

Economic and Technological Feasibility:

This proposal is economically and technically feasible.

Minimizing Adverse Impact:

There are no alternatives to the proposal.

Small Business and Local Government Participation:

The Department has conducted many outreach programs and continues to do so. These efforts have included professional organizations representing the Voluntary Foster Care Agencies and the physicians, nurses, and other health care personnel they employ. The Department has also performed outreach to the New York Public Welfare Association (NYPWA), which is the organization that represents county Departments of Social Services.

Rural Area Flexibility Analysis

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

The proposed rule will not impose an adverse economic impact on rural facilities defined within PHL Article 29-I.

Job Impact Statement

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

State Liquor Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Bottle Club License Updates

I.D. No. LQR-30-18-00001-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 49 of Title 9 NYCRR.

Statutory authority: Alcoholic Beverage Control Law, section 64-b

Subject: Bottle Club license updates.

Purpose: To update outdated Bottle Club license requirements and procedures.

Public hearing(s) will be held at: 10:00 a.m., Oct. 24, 2018 at 317 Lenox Ave., New York, NY.

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

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

Text of proposed rule: Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), is hereby amended to include amendments to Sections 49.1, 49.4, 49.9, and 49.10 as well as the repeal of Sections 49.2, 49.3, 49.5 and 49.8 and Subdivision 49.13(b) of Title 9, Subtitle B, of the New York Codes, Rules and Regulations (N.Y.C.R.R.).

§ 49.1 Conduct of licensed bottle clubs

The proper conduct of licensed bottle clubs is essential to the public interest. [To insure and promote adequate personal supervision by responsible licensees, no more than one such license shall be issued to any person and no such license shall hereafter be issued to any person who is interested in any other licensed premises as a licensee, member of a licensed partnership or as an officer, director or substantial stockholder, (10 percent or more) of a licensed corporation; and no other license shall be issued to or held by any person who is interested in any licensed bottle club as a licensee, a member of a licensed partnership or as an officer, director or substantial stockholder thereof.] *Failure of a bottle club licensee to exercise adequate supervision over the conduct of such an establishment poses a substantial risk not only to the objectives of alcoholic beverage control but imperils the health, welfare and safety of the people of this state. It shall be the obligation of each person licensed pursuant to Alcoholic Beverage Control Law Section 64-b to ensure that a high degree of supervision is exercised over the conduct of the licensed establishment at all times in order to safeguard against abuses of the license privilege and violations of law. Each such licensee will be held strictly accountable for all violations that occur in the licensed premises and are committed by or suffered and permitted by any manager, agent or employee of such licensee. Each such licensee must ensure that a high degree of supervision is exercised over the conduct of the licensed premises at all times in order to safeguard against abuses of the license privilege and violations of law and must ensure that the licensed premises complies with all applicable building codes, fire, health, safety and other government regulations.*

§ 49.4 Physical standards

No bottle club license shall be issued for any premises except where the premises comply with all statutory requirements and, in addition, meet the following physical standards:

[2.]*(a)* Each such premises, unless located in an airport or in a railroad or bus terminal, shall be located at street level with all entrances opening onto a public street or thoroughfare, except that such entrances may be set back from and need not abut such street or thoroughfare.

[3. Each such premises shall have one or more windows at least four feet in length and two feet high and shall be so constructed as to afford clear visibility from the exterior and throughout the interior of said premises.

4. No such premises shall have any back room, or any window back, partition or other obstruction which obstructs visibility into or prevents a full view of the entire room by every person present therein except such necessary storage space as may be approved by the authority.

5.]*(b)* Each such premises shall be under the exclusive dominion and control of the licensee and the service and consumption of alcoholic beverages shall be confined thereto.

[6. Only one permanently affixed bar for the service of alcoholic beverages shall be permitted in any such premises. Such bar shall be in an area where seating at tables is provided for patrons. No permanently affixed bar for the service of alcoholic beverages direct to consumer shall be permitted in any such premises where the over-all length of the bar, measured along its outside perimeter, exceeds a ratio of three feet of bar for each seat provided at tables.

7.]*(c)* Each premises licensed hereunder shall have [separate sanitary facilities for both sexes] *a minimum of two public restrooms*. The requirement for such facilities may be waived by the Authority provided there is a satisfactory showing that such facilities are in an area adjacent or proximate to the licensed premises and available to the patrons thereof.

[8.]*(d)* Each premises licensed hereunder shall at all times during the hours such premises is open for business, be illuminated by sufficient light such as will permit a person therein to read nine-point print of the kind generally used in the average newspaper. Nothing herein contained shall, however, be construed as prohibiting temporary dimming of lights during a period of regular entertainment or other special occasions.

[9.]*(e)* Each premises licensed hereunder shall have seating for patrons at tables. [Seating at tables shall be no less than one seat for each three feet of bar measured along the outside perimeter of the bar.]

§ 49.9 Prohibitions

(a) No bottle club licensee shall suffer or permit any gambling on the licensed premises or suffer or permit such premises to become disorderly.

(b) No bottle club licensee shall deliver, serve or give away or permit or procure to be delivered, served or given away any alcoholic beverage to (1) any minor actually or apparently under the age of [18] *21* years or to (2) any intoxicated person or to any person apparently under the influence of any alcoholic beverage; nor shall he *or she* permit any such person to consume any alcoholic beverage in the licensed premises.

(c) [No minor actually or apparently under the age of 18 years, shall be permitted in such premises unless accompanied by a parent or guardian or an adult person authorized by a parent or guardian.

(d)] No [retailer] *bottle club licensee* shall employ, or permit to be employed, or shall suffer to work, on any premises licensed hereunder, any person under the age of 18 years, as a hostess, waitress, waiter, or in any other capacity where the duties of such person require or permit such person to dispense or handle alcoholic beverages.

([e]*d*) No [retailer] *bottle club licensee* shall permit or suffer to appear as an entertainer, on any premises licensed hereunder, any person under the age of 18 years. Failure to restrain such a person from so appearing shall be deemed to constitute permission.

([f]*e*) No bottle club licensee shall [purchase,] sell [or give away] any alcoholic beverages on the licensed premises.

([g]*f*) No bottle club licensee shall suffer or permit any alcoholic beverages to be brought into the licensed premises, or consumed therein, *other than alcoholic beverages purchased by the licensee to give away to customers for on premises consumption,* unless the container shall bear the signature of the person bringing such liquor into the premises or unless there is attached thereto a label signed by such person.

([h]*g*) No alcoholic beverages *other than alcoholic beverages purchased by the licensee to give away to customers for on premises consumption,* shall be stored, kept or received on the licensed premises nor consumed therein unless labeled as herein required.

[(i) No liquor shall be stored, kept or received on the licensed premises which shall belong to the licensee or any employee, servant or agent.]

([j]*h*) No licensee shall suffer or permit any alcoholic beverages brought into the premises to be taken therefrom by the owner thereof or any other person but shall store the same in the name and for the use of such owner.

([k]*i*) No licensee shall suffer or permit any illicit alcoholic beverage or spurious liquor to be brought into, stored, kept or consumed on the licensed premises. For the purposes of this rule illicit alcoholic beverage means and includes any alcoholic beverage on which any tax required to have been paid under any applicable federal law has not been paid. Spurious liquor means and includes liquor in containers, the contents of which are not as represented on the labels affixed thereto.

§ 49.10 Lockers

For licensees that choose to allow customers to bring their own alcoholic beverages on the licensed premises for consumption, [L]*l*ockers shall be provided by the licensee for the use of persons frequenting the licensed premises so that alcoholic beverages owned by each person may be securely kept under lock and key. Any alcoholic beverages not being actually used or consumed by the owner thereof shall be kept in a locker designated to the use of such person. A separate locker shall be assigned to each person applying for the same and the licensee shall not permit more than one person to use a single locker. All alcoholic beverages brought into the licensed premises shall be the personal property of the owner thereof and shall be consumed only by himself and his guests accompanying him. The locker assigned to each person shall be under the control of such person and alcoholic beverages may be removed therefrom only by the owner to whom the locker has been assigned or by an employee of the licensee at such times when the owner of the locker is in the licensed premises and requests such service.

§ 49.11 Premises open to general public

Premises for which a bottle club license has been issued shall be open to the general public. The term *"*bottle clubs*"* is not restricted to *"*clubs*"* as defined under section 3(9) of the Alcoholic Beverage Control Law.

§ 49.13 Application of Part

(a) This Part shall become effective forthwith.

(b) [Each license issued hereunder shall be subject to the licensee continuing to conform with all representations set forth in the application for the license and the provisions of this Part and any amendment thereof. Such representations shall constitute continuing representations for the life of the license and all renewals thereof. Any change or deviation therefrom in any material respect without the permission of the Authority shall be cause for the institution of proceedings to revoke, cancel or suspend such license or refusal to renew the same.

(c)] Whenever the word licensee is used herein, it shall mean and include an individual licensee, each member of a partnership licensee, each officer, director and substantial stockholder of a corporate licensee, [or the spouses of any of the foregoing persons,] and any agent, employee or servant of such licensee.

Text of proposed rule and any required statements and analyses may be obtained from: Paul S. Karamanol, Senior Attorney, State Liquor Authority, 80 South Swan Street, Suite 900, Albany, NY 12210, (518) 474-3114, email: paul.karamanol@sla.ny.gov

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

Public comment will be received until: Five days after the last scheduled public hearing.

Regulatory Impact Statement

Statutory authority:

These proposed regulations updating the rights, responsibilities, and procedures of Bottle Club licensees are issued pursuant to Alcoholic Beverage Control Law ("ABCL") § 64-b are being issued by the State Liquor Authority ("Authority") and would appear as amended Sections 49.1, 49.4, 49.9, and 49.10 and would also repeal Sections 49.2, 49.3, 49.5 and 49.8 and Subdivision 49.13(b) of Title 9, Subtitle B, of the New York Codes, Rules and Regulations (N.Y.C.R.R.).

These regulations are issued pursuant to the following:

ABCL § 64-b, which authorizes the Authority to promulgate rules and regulations for Bottle Club licensees.

Legislative objectives:

Changing the public policy underpinnings of the ABCL to be more business friendly where possible was recommended by the New York State Law Revision Commission in their 2009 Report on the Alcoholic Beverage Control Law and its Administration, which included recommendations of "supporting economic growth, job development, and the state's alcoholic beverage production industries and its tourism and recreation industry…provided that such activities do not conflict with the primary regulatory objectives of promoting the health, welfare and safety of the people of the state, and promoting temperance in the consumption of alcoholic beverages." In that effort, and as part of an overall effort to modernize the Authority's rules and regulations the Authority hereby seeks to update its bottle club license rules to make them easier to understand and abide by for industry members and regulators alike. These regulatory proposals would thus help the Authority promote the health, welfare and safety of the people of New York by: clarifying the state policy regarding the responsibility of bottle club licensees to exercise proper supervision over their premises; repealing several outdated or duplicative rule provisions relative to requisite books and records, hours of operation, personal qualifications and ownership interests of applicants; and generally modernizing the language utilized throughout this Part.

Needs and benefits:

These regulatory proposals will help modernize administration of the ABCL, and promote the health, welfare, and safety of the people of New York by: clarifying the state policy regarding the responsibility of bottle club licensees to exercise proper supervision over their premises; repealing several outdated or duplicative rule provisions relative to requisite books and records, hours of operation, personal qualifications and ownership interests of applicants; and generally modernizing the language utilized throughout this Part.

Costs:

There will be no increased costs to local municipal governments as a result of these proposals, as local municipalities play no role in regulating bottle club licensees. Additionally, there will be no increased costs to industry members or to the Authority as a result of these proposals since there are no new responsibilities being added to those of bottle club licensees, the rules governing same are merely being clarified and paired down. Due to the above, there will be no added costs to the Authority, to local governments or industry members as a result of the implementation of the proposed rule amendments.

Local government mandates:

None. Local governments play no role in regulating bottle club licensees outside of the same local health code and zoning enforcement that they exercise for every business and there are no policy changes being implemented via these proposed reforms.

Paperwork:

The proposed rule amendments impose no new paperwork requirements on industry members or Authority staff.

Duplication:

There is no federal or municipal level involvement in licensing of retail alcoholic beverage businesses.

Alternatives/Federal standards:

Since there is no federal or municipal level involvement in licensing of retail alcoholic beverage businesses, no alternative standards were considered to the proposed regulatory reforms.

Compliance schedule:

The period of time the industry will require to enable compliance is likely to be negligible as these proposed regulatory reforms merely seek to modernize the language utilized for bottle club licensees and since there are no new requirements being imposed upon bottle club licensees via these proposals. As a result there are no policy changes being introduced via these rule proposals the Authority expects to be compliant immediately upon adoption.

Regulatory Flexibility Analysis

The proposed amendments to Sections 49.1, 49.4, 49.9, and 49.10 as well as the repeal of Sections 49.2, 49.3, 49.5 and 49.8 and Subdivision 49.13(b) of Title 9, Subtitle B, of the New York Codes, Rules and Regula-

tions (N.Y.C.R.R.) would clarify the state policy regarding the responsibility of bottle club licensees to exercise proper supervision over their premises; repeal several outdated or duplicative rule provisions relative to requisite books and records, hours of operation, personal qualifications and ownership interests of applicants; and generally modernize the language utilized throughout this Part. The amendments, by their very nature, would not impose an adverse economic impact on small businesses or local governments, and would not impose reporting, record keeping or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendments that they will have no adverse impact on small businesses or local governments, no further steps were needed to ascertain those facts and none were taken by the Authority. Accordingly, a full regulatory flexibility analysis for small businesses and local governments is not required for any of the proposed amendments and none has been prepared.

Rural Area Flexibility Analysis

The proposed amendments to Sections 49.1, 49.4, 49.9, and 49.10 as well as the repeal of Sections 49.2, 49.3, 49.5 and 49.8 and Subdivision 49.13(b) of Title 9, Subtitle B, of the New York Codes, Rules and Regulations (N.Y.C.R.R.) would clarify the state policy regarding the responsibility of bottle club licensees to exercise proper supervision over their premises; repeal several outdated or duplicative rule provisions relative to requisite books and records, hours of operation, personal qualifications and ownership interests of applicants; and generally modernize the language utilized throughout this Part. The amendments, by their very nature, would not impose an adverse impact on facilities in rural areas, and would not impose reporting, record keeping or other compliance requirements on facilities in rural areas. Because it is evident from the nature of the proposed amendments that they will have no adverse impact on rural areas, no further steps were needed to ascertain those facts and none were taken by the Authority. Accordingly, a full rural area flexibility analysis is not required for any of the proposed amendments and none has been prepared.

Job Impact Statement

The proposed amendments to Sections 49.1, 49.4, 49.9, and 49.10 as well as the repeal of Sections 49.2, 49.3, 49.5 and 49.8 and Subdivision 49.13(b) of Title 9, Subtitle B, of the New York Codes, Rules and Regulations (N.Y.C.R.R.) would clarify the state policy regarding the responsibility of bottle club licensees to exercise proper supervision over their premises; repeal several outdated or duplicative rule provisions relative to requisite books and records, hours of operation, personal qualifications and ownership interests of applicants; and generally modernize the language utilized throughout this Part. The amendments would not impose any new or additional compliance requirements and no new professional services would be required to comply with the proposed rule amendments as these proposals merely seek to modernize the language utilized for bottle club licensees without adding any new requirements or making any policy changes for bottle club licensees hereby. As a result, the proposed amendments will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendments that they will have no impact on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken by the Authority. Accordingly, a job impact statement is not required for any of the proposed amendments and none has been prepared.

Department of Motor Vehicles

NOTICE OF ADOPTION

Colored Lights; Amber Lights

I.D. No. MTV-19-18-00001-A
Filing No. 618
Filing Date: 2018-07-10
Effective Date: 2018-07-25

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

Action taken: Amendment of section 44.3(a) of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 375(41)(6)

Subject: Colored Lights; amber lights.

Purpose: To conform the regulation to the statute.

Text or summary was published in the May 9, 2018 issue of the Register, I.D. No. MTV-19-18-00001-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Ownership of St. Lawrence Gas Company, Inc.

I.D. No. PSC-30-18-00004-P

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

Proposed Action: The Commission is considering a joint petition between Liberty Utilities Co. and St. Lawrence Gas Company, Inc. seeking approval for the transfer of ownership of St. Lawrence Gas Company, Inc. and related issuance of long-term debt.

Statutory authority: Public Service Law, sections 4, 5(1)(b), (2), 69 and 70

Subject: Ownership of St. Lawrence Gas Company, Inc.

Purpose: To consider whether a proposed transfer of ownership interests in St. Lawrence Gas Company, Inc. is in the public interest.

Public hearing(s) will be held at: 6:30 p.m., Aug. 15, 2018 at Malone Middle School Auditorium, 15 Francis St., Malone, NY*; 1:30 p.m., Aug. 16, 2018 at Potsdam Civic Center, Community Rm., 38 Main St., Potsdam, NY*.

*On occasion, there are requests to reschedule or postpone hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 18-G-0140.

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

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

Substance of proposed rule: The New York State Public Service Commission is considering a joint petition, filed on March 1, 2018, by Liberty Utilities Co. and St. Lawrence Gas Company, Inc. d/b/a Enbridge St. Lawrence Gas (St. Lawrence Gas) for approval, pursuant to Section 70 of the Public Service Law (PSL), of the acquisition of St. Lawrence Gas Company, Inc. by Liberty Utilities Co. and for approval, pursuant to Section 69 of the PSL, of the issuance of long-term indebtedness. The petition requests Commission approval of the acquisition of all the outstanding stock of St. Lawrence Gas from the current owner, Enbridge Gas Distribution, Inc. pursuant to a Securities Purchase agreement entered into on August 31, 2017. Transfer of all the shares of St. Lawrence Gas will also result in transfer of two non-regulated subsidiaries, St. Lawrence Co. Service and Merchandising Corp. and S.L.G. Communications Corp. Related to the proposed transfer of ownership, Liberty Utilities, Co. and St. Lawrence Gas also request approval, pursuant to PSL Section 69, of the issuance by St. Lawrence Gas of long-term indebtedness intended to replace existing loans totaling $34.5 million. In addition, the petitioners seek clarification or, to the extent necessary, modification of the St. Lawrence Gas Affiliate Code of Conduct to permit St. Lawrence Gas and its unregulated subsidiaries to participate in the Liberty Utilities, Co.'s Money Pool that serves other members of the Liberty Utilities family of companies. Alternatively, the petitioners seek express approval for such participation. The full text of the joint petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(18-G-0140SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Use of Gas Metering Equipment

I.D. No. PSC-30-18-00005-P

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

Proposed Action: The Public Service Commission is considering a petition filed by New York State Electric & Gas Corp. and Rochester Gas & Electric Corp. for approval to use the Honeywell/Elster models RVP-FI and RVP-VI Remote Volume Pulsers in gas metering applications.

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

Subject: Petition for use of gas metering equipment.

Purpose: To ensure that consumer bills are based on accurate measurements of gas usage.

Substance of proposed rule: The Public Service Commission is considering a petition filed by New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation on March 28, 2018, seeking approval to use the Honeywell/Elster models RVP-FI and RVP-VI Remote Volume Pulsers in gas metering applications. The Commission requires new types of gas meters and accessories to be tested and must be approved by the Commission before they can be used for customer billing. The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may approve, modify or reject, in whole or in part, the action proposed, and may resolve related matters.

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

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

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

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

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

(18-G-0198SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Use of Electric Metering Equipment

I.D. No. PSC-30-18-00006-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Arteche USA for approval to use the Arteche models IRH-1; IRH-5; IRH-7 and IRH-10 current transformers in electric metering applications.

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

Subject: Petition for use of electric metering equipment.

Purpose: To ensure that consumer bills are based on accurate measurements of electric usage.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Arteche USA on May 23, 2018, seeking approval to use the Arteche IRH-1; IRH-5; IRH-7 and IRH-10 current transformers in electric metering applications. The Commission requires new types of electric meters, transformers, and auxiliary devices used to measure electric service furnished to customers to be tested, and must be approved by the Commission before they may be used for the purposes of customer billing. The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may approve, modify or reject, in whole or in part, the action proposed, and may resolve related matters.

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

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

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

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

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

(18-E-0324SP1)

Workers' Compensation Board

NOTICE OF ADOPTION

Procedures Under Workers' Compensation Law 21-a

I.D. No. WCB-18-18-00014-A

Filing No. 616

Filing Date: 2018-07-10

Effective Date: 2018-07-25

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

Action taken: Amendment of section 300.22 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, section 117

Subject: Procedures under Workers' Compensation Law 21-a.

Purpose: To correct typographical citation errors and make a clarifying change.

Text or summary was published in the May 2, 2018 issue of the Register, I.D. No. WCB-18-18-00014-P.

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

Text of rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, 328 State Street, Schenectady, NY 12305, (518) 486-9564, email: regulations@wcb.ny.gov

Assessment of Public Comment

The agency received no public comment.