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 Environmental Conservation

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Governor Mario M. Cuomo Bridge

I.D. No. ENV-08-19-00004-P

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

Proposed Action: This is a consensus rule making to amend Parts 10, 11, 35, 42, 43, 45, 47, 576 and 591 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0103 and 13-0307

Subject: Governor Mario M. Cuomo Bridge.

Purpose: Replacing references to the Governor Malcolm Wilson Tappan Zee Bridge with references to the Governor Mario M. Cuomo Bridge.

Text of proposed rule: 6 NYCRR Part 10 is amended to read as follows:

Clause 10.1(f)(3)(iii)(c) is amended to read as follows:

(c) Hudson River Overland Transportation Corridor shall mean the geographical area associated with the water body as defined in subparagraph (7)(x) of this subdivision starting at the eastern shore of the Hudson River at the Federal Dam in Troy, continuing east on W. Glenn Avenue in Troy to its intersection with State Route 4, then continuing south on State Route 4 to its intersection with State Routes 9 and 20, then continuing easterly to its intersection with State Route 9, then continuing east on State Route 82, then continuing east on State Route 82 to its intersection with the Taconic State Parkway, then continuing south on the Taconic State Parkway to its intersection with the Sprain Brook Parkway, then continuing south on the Sprain Brook Parkway to its intersection with I-287, then continuing west on I-287 across the [Tappan Zee] *Governor Mario M. Cuomo* Bridge to I-87 North, then continuing north on I-87 to where State Route 9W crosses I-87 in Greene County, then continuing north on State Route 9W to where State Route 9W crosses I-87 in Albany County, then continuing north on I-87 to its intersection with State Route 7, and then continuing east on State Route 7 to its intersection with I-787, and then continuing north on I-787 to its intersection with Tibbets Avenue, and then continuing east on Tibbets Avenue to its intersection with Delaware Avenue, then proceeding in a straight line to the west edge of the Troy Dam.

Clause 10.10(c)(4)(ii) is amended to read as follows:

(ii) The operator of a party or charter boat operating above the Governor [Malcolm Wilson Tappan Zee] *Mario M. Cuomo* Bridge on the Hudson River may possess anadromous river herring in excess of the individual recreational possession limit, as specified in subparagraph (i) of this paragraph, prior to the commencement of a fishing charter.

6 NYCRR Part 11 is amended to read as follows:

Clause 11.2(b)(4) is amended to read as follows:

(4) take or possess American shad in the Hudson River and its tributary waters upstream from the river to the first falls or barrier impassable by fish, from the Federal Dam at Troy south to the Governor [Malcolm Wilson Tappan Zee] *Mario M. Cuomo* Bridge, and the Marine and Coastal District at any time.

Clause 11.2(e) is amended to read as follows:

(e) Possession and sale of American shad in the Hudson River, and its tributary waters upstream from the river to the first falls or barrier impassable by fish, from the Federal Dam at Troy south to the Governor [Malcolm Wilson Tappan Zee] *Mario M. Cuomo* Bridge, and the Marine and Coastal District.

Clause 11.2(e)(1) is amended to read as follows:

(1) Any American shad inadvertently taken in the Hudson River, and its tributary waters upstream from the river to the first falls or barrier impassable by fish, from the Federal Dam at Troy south to the Governor [Malcolm Wilson Tappan Zee] *Mario M. Cuomo* Bridge, and the Marine and Coastal District must be returned to the water immediately without unnecessary injury.

6 NYCRR Part 35 is amended to read as follows:

Clause 35.1(c) is amended to read as follows:

(c) Persons taking and landing fish for commercial purposes in the Hudson River downstream from the [Tappan Zee] *Governor Mario M. Cuomo* Bridge must possess a resident or a nonresident marine commercial food fishing license as required by Environmental Conservation Law (ECL), section 13-0335 and a Hudson River commercial gear license as required by section 36.1 of this Title.

Clause 35.1(d) is amended to read as follows:

(d) Fees paid for a resident or nonresident marine commercial food fishing license to take and land fish for commercial purposes pursuant to Environmental Conservation Law section 13-0335 from the marine and coastal district, which includes the Hudson River downstream from the [Tappan Zee] *Governor Mario M. Cuomo* Bridge, may be credited toward the purchase of the Hudson River commercial gear license. Fees for the Hudson River commercial gear license will be paid only to the extent that the fee for such license exceeds the $100 resident fee or the $1,000 nonresident fee for the marine commercial food fishing license, whichever is applicable.

Clause 35.3(c)(1) is amended to read as follows:

(1) bait fish taken in the Hudson River upstream of the [Tappan Zee] *Governor Mario M. Cuomo* Bridge and below the Federal Dam at Troy, including all tributaries up to the first barrier impassable by fish, may also be possessed, sold, offered for sale, bartered, or transferred for use in the marine and coastal district defined in Environmental Conservation Law, section 13-0103; or

6 NYCRR Part 42 is amended to read as follows:

Clause 42.2(w) is amended to read as follows:

(w) Marine district means the waters of the Atlantic Ocean within three

nautical miles of the coastline of the State and all tidal waters within the State including the Hudson River up to the [Tappan Zee bridge] *Governor Mario M. Cuomo Bridge*.

6 NYCRR Part 43 is amended to read as follows:

Clause 43-1.1 is amended to read as follows:

The purpose of this Subpart is to promote and support the maintenance of viable surf clam and ocean quahog populations in select areas of the Marine and Coastal District. The Marine and Coastal District includes the waters of the Atlantic Ocean within three nautical miles from the coastline and all other tidal waters within the State, including the Hudson River up to the [Tappan Zee] *Governor Mario M. Cuomo* Bridge. The provisions of this Subpart are designed to limit mechanical surf clam and ocean quahog harvesting activities to specifically defined areas of the Marine and Coastal District, to require a special surf clam/ocean quahog mechanical harvesting permit, to provide specific controls over the design of mechanical harvesting gear, weekly and annual harvest quotas, open and closed seasons, and to require recordkeeping and reporting. Such requirements and controls are intended to support the continuation of a limited capacity fishery in the involved waters of the Marine and Coastal District so that the fishery continues to operate in basic balance with available surf clam and ocean quahog stocks and to aid in the management of a complex system of shellfish resources in adjoining waters.

Clause 43-2.1 is amended to read as follows:

The purpose of this Subpart is to promote and support the maintenance of viable surfclam and ocean quahog populations in the Atlantic Ocean portion of the Marine and Coastal District. The Marine and Coastal District includes the waters of the Atlantic Ocean within three nautical miles from the coastline and all other tidal waters within the State, including the Hudson River up to the [Tappan Zee] *Governor Mario M. Cuomo* Bridge. The provisions of this Subpart require surfclam and ocean quahog mechanical harvesting permits, establish specific controls over the possession and design of mechanical harvesting gear, set daily vessel harvest limits and annual harvest limits, establish an Individual Fishing Quota system for each eligible surfclam vessel, establish container and cage tagging requirements and require recordkeeping and reporting, implement mandatory Vessel Monitoring System requirements and establish rules for confidentiality of fisheries data. Such requirements are intended to support the continuation of a viable fishery in the involved waters of the Atlantic Ocean so that the fishery continues to operate in balance with available surfclam and ocean quahog stocks.

6 NYCRR Part 45 is amended to read as follows:

Clause 45.1(g) is amended to read as follows:

(g) Marine district means the waters of the Atlantic Ocean within three nautical miles of the coastline of the State and all tidal waters within the State including the Hudson River up to the [Tappan Zee] *Governor Mario M. Cuomo* Bridge.

6 NYCRR Part 47 is amended to read as follows:

Clause 47.1(i) is amended to read as follows:

(i) Marine district means the waters of the Atlantic Ocean within three nautical miles of the coastline of the State, and all tidal waters within the State, including the Hudson River up to the [Tappan Zee] *Governor Mario M. Cuomo* Bridge.

6 NYCRR Part 576 is amended to read as follows:

Clause 576.2(h) is amended to read as follows:

(h) Marine and coastal district waters means the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the state, including the Hudson River up to the Governor [Malcolm Wilson Tappan Zee] *Mario M. Cuomo* Bridge.

6 NYCRR Part 591 is amended to read as follows:

Clause 591.3(l)(2)(i) is amended to read as follows:

(i) the proposed project is a tidal wetland, with or without associated upland buffer, as defined in article 25 of the Environmental Conservation Law, located either in the marine and coastal district as defined in section 13-0103 of the Environmental Conservation Law or in the Hudson River Valley between the [Tappan Zee] *Governor Mario M. Cuomo* Bridge and the Federal Dam at Troy; or

Text of proposed rule and any required statements and analyses may be obtained from: Tyler Hepner, NYS Department of Environmental Conservation, NYSDEC, Office of General Counsel, 625 Broadway, Albany, NY 12233, (518) 402-9530, email: tyler.hepner@dec.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.

Additional matter required by statute: Pursuant to Article 8 of the Environmental Conservation Law, the State Environmental Quality Review Act and 6 NYCRR 617.5(c) (25) and (33) the Department has determined that this rulemaking is a Type II action and no further review is required.

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

Consensus Rule Making Determination

The Department of Environmental Conservation ("Department") is proposing to amend 6 NYCRR Sections 10.1, 10.10, 11.2, 35.1, 35.3, 42.2, 43-1.1, 43-2.1, 45.1, 47.1, 576.2, and 591.3. These sections reference the Governor Malcom Wilson Tappan Zee Bridge ("Tappan Zee Bridge"), which is currently being dismantled. Effective June 29, 2017, the Legislature amended the Environmental Conservation Law ("ECL") to replace all references to the Tappan Zee Bridge with the name of the new bridge -- the Governor Mario M. Cuomo Bridge ("Cuomo Bridge"). The Department proposes to amend the regulations to conform with the ECL by replacing all references to the Tappan Zee Bridge with references to the Cuomo Bridge.

The provisions of this proposed rulemaking do not involve any discretion by the Department. The proposed changes are necessary to maintain the accuracy of the Department's regulations, to maintain consistency with the ECL, and to avoid confusing the public with outdated references. For these reasons, the Department has determined that no person is likely to object to this rulemaking.

Job Impact Statement

A Job Impact Statement is not required for this rule making because the proposed rule will not have a substantial adverse impact on jobs and employment opportunities. The purpose of this rule is to recognize in 6 NYCRR the new Governor Mario M. Cuomo Bridge due to an amendment to the Environmental Conservation Law ("ECL").

This rule would amend 6 NYCRR Sections 10.1, 10.10, 11.2, 35.1, 35.3, 42.2, 43-1.1, 43-2.1, 45.1, 47.1, 576.2, and 591.3. These sections reference the Governor Malcom Wilson Tappan Zee Bridge ("Tappan Zee Bridge"), which is currently being dismantled. Effective June 29, 2017, the Legislature amended the ECL to replace all references to the Tappan Zee Bridge with the name of the new bridge -- the Governor Mario M. Cuomo Bridge ("Cuomo Bridge"). The Department proposes to amend the regulations to conform with the ECL by replacing all references to the Tappan Zee Bridge with references to the Cuomo Bridge.

This rulemaking will not result in the loss of any jobs in New York State. Therefore, the Department has determined that a Job Impact Statement is not required.

Department of Financial Services

EMERGENCY RULE MAKING

Assessment of Entities Regulated by the Banking Division of the Department of Financial Services

I.D. No. DFS-08-19-00002-E

Filing No. 74

Filing Date: 2019-01-31

Effective Date: 2019-01-31

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

Action taken: Addition of Part 501 to Title 3 NYCRR.

Statutory authority: Banking Law, section 17; Financial Services Law, section 206

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

Specific reasons underlying the finding of necessity: Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision (including examination) of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be

charged to, and paid by, the regulated institutions subject to the supervision of in the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

Litigation commenced in June, 2011 challenged the methodology used by the Banking Department to assess mortgage bankers. On May 3, 2012, the Appellate Division invalidated this methodology for the 2010 State Fiscal Year, finding that the former Banking Department had not followed the requirements of the State Administrative Procedures Act.

In response to this ruling, the Department has determined to adopt this new rule setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

The emergency adoption of this regulation is necessary to implement the requirements of Section 17 of the Banking Law and Section 206 of the Financial Services Law in light of the determination of the Court and the ongoing need to fund the operations of the Department without interruption. Accordingly, it is imperative that Part 501 of the Superintendent's Regulations be promulgated on an emergency basis for the public's general welfare.

Subject: Assessment of entities regulated by the Banking Division of the Department of Financial Services.

Purpose: New Part 501 implements Section 17 of the Banking Law and Section 206 of the Financial Services Law and sets forth the basis for allocating all costs and expenses attributable to the operation of the Banking Division of the Department of Financial Services among and between any person or entity licensed, registered, incorporated or otherwise formed pursuant the Banking Law.

Text of emergency rule: *Part 501*

BANKING DIVISION ASSESSMENTS

§ 501.1 Background.

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated on October 3, 2011 into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL. Effective October 3, 2011, assessments are governed by Section 206 of the FSL, provided that Section 17 of the BL continues to apply to assessments for the fiscal year commencing on April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (including, but not limited to, compensation, lease costs and other overhead costs) of the Department attributable to institutions subject to the BL are to be charged to, and paid by, such regulated institutions. These institutions ("Regulated Entities") are now regulated by the Banking Division of the Department. Under both Section 17 of the BL and Section 206 of the FSL, the Superintendent is authorized to assess Regulated Entities for its total costs in such proportions as the Superintendent shall deem just and reasonable.

The Banking Department has historically funded itself entirely from industry assessments of Regulated Entities. These assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This regulation sets forth the basis for allocating such expenses among Regulated Entities and the process for making such assessments.

§ 501.2 Definitions.

The following definitions apply in this Part:

(a) "Total Operating Cost" means for the fiscal year beginning on April 1, 2011, the total direct and indirect costs of operating the Banking Division. For fiscal years beginning on April 1, 2012, "Total Operating Cost" means: (1) the sum of the total operating expenses of the Department that are solely attributable to regulated persons under the Banking Law; and (2) the proportion deemed just and reasonable by the Superintendent of the other operating expenses of the Department which under Section 206(a) of the Financial Services Law may be assessed against persons regulated under the Banking Law and other persons regulated by the Department.

(b) "Industry Group" means the grouping to which a business entity regulated by the Banking Division is assigned. There are three Industry Groups in the Banking Division:

(1) The Depository Institutions Group, which consists of all banking organizations and foreign banking corporations licensed by the Department to maintain a branch, agency or representative office in this state;

(2) The Mortgage-Related Entities Group, which consists of all mortgage brokers, mortgage bankers and mortgage loan servicers; and

(3) The Licensed Financial Services Providers Group, which consists of all check cashers, budget planners, licensed lenders, sales finance companies, premium finance companies and money transmitters.

(c) "Industry Group Operating Cost" means the amount of the Total Operating Cost to be assessed to a particular Industry Group. The amount is derived from the percentage of the total expenses for salaries and fringe benefits for the examining, specialist and related personnel represented by such costs for the particular Industry Group.

(d) "Industry Group Supervisory Component" means the total of the Supervisory Components for all institutions in that Industry Group.

(e) "Supervisory Component" for an individual institution means the product of the average number of hours attributed to supervisory oversight by examiners and specialists of all institutions of a similar size and type, as determined by the Superintendent, in the applicable Industry Group, or the applicable sub-group, and the average hourly cost of the examiners and specialists assigned to the applicable Industry Group or sub-group.

(f) "Industry Group Regulatory Component" means the Industry Group Operating Cost for that group minus the Industry Group Supervisory Component and certain miscellaneous fees such as application fees.

(g) "Industry Financial Basis" means the measurement tool used to distribute the Industry Group Regulatory Component among individual institutions in an Industry Group.

The Industry Financial Basis used for each Industry Group is as follows:

(1) For the Depository Institutions Group: total assets of all institutions in the group;

(2) For the Mortgage-Related Entities Group: total gross revenues from New York State operations, including servicing and secondary market revenues, for all institutions in the group; and

(3) For the Licensed Financial Services Providers Group: (i) for budget planners, the number of New York customers; (ii) for licensed lenders, the dollar amount of New York assets; (iii) for check cashers, the dollar amount of checks cashed in New York; (iv) for money transmitters, the dollar value of all New York transactions; (v) for premium finance companies, the dollar value of loans originated in New York; and (vi) for sales finance companies, the dollar value of credit extensions in New York.

(h) "Financial Basis" for an individual institution is that institution's portion of the measurement tool used in Section 501.2(g) to develop the Industry Financial Basis. (For example, in the case of the Depository Institutions Group, an entity's Financial Basis would be its total assets.)

(i) "Industry Group Regulatory Rate" means the result of dividing the Industry Group Regulatory Component by the Industry Financial Basis.

(j) "Regulatory Component" for an individual institution is the product of the Financial Basis for the individual institution multiplied by the Industry Group Regulatory Rate for that institution.

§ 501.3 Billing and Assessment Process.

The New York State fiscal year begins April 1 and ends March 31 of the following calendar year. Each institution subject to assessment pursuant to this Part is billed five times for a fiscal year: four quarterly assessments (each approximately 25% of the anticipated annual amount) based on the Banking Division's estimated annual budget at the time of the billing, and a final assessment (or "true-up"), based on

the Banking Division's actual expenses for the fiscal year. Any institution that is a Regulated Entity for any part of a quarter shall be assessed for the full quarter.

§ 501.4 Computation of Assessment.

The total annual assessment for an institution shall be the sum of its Supervisory Component and its Regulatory Component.

§ 501.5 Penalties/Enforcement Actions.

All Regulated Entities shall be subject to all applicable penalties, including late fees and interest, provided for by the BL, the FSL, the State Finance law or other applicable laws. Enforcement actions for nonpayment could include suspension, revocation, termination or other actions.

§ 501.6 Effective Date.

This Part shall be effective immediately. It shall apply to all State Fiscal Years beginning with the Fiscal Year starting on April 1, 2011.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 30, 2019.

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

Regulatory Impact Statement

1. Statutory Authority

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department (the "Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services (the "Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

In response to a court ruling, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012) ("Homestead"), that held that the Department should adopt changes to its assessment methodology for mortgage bankers through a formal assessment rule pursuant to the requirements of the State Administrative Procedures Act ("SAPA"), the Department has determined to adopt this new regulation setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

2. Legislative Objectives

The BL and the FSL make the industries regulated by the former Banking Department (and now by the Banking Division of the new Department) responsible for all the costs and expenses of their regulation by the State. The assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This reflects a long-standing State policy that the regulated industries are the appropriate parties to pay for their supervision in light of the financial benefits it provides to them to engage in banking and other regulated businesses in New York. The statute specifically provides that these costs are to be allocated among such institutions in the proportions deemed just and reasonable by the Superintendent.

While this type of allocation had been the practice of the former Banking Department for many decades, Homestead found that a change to the methodology for mortgage bankers to include secondary market and servicing income should be accomplished through formal regulations subject to the SAPA process. Given the nature of the Banking Division's assessment methodology - - the calculation and payment of the assessment is ongoing throughout the year and any period of uncertainty as to the applicable rule would be extremely disruptive - - the Department has determined that it is necessary to adopt the rule on an emergency basis so as to avoid any possibility of disrupting the funding of its operations.

3. Needs and Benefits

The Banking Division regulates more than 250 state chartered banks and licensed foreign bank branches and agencies in New York with total assets of over $2 trillion. In addition, it regulates a variety of other entities engaged in delivering financial services to the residents of New York State. These entities include: licensed check cashers; licensed money transmitters; sales finance companies; licensed lenders; premium finance companies; budget planners; mortgage bankers and brokers; mortgage loan servicers; and mortgage loan originators.

Collectively, the regulated entities represent a spectrum, from some of the largest financial institutions in the country to the smallest, neighborhood-based financial services providers. Their services are vital to the economic health of New York, and their supervision is critical to ensuring that these services are provided in a fair, economical and safe manner.

This supervision requires that the Banking Division maintain a core of trained examiners, plus facilities and systems. As noted above, these costs are by statute to be paid by all regulated entities in the proportions deemed just and reasonable by the Superintendent. The new regulation is intended to formally set forth the methodology utilized by the Banking Division for allocating these costs.

4. Costs

The new regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division. Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities.

5. Local Government Mandates

None.

6. Paperwork

The regulation does not change the process utilized by the Banking Division to determine and collect assessments.

7. Duplication

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

8. Alternatives

The purpose of the regulation is to formally set forth the process employed by the Department to carry out the statutory mandate to assess and collect the operating costs of the Banking Division from regulated entities. In light of Homestead, the Department believes that promulgating this formal regulation is necessary in order to allow it to continue to assess all of its regulated institutions in the manner deemed most appropriate by the Superintendent. Failing to formalize the Banking Division's allocation methodology would potentially leave the assessment process open to further judicial challenges.

9. Federal Standards

Not applicable.

10. Compliance Schedule

The emergency regulations are effective immediately. Regulated institutions will be expected to comply with the regulation for the fiscal year beginning on April 1, 2011 and thereafter.

Regulatory Flexibility Analysis

1. Effect of Rule:

The regulation does not have any impact on local governments.

The regulation simply codifies the methodology used by the Banking Division of the Department of Financial Services (the "Department") to assess all entities regulated by it, including those which are small businesses. The regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division.

Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities. It is expected that the effect of this change will be that larger members of the mortgage banking industry will pay an increased proportion of the total cost of regulating that industry, while the relative assessments paid by smaller industry members will be reduced.

2. Compliance Requirements:

The regulation does not change existing compliance requirements. Both

Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the Banking Law are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division. Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

3. Professional Services:

None.

4. Compliance Costs:

All regulated institutions are currently subject to assessment by the Banking Division. The regulation simply formalizes the Banking Division's assessment methodology. It makes only one change from the allocation methodology used by the Banking Department in the previous state fiscal years. That change affects only one of the industry groups regulated by the Banking Division. Regulatory costs assessed to the mortgage banking industry are now divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. Even within the one industry group affected by the change, additional compliance costs, if any, are expected to be minimal.

5. Economic and Technological Feasibility:

All regulated institutions are currently subject to the Banking Division's assessment requirements. The formalization of the Banking Division's assessment methodology in a regulation will not impose any additional economic or technological burden on regulated entities which are small businesses.

6. Minimizing Adverse Impact:

Even within the mortgage banking industry, which is the one industry group affected by the change in assessment methodology, the change will not affect the total amount of the assessment. Indeed, it is anticipated that this change may slightly reduce the proportion of mortgage banking industry assessments that is paid by entities that are small businesses.

7. Small Business and Local Government Participation:

This regulation does not impact local governments.

This regulation simply codifies the methodology which the Banking Division uses for determining the just and reasonable proportion of the Banking Division's costs to be charged to and paid by each regulated institution, including regulated institutions which are small businesses. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those that are small businesses.

Thereafter, the Banking Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Banking Department changed its overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market and servicing activities. Litigation was commenced challenging this latter change, and in a recent decision, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012), the court determined that the Department should adopt a change to its assessment methodology for mortgage bankers through a formal assessment rule promulgated pursuant to the requirements of the State Administrative Procedures Act. The challenged change in methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants, including those which are small businesses.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas: There are entities regulated by the New York State Department of Financial Services (formerly the Banking Department) located in all areas of the State, including rural areas. However, this rule simply codifies the methodology currently used by the Department to assess all entities regulated by it. The regulation does not alter that methodology, and thus it does not change the cost of assessments on regulated entities, including regulated entities located in rural areas.

Reporting, Recordkeeping and Other Complaince Requirements; and Professional Services: The regulation would not change the current compliance requirements associated with the assessment process.

Costs: While the regulation formalizes the assessment process, it does not change the amounts assessed to regulated entities, including those located in rural areas.

Minimizing Adverse Impacts: The regulation does not increase the total amount assessed to regulated entities by the Department. It simply codifies the methodology which the Superintendent has chosen for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution.

Rural Area Participation: This rule simply codifies the methodology which the Department currently uses for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution, including regulated institutions located in rural areas. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those located in rural areas. It followed the loss of several major banking institutions that had paid significant portions of the former Banking Department's assessments.

Thereafter, the Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Department changed this overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market income and servicing income. This latter change was challenged by a mortgage banker, and in early May, the Appellate Division determined that the latter change should have been made in conformity with the State Administrative Procedures Act. The challenged part of the methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants.

Job Impact Statement

The regulation is not expected to have an adverse effect on employment.

All institutions regulated by the Banking Division (the "Banking Division") of the Department of Financial Services are currently subject to assessment by the Department. The regulation simply formalizes the assessment methodology used by the Banking Division. It makes only one change from the allocation methodology used by the former Banking Department in the previous state fiscal years.

That change affects only one of the industry groups regulated by the Banking Division. It somewhat alters the way in which the Banking Division's costs of regulating mortgage banking industry are allocated among entities within that industry. In any case, the total amount assessed against regulated entities within that industry will remain the same.

NOTICE OF WITHDRAWAL

Charges for Professional Health Services

I.D. No. DFS-26-18-00002-W

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

Action taken: Notice of proposed rule making, I.D. No. DFS-26-18-00002-EP, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on June 27, 2018.

Subject: Charges for Professional Health Services.

Reason(s) for withdrawal of the proposed rule: The Department intends to submit a new proposed rule because of dramatic changes made to the current proposed rule.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Charges for Professional Health Services

I.D. No. DFS-08-19-00003-P

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

Proposed Action: Amendment of Part 68 (Regulation 83) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302; Insurance Law, sections 301, 2601, 5221 and art. 51

Subject: Charges for Professional Health Services.

Purpose: To delay the effective date of the Workers' Compensation fee schedule increases for no-fault reimbursement.

Text of proposed rule: Section 68.1 is amended to read as follows:

§ 68.1 Adoption of certain workers' compensation schedules

(a)*(1)* The existing fee schedules prepared and established by the [chairman] *chair* of the Workers' Compensation Board for industrial accidents are hereby adopted by the Superintendent of Financial Services with appropriate modification so as to adapt such schedules for use pursuant to the provisions of [section 5108 of the] Insurance Law *section 5108.*

(2)(i) Notwithstanding paragraph (1) of this subdivision, and except as provided in subparagraph (ii) of this paragraph, the amendments to the fee schedules set forth in Parts 329, 333, 343, and 348 of 12 NYCRR that were promulgated by the chair of the Workers' Compensation Board on December 11, 2018, shall take effect for purposes of Insurance Law section 5108 on October 1, 2020, and shall only apply to all charges for health services performed on or after October 1, 2020.

(ii) The following ground rules in the amendments to the fee schedules set forth in Parts 329, 333, 343, and 348 of 12 NYCRR that were promulgated by the chair of the Workers' Compensation Board on December 11, 2018, shall take effect for purposes of Insurance Law section 5108 on April 1, 2019, and shall apply to all charges for health services performed on or after April 1, 2019:

(a) General Ground Rule 10 in the Workers' Compensation Chiropractic Fee Schedule set forth in 12 NYCRR 348;

(b) General Ground Rule 19 in the Workers' Compensation Medical Fee Schedule set forth in 12 NYCRR 329;

(c) General Ground Rule 13 in the Workers' Compensation Behavioral Health Fee Schedule (formerly the Psychology Fee Schedule) set forth in 12 NYCRR 333, and;

(d) General Ground Rule 16 in the Workers' Compensation Podiatry Fee Schedule set forth in 12 NYCRR 343.

(b)(1) The charges for services specified in [paragraph one of subsection (a) of section 5102 of the] Insurance Law *section 5102(a)(1)* and any further health service charges [which] *that* are incurred as a result of the injury and [which] *that* are in excess of basic economic loss, shall not exceed the charges permissible under the schedules prepared and established by the chair of the Workers' Compensation Board for industrial accidents *that are in effect for purposes of no-fault at the time the charges are incurred*. However, references to workers' compensation reporting and procedural requirements in such schedules do not apply *to no-fault*, e.g., requirements that provide for authorization to perform surgical procedures[, is not applicable to no-fault]. The general instructions and ground rules in the workers' compensation fee schedules apply, but those rules [which] *that* refer to workers' compensation claim forms, preauthorization approval*, time limitations within which health services must be performed, enhanced reimbursement for providers of certain designated services,* and dispute resolution guidelines do not apply, unless specified in this Part.

Text of proposed rule and any required statements and analyses may be obtained from: Camielle Barclay, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5299, email: Camielle.Barclay@dfs.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority: Financial Services Law Sections 202 and 302, and Insurance Law Sections 301, 2601, 5221, and Article 51.

Insurance Law Section 301 and Financial Services Law Sections 202 and 302 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law.

Insurance Law Section 2601 prohibits insurers from engaging in unfair claim settlement practices and requires insurers to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

Insurance Law Section 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation with respect to the payment of no-fault benefits to qualified persons.

Article 51 of the Insurance Law contains the provisions authorizing the establishment of a no-fault reparations system for persons injured in motor vehicle accidents. Section 5108(b) specifically authorizes the Superintendent to adopt the fee schedules prepared and established by the Chairman of the Workers' Compensation Board (the "Chair") or to promulgate fee schedules for health care benefits payable under the no-fault system for any services for which the Chair has not prepared and established; and subsection (c) prohibits a provider of health services, as defined in Article 51, in addition to the amount authorized pursuant to Insurance Law Section 5108.

2. Legislative objectives: Chapter 892 of the Laws of 1977 recognized the necessity of establishing schedules of maximum permissible charges for professional health services payable as no-fault insurance benefits to contain the costs of no-fault insurance. To that end, and pursuant to Insurance Law Section 5108(b), the Superintendent adopted those fee schedules promulgated by the Chair. In addition, the Superintendent, after consulting with the Chair and the Commissioner of Health, established fee schedules for those services for which the Chair has not prepared and established fee schedules.

Since 1977, the workers' compensation fee schedules underwent annual revisions until the mid-1990s to reflect inflationary increases and to incorporate other necessary enhancements. In turn, the Superintendent adopted those fee schedules through amendments to Insurance Regulation 83. However, in 2002, the Superintendent promulgated an amendment to Insurance Regulation 83, which prescribed that any changes the Chair made to the workers' compensation fee schedules automatically would apply to no-fault, and therefore, no longer necessitated adoption of the workers' compensation fee schedules as changes were made to them.

3. Needs and benefits: In December 2018, The Chair adopted expansive amendments to its fee schedules for medical, chiropractic, behavioral health (otherwise known as the psychological fee schedule), and podiatric services (collectively the "medical fee schedules") to take effect on April 1, 2019. The Chair contended, in its Regulatory Impact Statement in the December 26, 2018 issue of the New York State Register, that such changes were necessary to ensure that treating providers are paid a reasonable fee for their services so that injured workers may receive high quality medical care in the workers' compensation system.

Although the expansive changes to the fee schedules may be necessary to maintain quality health services for the workers' compensation system, the automatic adoption of such sweeping changes for use in the no-fault system within a relatively short period (April 1, 2019) would have a significant adverse impact on insurers' ability to absorb the health-service-related costs resulting from those changes within that timeframe. Those changes will result in a substantial overall increase (at least a 10% increase has been reported) in total loss payments for no-fault-related health services, which insurers could not have anticipated. Because health service payments account for more than 90% of the total loss costs in no-fault, insurers will need time to carefully study the impact of the changes in the medical fee schedules on no-fault to appropriately adjust no-fault premium rates to absorb the noticeable increase in no-fault claims costs.

Furthermore, pursuant to Insurance Law Sections 3425 and 3426, there is a one-year "required policy period" for automobile policies, which may not be canceled during that period unless as prescribed in the statutes; therefore, policies that are already in effect could not be altered to reflect the sudden increase in loss costs. The Superintendent therefore, deems it necessary to delay for 18 months the adoption of the medical fee schedules that the Chair has prepared and established to take effect on April 1, 2019, and so those fee schedules will take effect on October 1, 2020 for use in no-fault pursuant to Insurance Law 5108.

However, this amendment to Insurance Regulation 83 will exclude certain workers' compensation ground rules from the 18-month delay, to wit: General Ground Rule 10 in the Workers' Compensation Chiropractic Fee Schedule, General Ground Rule 13 in the Workers' Compensation Behavioral Health Fee Schedule, and General Ground Rule 16 in the Workers' Compensation Podiatry Fee Schedule, which prohibit providers to whom these fee schedules apply from billing under current procedural terminology ("CPT") codes not listed in their respective fee schedules; and General Ground Rule 19 in the Workers' Compensation Medical Fee Schedule, which prohibits any chiropractor, podiatrist or provider of behavioral health services from billing under CPT codes in the medical fee schedule. Per the Chair, these rules are not new but clarification of existing rules; therefore, the Superintendent determined it was not necessary to delay their implementation.

Insurance Regulation 83 also is being amended to provide that any references in any workers' compensation ground rules regarding time limitations within which health services must be performed, as well as any enhanced reimbursement for providers of certain designated services, are inapplicable to no-fault. Insurance Law Section 5102(a) specifically prescribes any time limitations on receiving necessary health-related services. With respect to enhanced reimbursement for providers (20% in addition the fee schedule rate), the Chair, in General Ground Rule 17 of the Workers' Compensation Medical Fee Schedule, stated that this enhancement was necessary to increase the number of Board-authorized providers in the general medicine specialties. There is no requirement that providers be authorized by the Department to treat no-fault patients, nor is there a shortage of no-fault treating providers in general medicine specialties. Therefore, the Superintendent determined an additional 20% reimbursement increase solely for general medicine specialty providers of no-fault-related health services is unwarranted, and will not be adopted for use pursuant to Insurance Law Section 5108.

4. Costs: This amendment should have no compliance cost impact on applicants for no-fault benefits, insurers, self-insurers, or state and local governments. With respect to any cost impact to health service providers not regulated by the Department, participation in the no-fault system is optional, and the Department has imposed no preauthorization or reporting requirements on these applicants for no-fault benefits. Notwithstanding, this rule only delays the adoption of changes that the Chair has made to the workers' compensation fee schedules, which the Department is required to adopt pursuant to Insurance Law Section 5108.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district.

6. Paperwork: This rule does not impose any additional paperwork on any persons affected by the rule.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The Superintendent carefully evaluated alternatives to the 18-month delay in adopting the workers' compensation medical fee schedules. The Superintendent determined that delaying only increases and not decreases in the fee schedules would cause significant systems issues for both insurers and health service providers, from having to utilize separate fee schedules and apply different ground rules. The Superintendent also considered a shorter implementation delay period, but determined, based on the Superintendent's expertise as insurance regulator, that an 18-month delay was most appropriate to permit insurers sufficient time to study the cost impact of the fee schedule changes to determine when and how to adjust their rates.

9. Federal standards: There are no minimum federal standards for the same or similar subject areas. The rule is consistent with federal standards or requirements.

10. Compliance schedule: This amendment shall take effect upon publication of the notice of adoption in the State Register. However, the 18-month delay in adopting the Chair's amended medical fee schedules shall commence on April 1, 2019, the effective date of those fee schedules.

Regulatory Flexibility Analysis

1. Effect of rule: This rule affects no-fault insurers authorized to do business in New York State and self-insurers, none of which fall within the definition of "small business" as defined in State Administrative Procedure Act Section 102(8), because none are both independently owned and have less than one hundred employees. Self-insurers are typically large enough to have the financial ability to self-insure losses and the Department of Financial Services (the "Department") does not have any information to indicate that any self-insurers are small businesses.

Local government units make independent determinations on the feasibility of becoming self-insured for no-fault benefits or having these benefits provided by authorized insurers. There are no requirements under the State's financial security laws requiring local governments to report to the Department or the Department of Motor Vehicles that they are self-insured. Therefore, the Department has no way of estimating how many local government units are self-insured for no-fault benefits.

The types of small businesses affected by this rule are applicants for no-fault benefits, who are typically health service providers not regulated by the Department. Their participation in the no-fault system, however, is optional and the Department has established no preauthorization or reporting requirements with respect to these small businesses. Further, because the Department does not maintain records of either the number of applicants licensed in this state or the number of applicants providing services to injured persons eligible for no-fault benefits, it cannot provide the number of these entities that will be affected by this rule. Notwithstanding, this rule only delays for 18 months the adoption of the most recent amendments to the workers' compensation fee schedules, which are required to be utilized in the no-fault system pursuant to Insurance Law Section 5108. Although this amendment may have a temporary impact on small businesses in that they may not bill at the higher fee schedule rate for their services until October 1, 2020, such an impact is outweighed by the need to give no-fault insurers time to study the impact the fee schedule changes will have on loss costs so they may appropriately adjust premiums to cover those costs.

2. Compliance requirements: This amendment will not impose any additional reporting, recordkeeping or other compliance requirements on any small businesses or self-insured local governments affected by this rule.

3. Professional services: This rule does not require the use of professional services.

4. Compliance costs: This amendment does not impose any additional compliance costs on small businesses or self-insured local governments.

5. Economic and technological feasibility: There should not be any issues pertaining to economic or technological feasibility because this rule only delays the adoption of the most recent amendments to the workers' compensation fee schedules for use in no-fault pursuant to Insurance Law Section 5108.

6. Minimizing adverse impact: This rule should have no adverse impact on small businesses or local governments affected by this amendment because the amendment only delays the adoption of the most recent amendments to the workers' compensation fee schedules for use pursuant to Insurance Law Section 5108. The Department anticipates that no small businesses subject to the rule, if any, or self-insured local governments will experience any cost increase because of this amendment.

7. Small business and local government participation: Interested parties, including small businesses and local governments, will be given an opportunity to review and comment on the rulemaking once it is published in the New York State Register.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Health service providers, insurers, and self-insurers affected by this regulation do business in every county in this state, including rural areas as defined in State Administrative Procedure Act Section 102(10). Some government entities that are self-insurers for no-fault benefits may be located in rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: This amendment will not impose any additional reporting, recordkeeping or other compliance requirements on insurers, self-insurers, self-insured local governments, and health service providers affected by this rule.

Insurers, self-insurers, self-insured local governments, and health service providers affected by this rule should not need to retain professional services to comply with this rule. This rule only delays for 18 months the adoption of the most recent amendments to the workers' compensation fee schedules, which are required to be utilized in the no-fault system pursuant to Insurance Law Section 5108.

3. Costs: This amendment does not impose any additional costs on no-fault insurers, self-insurers, self-insured local governments, and health service providers, because this rule only delays for 18 months the adoption of the most recent amendments to the workers' compensation fee schedules, which are required to be utilized in the no-fault system pursuant to Insurance Law Section 5108.

4. Minimizing adverse impact: This rule uniformly affects insurers, self-insurers, self-insured local governments, and health service providers throughout New York State. Therefore, it does not impose any adverse impact on rural areas.

5. Rural area participation: Interested parties, including those located in rural areas, will be given an opportunity to review and comment on the rulemaking once it is published in the New York State Register.

Job Impact Statement

This rule should not adversely impact jobs or employment opportunities in New York State. The amendment only delays for 18 months the adoption of the workers' compensation fee schedules for use pursuant to Insurance Law Section 5108.

Department of Health

EMERGENCY RULE MAKING

Medical Use of Marihuana

I.D. No. HLT-31-18-00005-E
Filing No. 108
Filing Date: 2019-02-05
Effective Date: 2019-02-05

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

Action taken: Amendment of section 1004.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3369-a

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

Specific reasons underlying the finding of necessity: In New York State, the number of overdose deaths involving opioids has increased from over 1,000 deaths in 2010, to over 3,000 deaths in 2016. The opioid epidemic is an unprecedented crisis and practitioners should have as many treatment options available to them as possible.

Medical marihuana has been demonstrated to be an effective treatment option for pain, thereby reducing the chance of dependence and the risk of fatal overdose as compared to opioid-based medications. Studies of some states with medical marihuana programs have found notable associations of reductions in opioid deaths and opioid prescribing with the availability of cannabis products. States with medical marihuana programs have also been found to have less opioid overdose deaths than other states by as much as 25 percent. Studies of opioid prescribing in some states with medical marihuana programs have noted a 5.88 percent lower rate of opioid prescribing.

The regulations are necessary to immediately conform the regulations to recent amendments to Section 3360(7) of the PHL that added post-traumatic stress disorder, pain that degrades health and functional capability where the use of medical marihuana is an alternative to opioid use, and substance use disorder, as serious conditions for which patients may be certified to use medical marihuana. In doing so, the regulations will help prevent patients from relying on prescription opioids for severe pain that

is not expected to last more than three months. In addition, adding opioid use disorder as a clinically associated condition will allow individuals with substance use disorder, but who don't suffer from severe or chronic pain, to use medical marihuana as a part of their treatment program.

Subject: Medical Use of Marihuana.

Purpose: To add additional serious conditions for which patients may be certified to use medical marihuana.

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by section 3369-a of the Public Health Law (PHL), Section 1004.2 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:

Section 1004.2 Practitioner issuance of certification.

(a) Requirements for Patient Certification. A practitioner who is registered pursuant to 1004.1 of this part may issue a certification for the use of an approved medical marihuana product by a qualifying patient subject to completion of subdivision (e) of this section. Such certification shall contain:

* * *

(8) the patient's diagnosis, limited solely to the specific severe debilitating or life-threatening condition(s) listed below;

* * *

(xi) any severe debilitating pain that the practitioner determines degrades health and functional capability; where the patient has contraindications, has experienced intolerable side effects, or has experienced failure of one or more previously tried therapeutic options; and where there is documented medical evidence of such pain having lasted three months or more beyond onset, or the practitioner reasonably anticipates such pain to last three months or more beyond onset; [or]

(xii) post-traumatic stress disorder;

(xiii) pain that degrades health and functional capability where the use of medical marihuana is an alternative to opioid use, provided that the precise underlying condition is expressly stated on the patient's certification; or

(xiv) substance use disorder; or

([xii]*xv*) any other condition added by the commissioner.

(9) The condition or symptom that is clinically associated with, or is a complication of the severe debilitating or life-threatening condition listed in paragraph (8) of this subdivision. Clinically associated conditions, symptoms or complications, as defined in subdivision seven of section thirty-three hundred sixty of the public health law are limited solely to:

(i) Cachexia or wasting syndrome;

(ii) severe or chronic pain resulting in substantial limitation of function;

(iii) severe nausea;

(iv) seizures;

(v) severe or persistent muscle spasms; [or]

(vi) post-traumatic stress disorder;

(vii) opioid use disorder; or

([vi]*viii*) such other conditions, symptoms or complications as added by the commissioner.

(10) a statement that by training or experience, the practitioner is qualified to treat the serious condition, which encompasses the severe debilitating or life-threatening condition listed pursuant to paragraph (8) of this subdivision and the clinically associated condition, symptom or complication listed pursuant to paragraph (9) of this subdivision;

(i) for purposes of this subdivision, a practitioner must hold a federal Drug Addiction Treatment Act of 2000 (DATA 2000) waiver to be qualified to treat patients with substance use disorder or opioid use disorder.

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-31-18-00005-P, Issue of August 1, 2018. The emergency rule will expire April 5, 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: regsqna@health.ny.gov

Regulatory Impact Statement

Statutory Authority:

The Commissioner of Health is authorized pursuant to Section 3369-a of the Public Health Law (PHL) to promulgate rules and regulations necessary to effectuate the provisions of Title V-A of Article 33 of the PHL. The Commissioner of Health is also authorized pursuant to Section 3360(7) of the PHL to add serious conditions under which patients may qualify for the use of medical marihuana.

Legislative Objectives:

The legislative objective of Title V-A is to comprehensively regulate the manufacture, sale and use of medical marihuana, by striking a balance between potentially relieving the pain and suffering of those individuals with serious conditions, as defined in Section 3360(7) of the PHL, and protecting the public against risks to its health and safety.

Needs and Benefits:

The regulatory amendments are necessary to conform the regulations to recent amendments to Section 3360(7) of the PHL that added post-traumatic stress disorder, pain that degrades health and functional capability where the use of medical marihuana is an alternative to opioid use, and substance use disorder, as serious conditions for which patients may be certified to use medical marihuana. This regulatory amendment will particularly benefit patients with these conditions as medical marihuana will now be an available treatment option. Requiring practitioners to expressly state the precise underlying condition will help the Department to better understand how medical marihuana can be used as an alternative or adjunctive therapy to prescription opioids.

In addition, adding substance use disorder as a severe debilitating or life-threatening condition and opioid use disorder as a clinically associated condition will allow individuals who are addicted to opioids to use medical marihuana as part of their treatment. This latest emergency regulation removes the requirement that a patient be enrolled in a treatment program certified pursuant to Article 32 of the Mental Hygiene Law. The emergency regulation instead requires practitioners certifying patients for substance use disorder and opioid use disorder to hold a federal Drug Addiction Treatment Act of 2000 (DATA 2000) waiver.

Costs:

Costs to the Regulated Entity:

Patients certified by their practitioner for the medical use of marihuana will have to pay a $50 non-refundable application fee to obtain a registry identification card to register with the Medical Marihuana Program. However, the Department may waive or reduce this fee in cases of financial hardship, and is currently waiving this fee for all patients and caregivers. Patients will also have a cost associated with the fees charged by registered organizations for the purchase of medical marihuana products.

Costs to Local Government:

This amendment to the 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:

With the inclusion of these new serious conditions, additional patient registrations will need to be processed by the Department. In addition, there may be an increase in the number of practitioners who register with the program to certify patients who may benefit from the use of medical marihuana for these new serious conditions. This regulatory amendment may result in an increased cost to the Department for additional staffing to provide registration support for patients and practitioners as well as certification support for registered practitioners. However, any resulting cost of additional staffing is greatly outweighed by the benefit of making another treatment option available to practitioners who are treating patients suffering from severe pain or opioid use disorder.

Local Government Mandates:

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

Paperwork:

Registered practitioners who certify patients for the program will be required to maintain a copy of the patient's certification in the patient's medical record.

Duplication:

No relevant rules or legal requirements of the Federal and State governments duplicate, overlap or conflict with this rule.

Alternatives:

An alternative would be to not amend the regulation to align with Section 3360(7) of the PHL. However, this was not considered a viable alternative, as it would create confusion for registered practitioners and patients seeking to be certified for the medical use of marihuana.

Federal Standards:

Federal requirements do not include provisions for a medical marihuana program.

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 amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Cure Period:
Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement under the regulation. The regulatory amendment authorizing the addition of this serious condition does not mandate that a practitioner register with the program. This amendment does not mandate that a registered practitioner issue a certification to a patient who qualifies for this new serious condition. Hence, no cure period is necessary.

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
No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the amendment, that it will not have an adverse impact on jobs and employment opportunities.

Assessment of Public Comment
The agency received no public comment since publication of the last assessment of public comment.

NOTICE OF ADOPTION

Voluntary Foster Care Agency Health Facility Licensure

I.D. No. HLT-30-18-00008-A
Filing No. 104
Filing Date: 2019-02-04
Effective Date: 2019-02-20

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

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

Statutory authority: Public Health Law, section 2999-gg

Subject: Voluntary Foster Care Agency Health Facility Licensure.

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

Text or summary was published in the July 25, 2018 issue of the Register, I.D. No. HLT-30-18-00008-P.

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

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

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 agency received no public comment.

State Commission on Judicial Conduct

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Counsel for Witnesses at Hearings

I.D. No. JDC-08-19-00006-P

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

Proposed Action: Addition of section 7000.6(i)(3) to Title 22 NYCRR.

Statutory authority: Judiciary Law, section 42(5)

Subject: Counsel for witnesses at hearings.

Purpose: To codify the practice that a witness may have legal counsel present during a commission hearing.

Text of proposed rule: A new paragraph of subdivision (i) of section 7000.6 is added to read as follows:

(3) At a hearing, counsel for a witness may be present while his or her client is testifying and may request permission of the referee to consult with the client, but may not object to questions, examine or cross-examine witnesses or otherwise participate in the proceedings.

Text of proposed rule and any required statements and analyses may be obtained from: Marisa E. Harrison, Commission on Judicial Conduct, Corning Tower, Suite 2301, Empire State Plaza, Albany, New York 12223, (518) 453-4600, email: harrison@cjc.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: Judiciary Law, Section 42(5).
2. Legislative objectives: The proposed change would clarify that counsel for a witness may be present while his or client is testifying at a Commission hearing, and may request permission of the referee to consult with the client, but may not object to questions, examine or cross-examine witnesses or otherwise participate in the proceedings.
3. Needs and benefits: The proposal seeks to clarify ambiguities and better reflect actual Commission practice that allows a witness to have counsel present during Commission hearings.
4. Costs: None.
5. Local government mandates: None.
6. Paperwork: None.
7. Duplication: None.
8. Alternatives: None.
9. Federal standards: None.
10. Compliance schedule: None.

Regulatory Flexibility Analysis
1. Effect of rule: These are internal agency operating rules concerning disciplinary proceedings against judges. No small businesses or local governments are affected.
2. Compliance requirements: None.
3. Professional services: None.
4. Compliance costs: None.
5. Economic and technological feasibility: Not applicable.
6. Minimizing adverse impact: There is no economic impact on small businesses or local governments.
7. Small business and local government participation: This internal agency operating rule concerning disciplinary proceedings against judges do not involve small businesses or local governments.
8. For rules that either establish or modify a violation or penalties associated with a violation: Not applicable.
9. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: Not applicable.

Rural Area Flexibility Analysis
This proposal will not impose any adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This proposal contains internal agency operating rules concerning disciplinary proceedings against judges of the state unified court system. The agency analyzed the plain language of the proposed rule and concluded that the subject matter – i.e. the legal representation of witnesses at Commission hearings – is not addressed to rural areas and, in any event, contains no reporting or recordkeeping requirements.

Job Impact Statement
This proposal will not impose any adverse impact on jobs and employment opportunities. This proposal contains internal agency operating rules concerning disciplinary proceedings against judges of the state unified court system. It does not add or eliminate any jobs, nor does it impose or modify any responsibilities associated with existing jobs. The agency analyzed the plain language of the proposed rule and concluded that the subject matter – i.e. the legal representation of witnesses at Commission hearings – does not address, create or impact upon any jobs.

Office of Mental Health

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Establish Standards for Providers Who Wish to Become Licensed Children's Mental Health Rehabilitation Programs

I.D. No. OMH-08-19-00005-P

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

Proposed Action: Renumbering of Part 511 to Subpart 511-1; and addition of Subpart 511-2 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.04, 43.02; Social Services Law, sections 364(3), 364-a(1) and 364-j

Subject: Establish standards for providers who wish to become licensed Children's Mental Health Rehabilitation programs.

Purpose: The Children's Mental Health Rehabilitation Program (CMHRS) is a vehicle for implementing the new State Plan services.

Substance of proposed rule (Full text is posted at the following State website: https://www.omh.ny.gov/omhweb /policy_and_regulations/): The Children's Mental Health Rehabilitation Program (CMHRS) is an outgrowth of the Children's Medicaid Redesign efforts. From this effort, a new array of children's behavioral health services was designed to better meet the needs of children and their families. A large part of the redesign was focused on making services, known to work well, more readily available to a broader population of children. As such, services that once were only accessible through a Home and Community Based Services (HCBS) Waiver for children at risk of hospitalization, were developed as State Plan services for all children eligible for Medicaid. Furthermore, the services were included as a part of Early, Periodic, Screening Diagnostic and Treatment (EPSDT) services, directed to all children under the age of 21 years of age as long as they were in need of the service(s) and met medical necessity. This offers a greater opportunity to achieve the goal of integrated care of behavioral health services with physical health care, and the chance to intervene earlier in the lives of children in a more preventive and proactive way.

The Children's Medicaid Redesign involved a variety of child-serving State Agencies, including the Office of Mental Health (OMH), the Department of Health (DOH), the Office of Children and Family Services (OCFS), the Office of Alcoholism and Substance Abuse Services (OASAS), and the Office of Persons with Developmental Disabilities (OPWDD). For these new State Plan services, three agencies: OMH, OASAS, and OCFS, created mechanisms to designate and license/certify agencies for the provision of these services to the populations for which they are responsible.

As a result, the OMH developed the CMHRS program as a vehicle for the implementation of the new State Plan services for children with mental health needs. Providers who become licensed as a CMHRS program will be responsible for the provision and coordination of five of the new State Plan services, including: Other Licensed Practitioner, Community Psychiatric Supports and Treatment, Psychosocial Rehabilitation, Family Peer Support, Services, and Youth Peer Support and Training. This regulation provides a new licensure category for existing children's mental health providers or other interested service providers to become a CMHRS program. In addition, it establishes standard expectations and oversight parameters for all CMHRS program providers.

The goal of the CMHRS program is to assist children and their families with significant mental health and behavioral needs function successfully within their homes and community, ameliorate mental health symptoms, and prevent the progression of mental health conditions by providing a coordinated array of clinical treatment, rehabilitative and support services. The CMHRS program is delivered by a team of varied specialists who works with the child and family to create an individualized treatment plan to meet the unique needs of the child and their family. CMHRS can be offered individually or as a comprehensive array of services provided in an integrated and coordinated manner. Services are intended to be provided in nontraditional settings, including in the home or community settings, to children and their families for whom a flexible approach to service provision is needed to facilitate engagement or therapeutic benefit.

With the CMHRS program, children will have a wider array of available community-based services to assist them at any time in their developmental trajectory when needs are identified. These services provide additional options for families beyond office-based therapy to better meet their needs. It is expected that earlier interventions with greater access to services will help to avert future need for more restrictive services, such as inpatient hospitalizations or residential treatment.

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

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

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

Regulatory Impact Statement

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

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

3. Needs and Benefits: Federal law requires state Medicaid programs to offer Early and Periodic Screening, Diagnosis and Treatment (EPSDT) to all Medicaid-eligible children under age 21. Within the scope of EPSDT benefits, states are required to cover any service that is medically necessary to "correct or ameliorate a defect, physical or mental illness, or a condition identified by screening" and which are recommended by a licensed practitioner of the healing arts. New York State has obtained an amendment to its Medicaid State Plan that authorizes the provision of six new children's behavioral and health services under the EPSDT program. When recommended by a practitioner of the healing arts, these six services will be made available to any child eligible for Medicaid who meets relevant medical necessity criteria, and include: Crisis Intervention Services; Family Peer Support Services (FPSS); Youth Peer Support and Training (YPST); Psychosocial Rehabilitation Services (PSR); Community Psychiatric Support and Treatment (CPST); and Other Licensed Practitioner (OLP). This Part establishes standards specifically the services offered through the Child Mental Health Rehabilitation Services (CMHRS) Program, which includes OLP, CPST, PSR, FPSS, and YPST, that require additional certification standards that are applicable to all providers of services licensed or operated by the Office of Mental Health that wish to be designated, or have been designated, to offer EPSDT behavioral health services.

4. Costs: Costs to implement a CMHRS Program in general, are significantly offset by the cost savings that can result from its use. These services will be provided in the home or community settings with the goal of identifying needs early, maintaining the child at home with support and services, and preventing longer term need for costly higher-end services. All services are intended to be delivered in a culturally competent manner and to be trauma-informed. Service planning will consider the child and his or her family's strengths, assets, needs and any history of adverse experiences.

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

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

(c) Cost to Regulated Parties: For providers that wish to offer these services, there are no new costs to providers as a result of these amendments.

5. Local Government Mandates: The provision of this service is not required.

These regulatory amendments will not involve or result in any additional imposition of duties or responsibilities upon county, city, town, village, school, or fire districts.

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

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

8. Alternatives: OMH wishes to advance these amendments to establish basic standards for the provision of CMHRS Programs to ensure quality and efficacy.

9. Federal Standards: There are currently no federal standards specific to the provision of these EPSDT behavioral health services. However, the regulatory amendments are consistent with the definition of EPSDT services issued by the Centers for Medicare and Medicaid Services. (42 U.S.C. § § 1396d(r)(5).

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

Regulatory Flexibility Analysis

The amendments to 14 NYCRR Part 511-2 are intended to establish basic standards for all licensed providers of services licensed or operated by the Office of Mental Health that wish to be designated, or have been designated to establish a Children's Mental Health Rehabilitation Services Program.

The provision of this program is not required, and does not create new local government mandates. As there will be no adverse economic impact on small businesses or local governments as a result of these amendments, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

The amendments to 14 NYCRR Part 511-2 are intended to establish basic standards and parameters to approve the Children's Mental Health Rehabilitation Services Programs that are authorized and designated to provide these services. The provision of these services is not required. The proposed rule will not impose any adverse economic impact on rural areas; therefore, a Rural Area Flexibility Analysis is not submitted with this notice.

Job Impact Statement

The amendments to 14 NYCRR Part 511-2 are intended to establish basic standards and parameters to approve the use of EPSDT behavioral health children's services in Children's Mental Health Rehabilitation Services Programs that are authorized and designated to provide these services. The provision of these services is not required. Because it is evident from the subject matter that there will be no adverse impact on jobs and employment opportunities as a result of these amendments, a Job Impact Statement is not submitted with this notice.

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-42-18-00005-A

Filing Date: 2019-02-05

Effective Date: 2019-01-01

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

Action taken: Decrease in Production Rates.

Statutory authority: Public Authorities Law, sections 1005, 3rd undesignated paragraph and 1005(6)

Subject: Rates for the Sale of Power and Energy.

Purpose: To align Rates and Costs.

Substance of final rule: The New York Power Authority's Notice of Proposed Rulemaking published on October 17, 2018, proposed to decrease the production rates of its Westchester County Governmental Customers by 17.98%. Based on further analysis by staff, the Authority determined that the production rates should be decreased by 0.95%. The new production rates will be effective commencing with the January 2019 billing period.

Final rule as compared with last published rule: Substantial revisions were made in First Part.

Text of rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street - 11-P, White Plains, NY 10601, (914) 390-8085, email: karen.delince@nypa.gov

Revised Regulatory Impact Statement

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

Revised Regulatory Flexibility Analysis

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

Revised Rural Area Flexibility Analysis

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

Revised Job Impact Statement

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

Assessment of Public Comment

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

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Disposition of Property Tax Refunds

I.D. No. PSC-08-19-00008-P

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

Proposed Action: The Public Service Commission is considering Verizon New York Inc.'s petition to retain $2,066,319, the intrastate portion of a $3,387,409 property tax refund received from the City of New York, associated with the 2017-2018 tax year.

Statutory authority: Public Service Law, section 113(2)

Subject: Disposition of property tax refunds.

Purpose: To consider Verizon New York Inc.'s request to retain a portion of a property tax refund.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Verizon New York Inc. (Applicant) on January 8, 2019, seeking the retention of the portion of a property tax refund received from the City of New York in relation to its regulated, intrastate New York operations during the 2017-2018 tax year.

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-C-0011SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sale of Street Lighting Facilities to the Town of Rosendale

I.D. No. PSC-08-19-00009-P

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

Proposed Action: The Commission is considering a petition filed by Central Hudson Gas & Electric Corporation for approval to transfer certain street lighting facilities to the Town of Rosendale, Ulster County, NY.

Statutory authority: Public Service Law, section 70(1)

Subject: Sale of Street Lighting Facilities to the Town of Rosendale.

Purpose: To consider the transfer of street lighting facilities to the Town of Rosendale.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed by Central Hudson Gas & Electric Corporation (Central Hudson or the Company) on November 30, 2018, requesting approval to transfer certain street lighting facilities located in the Town of Rosendale (Town), Ulster County, New York to the Town of Rosendale.

The November 30th filing inadvertently indicated that the original cost of the assets to be transferred was less than $100,000. The Company provided a supplemental letter on January 30, 2019, showing that the original book cost of the facilities was $105,435 and the net book value, as of November 1, 2018, is $67,302. The gross proceeds available to Central Hudson as a result of the sale of certain streetlights is approximately $50,389 and will be applied to Account 108 – accumulated depreciation reserve for electric plant.

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-E-0064SP1)

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-48-18-00003-A

Filing No. 107

Filing Date: 2019-02-05

Effective Date: 2019-02-05

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period January 1, 2019 through March 31, 2019.

Text or summary was published in the November 28, 2018 issue of the Register, I.D. No. TAF-48-18-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. Chase, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: Kathleen.Chase@tax.ny.gov

Assessment of Public Comment

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-08-19-00007-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2019 through June 30, 2019.

Text of proposed rule: Pursuant to the authority contained in subdivision First of section 171, subdivision (c) of section 301-h, subdivision 7 of section 509, subdivision (b) of section 523, and subdivision (a) of section 528 of the Tax Law, the First Deputy Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of the Commissioner of Taxation and Finance, hereby proposes to make and adopt the following amendments to the Fuel Use Tax Regulations, as published in Article 3 of Subchapter C of Chapter III of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (xciv) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(xciii) January-March 2019					
17.7	24.0	41.7	16.0	24.0	39.95
(xciv) April-June 2019					
14.7	*22.7*	*40.4*	*16.0*	*24.0*	*39.95*

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen D. Chase, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: Kathleen.Chase@tax.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

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

Department of Transportation

NOTICE OF ADOPTION

Regulation of Transportation of Hazardous Materials by Commercial Motor Carriers in New York State

I.D. No. TRN-47-18-00001-A

Filing No. 72

Filing Date: 2019-01-30

Effective Date: 2019-02-20

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

Action taken: Amendment of section 820.8(j) of Title 17 NYCRR.

Statutory authority: Transportation Law, section 14(18); 49 U.S.C., sections 30103, 31102, 31136 and 31141

Subject: Regulation of transportation of hazardous materials by commercial motor carriers in New York State.

Purpose: Corrects omissions in State regulations associated with Title 49 CFR provisions related to transport of hazardous materials.

Text or summary was published in the November 21, 2018 issue of the Register, I.D. No. TRN-47-18-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: David E. Winans, Associate Counsel, NYSDOT, Office of Legal Services, 50 Wolf Road, Albany, NY 12232, (518) 457-2411, email: David.Winans@dot.ny.gov

Assessment of Public Comment
The agency received no public comment.

Urban Development Corporation

EMERGENCY RULE MAKING

Life Sciences Initiative Program

I.D. No. UDC-08-19-00001-E
Filing No. 73
Filing Date: 2019-01-31
Effective Date: 2019-01-31

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

Action taken: Amentment of Part 4255 of Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, sections 5(4), 9-c and 16-aa; L. 2017, ch. 58, part TT

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the statutory changes contained in Part TT of Chapter 58 of the Laws of 2017. The emergency rule amends the second component of the Life Sciences Initiative program, the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program, to streamline it and make it more attractive to potential applicants.

NYFIRST is intended to encourage the recruitment and retention of exceptional life science researchers and world-class talent at the state's medical schools to accelerate translational research. NYFIRST funds will be used to support the establishment or upgrading of laboratories for these researchers, purchases of capital equipment and specialized supplies needed for their research, and as working capital to cover costs of professional staff (including staff scientists, postdoctoral fellows, and technicians, but excluding the recruited researcher) critical to the proposed research.

The rule updates the administrative procedures for the NYFIRST program. It is critical to implement this program immediately because medical schools are eager to encourage translational research at their institutions, as such research often results in new intellectual property, start-up companies, and products with commercial promise. By waiting for the standard rulemaking process to unfold, the State risks losing important economic development opportunities to states with competing life sciences incentive programs.

Subject: Life Sciences Initiative Program.

Purpose: Amend NYFIRST component of the Life Sciences Initiatives program.

Substance of emergency rule (Full text is posted at the following State website: esd.ny.gov): 21 NYCRR Part 4255 is amended as follows:

21 NYCRR 4255.3 covers the second component of the Life Sciences Initiative, the newly created New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program. The authority and purpose section is amended to establish that working capital expenses are included under this program.

Next, the regulation lays out key definitions of this component and adds a new definition of "Specialized Supplies."

In its "Available Program Assistance" section, the regulation next makes clear that grantees shall submit twice yearly invoices, instead of quarterly invoices.

Next, the regulation discusses eligibility criteria for the NYFIRST program. It clarifies that program grants are intended to encourage the recruitment and retention by the state's medical schools of exceptional life science researchers and world-class talent focused on accelerating Translational Research. NYFIRST grants may be used to support the establishment or upgrading of laboratories for these researchers, for purchases of capital equipment and specialized supplies needed for their research, and as working capital to cover costs of professional staff (including staff scientists, postdoctoral fellows, and technicians, but excluding the recruited researcher) critical to the proposed research.

The regulation next covers specifics of the application and the evaluation process for NYFIRST grants. The specific selection criteria are delineated in the regulation. Importantly, the Corporation intends to make Program grant awards through a competitive grant solicitation to qualifying Applicants, twice annually until the funds under this Program are fully committed.

The regulations now clarify several important administrative items. For example, the offer of employment to the Principal Investigator by the Applicant must be made between the date of availability of the NYFIRST application for a given application cycle and the application deadline for that cycle. Acceptance of such offer also must occur between the date of availability of the NYFIRST application for a given application cycle and the application deadline for that cycle. A copy of the accepted employment offer must be submitted with the NYFIRST application.

Also, the grant term is four years, and all expenditures for which Program funding is approved must be commenced and completed no more than four years from commencement of the grant.

Eligible uses for the funds are then discussed. Program grants may now cover specialized supply purchases and working capital.

The full text of the regulations is available at: www.esd.ny.gov

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 30, 2019.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Part TT of Chapter 58 of the Laws of 2017 requires the New York State Urban Development Corporation ("UDC") to establish criteria for the Life Sciences Initiatives Program via rulemaking.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance since it implements both the Capital Assistance component of the Life Sciences Initiative Program as well as the second component of the Program, the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program.

NEEDS AND BENEFITS:

The Capital Assistance component is designed to attract new life sciences technologies to New York State, promote critical public and private sector investment in emerging life sciences fields in New York State and create and expand life sciences related businesses and employment. It includes a diverse range of programs designed to attract, grow and retain life science companies in regions of the state with existing life science activity. These programs include establishment of the Empire Discovery Institute (EDI), a collaboration among three upstate research institutions to accelerate the pathway from discovery research to commercialization; supporting the launch of JLABS@NYC, an incubator for life-science startups; creation of public-private partnerships with private sector biopharmaceutical companies; and establishment of the New York Fund for Innovation in Research and Scientific Talent (NYFIRST), a medical school grant program.

NYFIRST is intended to encourage the recruitment and retention of exceptional life science researchers and world-class talent at the state's medical schools to accelerate translational research. NYFIRST funds will be used to support the establishment or upgrading of laboratories for these researchers, purchases of capital equipment and specialized supplies needed for their research, and working capital to cover costs of professional staff (including staff scientists, postdoctoral fellows, and technicians, but excluding the recruited researcher) critical to the proposed research.

The rule updates the administrative procedures for the NYFIRST program. It is critical to implement this program immediately because medical schools are eager to encourage translational research at their institutions, as such research often results in new intellectual property, start-up companies, and products with commercial promise. By waiting for the standard rulemaking process to unfold, the State risks losing important economic development opportunities to states with competing life sciences incentive programs.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Life Sciences Initiative Program, only voluntary participants.

B. Costs to the agency, the state, and local governments: UDC does not anticipate substantial extra costs associated with running the program outlined in this rulemaking. The program appropriation makes funding available for the Corporation's administrative costs. There is no additional cost to local governments.

C. Costs to the State government: The money to fund this grant program

is part of the Governor's $320 million Life Sciences Initiative passed in FY 2018 budget. The Corporation believes the costs of this program will be offset by the positive economic impact of the program.

LOCAL GOVERNMENT MANDATES:

None. Local governments are not eligible to participate in the Life Sciences Initiatives Program.

PAPERWORK:

The emergency rule will require applicants to fill out an application to participate in the Life Sciences Capital Assistance program and the NYFIRST program. These applications will require applicants to provide certain business financial information to the Corporation. In addition, the Capital Assistance component requires applicant to submit an annual report to the Corporation while the NYFIRST program requires periodic reporting as well. Under NYFIRST, quarterly invoices are required to be submitted prior to the Corporation disbursing grant payments on a semiannual basis.

DUPLICATION:

The emergency rule conforms to provisions of section 16-aa of the New York State Urban Development Corporation Act and does not otherwise duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to implementing this rulemaking.

FEDERAL STANDARDS:

There are no federal standards with regard to the Life Sciences Initiatives Program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible.

Regulatory Flexibility Analysis

The Life Sciences Initiative is composed of the Capital Assistance Program and the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program which are both statewide grant programs. Although there are small businesses in New York State that are eligible to participate in the program, participation by the businesses is entirely at their discretion. The emergency rule will not have a substantial adverse economic impact on small businesses and local governments. On the contrary, because the rule creates a grant program designed to attract business and jobs to New York State, it will have a positive economic impact on the State. Accordingly, a regulatory flexibility analysis for small business and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

The Life Sciences Initiative is composed of the Capital Assistance Program and the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program, both of which are statewide programs. Although there are businesses in rural areas of New York State that are eligible to participate in the programs, participation by the businesses is entirely at their discretion. The emergency rule imposes no additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed rule relates to both the Capital Assistance component and the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") component of the Life Sciences Initiative Program. This Program will enable New York State to provide financial assistance to life sciences companies that commit to create or retain jobs and/or to make significant capital investment in the State. This Program, given its design and purpose, will have a substantial positive impact on job retention and creation, and employment opportunities. Because this rule will authorize the Corporation to immediately begin offering financial incentives to life sciences businesses that commit to creating or retaining jobs, it will only have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.