

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 Audit and Control

NOTICE OF ADOPTION

Reporting of Miscellaneous Abandoned Property

I.D. No. AAC-50-18-00001-A

Filing No. 300

Filing Date: 2019-03-27

Effective Date: 2019-04-17

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

Action taken: Repeal of section 115.1; addition of new section 115.1; amendment of section 115.2 of Title 2 NYCRR.

Statutory authority: Abandoned Property Law, section 1414

Subject: Reporting of Miscellaneous Abandoned Property.

Purpose: To update and clarify requirements related to the reporting of miscellaneous abandoned property.

Text or summary was published in the December 12, 2018 issue of the Register, I.D. No. AAC-50-18-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.ny.gov

Assessment of Public Comment

The agency received no public comment.

Education Department

NOTICE OF EXPIRATION

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

Teacher Certification in Health Education

I.D. No.	Proposed	Expiration Date
EDU-13-18-00027-P	March 28, 2018	March 28, 2019

Department of Financial Services

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

I.D. No. DFS-16-19-00009-EP

Filing No. 308

Filing Date: 2019-04-02

Effective Date: 2019-04-02

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

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

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: Chapter 472 of the Laws of 2008, which requires mortgage loan servicers to be registered with the Superintendent of Financial Services, went into effect on July 1, 2009. These regulations implement the registration requirement and inform servicers of the details of the registration process so applicants can 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 implementation of such loan program so that the anticipated energy efficiency benefits can be realized without undue regulatory burden.

The timely registration of mortgage loan servicers and the granting of exemptions from registration, as applicable, are necessary to protect both borrowers and other participants in the home mortgage lending market. Accordingly, it is imperative that Part 418 of the Superintendent's Regulations and Supervisory Procedures MB 109 and MB 110 be promulgated on an emergency basis for the public's general welfare.

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/proposed rule (Full text is posted at the following State website: https://www.dfs.ny.gov/industry_guidance/regulations): 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 depository 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 as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire June 30, 2019.

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

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.

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. Alternative.

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

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

9. Federal Standards.

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

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

10. Compliance Schedule.

The emergency regulation will become effective on April 1, 2019. 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 required 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 Rule:

The regulation 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 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 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 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 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 through 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 minimis 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 through 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 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 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 regulations.

Department of Health

EMERGENCY RULE MAKING

Controlled Substances

I.D. No. HLT-07-19-00006-E

Filing No. 302

Filing Date: 2019-03-29

Effective Date: 2019-03-29

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

Action taken: Amendment of section 80.3 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3307(5)

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: On September 28, 2018, the Drug Enforcement Administration recently issued a final order placing certain drug products that have been approved by the U.S. Food and Drug Administration (FDA) and which contain cannabidiol (CBD) in schedule V of the Controlled Substances Act. Specifically, the order places FDA-approved drugs containing CBD derived from cannabis and no more than 0.1 percent tetrahydrocannabinols in schedule V. These FDA-approved CBD products have been found to be effective for the treatment of seizures associated with severe and dangerous forms of epilepsy that are notoriously treatment-resistant. This regulatory amendment is necessary to immediately reclassify these products as schedule V substances. This will allow patients in New York state to be prescribed these medications as soon as possible. Any delay in reclassifying these FDA-approved products containing CBD would limit access to these medications and could put patients at risk.

Subject: Controlled Substances.

Purpose: To reclassify cannabidiol (CBD) from a Schedule I controlled substance to a Schedule V controlled substance.

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by section 3307 of the Public Health Law (PHL), Section 80.3 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective upon filing with the Secretary of State, to read as follows:

Subdivision (b) of Section 80.3 is amended to read as follows:

(b) Reclassifications.

(1) The following drugs listed in schedule II(c) of section 3306 of the Public Health Law are hereby reclassified as schedule III substances.

* * *

(2) The following drug classified under schedule I of section 3306 of the Public Health Law is hereby reclassified as a schedule V substance:

a drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-07-19-00006-P, Issue of February 13, 2019. The emergency rule will expire May 27, 2019.

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

Regulatory Impact Statement**Statutory Authority:**

The Commissioner of Health is authorized pursuant to Section 3307(5) of the Public Health Law (PHL) to reclassify, by regulation or emergency regulation, any compound, mixture or preparation containing any substance listed as a schedule I substance, to a schedule II, III, IV or V substance, if that same compound, mixture or preparation is redesignated or rescheduled other than under schedule I under the federal Controlled Substance Act, or deleted under the federal Controlled Substances Act.

Legislative Objectives:

Section 3307(5) of the Public Health Law permits the Commissioner to respond quickly and flexibly to actions by the U.S. Drug Enforcement Agency (DEA) that reclassify scheduled substances, particularly in circumstances where a new medical use of a scheduled substance has been approved by the U.S. Food and Drug Administration (FDA) and is permitted as a result of the reclassification. The purpose of this statute is to ensure that patients in New York can have access to medication that would otherwise be prohibited under the Public Health Law.

Needs and Benefits:

On September 28, 2018, the DEA issued a final order placing certain drug products that have been approved by the U.S. Food and Drug Administration (FDA) and which contain cannabidiol (CBD) in schedule V of the Controlled Substances Act. Specifically, the order places FDA-approved drugs containing CBD derived from cannabis and no more than 0.1 percent tetrahydrocannabinols in schedule V. These FDA-approved CBD products have been found to be effective for the treatment of seizures associated with severe and dangerous forms of epilepsy that are notoriously treatment-resistant. This regulation is necessary to immediately reclassify these products as schedule V substances, allowing patients in New York state to be prescribed these medications as soon as possible.

Costs:**Costs to the Regulated Entity:**

The Department of Health (Department) does not anticipate any additional costs to regulated entities.

Costs to Local Government:

This regulation does not require local governments to perform any additional tasks; therefore, it is not anticipated to have an adverse fiscal impact.

Costs to the Department of Health:

The Department does not anticipate any additional costs.

Local Government Mandates:

This amendment does not impose any new programs, services, duties or responsibilities on local government.

Paperwork:

The department does not anticipate any change in required paperwork by the adoption of this amendment.

Duplication:

No relevant rules or legal requirements of the State government duplicate or conflict with this rule. The amendment reflects federal reclassification of FDA approved cannabidiol substances.

Alternatives:

An alternative to this regulatory amendment would be to not reclassify FDA-approved cannabidiol products as schedule V controlled substances. However, by not reclassifying these FDA approved drugs, patients in New York state would not be able to benefit from these medications.

Federal Standards:

The DEA, on September 28, 2018, reclassified FDA approved cannabidiol products as schedule V substances. This regulatory amendment would reflect that change.

Compliance Schedule:

There is no compliance schedule imposed by these amendments, which shall be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The regulation 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 these amendments is not being submitted because amendments 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 other compliance costs imposed on public or private entities in rural areas as a result of the amendments.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments

that they will not have a substantial adverse impact on jobs and/or employment opportunities.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Proposed Major Electric Delivery Revenue Requirement Increase of Approximately \$485 Million (or 4.6% in Total Revenues)

I.D. No. PSC-16-19-00005-P

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

Proposed Action: The Commission is considering a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) to make various changes to the rates, charges, rules and regulations contained in its Schedules P.S.C. Nos. 10 and 12—Electricity.

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

Subject: Proposed major electric delivery revenue requirement increase of approximately \$485 million (or 4.6% in total revenues).

Purpose: To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.

Public hearing(s) will be held at: 1:00 p.m., June 25, 2019 at Yonkers Library-Grintin Will Branch, 1500 Central Park Ave., Yonkers, NY. (Public Statement Hearing Schedule)*

*On occasion, there are requests to reschedule or postpone hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 19-E-0065.

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

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

Substance of proposed rule: The Commission is considering a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison or the Company) on January 31, 2019, to increase its electric delivery revenues for the rate year ending December 31, 2020, by approximately \$485 million (8.6% increase in delivery revenues, or 4.6% increase in total revenues).

Con Edison's requested electric revenue increase, as well as rate design changes, would result in an average residential monthly total bill increase of \$7.74 (8.6% increase on the delivery bill, or a 5.6% on the total bill) for a customer using 600 kWh per month. The major cost drivers of this rate filing include: increased plant investment, higher property taxes; reduced sales; and an expiring customer credit of \$130 million. The initial suspension period for the proposed filing runs through June 29, 2019.

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: Five days after the last scheduled public hearing.

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.

(19-E-0065SP1)

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

Proposed Major Rate Increase in Con Edison's Gas Delivery Revenues of Approximately \$210 Million (or 9.1% in Total Revenues)

I.D. No. PSC-16-19-00008-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 proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) to make various changes in the rates, charges, rules and regulations contained in its Schedule P.S.C. No. 9—Gas.

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

Subject: Proposed major rate increase in Con Edison's gas delivery revenues of approximately \$210 million (or 9.1% in total revenues).

Purpose: To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.

Public hearing(s) will be held at: 1:00 p.m., June 25, 2019 at Yonkers Library-Grintin Will Branch, 1500 Central Park Ave., Yonkers, NY. (Public Statement Hearing Schedule)*

*On occasion, there are requests to reschedule or postpone hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 19-G-0066.

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

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

Substance of proposed rule: The Commission is considering a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison or the Company) on January 31, 2019, to increase its gas delivery revenues for the rate year ending December 31, 2020, by approximately \$210 million (14.5% increase in delivery revenues, or 9.1% increase in total revenues).

Con Edison's requested gas revenue increase, as well as rate design changes, would result in a total monthly bill increase of about \$17.28 (15.8% increase on the delivery bill, or 10.9% increase on the total bill) for a typical residential heating customer using 100 therms per month. The major cost drivers of this rate filing include: increased investment in infrastructure, including leak-prone pipe main replacement and upgrades to the liquified natural gas plant; increasing property taxes; and increasing operations and maintenance expenses resulting from new service line inspection requirements. The requested increase in gas delivery service revenue is offset by the accelerated refund of federal income tax savings. The initial suspension period for the proposed filing runs through June 29, 2019.

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: Five days after the last scheduled public hearing.

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.

(19-G-0066SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Waiver of Certain Rules, i.e., 5-Year Buildout and 7-Day Installation Requirements Pertaining to Cable Television Franchise

I.D. No. PSC-16-19-00001-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 for certain waivers filed by Frontier Communications of New York, Inc. in connection with a cable television franchise for the Town of Chester, Orange County.

Statutory authority: Public Service Law, sections 215, 216 and 221

Subject: Waiver of certain rules, i.e., 5-year buildout and 7-day installation requirements pertaining to cable television franchise.

Purpose: To determine whether to waive any rules and regulations.

Substance of proposed rule: The Commission is considering a petition filed on March 18, 2019 by Frontier Communications of New York, Inc. (Frontier) for approval of its certificate of confirmation (certificate) for a cable television franchise with the Town of Chester, Orange County (Town).

The certificate, if approved, will enable Frontier to offer advanced broadband services and provide a competitive wireline cable alternative to the monopoly wireline cable provider to some residents of the Town. In addition to facilitating cable competition in certain areas, the proposed franchise agreement would promote broadband deployment at speeds up to 100Mbps and potentially lead to additional network build-out opportunities.

In connection with the proposed cable television franchise, Frontier requested waivers and/or partial waivers of certain cable franchise requirements found in: (1) 16 NYCRR § 895.5(b)(1) and 895.5(c), which requires a five-year build-out of the primary service area; and (2) 16 NYCRR § 895.5(b)(3) and 890(b)(1), which establishes a seven-business day installation interval for providing service to certain dwellings.

Frontier submits that, in light of market realities, the requested waivers are necessary for a new entrant to the market, like Frontier, to compete against well-entrenched cable providers that have existing customer bases and substantially higher market capitalizations than Frontier. Frontier further submits that the requested waivers mitigate the risks and challenges associated with competing with an incumbent service provider with a 100% market share.

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.

(19-V-0192SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

NYSEG and RG&E Implementation Plan and Audit Recommendations

I.D. No. PSC-16-19-00002-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 Audit Implementation Plan submitted by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (NYSEG and RG&E) and whether to order the implementation of audit recommendations.

Statutory authority: Public Service Law, section 66(19)

Subject: NYSEG and RG&E Implementation Plan and audit recommendations.

Purpose: To consider NYSEG and RG&E's Implementation Plan.

Substance of proposed rule: The Public Service Commission is considering the Management and Operations Audit Implementation Plan (Implementation Plan) filed by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (NYSEG and RG&E) on March 11, 2019.

NYSEG and RG&E's Implementation Plan addresses the 81 actionable recommendations contained in the Final Audit Report prepared by Overland Consulting Group as a result of its management and operations audit of the Companies.

The full text of the Implementation Plan 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-M-0610SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Notice of Intent to Submeter Electricity

I.D. No. PSC-16-19-00003-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 notice of intent of Civic Center Community Group Broadway LLC to submeter electricity at 108 Leonard Street, New York, New York.

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

Subject: Notice of intent to submeter electricity.

Purpose: To ensure adequate submetering equipment and consumer protections are in place.

Substance of proposed rule: The Commission is considering the notice of intent filed by Civil Center Community Group Broadway LLC, on March 21, 2019, to submeter electricity at 108 Leonard Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison).

By stating its intent to submeter electricity, Civil Center Community Group Broadway LLC requests authorization to take electric service from Con Edison and then distribute and meter that electricity to its residents. Submetering of electricity to residential residents is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96.

The full text of the notice of intent 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.

(19-E-0198SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Notice of Intent to Submeter Electricity

I.D. No. PSC-16-19-00004-P

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

Proposed Action: The Commission is considering the notice of intent of CabGram Developers to submeter electricity at 215 East 19th, 225 East 19th, 220 East 20th and 230 East 20th Streets, New York, New York.

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

Subject: Notice of intent to submeter electricity.

Purpose: To ensure adequate submetering equipment and consumer protections are in place.

Substance of proposed rule: The Commission is considering the notice of intent filed by CabGram Developers, on February 27, 2019, to submeter electricity at 215 East 19th, 225 East 19th, 220 East 20th and 230 East 20th Streets, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison).

By stating its intent to submeter electricity, CabGram Developers requests authorization to take electric service from Con Edison and then distribute and meter that electricity to its residents. Submetering of electricity to residential residents is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96.

The full text of the notice of intent 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.

(19-E-0130SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Waiver of Certain Rules, i.e., 5-Year Buildout and 7-Day Installation Requirements Pertaining to Cable Television Franchise

I.D. No. PSC-16-19-00006-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 for certain waivers filed by Frontier Communications of New York, Inc. in connec-

tion with a cable television franchise for the Village of Monroe, Orange County.

Statutory authority: Public Service Law, sections 215, 216 and 221

Subject: Waiver of certain rules, i.e., 5-year buildout and 7-day installation requirements pertaining to cable television franchise.

Purpose: To determine whether to waive any rules and regulations.

Substance of proposed rule: The Commission is considering a petition filed on March 8, 2019 by Frontier Communications of New York, Inc. (Frontier) for approval of its certificate of confirmation (certificate) for a cable television franchise with the Village of Monroe, Orange County (Village).

The certificate, if approved, will enable Frontier to offer advanced broadband services and provide a competitive wireline cable alternative to the monopoly wireline cable provider to some residents of the Village. In addition to facilitating cable competition in certain areas, the proposed franchise agreement would promote broadband deployment at speeds up to 100MBps and potentially lead to additional network build-out opportunities.

In connection with the proposed cable television franchise, Frontier requested waivers and/or partial waivers of certain cable franchise requirements found in: (1) 16 NYCRR § 895.5(b)(1) and 895.5(c), which requires a five-year build-out of the primary service area; and (2) 16 NYCRR § 895.5(b)(3) and 890(b)(1), which establishes a seven-business day installation interval for providing service to certain dwellings.

Frontier submits that, in light of market realities, the requested waivers are necessary for a new entrant to the market, like Frontier, to compete against well-entrenched cable providers that have existing customer bases and substantially higher market capitalizations than Frontier. Frontier further submits that the requested waivers mitigate the risks and challenges associated with competing with an incumbent service provider with a 100% market share.

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.

(19-V-0175SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Recommencement of the Levelization Surcharge, Changes to the System Improvement Charge, and a One-Year Stay-Out

I.D. No. PSC-16-19-00007-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 whether to recommence New York American Water, Inc.'s (NYAW) levelization surcharge, to substitute and expand the capital projects eligible for recovery through the System Improvement Charge, and a one-year stay-out.

Statutory authority: Public Service Law, sections 89-b and 89-c

Subject: Recommencement of the levelization surcharge, changes to the System Improvement Charge, and a one-year stay-out.

Purpose: To address the issues in NYAW's petition dated February 25, 2019.

Substance of proposed rule: The Commission is considering a petition by New York American Water, Inc. (NYAW) filed February 25, 2019, seeking approval to recommence the levelization surcharge for Service Area 1 customers, originally effective April 1, 2019, and postponed by the Commission and to substitute and expand the number of capital projects eligible for recovery through the System Improvement Charge (SIC).

NYAW states that if the Commission approves its proposals without modification, it would agree to a stay-out provision under which it would agree not to file a base rate increase application, subject to certain exceptions detailed in the filing, for rates to go into effect before April 1, 2022, after being suspended for the maximum period under the New York State Public Service Law.

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.

(16-W-0259SP9)

Workers' Compensation Board

NOTICE OF ADOPTION

Pharmacy Fee Schedule

I.D. No. WCB-49-18-00010-A

Filing No. 307

Filing Date: 2019-04-02

Effective Date: 2019-10-01

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

Action taken: Amendment of Part 440 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 13-o, 13-p, 117 and 141

Subject: Pharmacy Fee Schedule.

Purpose: Update the pricing methodology for prescription drugs.

Text of final rule: Section 440.1 of Part 440 of Title 12 NYCRR is amended to read as follows:

This pharmaceutical fee schedule is applicable to prescription drugs or medicines dispensed on or after the most recent effective date of section 440.5 of this part for medical care or treatment of an injured employee, regardless of the date of accident or date of disablement. [The date that the prescription drug or medicine is dispensed shall be the applicable date for reimbursement in accordance with this fee schedule.] *Prescription drugs shall be reimbursed in accordance with the fee schedule as set forth section 440.5 in effect on the date the prescription drug is dispensed.* [Prescription drugs or medicines dispensed prior to July 11, 2007, shall be reimbursed at the usual and customary rate in the location where the claimant resides. Prescription drugs or medicines dispensed on or after July 11, 2007, but prior to the most recent effective date of section 440.5 of this part, shall be reimbursed pursuant to the fee schedule in section 440.5 of this part in effect on the date the prescription drug or medicine was dispensed.]

Section 440.2 of Part 440 of Title 12 NYCRR is amended to read as follows:

Section 440.2. Definitions

(a) "Average Wholesale Price" or "AWP" means the average wholesale price of a prescription drug as provided in the most current release of the Red Book published by Thomson Reuters or Medi-Span Master Drug Database by Wolters Kluwer Health or any successor publisher, on the day a prescription drug is dispensed or other nationally recognized drug pricing index adopted by the Chair or Chair's designee.

(b) "Brand name drug" means a drug for which an application is approved under the Federal Food, Drug, and Cosmetic Act Section 505(c).

(c) “Calculated cost” means the Average Wholesale Price for the national drug code of the prescription drug or medicine on the day it was dispensed plus a dispensing fee. For brand name drugs the Calculated cost shall be AWP minus twelve percent of the Average Wholesale price plus a dispensing fee of four dollars. For generic drugs the Calculated cost shall be AWP minus twenty percent plus a dispensing fee of five dollars.

(d) “Contract price” means the maximum amount that a designated pharmacy (as set forth in section 440.3 of this Part) will pay a pharmacy for generic drugs and brand name drugs that have generic versions available (multi-source brands).

([c]e) “Controlled substance” has the meaning provided in Public Health Law Section 3306.

(f) “Formulary” means the New York Workers’ Compensation Formulary which is a list of drugs for work-related injuries that is incorporated by reference in section 441.2 of this Part and that must be used to prescribe medication for all Disability events. The Formulary includes medications available in Phase A and B; and, also includes a list of medications available for Perioperative periods that may be prescribed without Prior Authorization during the applicable Phase or Perioperative period.

([d]g) “Generic drug” means [a drug for which an application is approved under the Federal Food, Drug, and Cosmetic Act Section 505(j)] an FDA-approved drug that is therapeutically equivalent to a brand name drug, as determined by the FDA’s designation of the drug with the Therapeutic Equivalence Evaluation Code designation as an “A” product in the “Approved Drug Products with Therapeutic Equivalence Evaluations” (commonly referred to as the Orange Book), irrespective of dosage for the route of administration (oral, topical or systemic) prescribed. A brand name drug may not be dispensed when a generic version of the same active ingredient[s] is commercially available in a different strength/dosage.

([e]h) “Independent pharmacy” means a pharmacy (including a remote pharmacy) that is not part of a pharmacy chain.

([f]i) “Insurance carrier” means the State Insurance Fund, stock corporations, mutual corporations or reciprocal insurers with which employers have insured, and any special fund maintained by the Board that is responsible for paying for medical treatment and care of injured workers, including but not limited to, the Special Fund for Reopened Cases created and governed by Workers’ Compensation Law Section 25-a and the Uninsured Employers’ Fund created and governed by Workers’ Compensation Law Section 26-a.

([g]j) “Pharmacy benefit management” means the services provided to a self-insured employer or insurance carrier, directly or through another entity, including:

(1) the negotiation of the amount to be paid for prescription medicine or drugs by the self-insured employer or insurance carrier and the amount paid to an independent pharmacy, pharmacy chain, or remote pharmacy dispensing prescription medicine or drugs;

(2) procurement of prescription medicines or drugs to be dispensed to injured employees; or

(3) the administration or management of prescription medicine or drug benefits, including, but not limited to, any of the following:

(i) mail service pharmacy;

(ii) claims processing, *New York Pharmacy Formulary administration and prior authorization review*, retail network contracting and management, or payment of claims to pharmacies for dispensing prescription medicines or drugs;

(iii) patient compliance, therapeutic intervention, or generic substitution programs;

(iv) disease management; and

(v) retrospective review.

([h]k) “Pharmacy benefit manager” means any entity that performs pharmacy benefit management for a self-insured employer or insurance carrier.

([i]l) “Pharmacy chain” means any entity that has been designated by a carrier or self-insured employer under section 440.3(a) of this Part that is:

(1) a group of pharmacies (including remote pharmacies) under common ownership; or

(2) a group of pharmacies (including remote pharmacies) linked to the same company via franchise agreements.

([j]m) “Pharmacy Processing Agent” means person or entity that contracts with a pharmacy as permitted by law, establishing an agent or assignee relationship, to process claims and act on behalf of the pharmacy under the terms and conditions of a contract related to services being billed. Such contracts may permit the agent or assignee to submit billings, request reconsideration, receive reimbursement, and seek medical dispute resolution for the pharmacy services billed.

([k]n) “Remote pharmacy” means any pharmacy that sells anywhere in New York State by mail, phone and/or Internet.

(o) “Repackaging” is the act of taking a finished drug product from the

container in which it was distributed by the original manufacturer and placing it into a different container without further manipulation of the drug. Repackaging also includes the act of placing the contents of multiple containers (e.g., vials) of the same finished drug product into one container when the container does not include other ingredients.

([l]p) “Rural area” means counties within the state having a population of less than two hundred thousand, and the municipalities as are found therein, and in counties having a population of two hundred thousand or greater, “rural areas” means towns with population densities of one hundred fifty persons or less per square mile, and the villages and other municipalities as are found therein. For purposes of this Part, a rural area does not include municipalities which are incorporated cities or villages having a population of 2,500 or more.

([m]q) “Self-insured employer” means an employer permitted by the Chair to pay compensation and medical benefits directly under the provisions of Workers’ Compensation Law Section 50(3), (3-a) or (4).

([n]r) “Third party payor” means any self-insured employer, insurance carrier, nonprofit hospital service plan, health care service plan, health maintenance organization, or any person or other entity which provides payment for medical and related services.

(s) “Usual and Customary price” means the retail price charged to the general public for a prescription drug.

Subdivision (d) of Section 440.3 of Part 440 is amended to read as follows:

(d) In any claim controverted by the self-insured employer or insurance carrier pursuant to Workers’ Compensation Law Section 25(2), where the self-insured employer or insurance carrier will not reimburse the designated independent pharmacy, pharmacy chain, or pharmacy benefits manager for prescription medicines dispensed to the claimant until the controversy is resolved and the claim established, even under the provisions of Workers’ Compensation Law Section 21-a, the self-insured employer or insurance carrier shall provide notice of this decision to the claimant with the notice that the right to compensation is controverted. Such notice shall be in the form prescribed by the Chair, and shall state that the self-insured employer or insurance carrier does not intend to reimburse the independent pharmacy, pharmacy chain, or pharmacy benefit manager it has designated while the claim is controverted and until it is established, and the claimant may elect to use a pharmacy not designated pursuant to this Part during the period that the claim is controverted. *Prior to the filing of such prescribed notice, the claimant may be prescribed and dispensed and the insurance carrier or self-insured employer will be responsible for the cost (as set forth in section 440.5 of this Part) of medications from, as applicable, Phase A, B or the Perioperative section of the Pharmacy Formulary.* In the event the claimant prevails on his or her claim, the self-insured employer or insurance carrier shall reimburse either:

(1) the claimant, the pharmacy processing agent, or other third party that has made payment for such medication; or

(2) the pharmacy from which the claimant has obtained such medication where the pharmacy has not received payment from the claimant, the pharmacy processing agent, or any third party. Such reimbursement shall not exceed the maximum amount set by the fee schedule for controverted claims in section 440.5 of this Part. In the event the self-insured employer or insurance carrier prevails, it shall have no obligation to reimburse the claimant, the pharmacy processing agent, or any third party that paid for such medication, or pharmacy. Nothing in these regulations shall bar the pharmacy or pharmacy processing agent or other third-party payor from seeking payment or reimbursement from the claimant if the claim is not established as otherwise permitted by law.

A new subdivision (g) is added to Section 440.3 of Part 440 to read as follows:

(g) *Any rebates or third-party revenue related to drugs dispensed through a contract for pharmacy benefit management and delivered to the designated pharmacy shall be passed through in full to the insurance carrier or self-insured employer in accordance with contract terms that document the methodology for such transactions. Carriers shall offset bills to insured employers by the amount of any passed-through rebate and third-party revenue. Such rebates and third-party revenue shall be reported at least annually to the carrier or self-insured employer and reported by the carrier or self-insured employer to the Chair upon request.*

Section 440.5 of Part 440 is amended to read as follows:
Section 440.5. Fee schedule

(a)(1)(i) *Prior to October 1, 2019, r[T]he maximum reimbursement or payment for prescription drugs or medicines in uncontroverted cases, including all brand name and generic prescription drugs or medicines, shall be the Average Wholesale Price for the national drug code for the prescription drug or medicine on the day it was dispensed minus twelve percent of the Average Wholesale price plus a dispensing fee of four dollars for brand name drugs or medicines, minus twenty percent of the Average Wholesale Price plus a dispensing fee of five dollars for generic drugs or medicines.*

(ii) On or after October 1, 2019, the maximum reimbursement or payment for New York Workers' Compensation Formulary drugs or when applicable, drugs that received Prior Authorization in accordance with section 441.4 of this Chapter, including all brand name and generic prescription drugs or medicines, shall be the lesser of the calculated cost, the contract price (for designated pharmacies), or the usual and customary price for the prescription drug or medication.

(2) The maximum reimbursement for prescription drugs or medicines dispensed in controverted cases during the period the case is controverted, including all brand name and generic prescription drugs or medicines, shall be twenty-five per cent more than the calculated cost at the time the prescription drugs or medicines are provided if the case was uncontroverted, plus a dispensing fee of seven dollars and fifty cents for generic prescription drugs or medicines and six dollars for brand-name prescription drugs or medicines. Prior to the filing of a prescribed notice denying the claim for workers' compensation, the claimant may be prescribed and dispensed and the insurance carrier or self-insured employer will be responsible for the cost (as set forth in subdivision [a][1] of this section) of medications from, as applicable, Phase A, B or the Perioperative section of the Pharmacy Formulary.

(3) Nothing in this section shall bar a self-insured employer or insurance carrier from providing a lower reimbursement rate or dispensing fee pursuant to a written agreement with any independent pharmacy, pharmacy chain, or pharmacy benefit manager.

(4) The maximum reimbursements or payments for prescription drugs or medicines set forth in this subdivision shall be the maximum payment any individual or entity may receive from any claimant, individual, entity, self-insured employer, insurance carrier, or third party in connection with a claim for workers' compensation benefits.

(b) Fees for pharmacy benefit management shall be established by agreement between the self-insured employer or insurance carrier and the independent pharmacy, pharmacy chain, or pharmacy benefit manager. Fees to a pharmacy processing agent shall be established by agreement between the independent pharmacy, pharmacy chain, or pharmacy benefit manager and the pharmacy processing agent. The Chair may audit agreements from time to time for the purpose of ensuring compliance with this Part.

(c) Notwithstanding any other provision of this Part, if a prescription drug or medicine has been repackaged, the Average Wholesale Price used to determine the maximum reimbursement shall be the Average Wholesale Price of the underlying drug product, as identified by its national drug code (or NDC), of the underlying drug product used in the drug packaging. If the NDC is not supplied with the bill for the prescription drug or medicine, the self-insured employer or insurance carrier may identify the NDC of the underlying drug product to calculate reimbursement. While a pharmacy may engage in repackaging by removing a finished drug product from the container in which it was distributed by the original manufacturer and placing it into a different (often smaller container), the maximum reimbursement must be calculated using the AWP for the container in which the finished drug product was distributed by the original manufacturer prior to any repackaging.

(d) Compound[ed medications] drug, as defined in subdivision (a) of section 441.1, shall be reimbursed at the ingredient level, with each ingredient identified using the applicable NDC of the drug product, and the corresponding quantity. Ingredients with no NDC are not separately reimbursable. When a compound drug is prescribed and dispensed in accordance with subdivision (a) of section 441.1 or pursuant subdivision (m) of section 441.1 (Prior Authorization), [P] payment shall be based upon a sum of the allowable fee for each NDC ingredient(s) as set forth in this section, plus a single dispensing fee of six dollars per compound drug. Compound drugs with any Non-Formulary drug ingredient and/or for Formulary drugs being prescribed for other than an FDA approved route of administration are not reimbursable.

(e) The fee schedule created by this section shall not apply to prescription drugs or medicines provided as part of treatment governed by the medical and hospital fee schedule issued pursuant to Workers' Compensation Law Section 13.

Section 440.6 of Part 440 is amended to read as follows:

Section 440.6. Prescription drugs or medicines

(a) When a brand name drug is prescribed to treat an injury for which a self-insured employer or insurance carrier is liable pursuant to Workers' Compensation Law Section 13, a generic drug equivalent, if a generic equivalent is available, shall be provided unless the prescribing physician obtains Prior Authorization pursuant to subdivision (m) of section 441.1 [specifically provides otherwise on the prescription in accordance with New York Education Law Section 6810(6)].

(b) A billing statement submitted to a self-insured employer or carrier for a prescription drug that has been dispensed shall include the national drug code number of the prescription drug as listed in the national drug code directory maintained by the federal Food and Drug Administration

and shall state separately the [price] maximum reimbursement (as set forth in subdivision [a] of section 440.5 herein) of the prescription drug and the dispensing fee as applicable.

Subdivisions (a) and (b) of Section 440.8 of Part 440 are amended to read as follows:

(a) Upon receipt of a bill or reimbursement request for prescription medicine, the self-insured employer or insurance carrier shall pay or reimburse the claimant, pharmacy, pharmacy benefit manager, pharmacy processing agent or third party within forty-five days of receipt of the bill or reimbursement request in accordance with section 440.5 of this Part, unless:

(1) [the liability of the self-insured employer or insurance carrier for the claim has not been established] *The drug was not prescribed consistent with Part 441 of this Chapter (New York Workers' Compensation Formulary);* or

(2) [the prescribed medicine is not for a causally related condition; or] *The insurance carrier or self-insured employer has denied the claim in accordance with Workers' Compensation Law section 25 (2), and section 300.22 of this Chapter.*

(3) [the prescribed medicine was not prescribed consistent with the medical treatment guidelines set forth in section 342.2 (a) of Part 342 of this Title.]

(b) Where the [liability of the self-insured employer or insurance carrier for the claim has not been established, or the prescribed medicine is not for a causally related condition, or the prescribed medicine was not prescribed consistent with the medical treatment guidelines set forth in section 342.2 of this title, the] *self-insured employer or insurance carrier denies payment of all or a portion of a pharmacy bill pursuant to subdivision 1 herein*, it shall pay any undisputed amount of the bill or reimbursement request and notify the claimant, the claimant's representative, if any, as well as the pharmacy, or pharmacy benefit manager, pharmacy processing agent, or third party which submitted the bill or reimbursement request, as appropriate. A notice to the pharmacy, pharmacy benefits manager, pharmacy processing agent, or third party must be made for each claim; denial of multiple claims in a single notice are not in compliance with this Section. Such notice shall be made to all parties on the same day within forty-five days of receipt of the claim or reimbursement request and shall state[

(1)] that the claim is not being paid and the reason for non-payment of the claim[; or

(2) that additional information is needed to reasonably determine the self-insured employer's or insurance carrier's liability for the claim, whether the medicine is causally related to the injury, or whether the prescribed medicine was prescribed in accordance with the medical treatment guidelines and to request such information Upon receipt of the information reasonably requested by this paragraph, the self-insured employer or insurance carrier shall have twenty days to pay the bill or reimbursement request or provide a written explanation why the bill is not being paid, with copies of the additional information requested attached to the explanation to support the determination. The written explanation shall be sent by the self-insured employer or insurance carrier to the claimant, pharmacy, pharmacy benefit manager, pharmacy processing agent or third party that submitted the bill or reimbursement request, the claimant's legal representative, if any, and the Board on the same day].

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 440.2(f), 440.3(d), (g) and 440.5(a).

Text of 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

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

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required because the change made to the last published rule does not necessitate revision to the previously published document. The regulatory text still seeks to implement the pharmacy fee schedule in a way that accomplishes the goals highlighted in the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement. The change does not affect the meaning of any statements in the document.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Chair and the Board received seven formal written comments via email and regular mail in response to the proposed amendment to Part 440

of 12 NYCRR. The public comment period remained open through February 4, 2019.

Five commenters expressed concern with the language requiring rebates received by a pharmacy network to be passed through to insured employers. The reasons offered include: rebates are generally only available on brand name drugs and the Formulary is based on generic drugs; rebates are not allocable to a particular carrier or claim; rebates are calculated in to the contract price; pharmacy benefit managers should not have to do reporting to the Board, and: rebate information is confidential and proprietary. The Board clarified in the final regulation that passing through of rebates and third-party revenue must be in accordance with contract term that account for the methodology for such transactions and that it is the insurance carrier's responsibility to report to the Board when requested.

The Board received three comments that the price paid for prescription drugs should be governed by the contract between the pharmacy benefits manager and the insurance carrier. As the "lesser of" standard was proposed to ensure that New York State employees receive the least costly prescriptions available in the community, the Board has made no change in response to this comment.

The Board received one comment that suggested a change to the definition of pharmacy network. As this is the definition that has been in place for a number of years and the Board is unaware as to any issues with use of this definition, no change has been made in response to this comment.

The Board received five comments in support of the changes to compound medication pricing. One no-fault carrier suggested further modifications. The Board has made no further changes as a result of this comment but notes that the revised proposed drug formulary regulation (proposed 12 NYCRR Part 441) does contain further restraints on prescription of compound medications.

One commenter suggested that the Board select one source as the provider of Average Wholesale Price (AWP). The Board has permitted use of more than one provider of AWP for many years and the Board is unaware of any issues with this process. Accordingly, no change has been made in response to this comment.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Establishment of Prescription Drug Formulary

I.D. No. WCB-52-17-00021-RP

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

Proposed Action: Addition of Part 441 to Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 13-p, 117 and 142

Subject: Establishment of Prescription Drug Formulary.

Purpose: Establishment of a drug formulary that includes high-quality and cost-effective pre-authorized medication.

Substance of revised rule (Full text is posted at the following State website: www.wcb.ny.gov): Subchapter M of Chapter V of Title 12 of NYCRR is amended to add a new Part 441 as follows:

441 Formulary

441.1 Definitions. Contains definitions of the following terms: Compound drug, Disability event, Dispense, FDA-approved drug, FDA OTC Monograph, Generic drug, Carrier's Physician, Formulary, Unlisted Drug, Perioperative Formulary drug, Phase A Drug, Phase B drug, Prior Authorization process, Prior Authorization and URAC.

441.2 New York Workers' Compensation Formulary. Incorporates the three lists of the Formulary by reference into this Part and describes the lists: Phase A lists Formulary drugs that may be prescribed during the first 30 days; Phase B lists Formulary drugs that may be prescribed after the 30th day or when accepted by the insurance carrier. This section also describes how to obtain copies of the Formulary lists.

441.3 Effective Dates and Notice. Sets forth that new prescriptions must be prescribed pursuant to the Formulary within 6 months of the effective date of the Formulary; that refills and renewals must be prescribed pursuant to the Formulary within 12 months of the effective date of the Formulary; that Notice must be given to claimants on non-Formulary agents and their providers within 6 months of the effective date of the Formulary.

441.4 Application of Formulary. This section describes in detail how drugs may be prescribed consistent with Phase A, B or the Perioperative Formulary. This section also identifies when Prior Authorization may be required.

441.5 Prior Authorization Process. This section details when Prior Au-

thorization is required. It details the process for requesting Prior Authorization from the Carrier and describes the rules governing the insurance carrier's review of such requests.

441.6 Review by the Board of a Prior Authorization Denial. This section sets forth the process for review by the Board's Medical Director's Office of a carrier denial of a Prior Authorization request.

441.7 Changes to the Formulary. This section describes the process for requesting changes to the drugs listed in the Formulary and the timing thereof.

441.8 Medical Treatment Guidelines and Formulary. This sections states that should there be an inconsistency or conflict between the Formulary and the Medical Treatment Guidelines (MTG), the MTG shall govern.

Revised rule making(s) were previously published in the State Register on October 17, 2018 and January 23, 2019.

Revised rule compared with proposed rule: Substantial revisions were made in sections 441.1 and 441.5.

Text of revised proposed rule and any required statements and analyses may be obtained from Heather MacMaster, Workers' Compensation Board, 328 State Street, Office of General Counsel, Schenectady, New York 12305-2318, (518) 486-9564, email: regulations@wcb.ny.gov

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

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

Additional matter required by statute: The proposed Phase A, Phase B, and Perioperative Formulary are published at www.wcb.ny.gov.

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

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text still seek to adopt a comprehensive drug formulary in a way that accomplishes the goals highlighted in the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement. These changes, while some of them are substantial, do not affect the meaning of any statements in the document.

Assessment of Public Comment

The Chair and the Board received approximately 18 unique written comments in response to the revised proposed adoption of Part 441 of 12 NYCRR and the Formulary incorporated by reference therein. The public comment period remained open through February 22, 2019.

Multiple commenters expressed support for the Formulary and the revisions made since the last publication.

A medical provider opposed the implementation of any drug formulary and requested that it act merely as a guideline for stakeholders rather than a requirement. In response, the Board notes that it is statutorily required to implement a comprehensive drug formulary, pursuant to Workers' Compensation Law (WCL) section 13-p.

A pharmacy requested that pharmacy benefits managers (PBMs) not be involved in the Formulary approval process so that more over-the-counter (OTC) drugs can be prescribed to claimants. The Board notes that carriers have express statutory authority to enter into a contract with a PBM under WCL section 13(i)(5).

441.1 Definitions

Several parties requested that changes be made to the definition of "carrier's physician," either to clarify the definition or to include all medical providers within the definition, rather than only physicians. Another disagreed with the requirement that a carrier's physician not be someone who is also employed by the PBM. The Board declines to amend this definition, as it finds that requiring licensed physicians to perform second-level Prior Authorization requests best protects claimants, and declines to omit the requirement that a carrier's physician not be employed or contracted by the carrier's PBM as the PBM is permitted to perform the first level prior authorization review.

Several insurance groups raised concerns about the definition of a "compound drug" and requested that Prior Authorization be required for all compound medications. The Board agrees with these comments and requires prior authorization for all compound medications in the revised proposed regulation.

441.3 Applicability, Effective Dates and Notice

A claims management group requested that the Board clarify that refill or renewals that are first prescribed to a claimant after the effective date of this rule do not fall into the 12-month exception. The Board finds that no changes are necessary given the definitions of "refill" and "renewal" prescriptions contained in sections 441.1(q) and (r) of the proposed regulation.

An insurance group recommended that the notice requirement set forth in 441.3(f) should come from the Board, not the carrier/SIE. No change has been made in response to this comment. The Board will give clear guidance with respect to the notice that must be provided.

An insurance group asked that the reference to medical marijuana state that it is medical marijuana "subject to Title V-A of the Public Health Law," to differentiate it from FDA-approved medications derived from medical cannabis. No change has been made as a result of this comment as the medical marijuana program is clearly delineated through the variance process here at the Board.

An insurance group recommended that any non-Formulary drug that was prescribed prior to the adoption of the Formulary also be considered a "new prescription." Non-Formulary drugs prescribed prior to the adoption of the Formulary would be classified as a refill or renewal prescription, pursuant to section 441.3(a)(2) of the proposed regulation; as such, the Board declines to make the suggested change.

An insurance group commented that the prior Assessment of Public Comment indicated that revisions would be made to the carrier notice requirements now contained in section 441.3(f), but no changes appear. A pharmacy requested that section 441.3(f)(2) be clarified because, as currently written, it appears to require the PBM or claims administrator to make a medical necessity decision on a generic or a Formulary drug over the desire of the prescriber. The revised rule has been changed to clarify that both notice to the provider and notice to the claimant will be in the format prescribed by the Chair.

441.4 Application of Formulary

A pharmacy requested that the regulations clarify which medications may be utilized without prior authorization once the claim is accepted but the date of treatment is less than 30 days from the date of injury. Section 441.4(a) states that Phase A is applicable for "the thirty days following an accident or injury or until the carrier accepts the claim or the Board establishes the claim, whichever is less" (emphasis added). As such, the Board finds that no additional clarifying language is necessary.

An insurance group recommended that skeletal muscle relaxants be removed from the list of "special considerations" because it is reasonable that these prescriptions would be prescribed for a longer period of time to receive the maximum benefit, and requiring prior authorization for periods beyond 7 days would unduly burden claimants and providers. Given the documented risks associated to prolonged use of skeletal muscle relaxants, no change has been made as a result of this comment.

A claims management group expressed concern regarding Phase B 2nd Line drugs, given that in the event the initial drug was dispensed outside of the PBM process, PBMs may not recognize the prescription as a 2nd line drug since they would not have visibility to the initial medication being prescribed. No change has been made as a result of this comment.

Several payer groups expressed that it is difficult to identify when the drug is being prescribed for a perioperative purpose and requested that the Board clarify that the carrier provide this information to its contracted PBM. No change has been made in response to this comment but notes that it is anticipated that carriers will communicate this information to its PBM.

A claimant requested that controlled substances be prescribed for longer than 7 days as the MTGs permit longer courses of treatment for chronic pain. No change has been made in response to this comment. Prior authorization may be requested in the limited circumstances when the MTG extends recommended prescription of controlled substances.

A medical provider argued that the three-phase approach is arbitrary and prejudicial. In comparison, many commenters commended the Board on this draft of the Formulary, which includes the three-phase approach. Therefore, on balance, the Board declines to make changes because of this comment.

An insurance group asked that Phase A drugs also require MTG corroboration. As Phase A drugs are intended to be supplied only for a short duration prior to the acceptance or establishing of a claim, no change has been made in response to this comment.

441.5 Prior Authorization Process

An insurance group suggested that the regulations require Prior Authorization before a claimant can proceed to a 2nd line therapy. No change has been made in response to this comment as it appears that this methodology is widely practiced in administering prescriptions and none of the 2nd line drugs present any unwarranted risks.

An insurance group suggested that the regulations require Prior Authorization before any Non-Formulary drug is prescribed for an "off-label" use. No change has been made as a result of this comment. The Board notes that for Phase B drugs, prescriptions are associated to a particular body part or injury. As such "off-label" use should be minimized.

An insurance group requested that if the drug has not yet been dispensed but more than 4 calendar days has passed, the carrier can still modify or deny a Prior Authorization request. No change has been made in response to this comment as it would unduly delay the dispensing of drugs.

A medical provider expressed concern that the Prior Authorization process is burdensome for all parties. Given that many commenters commended the Board on this draft of the Formulary, which included the Prior Authorization process and the statute, WCL section 13-p requires the Board to prescribe such a process, the Board finds that no changes are necessary.

An insurance group asked that first-level Prior Authorization review should be able to be at the carrier's offices. The Board notes that the regulations do not specify who may complete first-level review at the carrier's office; therefore, no changes are necessary due to this comment.

Several parties expressed that 4 calendar days for a response is too short. Moreover, in prior drafts of the Formulary regulations, some stakeholders requested a shorter review period. In balancing these comments, the Board finds it is best to leave the review timeline as 4 calendar days.

A claimant requested that the regulations require carriers to affirmatively notify the claimant or provider within 60 days of the Prior Authorization's expiration. Given that the provider will be notified of the acceptance of a Prior Authorization request, and therefore will be duly notified of the length of the Prior Authorization approval, no change has been made as a result of this comment.

441.6 Review by the Board of a Prior Authorization Denial

Two insurance groups argued that the right to appeal at this stage of review also be extended to the carrier/SIE. The right to request a hearing has only been extended only to the claimant, as he or she does not participate in the three levels of prior review. As indicated previously, the Board finds that the three levels of review available to medical providers and carriers is sufficient to meet due process considerations. Accordingly, no change has been made as a result of these comments.

Formulary

Several commenters pointed to unclear sentences, FAQs, and typographical errors in the introductory text of the Formulary. While the typographical errors have been fixed, the Board declines to make all suggested changes; where specific detail about the law is needed, stakeholders should refer to the text of the governing regulations and the applicable Formulary.

An insurance group asked the Board to clarify the state's intent for Phase B drugs without a "Yes" or "2nd" indicator on the Formulary. As is described in the Formulary, medications may only be prescribed for the body parts identified with a Yes or as a 2nd line prescription when indicated by a 2nd. When there is no such indicator for the body part, the drug may not be prescribed without prior authorization.

Multiple commenters requested that specific drugs be included in the Formulary which are not currently listed. Specifically, several commenters asked that the Board include 5% strength lidocaine dermatological medication; others specifically requested that the Formulary include the lidocaine 5% patch and the lidocaine ointment. In response to the number of comments received regarding lidocaine, the Board has clarified that Lidocaine may only be prescribed in the 4% strength as a formulary agent and without a prior authorization.