RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Repeal of Part 141 of Title 1 NYCRR (Control of the Emerald Ash Borer)

I.D. No. AAM-18-18-00003-P

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

Proposed Action: Repeal of Part 141 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Subject: Repeal of Part 141 of Title 1 NYCRR (Control of the Emerald Ash Borer).

Purpose: Repealing the regulation since quarantines in the rule have not stopped the spread of this insect in New York State.

Text of proposed rule: Part 141 of Title One of the Official Compilation of Rules and Regulations of the State of New York (1 NYCRR) is repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Christopher Logue, Director, Division of Plant Industry, New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087, email: christopher.logue@agriculture.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been adopted to implement these laws.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Section 167 also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law.

2. Legislative objectives:

The repeal of Part 141 set forth in the proposed amendment would eliminate the Emerald Ash Borer (EAB) quarantine in New York State. While previously the quarantine has been effective in slowing the spread of the insect, recently the quarantine has no longer been effective. The financial costs of the quarantine to the State and the forest products industry now outweigh the now insubstantial benefits of the quarantine.

3. Needs and benefits:

EAB, Agrilus planipennis, is a destructive wood-boring insect that is not indigenous to the United States. EAB causes serious damage to healthy ash trees by boring through their bark, which ultimately results in the death of the tree within two years.

EAB was first detected in Michigan in 2002. In 2009, the Department adopted a regulation (1 NYCRR Part 141) to quarantine portions of Chautauqua and Chenango Counties where EAB first appeared in New York State. Since then, the Department has repeatedly amended Part 141 to establish quarantines in new areas where the EAB had spread. By 2017, all of southern New York State was placed under quarantine, which effectively prohibited the movement of ash materials in and out of that area of the State. However, as the 2017 growing season progressed, EAB was confirmed in Franklin and St. Lawrence Counties (north of the Adirondack Park). This illustrates the rapid advance of the EAB infestation despite the repeated expansions of the quarantines.

In light of the foregoing, the regulations are no longer serving the purpose of slowing the spread of EAB or allowing time for municipal governments to plan for the arrival of EAB. The financial costs of the regulations to state government and the forest products industry now outweigh the limited economic benefit of protecting a dwindling ash resource from infestation. Immediate repeal of these regulations will allow the forest products industry and forest landowners to harvest, process and sell the remaining ash that is still of high quality. This is in the best interest of forest landowners and the forest products industry, since the continued degradation of ash will decrease the economic value of this resource for regulated parties.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: None. There are 2,174 registered nursery growers, 6,059 registered nursery dealers, and 1,100 hardwood mill operations throughout New York State. There are also approximately 700,000 owners of 14-million acres of forest land, an undetermined number of whom provide forest products. A relatively low fraction of these regulated parties carry ash and those that do would realize a profit in harvesting, processing and selling the remaining ash that is still of high quality.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. In fact, with the proposed repeal of this regulation, it is anticipated that the Department may realize a savings of at least $100,000.00 per year: $94,000.00 for salary and fringe benefits for at least one inspector and $6,000.00 in travel costs.

(c) The information, including the sources of such information and the methodology upon which the cost analysis is based: The costs analysis set forth above is based upon observations of the industry and Department records.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The rule does not require any additional reporting requirements or paperwork.

7. Duplication:

The New York State Department of Environmental Conservation (DEC) is implementing a regulation parallel to this one.

8. Alternatives:

Alternatives considered included maintaining the existing quarantine as is or expanding it. These options were rejected, since it would appear that neither course of action would slow the spread of EAB.

9. Federal standards:

The regulations do not exceed any minimum standards for the same or similar subject areas.

10. Compliance schedule:

This rule shall take effect immediately upon publication of a Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for this amendment is not being submitted because the proposed amendment will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendment.

Job Impact Statement

It is anticipated that the proposed amendment will have no adverse effect on jobs or job opportunities in the State, due to the fact that the wood industry would benefit by the proposed amendment. By lifting the EAB quarantine through the repeal of Part 141, regulated parties dealing in ash materials would have increased opportunities to realize a profit by selling available ash before the EAB destroys the value of existing ash. This may provide a short term increase in job opportunities in New York State.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Milk Dealer Reports

I.D. No. AAM-18-18-00004-P

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

Proposed Action: This is a consensus rule making to amend section 25.3(a) of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 255

Subject: Milk dealer reports.

Purpose: To exempt milk dealers operating plants that receive 600,000 lbs. or less of milk, yearly, from having to file plant reports.

Text of proposed rule: Subdivision (a) of section 25.3 of 1 NYCRR is amended to read as follows:

(a) On or before the 15th day of each month, each milk dealer operating a [milk plant or] bulk tank unit shall file, for each such [plant or] bulk tank unit, an accurate report of the previous month's operation. *On or before the 15th day of each month, each milk dealer operating a milk plant that receives more than 600,000 lbs. of milk and/or milk products, yearly, for processing or manufacture, shall file, for each such plant, an accurate report of the previous month's operation.* [The] *Each such* report shall be filed with the Division of Dairy Industry Services on forms provided by such division.

Text of proposed rule and any required statements and analyses may be obtained from: Dan McCarthy, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-4921, email: Dan.McCarthy@agriculture.ny.gov

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

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

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

Consensus Rule Making Determination

The proposed rule, if adopted, will exempt each milk dealer that operates a milk plant that receives 600,000 lbs. or less of milk or milk products, yearly, from having to file a monthly plant report. The proposed rule would lessen a regulatory reporting burden upon certain "small" milk dealers and would have no adverse impact, financial or otherwise, upon "larger" milk dealers. Accordingly, the Department believes that the proposed rule will not be controversial and there will be no opposition thereto.

Job Impact Statement

The proposed rule will not have an adverse impact upon employment opportunities. The proposed rule will exempt each milk dealer that operates a milk plant that receives 600,000 lbs. or less of milk or milk products, yearly, from having to file a monthly plant report. The proposed rule lessens a regulatory burden upon certain milk dealers and will not have an adverse impact upon jobs.

New York State Athletic Commission

NOTICE OF ADOPTION

Loss of Bodily Function in Mixed Martial Arts Competitions

I.D. No. ATH-07-18-00012-A
Filing No. 379
Filing Date: 2018-04-17
Effective Date: 2018-05-02

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

Action taken: Addition of section 212.12(g)-(k) to Title 19 NYCRR.

Statutory authority: General Business Law, sections 1003(2) and 1014(9)

Subject: Loss of Bodily Function in Mixed Martial Arts Competitions.

Purpose: To comply with rule changes of the Association of Boxing Commissions and Combative Sports.

Text or summary was published in the February 14, 2018 issue of the Register, I.D. No. ATH-07-18-00012-EP.

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

Text of rule and any required statements and analyses may be obtained from: David Treacy, NYS Department of State, Office of General Counsel, One Commerce Plaza, 11th Fl., Albany, NY 12231, (518) 474-6740, email: David.Treacy@dos.ny.gov

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 agency received no public comment.

Board of Commissioner of Pilots

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Pilotage Fees for the Long Island Sound and Block Island Sound

I.D. No. COP-18-18-00002-P

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

Proposed Action: Amendment of section 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 of proposed rule: Section 55.3. Supplementary fees--Long Island Sound and Block Island Sound

(a) Tariff rates for the New York harbors of Long Island Sound

(1) Pilot Units (PU). Pilot Units shall be determined by multiplying the overall length of the vessel by the extreme breadth by the depth to the uppermost continuous deck, in feet, and dividing the total by 10,000.

(2) Tariff rates.

EFFECTIVE	*0-49PU FLAT RATE*	*50-99PU FLAT RATE*	*RATE/PU 100 OR OVER*	*MAX 500 PU*
APR 1, 2018	*362.75*	*434.86*	*4.06*	*$2,030.00*
JAN 1, 2019	*371.82*	*445.73*	*4.16*	*$2,080.00*
JAN 1, 2020	*381.11*	*456.87*	*4.26*	*$2,130.00*
JAN 1, 2021	*390.64*	*468.29*	*4.37*	*$2,185.00*
JAN 1, 2022	*400.40*	*480.00*	*4.48*	*$2,240.00*

(b) Additional Fees.

(1) [(a)] Docking and undocking. *All vessels shall pay a docking/undocking fee of one dollar twelve cents $1.12 per unit with a minimum fee of two hundred twenty five dollars ($225.00).*

[(1) Northville and Northport—$210 with tugs, $420 without tugs.]

[(2) Port Jefferson Harbor—$150 with tugs.]

[(b) Port Jefferson Harbor (in or out)—$320.]

[(c) Cancellation of sailing (pilot reporting)—$250.]

[(d) Pilot detained at anchor—$25 per hour but maximum of $300 for each 24 hours.]

[(e) Pilot detained in outward bound vessel for more than two hours—$25 per hour but a maximum of $300 for each 24 hours.]

[(f) Pilots detained on board vessels on account of quarantinable disease shall be entitled to a fee of $50 per hour.]

[(g) Adjusting compasses and/or calibration of direction finders. When a pilot is called upon to swing a ship for the purpose of adjusting compasses or calibration of direction finders or both, there shall be a fee of $50 in addition to any other authorized fees.]

[(h) Other services. Fees for any service not covered above will be arranged by specific agreement prior to the rendering of the service.]

(2) Launch hire. The launch hire to put a pilot on or off a ship in the NY Harbors of the Long Island Sound will be billed at cost.

(3) Shift within any harbor. The fee for a shift within any harbor is $675.00 in addition to the docking and undocking charge as above.

(4) Shift less than 25 miles in Long Island Sound. The fee for shifts less than 25 miles in Long Island Sound is the 2/3 rate. The fee for a vessel shifting to or from anchorage to a platform is the 2/3 rate.

(5) Excess of 8 hours for tows. A fee of $170.00 for each hour of pilotage in excess of 8 hours.

(6) Excess of 8 hour transit. In order to avoid fatigue two pilots shall be assigned to any unit where the transit is anticipated to be over 8 hours. This requires two full pilot fees. The excess of 8 hour fee shall not be charged. Launch hire shall be billed at cost.

(7) Detention for arrival and departures: When a ship's arrival or departure is delayed more than one hour, unless a 4 hour notice of change has been provided to the Administrator dispatch office, $170.00 detention will be billed for each hour in excess of one hour from the time of the original order.

(8) Detention at anchor or platform. Detention will be billed when a pilot is detained aboard a vessel at anchorage or at platform at a rate of $170.00 per hour for every hour detained. (Detention includes vessels waiting inbound or outbound, for stores, surveyors, repairs, tide, berth availability, weather, linemen, excess of one hour thirty minutes tying up, etc.

(9) Cancellation. If an order is cancelled less than 4 hours prior to the time of the order, a cancellation fee of $560.00 will be billed.

(10) Pilot boat fuel surcharge. There is currently in place a $180 fuel surcharge for all pilot boardings and disembarkations by pilot boat. Surcharge adjusts every quarter.

(11) Safety training surcharge. Surcharge of $20.00 for all pilot boardings and disembarkations by the pilot boat for the safety equipment and training fund.

(12) Pilot Carried Away. Should a pilot be carried away the following fees will apply: $1,120.00 for the 1st day, $560.00 for each additional day and the cost of 1st class travel expenses back to origin.

Text of proposed 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

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

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

Regulatory Impact Statement, 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.

Department of Economic Development

EMERGENCY RULE MAKING

Empire Zones Reform

I.D. No. EDV-18-18-00005-E

Filing No. 377

Filing Date: 2018-04-17

Effective Date: 2018-04-17

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

Action taken: Amendment of Parts 10 and 11; renumbering and amendment of Parts 12 through 14 to Parts 13, 15 and 16; and addition of new Parts 12 and 14 to Title 5 NYCRR.

Statutory authority: General Municipal Law, art. 18-B, section 959; L. 2000, ch. 63; L. 2005, ch. 63; L. 2009, ch. 57

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate. It bears noting that General Municipal Law section 959(a), as amended by Chapter 57 of the Laws of 2009, expressly authorizes the Commissioner of Economic Development to adopt emergency regulations to govern the program.

Subject: Empire Zones reform.

Purpose: Allow Department to continue implementing Zones reforms and adopt changes that would enhance program's strategic focus.

Substance of emergency rule: The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2000, Chapter 63 of the Laws of 2005, and Chapter 57 of the Laws of 2009. These laws, which authorize the empire zones program, were changed to make the program more effective and less costly through higher standards for entry into the program and for continued eligibility to remain in the program. Existing regulations fail to address these requirements and the existing regulations contain several outdated references. The emergency rule will correct these items.

The rule contained in 5 NYCRR Parts 10 through 14 (now Parts 10-16 as amended), which governs the empire zones program, is amended as follows:

1. The emergency rule, tracking the requirements of Chapter 63 of the Laws of 2005, requires placement of zone acreage into "distinct and separate contiguous areas."

2. The emergency rule updates several outdated references, including: the name change of the program from Economic Development Zones to Empire Zones, the replacement of Standard Industrial Codes with the North American Industrial Codes, the renaming of census-tract zones as investment zones, the renaming of county-created zones as development

zones, and the replacement of the Job Training Partnership Act (and private industry councils) with the Workforce Investment Act (and local workforce investment boards).

3. The emergency rule adds the statutory definition of "cost-benefit analysis" and provides for its use and applicability.

4. The emergency rule also adds several other definitions (such as applicant municipality, chief executive, concurring municipality, empire zone capital tax credits or zone capital tax credits, clean energy research and development enterprise, change of ownership, benefit-cost ratio, capital investments, single business enterprise and regionally significant project) and conforms several existing regulatory definitions to statutory definitions, including zone equivalent areas, women-owned business enterprise, minority-owned business enterprise, qualified investment project, zone development plans, and significant capital investment projects. The emergency rule also clarifies regionally significant project eligibility. Additionally, the emergency rule makes reference to the following tax credits and exemptions: the Qualified Empire Zone Enterprise ("QEZE") Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

5. The emergency rule requires additional statements to be included in an application for empire zone designation, including (i) a statement from the applicant and local economic development entities pertaining to the integration and cooperation of resources and services for the purpose of providing support for the zone administrator, and (ii) a statement from the applicant that there is no viable alternative area available that has existing public sewer or water infrastructure other than the proposed zone.

6. The emergency rule amends the existing rule in a manner that allows for the designation of nearby lands in investment zones to exceed 320 acres, upon the determination by the Department of Economic Development that certain conditions have been satisfied.

7. The emergency rule provides a description of the elements to be included in a zone development plan and requires that the plan be resubmitted by the local zone administrative board as economic conditions change within the zone. Changes to the zone development plan must be approved by the Commissioner of Economic Development ("the Commissioner"). Also, the rule adds additional situations under which a business enterprise may be granted a shift resolution.

8. The emergency rule grants discretion to the Commissioner to determine the contents of an empire zone application form.

9. The emergency rule tracks the amended statute's deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

10. The emergency rule reflects statutory changes to the process to revise a zone's boundaries. The primary effect of this is to limit the number of boundary revisions to one per year.

11. The emergency rule describes the amended certification and decertification processes. The authority to certify and decertify now rests solely with the Commissioner with reduced roles for the Department of Labor and the local zone. Local zone boards must recommend projects to the State for approval. The labor commissioner must determine whether an applicant firm has been engaged in substantial violations, or pattern of violations of laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding. If such applicant firm has been found in a criminal proceeding to have committed any such violations, the Commissioner may not certify that firm.

12. The emergency rule describes new eligibility standards for certification. The new factors which may be considered by the Commissioner when deciding whether to certify a firm is (i) whether a non-manufacturing applicant firm projects a benefit-cost ratio of at least 20:1 for the first three years of certification, (ii) whether a manufacturing applicant firm projects a benefit-cost ratio of at least 10:1 for the first three years of certification, and (iii) whether the business enterprise conforms with the zone development plan.

13. The emergency rule adds the following new justifications for decertification of firms: (a) the business enterprise, that has submitted at least three years of business annual reports, has failed to provide economic returns to the State in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; (b) the business enterprise, if first certified prior to August 1, 2002, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (c) change of ownership or moving out of the Zone, (d) failure to pay wages and benefits or make capital investments as represented on the firm's application, (e) the business enterprise makes a material misrepresentation of fact in any of its business annual reports, and (f) the business enterprise fails to invest in its facility substantially in accordance with the representations contained in its application. In addition, the regulations track the statute in permitting the decertification of a business enterprise if it failed to create new employment or prevent a loss of employment in the zone or zone equivalent area, and deletes the condition that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control. The emergency rule provides that the Commissioner shall revoke the certification of a firm if the firm fails the standard set forth in (a) above, or if the Commissioner makes the finding in (b) above, unless the Commissioner determines in his or her discretion, after consultation with the Director of the Budget, that other economic, social and environmental factors warrant continued certification of the firm. The emergency rule further provides for a process to appeal revocations of certifications based on (a) or (b) above to the Empire Zones Designation Board. The emergency rule also provides that the Commissioner may revoke the certification of a firm upon a finding of any one of the other criteria for revocation of certification set forth in the rule.

14. The emergency rule adds a new Part 12 implementing record-keeping requirements. Any firm choosing to participate in the empire zones program must maintain and have available, for a period of six years, all information related to the application and business annual reports.

15. The emergency rule clarifies the statutory requirement from Chapter 63 of the Laws of 2005 that development zones (formerly county zones) create up to three areas within their reconfigured zones as investment (formerly census tract) zones. The rule would require that 75% of the acreage used to define these investment zones be included within an eligible or contiguous census tract. Furthermore, the rule would not require a development zone to place investment zone acreage within a municipality in that county if that particular municipality already contained an investment zone, and the only eligible census tracts were contained within that municipality.

16. The emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage; the rule removes the requirement that any subsequent additions after their official redesignation by the Designation Board will still require unanimous approval by that Board.

17. The emergency rule clarifies the statutory requirement that certain defined "regionally significant" projects can be located outside of the distinct and separate contiguous areas. There are four categories of projects: (i) a manufacturer projecting the creation of fifty or more net new jobs in the State of New York; (ii) an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more net new jobs in the State of New York, (iii) a financial or insurance services or distribution center creating three hundred or more net new jobs in the State of New York, and (iv) a clean energy research and development enterprise. Other projects may be considered by the empire zone designation board. Only one category of projects, manufacturers projecting the creation of 50 or more net new jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. Regionally significant projects that fall within the four categories listed above must be projects that are exporting 60% of their goods or services outside the region and export a substantial amount of goods or services beyond the State.

18. The emergency rule clarifies the status of community development projects as a result of the statutory reconfiguration of the zones.

19. The emergency rule clarifies the provisions under Chapter 63 of the Laws of 2005 that allow for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The area which will be "grandfathered" shall be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

20. The emergency rule elaborates on the "demonstration of need" requirement mentioned in Chapter 63 of the Laws of 2005 for the addition (for both investment and development zones) of an additional distinct and separate contiguous area. A zone can demonstrate the need for a fourth or, as the case may be, a seventh distinct and separate contiguous area if (1) there is insufficient existing or planned infrastructure within the three (or six) distinct and separate contiguous areas to (a) accommodate business

development and there are other areas of the applicant municipality that can be characterized as economically distressed and/or (b) accommodate development of strategic businesses as defined in the local development plan, or (2) placing all acreage in the other three or six distinct and separate contiguous areas would be inconsistent with open space and wetland protection, or (3) there are insufficient lands available for further business development within the other distinct and separate contiguous areas.

The full text of the emergency rule is available at: www.empire.state.ny.us

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 15, 2018.

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 625 Broadway, Albany, NY 12245, (518) 292-5123, email: thomas.regan@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 959(a) of the General Municipal Law authorizes the Commissioner of Economic Development to adopt on an emergency basis rules and regulations governing the criteria of eligibility for empire zone designation, the application process, the certification of a business enterprises as to eligibility of benefits under the program and the decertification of a business enterprise so as to revoke the certification of business enterprises for benefits under the program.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to statutory amendments and the remaining revisions either conform the regulations to existing statute or clarify administrative procedures of the program. These amendments further the Legislative goals and objectives of the Empire Zones program, particularly as they relate to regionally significant projects, the cost-benefit analysis, and the process for certification and decertification of business enterprises. The proposed amendments to the rule will facilitate the administration of this program in a more efficient, effective, and accountable manner.

NEEDS AND BENEFITS:

The emergency rule is required in order to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Empire Zones program, only voluntary participants.

B. Costs to the agency, the state, and local governments: There will be additional costs to the Department of Economic Development associated with the emergency rule making. These costs pertain to the addition of personnel that may need to be hired to implement the Empire Zones program reforms. There may be savings for the Department of Labor associated with the streamlining of the State's administration and concentration of authority within the Department of Economic Development. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones program. If a local government chooses to participate, there is a cost associated with local administration that local government officials agreed to bear at the time of application for designation as an Empire Zone. One of the requirements for designation was a commitment to local administration and an identification of local resources that would be dedicated to local administration.

This emergency rule does not impose any additional costs to the local governments for administration of the Empire Zones program.

PAPERWORK:

The emergency rule imposes new record-keeping requirements on businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years.

DUPLICATION:

The emergency rule conforms to provisions of Article 18-B of the General Municipal Law and does not otherwise duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

FEDERAL STANDARDS:

There are no federal standards in regard to the Empire Zones program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes new record-keeping requirements on small businesses and large businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years. Local governments are unaffected by this rule.

2. Compliance requirements

Each small business and large business choosing to participate in the Empire Zones program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the Empire Zone program and relating to existing annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

No professional services are likely to be needed by small and large businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

No initial capital costs are likely to be incurred by small and large businesses choosing to participate in the Empire Zones program. Annual compliance costs are estimated to be negligible for both small and large businesses. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in full compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small businesses and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Empire Zones program is a statewide program. Although there are municipalities and businesses in rural areas of New York State that are eligible to participate in the program, participation by the municipalities and businesses is entirely at their discretion. The emergency rule imposes no additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Empire Zones program. The Empire Zones program itself is a job creation incentive, and will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency rule, which is being promulgated as a result of statutory reforms, will enable the program to continue to fulfill its mission of job creation and investment for economically distressed areas. Because it is evident from its nature that this emergency rule will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY RULE MAKING

START-UP NY Program

I.D. No. EDV-18-18-00006-E

Filing No. 378

Filing Date: 2018-04-17

Effective Date: 2018-04-17

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

Action taken: Addition of Part 220 to Title 5 NYCRR.

Statutory authority: Economic Development Law, art. 21, sections 435-36; L. 2013, ch. 68

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

Specific reasons underlying the finding of necessity: On June 24, 2013, Governor Andrew Cuomo signed into law the SUNY Tax-free Areas to Revitalize and Transform UPstate New York (START-UP NY) program, which offers an array of tax benefits to eligible businesses and their employees that locate in facilities affiliated with New York universities and colleges. The START-UP NY program will leverage these tax benefits to attract innovative start-ups and high tech industries to New York so as to create jobs and promote economic development.

Regulatory action is required to implement the START-UP NY program. The legislation creating the START-UP NY program delegated to the Department of Economic Development the establishment of procedures for the implementation and execution of the START-UP NY program. Without regulatory action by the Department of Economic Development, procedures will not be in place to accept applications from institutions of higher learning desiring to create Tax-Free Areas, or businesses wishing to participate in the START-UP NY program.

Adoption of this rule will enable the State to begin accepting applications from businesses to participate in the START-UP NY program, and represent a step towards the realization of the strategic objectives of the START-UP NY program: attracting and retaining cutting-edge start-up companies, and positioning New York as a global leader in high tech industries.

Subject: START-UP NY Program.

Purpose: Establish procedures for the implementation and execution of START-UP NY.

Substance of emergency rule (Full text is posted at the following State website: https://startup.ny.gov/university-and-college-resources): START-UP NY is a new program designed to stimulate economic development and promote employment of New Yorkers through the creation of tax-free areas that bring together educational institutions, innovative companies, and entrepreneurial investment.

1) The regulation defines key terms, including: "business in the formative stage," "campus," "competitor," "high tech business," "net new job," "new business," and "underutilized property."

2) The regulation establishes that the Commissioner shall review and approve plans from State University of New York (SUNY) colleges, City University of New York (CUNY) colleges, and community colleges seeking designation of Tax-Free NY Areas, and report on important aspects of the START-UP NY program, including eligible space for use as Tax-Free Areas and the number of employees eligible for personal income tax benefits.

3) The regulation creates the START-UP NY Approval Board, composed of three members appointed by the Governor, Speaker of the Assembly and Temporary President of the Senate, respectively. The START-UP NY Approval Board reviews and approves plans for the creation of Tax-Free NY Areas submitted by private universities and colleges, as well as certain plans from SUNY colleges, CUNY colleges, and community colleges, and designates Strategic State Assets affiliated with eligible New York colleges or universities. START-UP NY Approval Board members may designate representatives to act on their behalf during their absence. START-UP NY Approval Board members must remain disinterested, and recuse themselves where appropriate.

4) The regulation establishes eligibility criteria for Tax-Free Areas. Eligibility of vacant land and space varies based on whether it is affiliated with a SUNY college, CUNY college, community college, or private college, and whether the land or space in question is located upstate, downstate, or in New York City. The regulation prohibits any allocation of land or space that would result in the closure or relocation of any program or service associated with a university or college that serves students, faculty, or staff.

5) The regulation establishes eligibility requirements for businesses to participate in the START-UP program, and enumerates excluded industries. To be eligible, a business must: be a new business to the State at the time of its application, subject to exceptions for NYS incubators, businesses restoring previously relocated jobs, and businesses the Commissioner has determined will create net new jobs; comply with applicable worker protection, environmental, and tax laws; align with the academic mission of the sponsoring institution (the Sponsor); demonstrate that it will create net new jobs in its first year of operation; and not be engaged in the same line of business that it conducted at any time within the last five years in New York without the approval of the Commissioner. Businesses locating downstate must be in the formative stages of development, or engaged in a high tech business. To remain eligible, the business must, at a minimum, maintain net new jobs and the average number of jobs that existed with the business immediately before entering the program.

6) The regulation describes the process for approval of Tax-Free Areas. An eligible institution may submit a plan to the Commissioner identifying land or space to be designated as a Tax-Free Area. This plan must: identify precisely the location of the applicable land or space; describe business activities to be conducted on the land or space; establish that the business activities in question align with the mission of the institution; indicate how the business would generate positive community and economic benefits; summarize the Sponsor's procedures for attracting businesses; include a copy of the institution's conflict of interest guidelines; attest that the proposed Tax-Free Area will not jeopardize or conflict with any existing tax-exempt bonds used to finance the Sponsor; and certify that the Sponsor has not relocated or eliminated programs serving students, faculty, or staff to create the vacant land. Applications by private institutions require approval by both the Commissioner and START-UP NY Approval Board. The START-UP NY Approval Board is to approve applications so as to ensure balance among rural, urban and suburban areas throughout the state.

7) A sponsor applying to create a Tax-Free Area must provide a copy of its plan to the chief executive officer of any municipality in which the proposed Tax-Free Area is located, local economic development entities, the applicable university or college faculty senate, union representatives and the campus student government. Where the plan includes land or space outside of the campus boundaries of the university or college, the institution must consult with the chief executive officer of any municipality in which the proposed Tax-Free Area is to be located, and give preference to underutilized properties identified through this consultation. The Commissioner may enter onto any land or space identified in a plan, or audit any information supporting a plan application, as part of his or her duties in administering the START-UP program.

8) The regulation provides that amendments to approved plans may be made at any time through the same procedures as such plans were originally approved. Amendments that would violate the terms of a lease between a sponsor and a business in a Tax-Free Area will not be approved. Sponsors may amend their plans to reallocate vacant land or space in the case that a business, located in a Tax-Free Area, is disqualified from the program but elects to remain on the property.

9) The regulation describes application and eligibility requirements for businesses to participate in the START-UP program. Businesses are to submit applications to sponsoring universities and colleges by 12/31/20. An applicant must: (1) authorize the Department of Labor (DOL) and Department of Taxation and Finance (DTF) to share the applicant's tax information with the Department of Economic Development (DED); (2) allow DED to monitor the applicant's compliance with the START-UP program and agree to submit an annual report in such form as the Commissioner shall require; (3) provide to DED, upon request, information related to its business organization, tax returns, investment plans, development strategy, and non-competition with any businesses in the community but outside of the Tax-Free Area; (4) certify efforts to ascertain that the business would not compete with another business in the same community but outside the Tax-Free Area, including an affidavit that notice regarding the application was published in a daily publication no fewer than five consecutive days; (5) include a statement of performance benchmarks as to new jobs to be created through the applicant's participation in START-UP; (6) provide a statement of consequences for non-conformance with the performance benchmarks, including proportional recovery of tax benefits when the business fails to meet job creation benchmarks in up to three years of a ten-year plan, and removal from the program for failure to meet job creation benchmarks in at least four years of a ten-year plan; (7) identify information submitted to DED that the business deems confidential, proprietary, or a trade secret. Sponsors forward applications deemed to meet eligibility requirements to the Commissioner for further review. The Commissioner shall reject any application that does not satisfy the START-UP program eligibility requirements or purpose, and provide written notice of the rejection to the Sponsor. The Commissioner may approve an application any time after receipt; if the Commissioner approves the application, the business applicant is deemed accepted into the START-UP NY Program and can locate to the Sponsor's Tax-Free NY Area. Applications not rejected will be deemed accepted after sixty days. The Commissioner is to provide documentation of acceptance to successful applicants.

10) The regulation allows a business to amend a successful application at any time in accordance with the procedure of its original application. No amendment will be approved that would contain terms in conflict with a lease between a business and a SUNY college when the lease was included in the original application.

11) The regulation permits a business that has been rejected from the START-UP program to locate within a Tax-Free Area without being eligible for START-UP program benefits, or to reapply within sixty days via a written request identifying the reasons for rejection and offering verified factual information addressing the reasoning of the rejection. Failure to reapply within sixty days waives the applicant's right to resubmit.

Upon receipt of a timely resubmission, the Commissioner may use any resources to assess the claim, and must notify the applicant of his or her determination within sixty days. Disapproval of a reapplication is final and non-appealable.

12) With respect to audits, the regulation requires businesses to provide access to DED, DTF, and DOL to all records relating to facilities located in Tax-Free Areas at a business location within the State during normal business hours. DED, DTF, and DOL are to take reasonable steps to prevent public disclosure of information pursuant to Section 87 of the Public Officers Law where the business has timely informed the appropriate officials, the records in question have been properly identified, and the request is reasonable.

13) The regulation provides for the removal of a business from the program under a variety of circumstances, including violation of New York law, material misrepresentation of facts in its application to the START-UP program, or relocation from a Tax-Free Area. Upon removing a business from the START-UP program, the Commissioner is to notify the business and its Sponsor of the decision in writing. This removal notice provides the basis for the removal decision, the effective removal date, and the means by which the affected business may appeal the removal decision. A business shall be deemed served three days after notice is sent. Following a final decision, or waiver of the right to appeal by the business, DED is to forward a copy of the removal notice to DTF, and the business is not to receive further tax benefits under the START-UP program.

14) To appeal removal from the START-UP program, a business must send written notice of appeal to the Commissioner within thirty days from the mailing of the removal notice. The notice of appeal must contain specific factual information and all legal arguments that form the basis of the appeal. The appeal is to be adjudicated in the first instance by an appeal officer who, in reaching his or her decision, may seek information from outside sources, or require the parties to provide more information. The appeal officer is to prepare a report and make recommendations to the Commissioner. The Commissioner shall render a final decision based upon the appeal officer's report, and provide reasons for any findings of fact or law that conflict with those of the appeal officer.

15) With regard to disclosure authorization, businesses applying to participate in the START-UP program authorize the Commissioner to disclose any information contained in their application, including the projected new jobs to be created.

16) In order to assess business performance under the START-UP program, the Commissioner may require participating businesses to submit annual reports on or before March 15 of each year describing the businesses' continued satisfaction of eligibility requirements, jobs data, an accounting of wages paid to employees in net new jobs, and any other information the Commissioner may require. Information contained in businesses' annual reports may be made public by the Commissioner.

17) The Freedom of Information Law is applicable to the START-UP program, subject to disclosure waivers to protect certain proprietary information submitted in support of an application to the START-UP program.

18) All businesses must keep relevant records throughout their participation in the START-UP program, plus three years. DED has the right to inspect all such documents upon reasonable notice.

19) If the Commissioner determines that a business has acted fraudulently in connection with its participation in the START-UP program, the business shall be immediately terminated from the program, subject to criminal penalties, and liable for taxes that would have been levied against the business during the current year.

20) The regulation requires participating universities and colleges to maintain a conflict of interest policy relevant to issues that may arise during the START-UP program, and to report violations of said policies to the Commissioner for publication.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 15, 2018.

Text of rule and any required statements and analyses may be obtained from: Thomas Regan, Department of Economic Development, 625 Broadway, Albany, NY 12207, (518) 292-5123, email: thomas.regan@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Chapter 68 of the Laws of 2013 requires the Commissioner of Economic Development to promulgate rules and regulations to establish procedures for the implementation and execution of the SUNY Tax-free Areas to Revitalize and Transform UPstate New York program (START-UP NY). These procedures include, but are not limited to, the application processes for both academic institutions wishing to create Tax-Free NY Areas and businesses wishing to participate in the START-UP NY program, standards for evaluating applications, and any other provisions the Commissioner deems necessary and appropriate.

LEGISLATIVE OBJECTIVES:

The proposed rule is in accord with the public policy objectives the New York State Legislature sought to advance by enacting the START-UP NY program, which provides an incentive to businesses to locate critical high-tech industries in New York State as opposed to other competitive markets in the U.S. and abroad. It is the public policy of the State to establish Tax-Free Areas affiliated with New York universities and colleges, and to afford significant tax benefits to businesses, and the employees of those businesses, that locate within these Tax-Free Areas. The tax benefits are designed to attract and retain innovative start-ups and high-tech industries, and secure for New York the economic activity they generate. The proposed rule helps to further such objectives by establishing the application process for the program, clarifying the nature of eligible businesses and facilities, and describing key provisions of the START-UP NY program.

NEEDS AND BENEFITS:

The emergency rule is necessary in order to implement the statute contained in Article 21 of the Economic Development Law, creating the START-UP NY program. The statute directs the Commissioner of Economic Development to establish procedures for the implementation and execution of the START-UP NY program.

Upstate New York has faced longstanding economic challenges due in part to the departure of major business actors from the region. This divestment from upstate New York has left the economic potential of the region unrealized, and left many upstate New Yorkers unemployed.

START-UP NY will promote economic development and job creation in New York, particularly the upstate region, through tax benefits conditioned on locating business facilities in Tax-Free NY Areas. Attracting start-ups and high-tech industries is critical to restoring the economy of upstate New York, and to positioning the state as a whole to be competitive in a globalized economy. These goals cannot be achieved without first establishing procedures by which to admit businesses into the START-UP NY program.

The proposed regulation establishes procedures and standards for the implementation of the START-UP program, especially rules for the creation of Tax-Free NY Areas, application procedures for the admission of businesses into the program, and eligibility requirements for continued receipt of START-UP NY benefits for admitted businesses. These rules allow for the prompt and efficient commencement of the START-UP NY program, ensure accountability of business participants, and promote the general welfare of New Yorkers.

COSTS:

I. Costs to private regulated parties (the business applicants): None. The proposed regulation will not impose any additional costs to eligible business applicants.

II. Costs to the regulating agency for the implementation and continued administration of the rule: None.

III. Costs to the State government: None.

IV. Costs to local governments: None.

LOCAL GOVERNMENT MANDATES:

The rule establishes certain property tax benefits for businesses locating in Tax-Free NY Areas that may impact local governments. However, as described in the accompanying statement in lieu of a regulatory flexibility analysis for small businesses and local governments, the program is expected to have a net-positive impact on local government.

PAPERWORK:

The rule establishes application and eligibility requirements for Tax-Free NY Areas proposed by universities and colleges, and participating businesses. These regulations establish paperwork burdens that include materials to be submitted as part of applications, documents that must be submitted to maintain eligibility, and information that must be retained for auditing purposes.

DUPLICATION:

The proposed rule will create a new section of the existing regulations of the Commissioner of Economic Development, Part 220 of 5 NYCRR. Accordingly, there is no risk of duplication in the adoption of the proposed rule.

ALTERNATIVES:

No alternatives were considered in regard to creating a new regulation in response to the statutory requirement. The regulation implements the statutory requirements of the START-UP NY program regarding the application process for creation of Tax-Free NY Areas and certification as an eligible business. This action is necessary in order to clarify program participation requirements and is required by the legislation establishing the START-UP NY program.

FEDERAL STANDARDS:

There are no federal standards applicable to the START-UP NY program; it is purely a State program that offers tax benefits to eligible businesses and their employees. Therefore, the proposed rule does not exceed any federal standard.

COMPLIANCE SCHEDULE:

The affected State agency (Department of Economic Development) and the business applicants will be able to achieve compliance with the regulation as soon as it is implemented.

Regulatory Flexibility Analysis

Participation in the START-UP NY program is entirely at the discretion of qualifying business that may choose to locate in Tax-Free NY Areas. Neither statute nor the proposed regulations impose any obligation on any business entity to participate in the program. Rather than impose burdens on small business, the program is designed to provide substantial tax benefits to start-up businesses locating in New York, while providing protections to existing businesses against the threat of tax-privileged start-up companies locating in the same community. Local governments may not be able to collect tax revenues from businesses locating in certain Tax-Free NY Areas. However, the regulation is expected to have a net-positive impact on local governments in light of the substantial economic activity associated with businesses locating their facilities in these communities.

Because it is evident from the nature of the proposed rule that it will have a net-positive impact on small businesses and local government, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

The START-UP NY program is open to participation from any business that meets the eligibility requirements, and is organized as a corporation, partnership, limited liability company, or sole proprietorship. A business's decision to locate its facilities in a Tax-Free NY Area associated with a rural university or college would be no impediment to participation; in fact, START-UP NY allocates space for Tax-Free NY Areas specifically to the upstate region which contains many of New York's rural areas. Furthermore, START-UP NY specifically calls for the balanced allocation of space for Tax-Free NY Areas between eligible rural, urban, and suburban areas in the state. Thus, the regulation will not have a substantial adverse economic impact on rural areas, and instead has the potential to generate significant economic activity in upstate rural areas designated as Tax-Free NY Areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The regulation establishes procedures and standards for the administration of the START-UP NY program. START-UP NY creates tax-free areas designed to attract innovative start-ups and high-tech industries to New York so as to stimulate economic activity and create jobs. The regulation will not have a substantial adverse impact on jobs and employment opportunities; rather, the program is focused on creating jobs. Because it is evident from the nature of the rulemaking that it will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

State Board of Elections

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standardizes Subpoena Requests and Requires Reporting of Enforcement Activity

I.D. No. SBE-18-18-00007-P

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

Proposed Action: Amendment of Part 6203 of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-102[1], [17] and 3-104[8]

Subject: Standardizes subpoena requests and requires reporting of enforcement activity.

Purpose: Provides procedures related to the SBOE's subpoena authority and requires reporting of the SBOE's enforcement activity.

Text of proposed rule: 9 NYCRR Part 6203 is amended to read as follows:

Section 6203.1. Administration of oaths, examination of witnesses and issuance of subpoenas for the purpose of conducting investigations pursuant to chapter 233 of the Laws of 1976 and chapter 55, part H, subpart B of the Laws of 2014.

In addition to all duties and powers relating to the administration of the election process, election campaign processes and campaign finance practices:

(a) Any commissioner of the State Board of Elections may designate in writing any employee to administer oaths or affirmations, examine witnesses in public or private hearings, receive evidence and preside at or conduct any hearing or study.

(b) Pursuant to a delegation of its subpoena power by the State Board of Elections, each co-executive director, co-counsel and co-deputy counsel are authorized to issue subpoenas in the name of the State Board of Elections to compel the attendance of any person before the board or any employee designated pursuant to subdivision (a) of this section or to require the production of any books, records, documents or other evidence that the board or any such employee may deem relevant to any hearing or study.

(c) The chief enforcement counsel may at any time ask that the board authorize him or her to exercise the powers which the board is otherwise authorized to exercise pursuant to subdivision five and six of section 3-102 of this the Election Law. *Any such authorization shall be made pursuant to the provisions of section 6203.2 of this part.*

[The board shall vote on whether to grant or refuse to grant such authority no later than twenty days after the chief enforcement counsel makes such request. For purposes of considering and voting on such request, the chief enforcement counsel shall be entitled to participate in all matters related thereto and shall vote on the board's granting or refusal to grant such request only when there is a tie. Should the board not vote on such request within twenty days of its submission, or grant the chief enforcement counsel's request, the chief enforcement counsel shall be so empowered to act pursuant to subdivisions five and six of section 3-102 of the Election Law.]

Section 6203.2 Provisions related to granting the chief enforcement counsel authority to exercise the powers which the board is otherwise authorized to exercise pursuant to subdivision five and six of section 3-102 of this the Election Law.

When granting authority to the chief enforcement counsel to exercise the powers which the board is otherwise authorized to exercise pursuant to subdivision five and six of section 3-102 of this the Election Law, the following provisions shall apply:

(a) Vote within twenty days. The board shall vote on whether to grant or refuse to grant such authority no later than twenty days after the chief enforcement counsel makes a request for such authority. A request shall be deemed made when the memorandum and proposed subpoena(s) required by paragraph (d) of this section are received by the commissioners.

(b) Participation in determinations. For purposes of considering and voting on such request, the chief enforcement counsel shall be entitled to participate in all matters related thereto and shall vote on the board's granting or refusal to grant such request only when there is a tie vote.

(c) No vote within twenty days or granting of authority. Should the board not vote on such request within twenty days of its submission, or grant the chief enforcement counsel's request, the chief enforcement counsel shall be so empowered to act pursuant to subdivisions five and six of section 3-102 of the Election Law. Any such action by the Chief Enforcement Counsel shall comply with the requirements of this section.

(d) Request for subpoena authority. An application by the chief enforcement counsel seeking authority from the board to issue a subpoena, shall be sent to the commissioners and co-executive directors whenever possible at least one week prior to a vote and shall include: (1) a memorandum explaining the circumstances surrounding the investigation, reciting the section(s) of the Election Law that have allegedly been violated, and how any documents, testimony or other materials returned pursuant to a subpoena issued in the matter would be relevant and material to the investigation; (2) the name(s) of the person(s) and/ or entity(ies) that will be served the proposed subpoena(s); and, (3) a copy of the proposed subpoena(s) to be issued should the authority to issue be granted. Nothing in this subsection shall limit the chief enforcement counsel's ability to limit the scope of an issued subpoena or extend the response date of an issued subpoena at the request of a person or entity named therein.

(e) Scope of Authority. (1) A request for subpoena authority shall be directly related to a particular investigation. A grant of subpoena authority shall not include authority to issue subpoenas other than to those persons or entities identified in the application for such subpoena unless the board specifically grants such blanket authority.

(2) When the chief enforcement counsel applies for authority to issue a subpoena, the Board may authorize the chief enforcement counsel to issue subpoenas requiring the attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with and reasonably related to a lawful investigation.

(3) As a condition of granting subpoena authority to the chief enforce-

ment counsel, the board reserves the right, upon the motion of any one Commissioner, to rescind or further condition subpoenas or subpoenas duces tecum, by a majority vote of the board. When the board considers whether to rescind or further condition a subpoena or subpoena duces tecum, the chief enforcement counsel shall be entitled to participate in any discussion and may vote only if there is a tie vote.

(4) As a condition of granting authority to exercise the powers which the board is otherwise authorized to exercise pursuant to subdivision five and six of section 3-102 of the Election Law to the chief enforcement counsel, such authority to so act shall expire six months after the date authority is granted by the board unless the resolution approving such authority provides for a longer duration, and any subpoenas or subpoenas duces tecum shall be deemed expired six months after authority is granted by the board unless the resolution approving such subpoenas provides for a longer duration; provided, further, that if the board did not vote within twenty days of its submission, then the chief enforcement counsel's initial authority to act without a vote, shall expire ninety days after the chief enforcement counsel was empowered to exercise such authority, and any subsequent subpoenas or subpoenas duces tecum involved in that matter shall be brought to the Board for action pursuant to the above provisions after the expiration of the ninety day period.

(5) For any authority to exercise the powers which the board is otherwise authorized to exercise pursuant to subdivision five and six of section 3-102 of this the Election Law granted to the chief enforcement counsel prior to the effective date of this section, such authority and any subpoenas issued pursuant to such authority shall expire six months after the effective date of this regulation.

(6) Nothing in this section shall prohibit the chief enforcement counsel from making an application to renew authority to exercise powers with respect to any ongoing matter, which the board is otherwise authorized to exercise pursuant to subdivision five and six of section 3-102 of this the Election Law.

6203.3 Provisions related to subpoena authority oversight.

(a) Any person to whom a subpoena is directed pursuant to section 6203.1 of this part, may, prior to the time specified therein for compliance, but in no event more than seven business days after the date of receipt of such subpoena, apply to the state board to quash or modify such subpoena authority delegated to the chief enforcement counsel, accompanying such application with a brief statement of the reasons therefor. Applications to quash shall be filed with the State Board of Elections, Counsel's Office, 40 North Pearl Street, Suite 5, Albany, NY 12207 or by email sent to the co-executive directors. Any such application shall be deemed sufficiently stated for consideration if it reasonably sets forth in general terms the grounds the application is based upon and a copy of the subpoena itself.

(b) Upon receiving an application to quash or modify, Counsel's Office shall send notice, by mail and e-mail whenever possible, to the movant and the chief enforcement counsel. Such notice shall specify when and where a hearing shall be held. Such hearing shall be conducted by a hearing officer of the State Board of Elections appointed pursuant to part 6218. A report with the hearing officer's recommendation shall be delivered to the office of counsel, and counsel shall provide such report to the board. The board shall render a final determination, where the board may: (i) deny the application, or (ii) rescind, amend or modify the subpoena. All steps in this process shall be completed as soon as possible. The Board shall be presented with such findings within forty-eight hours of the hearing officer delivering such report to the co-counsels of the Board. Until a decision is issued with regard to any application made under this section, all requirements to comply with the subpoena shall be stayed and the expiration of the subpoena shall be likewise tolled. A decision by the board shall be issued within thirty days after an application is made unless such time period is extended by a majority vote of the commissioners.

6203.4 Enforcement Reporting.

The chief enforcement counsel shall provide a written report to the commissioners and co-executive directors at least once in each calendar quarter that shall include the following information with respect to the preceding calendar quarter:

(a) Total number of complaints received by the Enforcement Division by mail, email, phone, fax or any other means, and the number of such complaints:

(1) examined and found on their face to not warrant any further investigation

(2) still pending review

(3) under active investigation

(4) closed

(5) referred to the commissioners for further action

(b) Total number of hearing officer proceedings initiated, and the number of such proceedings:

(1) for failure to file reports

(2) for failure to cure a deficiency

(3) involving other matters

(c) Total number of settlements entered into and the number of such settlements entered into:

(1) before any hearing officer proceeding is initiated

(2) after a hearing officer proceeding but before a hearing officer's determination is made

(3) after a hearing officer determination

(d) Total number of special proceedings commenced in pursuant to article sixteen of the election law, and the number of such proceedings:

(1) related to failure to file

(2) failure to cure deficiency

(3) other matters

(e) Total sum of money collected, and with respect to such sum, the amount derived from:

(1) judgments entered before creation of the division of election law enforcement

(2) judgments entered after creation of the division of election law enforcement settlements

(f) Total number of deficiency referrals from the Compliance Unit received, and with respect to such referrals the number:

(1) referred to a hearing officer

(2) chief enforcement counsel determined not to refer to hearing officer

(3) pending review

(4) a decision has been made that no further action will be taken and the reasons therefor

(g) For failure to file required disclosures under article fourteen of the election law, the number of such:

(1) referred to hearing officer

(2) chief enforcement counsel determined not to refer to hearing officer

(3) pending review

(4) a decision has been made that no further action will be taken and the reason therfor

6203.5 Closed Enforcement Matters.

(a) When the chief enforcement counsel determines no further action will be taken on a complaint or matter and the matter was not referred for possible prosecution or to a hearing officer, the matter is thereby deemed closed, and the chief enforcement counsel shall provide notice to the commissioners and co-executive directors.

(b) If no action is taken on a complaint within two years after it was received, it shall be deemed closed for purposes of providing notice to the commissioners; provided, however, if the chief enforcement counsel determines any such matters should not be deemed closed because future action is reasonably anticipated, the chief enforcement counsel shall report the number of such continued matters to the commissioners.

(c) Notice to the board of closed matters may be satisfied by a written report or by the chief enforcement counsel providing copies of complaints and any correspondence to complainants indicating a matter is closed.

(d) A copy of any settlement agreement entered into in which the chief enforcement counsel or the division of election law enforcement is a party or signatory, shall be provided to the commissioners and co-executive directors within five days of execution.

6203.6 Notification of Failure to File.

The division of election law enforcement shall send the letters required to be sent by Election Law § 14-108(5).

6203.7 Special Investigators and Peace Officer Status Reporting.

(a) A request to the commissioners to appoint a special investigator shall set forth in detail the reason such appointment is needed.

(b) At no time shall any firearm be possessed in the offices of the State Board of Elections other than the space designated for the Division of Election Law Enforcement.

(c) For each person designated by the board as a special investigator having peace officer status, the chief enforcement counsel shall provide notice to the commissioners and co-executive directors in January and June of each year as to the status of each peace officer's certifications and training compliance required by section 2.30 of the criminal procedure law.

6203.8 Enforcement Internal Controls.

The division of election law enforcement shall annually complete the required internal controls report by the first day of April, and shall provide same to the co-executive directors. Such report shall be filed by the co-executive directors with the Division of Budget and/or the Office of the State Comptroller as required by law with such reports from all other units or divisions comprising the state board of elections.

Text of proposed rule and any required statements and analyses may be obtained from: Nicholas R. Cartagena, Esq., New York State Board of Elections, 40 North Pearl Street, Suite 5, Albany, New York 12207-2729, (518) 474-2064, email: nicholas.cartagena@elections.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Election Law § 3-102(1) gives the State Board of Elections the authority to promulgate rules relating to the administration of the election process. Election Law § 3-102(17) authorizes the State Board of Elections to "perform such other acts as may be necessary to carry out the purposes of this chapter." Section 3-104(8) of the Election Law authorizes the State Board of Elections to adopt rules consistent with law to specifically effectuate the sections of law related to enforcement powers within the State Board.

2. Legislative objectives: The New York State Election Law authorizes the State Board of Elections to issue subpoenas to compel the production of documents and to compel testimony. The Commissioners may vote to confer this authority upon the chief enforcement counsel. The proposed regulation provides a standardized process of granting such authority.

Further, the proposed regulations provide certain due process procedures that mirror those found in federal regulations for Federal Election Commission enforcement matters.

Lastly, the proposed regulation requires the chief enforcement counsel to report certain statistics related to the Enforcement Division's work quarterly and explicitly requires the chief enforcement counsel to comply with the Internal Controls Act, article 45 of the Executive Law.

3. Needs and benefits: This proposed regulation is designed to ensure that the State Board of Election's enforcement process is transparent, objective, impartial and fair. Under the Election Law, upon request, the Commissioners of the State Board of Elections may confer the Board's general subpoena authority and authority to compel testimony upon the chief enforcement counsel. The proposed regulation outlines the process upon which the chief enforcement counsel requests such authority. The purpose of this provision is to ensure that the Commissioners have the information necessary to make an informed decision regarding conferring the Board's authority. Further, having a standardized process helps ensure that the Board's decisions are consistent and that all parties are treated fairly and equitably.

Additionally, the proposed regulation provides certain due process rights that mirror rights found in federal regulations for Federal Election Commission enforcement matters, which ensures that all parties will be treated impartially.

Lastly, the proposed regulation requires the chief enforcement counsel to report certain statistics related to the Enforcement Division's work quarterly. This provision is designed to provide the public with transparency (providing general, non-case specific information to show how effective the Enforcement Division is operating) without compromising the Enforcement Division's ability to conduct its investigations. This will give the public information necessary to assess the effectiveness of New York's enforcement efforts.

4. Costs: The proposed amendment is cost neutral.

5. Local government mandates: There are no local mandates in this proposal.

6. Paperwork: This proposal imposes no new reporting or regulatory filing requirements.

7. Duplication: This proposal does not impose any duplicative regulatory burden or reporting requirements.

8. Alternatives: The alternative is to take no action; however, lack of a standardized subpoena process would result in an unpredictable and arbitrary process resulting in unequal treatment of parties, and resulting in Commissioners making decisions to confer subpoena authority with inadequate information. Further, the lack of a reporting requirement would result with an Enforcement Division with no transparency or accountability, which makes it impossible for the public to determine the effectiveness of the Enforcement Division.

9. Federal standards: This rulemaking is unrelated to any Federal rule or standard.

10. Compliance schedule: Compliance can be immediate upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

Under SAPA 202-b(3)(a), when a rule does not impose an adverse economic impact on small business or local government and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on such entities, the agency may file a Statement in Lieu of. This rule will not impact small business operations or local government functions. This rule has statewide application, providing procedures related to the State Board of Election's subpoena authority and reporting of the Board's enforcement activity. It imposes no additional compliance, regulatory or reporting requirements on local governments or small businesses.

Rural Area Flexibility Analysis

Under SAPA 202-bb(4)(a), when a rule does not impose an adverse economic impact on rural areas and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, the agency may file a Statement in Lieu of. This rule has statewide application, providing procedures related to the State Board of Election's subpoena authority and requires reporting of the Board's enforcement activity. The proposed rule does not create any materially new reporting, recordkeeping or other routine compliance requirements that will specifically impact rural areas. Accordingly, this rule has no adverse impact.

Job Impact Statement

Under SAPA 201-a(2)(a), when it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, the agency may file a Statement in Lieu of. This rulemaking, as is apparent from its nature and purpose, will not have an adverse impact on jobs or employment opportunities. This rule provides procedures related to the State Board of Election's subpoena authority and requires reporting of the Board's enforcement activity. This rulemaking imposes no regulatory burden on any facet of job creation or employment.

Department of Environmental Conservation

NOTICE OF ADOPTION

Permits for Taking Surfclams

I.D. No. ENV-16-17-00003-A
Filing No. 380
Filing Date: 2018-04-17
Effective Date: 2018-05-02

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

Action taken: Amendment of Subpart 43-1 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 13-0309(12)

Subject: Permits for taking surfclams.

Purpose: To reduce paperwork and streamline the surfclam permitting process.

Text or summary was published in the April 19, 2017 issue of the Register, I.D. No. ENV-16-17-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Maureen Davidson, NYSDEC Division of Marine Resources, 205 North Belle Mead Road, Suite 1, East Setauket, New York 11733, (631) 444-0483, email: maureen.davidson@dec.ny.gov

Additional matter required by statute: This rule making has been determined to be a Type II action pursuant to 6 NYCRR section 617.5(c)(20) and (27).

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

EMERGENCY RULE MAKING

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

I.D. No. DFS-18-18-00001-E
Filing No. 372
Filing Date: 2018-04-11
Effective Date: 2018-04-12

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

Action taken: Addition of Part 418 and Supervisory Procedures MB109 and MB110 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

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

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

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

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

Substance of emergency rule (Full text is posted at the following State website: http://www.dfs.ny.gov/legal/regulations/emergency/banking/emergbanking.htm): Section 418.1 summarizes the scope and application of Part 418. It notes that Sections 418.2 to 418.11 implement the requirement in Article 12-D of the Banking Law that certain mortgage loan servicers ("servicers") be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), while Sections 418.12 and 418. 13 set forth financial responsibility requirements that are applicable to both registered and exempt servicers. [Section 418.14 sets forth the transitional rules.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire July 9, 2018.

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

Regulatory Impact Statement

1. Statutory Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Legislative Objectives.

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

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

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

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

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

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

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

3. Needs and Benefits.

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

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

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

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

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

Further, consumers in this state will also benefit under these regulations because in the event there is an allegation that a mortgage servicer is involved in wrongdoing and the Superintendent finds that there is good cause, or that there is a substantial risk of public harm, he or she can

suspend such mortgage servicer for 30 days without a hearing. And in other cases, he or she can suspend or revoke such mortgage servicer's registration after notice and a hearing. Also, the requirement that servicers meet minimum financial standards and have performance and other bonds will act to ensure that consumers are protected.

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

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

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

4. Costs.

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

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

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

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

5. Local Government Mandates.

None.

6. Paperwork.

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

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

7. Duplication.

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

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

8. Alternatives.

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

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

9. Federal Standards.

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

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

10. Compliance Schedule.

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

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

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

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

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

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

3. Professional Services:

None.

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impacts:

The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLS, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for

servicer registration. A common form will be accepted by New York and the other participating states.

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

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

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

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

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

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

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

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

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

Job Impact Statement

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

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

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

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Residential Electric Vehicle Charging

I.D. No. PSC-18-18-00008-P

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

Proposed Action: The Commission is considering a petition made by Orange and Rockland Utilities, Inc., stating that its current tariff, P.S.C. No. 3 — Electricity, complies with Public Service Law (PSL) section 66-o (Residential Electric Vehicle Charging).

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Residential Electric Vehicle Charging.

Purpose: To effectuate service enhancements mandated by State Legislation.

Substance of proposed rule: The Commission is considering a petition made by Orange and Rockland Utilities, Inc. (O&R), on March 30, 2018, stating its current tariff, P.S.C. No. 3 – Electricity, complies with Public Service Law (PSL) § 66-o that was effectuated through Chapter 337 of the Laws of 2017. Among other requirements, PSL § 66-o mandates utilities to file a residential tariff for the purpose of recharging an eligible plug-in electric vehicles (PEV) on or before April 1, 2018. O&R states that it currently has in effect two residential tariff provisions (Special Provision C and Special Provision D) under Service Classification No. 1 – Residential Service which satisfy and comply with PSL § 66-o requirements. In addition to the two special provisions, O&R states that it has proposed to allow demand-billed customers that construct and own public charging stations to receive discounted electric rates under Rider H. The full text of the filing 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-E-0206SP5)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Transfer of Control of Keene Valley Video Inc.

I.D. No. PSC-18-18-00009-P

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

Proposed Action: The Commission is considering the joint petition of Atlas, 5LOOP, LLC; Atlas Connectivity, LLC, et. al. requesting transfer of control of the cable system, franchise and facilities of Keene Valley Video Inc. (KVVI).

Statutory authority: Public Service Law, section 222

Subject: Transfer of control of Keene Valley Video Inc.

Purpose: To ensure performance in accordance with applicable cable laws, regulations and standards and the public interest.

Substance of proposed rule: The Public Service Commission is considering a petition filed by 5LOOP, LLC; Atlas Connectivity, LLC; Nicholville Telephone Company, Inc.; SLIC Network Solutions, Inc.; and Keene Valley Video Inc., on February 26, 2018, for approval of a transfer of control of Keene Valley Video Inc. The franchise is for the Town of Keene, New York. Atlas proposes to upgrade the systems to provide faster broadband services than Keene Valley Video currently provides. 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 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-V-0132SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Waiver of PSC Regulations, 16 NYCRR Sections 86.3(a)(1), (2), (b)(2), 86.4(b) and 88.4(a)(4)

I.D. No. PSC-18-18-00010-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 motion filed by the New York Power Authority for a waiver of certain provisions of 16 NYCRR regarding requirements for applications under PSC Article VII for Certificates of Environmental Compatibility and Public Need.

Statutory authority: Public Service Law, sections 4, 5 and 122

Subject: Waiver of PSC regulations, 16 NYCRR sections 86.3(a)(1), (2), (b)(2), 86.4(b) and 88.4(a)(4).

Purpose: To ensure that adequate maps and system studies support the application.

Substance of proposed rule: The Public Service Commission is considering a motion filed by the Power Authority of New York, doing business as New York Power Authority (NYPA), on April 5, 2018, for a waiver or partial waiver of certain requirements for the content of an application for authority to rebuild and operate an electric transmission line pursuant to a Certificate of Environmental Compatibility and Public Need (Certificate) under Public Service Law Article VII. NYPA filed an Article VII petition on April 5, 2018, proposing to rebuild its existing 230 kilovolt (kV) Moses-Adirondack 1 and 2 transmission lines, which extend approximately 86 miles from the St. Lawrence Power Project's Robert Moses Power Dam Switchyard (Moses Switchyard) in the Town of Massena, St. Lawrence County, to the Adirondack Substation in the Town of Croghan, Lewis County and to construct certain upgrades to the Moses Switchyard and the Adirondack Substation (the Project). NYPA proposes to divide the Project into two phases. Phase One would consist of replacing 78-miles of the two lines currently configured as single circuits on separate wooden H-frame structures with two single-circuit lines on steel monopoles. NYPA intends to design and construct the transmission lines to operate at 345 kV. The initial operating voltage will be 230 kV. Phase Two would involve replacing the remaining length of the transmission lines with two single circuits on steel monopoles, and upgrading the Moses Switchyard and the Adirondack Substation to operate at 345 kV. Prior to commencing Phase Two, the Applicant intends to submit an Environmental Management and Construction Plan and a petition to amend the Certificate to permit the Project to operate at 345 kV. Except for an approximately one-mile reroute at the State University of New York at Canton campus, NYPA proposes to construct the Project entirely within an existing right-of-way that it maintains. NYPA specifically seeks waivers of 16 NYCRR §§ 86.3(a)(1), 86.3(a)(2), 86.3(b)(2), 86.4(b) and 88.4(a)(4), relating to the filing of certain maps, aerial photographs, and a System Reliability Impact Study. As to the maps of the proposed facilities, NYPA proposes to use base maps from different sources and at different scales than those specified in 16 NYCRR § 86.3. NYPA also proposes to depict proposed potential alternative route segments using an overlay on aerial photography instead of the NYSDOT maps listed in 16 NYCRR 86.4. NYPA proposes to use aerial photographs taken in 2015 in lieu of photographs taken within six months as indicated by 16 NYCRR § 86.3(b)(2). As to the System Reliability Impact Study, NYPA proposes to fulfill the requirements of 16 NYCRR 88.4(a)(4) by providing a System Impact Study (SIS) for Phase One and requests either clarification that the Commission's regulations do not require an SIS related to Phase Two at this time or, alternatively, waiver of the requirement to provide an SIS regarding Phase Two until such time NYPA seeks to commence the second phase. The full text of the motion 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-T-0207SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Residential Electric Vehicle Charging

I.D. No. PSC-18-18-00011-P

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

Proposed Action: The Commission is considering a petition made by Consolidated Edison Company of New York, Inc., stating that its current tariff, P.S.C. No. 10—Electricity, complies with Public Service Law (PSL) section 66-o (Residential Electric Vehicle Charging).

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Residential Electric Vehicle Charging.

Purpose: To effectuate service enhancements mandated by State Legislation.

Substance of proposed rule: The Commission is considering a petition made by Consolidated Edison Company of New York, Inc. (Con Edison), on March 30, 2018, stating its current tariff, P.S.C. No. 10 – Electricity, complies with Public Service Law (PSL) § 66-o that was effectuated through Chapter 337 of the Laws of 2017. Among other requirements, PSL § 66-o mandates utilities to file a residential tariff for the purpose of recharging eligible plug-in electric vehicles (PEVs) on or before April 1, 2018. Con Edison states that it currently has in effect two residential tariff provisions (Special Provision E and Special Provision F) under Service Classification No. 1 – Residential and Religious which satisfy and comply with the PSL § 66-o requirements. In addition to the two special provisions, Con Edison states it has also undertaken other PEV-related programs: the SmartCharge New York Program and the Business Incentive Rate Program. The full text of the filing 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-E-0206SP4)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Residential Electric Vehicle Charging

I.D. No. PSC-18-18-00012-P

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

Proposed Action: The Commission is considering a petition by Niagara Mohawk Power Corporation d/b/a National Grid, stating that its current tariff, P.S.C. No. 220 — Electricity, complies with Public Service Law (PSL) section 66-o (Residential Electric Vehicle Charging).

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Residential Electric Vehicle Charging.

Purpose: To effectuate service enhancements mandated by State Legislation.

Substance of proposed rule: The Commission is considering a petition made by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid or the Company), on March 30, 2018, stating its current tariff, P.S.C. No. 220 – Electricity, complies with Public Service Law (PSL) § 66-o that was effectuated through Chapter 337 of the Laws of 2017. Among other requirements, PSL § 66-o mandates utilities to file a residential tariff for the purpose of recharging eligible plug-in electric vehicles (PEV) on or before April 1, 2018. National Grid states that it currently has in effect Special Provision L of Service Classification No. 1 – Residential Optional Time-of-Use Delivery and Commodity Rate which satisfy and comply with PSL § 66-o. In regard to the data reporting requirements under PSL § 66-o, National Grid proposes to file annually with the Commission: how much electricity the customers on the tariff are consuming for their electric vehicle charging; the estimate of how many electric vehicles are in the Company's service territory; and any future plans for electric vehicles that would encourage the adoption of electric vehicles or lower the cost of sub-metering their load. The full text of the filing 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-E-0206SP6)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Motion Requesting Program Eligibility Clarification and to Make Clarifying Edits Related to Case 16-E-0060 and Rider Q

I.D. No. PSC-18-18-00013-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 filing by Consolidated Edison Company of New York, Inc., requesting clarification of the January 19, 2018 Order Approving Tariff Amendments with Modifications, and requesting to make related clarifying edits.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Motion requesting program eligibility clarification and to make clarifying edits related to Case 16-E-0060 and Rider Q.

Purpose: To test standby rate designs to facilitate distributed generation growth.

Substance of proposed rule: The Commission is considering a filing by Consolidated Edison Company of New York, Inc. (Con Edison or the Company), on March 7, 2018, requesting clarification of the Commission's January 19, 2018 Order Approving Tariff Amendments with Modifications (January 19 Order) and make any necessary revisions to P.S.C. No. 10 – Electricity (Electricity Tariff). The January 19 Order approved, with modifications, Con Edison's proposal to implement Rider Q – Standby Rate Pilot (Rider Q). Rider Q is a pilot program to test innovative standby rate designs for the purpose of facilitating the growth of distributed generation resources. Rider Q was developed in compliance with Appendix 20 of Con Edison's currently effective electric rate plan. In the January 19 Order, the Commission directed the Company to revise its Electricity Tariff and imposed certain data collection requirements. Con Edison requests permission to make clarifying revisions to the pilot program applicability, eligibility, and NOx limitation requirements for Rider Q participants. The clarifications would allow for non-CHP or non-battery resources to participate in the program, allow current maintained and reported metered data to satisfy the data reporting requirements, and provide an option for NOx limitations for new or expanding generators in specified zip codes to either satisfy local air quality criteria or have a maximum NOx emissions of 1.6 lbs/MWH. The full text of the filing 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.

(16-E-0060SP5)

Department of State

NOTICE OF ADOPTION

Establishment of the Identity Theft Prevention and Mitigation Program

I.D. No. DOS-52-17-00013-A
Filing No. 376
Filing Date: 2018-04-16
Effective Date: 2018-05-02

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

Action taken: Repeal of Parts 4600 and 4601 of Title 21 NYCRR; renumbering of Parts 4602-4605 and 4607-4608 of Title 21 NYCRR to Parts 220-225 of Title 19 NYCRR; and addition of Part 226 to Title 19 NYCRR.

Statutory authority: Executive Law, sections 91, 94-a(3)(6) and (9)

Subject: Establishment of the Identity Theft Prevention and Mitigation Program.

Purpose: To facilitate the timely provision of information and assistance to victims of identity theft.

Text of final rule: A new Chapter VIII is added to Title 19; Parts 4600 and 4601 of Title 21 are repealed; Parts 4602-4605 and 4607-4608 of Title 21 are renumbered as Parts 220-225 of Title 19, respectively; and a new Part 226 is added to Title 19 to read as follows:

CHAPTER VIII
Division of Consumer Protection
Part 226
Identity Theft Prevention and Mitigation Program
§ 226.1 Purpose.

The Division of Consumer Protection was created within the Department of State to protect the people of New York State from economic harm resulting from unscrupulous and questionable business practices. The Division is authorized to promulgate rules and regulations to achieve this objective, including the authority to establish and administer the Identity Theft Prevention and Mitigation Program. The Program is intended to: (1) inform consumers about how to protect their personal identifying information; (2) help consumers prevent identity theft, including taking steps to protect their identities once their personal identifying information has been compromised, and (3) help consumers mitigate issues related to the theft of their identities. These regulations establish requisites and procedures to provide consumers with the means to protect themselves against identity theft and to assure that appropriate assistance and complaint resolution mechanisms are in place for the protection and repair of their financial and credit history in the event their personal identifying information has been compromised.

§ 226.2 Definitions.

(a) Victim of identity theft. The term "victim of identity theft" shall mean any natural person whose personal information has been wrongfully obtained by another or is used in some way that involves fraud or deception, typically for economic gain.

(b) Personal information. The term "personal information" shall mean any information concerning a natural person which, because of name, number, personal mark, or other identifier, can be used to identify such natural person.

(c) Consumer Reporting Agency. The term "consumer reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports or investigative consumer reports to third parties.

(d) Consumer credit reporting agency. The term "consumer credit reporting agency" means a consumer reporting agency that regularly engages in the practice of assembling or evaluating and maintaining, for the purpose of furnishing consumer credit reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, public record information and credit account information from persons who furnish that information regularly and in the ordinary course of business.

(e) Division. The term "Division" shall mean the Division of Consumer Protection.

(f) Department. The term "Department" shall mean the Department of State.

(g) Program. The term "Program" shall mean the Identity Theft Prevention and Mitigation Program.

§ 226.3 Consumer Assistance.

Persons requesting assistance from the Division to respond to an identity theft concern shall complete a consumer complaint assistance form as prescribed by the Division. The Division, where appropriate, may undertake any activities necessary to help a victim of identity theft obtain any such information and assistance from any entity identified in Executive Law § 94-a3(9)(ii), including, but not limited to, consumer credit reporting agencies, as is necessary to prevent the utilization of such consumer's personal identifying information in a way that inures to such consumer's economic detriment, or to mitigate the impacts when such consumer's personal identifying information has been used to such consumer's economic detriment.

§ 226.4 Consumer Educational Materials.

The Division shall make available upon request to any person identifying themselves as a victim of identity theft information that provides such victims with guidance in understanding and addressing concerns surrounding an identity theft crime.

§ 226.5 Request for Information.

When the Division of Consumer Protection acts on behalf of a consumer to investigate, mediate and/or mitigate an identity theft complaint, the Division may require substantiating and/or supporting documentation and/or records from any State agency, including the Division of State Police, State public authority, municipal department or agency, county or municipal police department, and any non-governmental entity, including, but not limited to, consumer credit reporting agencies. A consumer credit reporting agency shall comply with the written request of the Division for such documentation and/or records within 10 business days of service of such request, consistent with applicable laws and this Part.

§ 226.6 Consumer Credit Reporting Agency Filing.

Each consumer credit reporting agency operating within the State shall file with the Department such information as the Division finds necessary to effectively administer the Program. Such information shall be disclosed by filing a form provided by the Department and entitled "Consumer Reporting Agency Notice and Contact Information." Such form shall include, but not be limited to, the following information, which shall be maintained and updated by the filer annually or immediately upon a material or substantive change to the information provided pursuant to this section:

(a) The name of the consumer credit reporting agency.

(b) The principles and officers of the consumer credit reporting agency.

(c) The direct contact information for an individual(s) within the consumer credit reporting agency available to the Division during regular business hours.

(d) The direct contact information for an individual(s) within the consumer credit reporting agency available to the Division within 24 hours of a notification of a security breach pursuant to GBL § 399-aa(8)(a).

(e) Contact information available to consumers, including, the consumer credit reporting agency's web address, telephone number and email address.

(f) A listing of all proprietary products offered by the consumer credit reporting agency to consumers for the prevention or mitigation of identity theft, any and all fees associated with the purchase of or subscription to such products, and the contractual provisions and disclosures in relation to such purchase or subscription, including, but not limited to: scope of services; liability for negligent or erroneous provision of services, and cancellation requisites.

(g) A listing and description of all business affiliations and contractual relationships with any other entities, where such business affiliations or contractual relationships relate to the provision of any products or services advertised to consumers as products or services available for the prevention or mitigation of identity theft.

(h) The consumer credit reporting agency's DUNNS number.

§ 226.7 Consumer Information.

Any advertisements or other material promoting proprietary products offered to consumers by a consumer credit reporting agency for the prevention of identity theft must, in addition to other applicable laws, prominently disclose any and all fees associated with the purchase or use of such product, including, if offered on a trial basis, any and all fees charged for its purchase or use after the trial period and the requisites of cancellation of such continued use.

§ 226.8 Violations.

A violation of any of the rules set forth in this Part shall be referred to the Attorney General, Department of Financial Services and/or any other appropriate law enforcement or regulatory entity for action.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 226.6 and 226.7.

Text of rule and any required statements and analyses may be obtained from: David Mossberg, NYS Department of State, One Commerce Plaza, Albany, NY 12231, (518) 474-6740, email: david.mossberg@dos.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.

Non-substantive changes were made in Section 226.6 by providing more specificity as to when a covered consumer credit reporting agency is required to update contact information required pursuant to that Section. This amendment is a non-substantive change designed to provide clear direction to those effected by the rule, and does not materially alter the rule's purpose, meaning or effect.

An additional non-substantive change was made in Section 226.7 to clarify that this Section does not alter an advertiser's obligation to otherwise comply with any other applicable provision relating, in part, to advertising and promotional materials. The change was made to add clarity for New York consumers so that they would know what at a minimum must be disclosed, in addition, to other requirements that might be applicable. This amendment is a non-substantive change designed to provide clear direction to those effected by the rule, and does not materially alter the rule's purpose, meaning or effect.

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 Division of Consumer Protection (Division) at the Department of State (Department) received comments from two entities regarding this proposed rule. Both sets of comments generally supported the proposal, but raised specific concerns with respect to, among other things, preemption by federal law and efficacy of the regulations. The Division has evaluated these comments and responds below as indicated. Other comments were general in nature and did not warrant reply or support changes to the rule making.

The Rule's Definitions

Both comments forwarded to the Division raised concerns regarding the definition of the terms "Consumer Reporting Agency" (CRA) and "Consumer Credit Reporting Agency" (CCRA). One comment asserted that there is no need for two definitions, rather the regulation should be imposed upon all Consumer Reporting Agencies. Whereas, the other response called upon the Division to "…narrow the CCRA definition so that it applies only to CRAs that: (1) assemble or evaluate, and maintain, files on more than 50,000 New York consumers; and (2) regularly provide consumer credit reports on New York consumers to persons regulated by New York regulators."

The Division finds that these two definitions are required for the regulatory establishment of the Identity Theft Prevention and Mitigation program at large. The Rulemaking's prescribed reporting criteria for CCRAs, and not for CRAs is intentional, as the CCRAs are the institutions compiling and asserting a consumer's financial imprint. The specified financial information creates a higher standard of care for the purpose of identity theft prevention and mitigation, as the great loss any victim of such theft can suffer is overwhelmingly financial. Nonetheless, CRAs provide for the dissemination of consumers' personal private information and as such, where appropriate, should be part of any mitigation efforts the Division of Consumer Protection engages in on behalf of New York identity theft victims. Accordingly, both definitions are required to provide a meaningful Identity Theft Prevention and Mitigation program for all New Yorkers; the Division has therefore decided not to change the definitions in response to these comments.

Two comments argued the definitions of "victim of identity theft" and "personal information' are too broad. Specifically, one comment suggested "personal information" should be specified as "non-public personal information." However, the definitions are encompassing for the Identity Theft Prevention and Mitigation Program to effectively help consumers prevent identity theft. The definitions of "victim of identity theft" and "personal information" are written so the Program can act proactively. Again, to provide the most robust program to New Yorkers, the Division has determined not to impose narrower definitions as suggested by the comments.

Preemption Concerns

Both comments contained proposed alternatives based upon an argument sounding in preemption by the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq. Having evaluated these comments, and as explained below, the Division does not believe that this rulemaking is barred by federal preemption.

One comment about Proposed Rule Section 226.5 states, "requests for information about a New York resident by the NYDOS from a consumer reporting agency can only be satisfied IF the request is in compliance with 15 U.S.C. § 1681b. There is no state law exception to this federal statutory requirement." The applicable subpart of the Fair Credit Reporting Act, Section 1681b(a)(2), states, "In general … any consumer reporting agency may furnish a consumer report under the following circumstances and no other … In accordance with the written instructions of the consumer to whom it relates."

Under Proposed Rule Section 226.5, the Division of Consumer Protection, when acting on behalf of a consumer to investigate or mediate an identity theft complaint, may require substantiating and/or supporting documentation and/or records from consumer credit reporting agencies. This request for documentation or records may or may not include consumer reports, but when such request is made, it is pursuant to and in accord with the consumer's written instructions with the Division, per the consumer complaint assistance form referenced to Proposed Rule Section 226.3. Insomuch as when the Division makes a request pursuant to this Part, if it finds the same to be appropriate, for a specific consumer report, such request is done in accord with applicable law; as such the Division does not find any change to the rule is required because of a preemption issue.

One comment suggested, "Proposed Section 226.5 applies not just to CCRAs, but to a wide range of government and non-governmental entities. As such, Proposed Section 226.5 is, in part, preempted by the FCRA [Fair Credit Reporting Act]." The comment, citing FCRA Section 1681g(e), continues as follows:

FCRA requires that a business entity that contracts with an alleged perpetrator of identity theft to comply with prescribed steps for verifying the identity of the victim and the claim of identity theft before providing the victim or a law enforcement agency specified by the victim with copies of business records relating to transactions and accounts that resulted from the alleged identity theft.

The Division agrees Proposed Section 226.5 applies to government and non-governmental entities and that FCRA Section 1681g(e) requires a business entity 'to comply with prescribed steps to verify the victim's identity and claim before providing the victim or law enforcement agency specified by the victim with copies of business records.' The Division, however, does not agree that FCRA Section 1681g(e) preempts Proposed Rule Section 226.5.

Proposed Section 226.5 states the Division of Consumer Protection, when acting on behalf of a victim, may collect substantiating or supporting documentation of identity theft from government and non-government entities. The Division will only act on behalf of a victim when the victim submits a consumer complaint assistance form to the Division, as stated above and in Proposed Section 226.3. As such, the Division will have the victim's authorization before acting on his or her behalf. Moreover, the Proposed Regulation does not supplant the federal responsibilities business entities must follow before responding to the Division's request for documents. It is the Division's position that, while Proposed Rule Section 226.5 does apply to a wide range of non-governmental entities, it is not preempted by FCRA Section 1681g(e).

Two comments requested the 10-day deadline in Section 226.5 be extended to either 20 or 30 days because, (1) a longer timeline would be necessary to comply with victim verification and authorization, and (2) it is preempted by the 30-day provision in FCRA Section 1681g(e).

First, the Division believes 10 days is a reasonable amount of time for a CCRA to comply with a request from the Division. The Division notes that this timeframe may be extended based on an agreement between the Division and the entity involved, as may be appropriate. Second, as stated above, Proposed Rule Section 226.5 is not preempted by the FCRA, in part because the request does not cover the same records that are covered by the FCRA.

The comment further stated the Division is preempted because FCRA Section 1681t(b)(1)(G) states that no requirement or prohibition may be imposed under State law with any subject matter regulated under FCRA Section 1681g(e). The Division believes FCRA Section 1681t(b)(1)(G) does not apply to this Proposed Rule because the rule does not impose a requirement or prohibition relating to either (1) the ability of victims of identity theft to request and obtain records from business entities documenting fraudulent transactions, or (2) the obligation of business entities to provide copies of the same records covered by the federal law to the victim no later than 30 days after receiving such a request. In sum, the Proposed Rule does not change a CCRAs obligation to provide information to victims.

Other Concerns

One comment received requested, "…the Division limit the requirements of Proposed Section 226.5 to circumstances involving actual or attempted fraud. Absent such a limitation, Proposed Section 226.5 may prove frustrating and unhelpful to consumers." Pursuant to Proposed Rule Section 226.5, the Division may request information upon an identity theft complaint by a consumer. The Division finds that being able to provide a source for consumers to coordinate and mitigate possible identity theft, regardless of an "actual or attempted fraud", will be valuable to New York-

ers, and does not believe that the comment supports amendment to the rule. If the rule were amended to only instances of "actual or attempted fraud", the Division would not be in fact establishing a prevention and mitigation program as envisioned by the Executive Law.

One comment expressed concern that "Proposed Section 226.5 does not state whether the Division intends to provide the requested information to the consumer whose complaint is being investigated." The Division does not plan to provide the requested information to complainants. The Division will retain the information to facilitate its investigation or mediation of an identity theft complaint. The Division will use whatever information is obtained, from whatever source, to carry out the intent of the Executive Law and will do so in compliance with applicable law. Another comment expressed the concern that "Proposed Section 226.5 lacks any requirement that the Division verify and authenticate a complaining consumer's identity." The Division plans to address this issue by verifying a complaining consumer's identity through its prescribed assistance form, per Proposed Section 226.3.

The Division received a couple of comments concerning Proposed Rule Section 226.7. The comments question the efficacy of this section given other federally mandated disclosures. The Division believes that requiring these express disclosures, in addition to any other applicable requirements, furthers the legislative intent in promoting an Identity Theft Prevention and Mitigation Program and provides clear and meaningful assistance. To ensure that that disclosures assist New Yorkers, an amendment to the rule has been made to clarify that disclosures are in addition to any other applicable law, as appropriate.

Concerns about Consumer Credit Reporting Agency Filing

Two comments expressed concern that Proposed Section 226.6(g) requires CCRAs to submit confidential, non-public, sensitive, and proprietary information that may subject them to competitive harm. The comments also suggest this filing requirement does not promote consumer protection or education. The proposed regulations require such information (proprietary products offered by CCRA and business affiliations and contractual relationships), in part, because such information identifies additional parties that are privy to consumer information and assists the Division to prevent or mitigate an instance of consumer identity theft.

With respect to the alleged competitive harm, the Division notes that dissemination of this information is subject to New York's Freedom of Information Law (FOIL), which contains appropriate safeguards against certain public disclosures. N.Y. Pub. Off. Law § 87(d); N.Y. Pub. Off. Law § 89. As stated elsewhere, the Division will use the information gathered pursuant to this Part in accordance with all applicable law, which may also include appropriate non-disclosure of information pursuant to FOIL.

Impact Statements and Flexibility Analyses

One comment asserted that the "Regulatory Impact Statement omits any estimate of costs for certain entities covered by Proposed Section 226.5, specifically non-governmental entities other than CCRAs."

Pursuant to Proposed Section 226.5, non-governmental entities may be required to provide pertinent documentation. The Regulatory Impact Statement, however, only indicates that estimated costs to CCRAs to comply with the rule will be nominal. The Regulatory Impact Statement does not specifically mention estimated costs to other "non-governmental entities," but the intent was and is for the ''estimated nominal costs'' to apply to CCRAs and to other non-governmental entities.

One comment asserted "the proposed rule's Regulatory Flexibility Analysis and Rural Area Flexibility Analysis lack discussion of adverse impacts on local governments, small businesses, and public and private entities in rural areas."

The nature and purpose of the rule is for businesses to cooperate with the Division, as an enforcement agency, in informing consumers and helping consumers identify and mitigate issues related to identity theft. The proposed rule does not ask for additional records that non-governmental entities or CCRAs would not already have readily available.

It is not apparent from the nature and purpose of the rule that it will have any substantial adverse impact on local governments, small businesses, or public and private entities in rural areas.

Workers' Compensation Board

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Procedures Under Workers' Compensation Law 21-a

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

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

Proposed Action: This is a consensus rule making to amend 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 a clarifying change.

Text of proposed rule: Paragraph (2) of subdivision (b) of section 300.22 of Title 12 NYCRR is hereby amended to read as follows:

(2) Reports required by section 110 of the Workers' Compensation Law. A mandatory first report of injury filed electronically by the carrier, special fund, or TPA pursuant to [sub]paragraph (1) of this subdivision shall satisfy the employer's obligation under subdivision (2) of section 110 of the Workers' Compensation Law when it is filed electronically within the time required in subdivision (2) of section 110. However, a report of injury filed by an employer in satisfaction of the requirements of subdivision (2) of section 110 of the Workers' Compensation Law is not a mandatory first report of injury unless such report is filed electronically by a carrier, special fund, or TPA in the format prescribed by the chair and contains all data elements prescribed by the chair as required in paragraph (1) of this subdivision.

Paragraph (1) of subdivision (c) of section 300.22 of Title 12 NYCRR is hereby amended to read as follows:

(1) Initial controversy. Unless submitted as a first report of injury in accordance with subparagraph ([a]*b*)(1)(i) or (ii) of this section, the initial notice of controversy required by paragraph (a) of subdivision (2) of section 25 of the Workers' Compensation Law shall be filed electronically with the chair either on or before the 18th day after the disability event or within 10 days after the employer has knowledge of the disability event, whichever period is the greater. In addition to the notice to claimant and claimant's attorney or licensed representative set forth in this subdivision, such notice shall be served in accordance with section 300.38 of this Part.

Paragraph (3) of subdivision (c) of section 300.22 of Title 12 NYCRR is hereby amended to read as follows:

(3) Notice that right to compensation is not controverted, but payment has not begun. Unless submitted as a first report of injury in accordance with subparagraph ([a]*b*)(1)(ii) of this section, if the right to compensation is not controverted but payment has not begun because no compensation is presently due and the claimant has compensable lost time, the carrier, special fund, or TPA shall file electronically notice with the chair on or before the 18th day after the disability event or within 10 days after the employer has knowledge of the disability event, whichever period is greater.

Paragraph (1) of subdivision (e) of section 300.22 of Title 12 NYCRR is hereby amended to read as follows:

(1) If the carrier, special fund, or TPA is unsure of the extent of its liability for a claim of compensation, and elects to make temporary payments of compensation or payment for prescribed medicine pursuant to section 21-a of the Workers' Compensation Law, the carrier, special fund, or TPA may, [at any time prior to or after] *when* filing a notice pursuant to subdivision (c) of this section, and prior to any decision of the board establishing or disallowing the claim, begin temporary payments of compensation and/or prescribed medicine has commenced. Such notice shall be filed electronically in the format prescribed by the chair and shall contain the data elements prescribed by the chair. A notice of payments made pursuant to section 21-a of the Workers' Compensation Law that contains the relevant elements, as prescribed by the chair, shall be transmitted to the claimant and his or her attorney or licensed representative, if any, within one business day of the date it is filed electronically with the chair. Payments of temporary compensation and/or prescribed medicine may be made without prejudice and without admitting liability.

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

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

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

Consensus Rule Making Determination

The proposed changes are ministerial. They do not change the meaning or function of any of the amended regulations. It is believed that there is no basis for objecting to the proposed amendments.

Job Impact Statement

These amendments correct typographical citation errors and conform the regulation to a 2014 subject number. These changes should have no adverse impact on jobs.