

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Incorporation by Reference of the 2017 Edition of the Grade A Pasteurized Milk Ordinance (“PMO”)

I.D. No. AAM-18-19-00001-P

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

Proposed Action: This is a consensus rule making to amend section 2.1 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18, 46, 46-a, 50-k, 71-a, 71-n and 214-b

Subject: Incorporation by reference of the 2017 edition of the Grade A Pasteurized Milk Ordinance (“PMO”).

Purpose: To require certain producers, processors and manufacturers of milk and milk products to comply with the 2017 edition of the PMO.

Text of proposed rule: Paragraph (1) of subdivision (b) of section 2.1 of 1 NYCRR is amended to read as follows:

(1) The sanitation provisions of this Part shall not apply to dairy farms or dairy farmers, or to milk plants and persons who operate milk plants, that have a sanitation compliance rating of 90 or better, as set forth in the latest Sanitation Compliance and Enforcement Ratings of interstate milk shippers list (IMS List), except as set forth in paragraph (2) of this subdivision. Dairy farms and dairy farmers, and milk plants and persons who operate milk plants, that have such a sanitation compliance rating shall comply with the sanitation requirements set forth in the Grade A Pasteurized Milk Ordinance, [2013] 2017 edition, published by the United

States Department of Health and Human Services, Washington, DC (PMO), except to the extent that any provision of the PMO is in conflict with a provision of State and/or Federal law and except as provided in paragraph (2) of this subdivision. A copy of the PMO is available for public inspection at the Division of Milk Control and Dairy Services, Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, and at the Department of State, 41 State Street, Albany, NY 11231.

Subdivision (c) of section 2.1 of 1 NYCRR is amended to read as follows:

(c) Every term used in subdivision (b) of this section that is defined in the Grade A Pasteurized Milk Ordinance, [2013] 2017 edition, shall have the meaning ascribed to such term therein.

Text of proposed rule and any required statements and analyses may be obtained from: Casey McCue, Division of Milk Control & Dairy Services, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-1772, email: Casey.McCue@agriculture.ny.gov

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

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

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

Consensus Rule Making Determination

The proposed rule will amend 1 NYCRR section 2.1 to incorporate by reference the 2017 edition of the Grade A Pasteurized Milk Ordinance (“the 2017 PMO”) and make the provisions thereof applicable to producers, processors and manufacturers of “Grade A” milk and milk products that have a sanitation compliance rating of ninety or better, as set forth in the latest Sanitation Compliance and Enforcement Ratings of the Interstate Milk Shippers Conference (“IMSC”), and who may, therefore, ship such foods in interstate commerce. The proposed rule is non-controversial. The 2017 PMO is a publication of the Food and Drug Administration (“FDA”) of the United States Department of Health and Human Services and contains sanitation guidelines for the production of raw milk that will be pasteurized, the processing of such milk for drinking, and the manufacture of milk products such as cottage cheese and yogurt. Pursuant to an agreement between the states, each state causes inspections to be made of the premises of each producer, processor and manufacturer of “Grade A” milk and milk products, located within its borders, that wishes to ship such foods in interstate commerce. After an inspection is conducted, the inspected business is given a “rating” that reflects its adherence to the sanitation guidelines set forth in the 2017 PMO. The states have agreed that no producer, processor or manufacturer of “Grade A” milk and milk products may ship such foods in interstate commerce unless and until it has received a sanitation compliance rating of ninety or better, indicating that it is in substantial compliance with such sanitation guidelines. As a result of this agreement between the states, every producer, processor and manufacturer of “Grade A” milk and milk products located in New York that ships such foods in interstate commerce must, and already does, have a sanitation compliance rating of ninety or better, indicating that it is in substantial compliance with the provisions of the 2017 PMO.

Based upon the preceding, the proposed rule will not have an adverse impact upon New York’s producers, processors and manufacturers of “Grade A” milk and milk products because those businesses that ship such foods in interstate commerce are already required to be in substantial compliance with the 2017 PMO. Furthermore, not only will the proposed rule have no adverse impact upon New York’s producers, processors and manufacturers of “Grade A” milk and milk products, but such businesses will favor adoption of such proposed rule because the FDA has indicated that New York’s ability to give “ratings” to such businesses will be jeopardized unless it adopts the 2017 PMO, which could, in turn, cause such businesses to no longer be able to ship such foods in interstate commerce.

For the preceding reasons, the proposed rule is non-controversial and is a consensus rule, as defined in State Administrative Procedure Act section 102(11).

Job Impact Statement

The proposed rule will not have an adverse impact on jobs or on employment opportunities.

The proposed rule will amend 1 NYCRR Part 2 to incorporate by reference the 2017 edition of the Grade A Pasteurized Milk Ordinance (“the 2017 PMO”) and make the provisions thereof applicable to producers, processors and manufacturers of “Grade A” milk and milk products, located in New York, that have a sanitation compliance rating of ninety or better, as set forth in the latest Sanitation and Compliance Enforcement Ratings of the Interstate Milk Shippers Conference (“IMSC”), and that may, therefore, ship such foods in interstate commerce. Such producers, processors and manufacturers are already practically required to substantially comply with the provisions of the 2017 PMO, and setting forth such requirement in regulations places no additional burden upon them. As such, the proposed rule will have no adverse impact upon jobs or employment opportunities.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-18-19-00007-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading “New York State Board of Elections,” by adding thereto the positions of Assistant Manager Information Services and by increasing the number of positions of Manager Information Services from 1 to 2.

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-18-19-00008-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Council on the Arts, by deleting therefrom the position of Arts Program Assistant; in the Executive Department under the subheading “Justice Center for the Protection of People with Special Needs,” by deleting therefrom the positions of Advocacy for the Disabled Specialist 3, Policy Analysis and Development Specialist 2 (1) and Quality Care Facility Review Specialist Assistant; and, in the Department of Civil Service, by deleting therefrom the positions of Community Outreach Coordinator (3), Community Outreach Specialist 2 (3), Employee Health Service Physician 1 (Part-time) (6) and Psychometrician, Personnel Assessment (1).

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Education Department

EMERGENCY RULE MAKING

Administration of Certain Vaccines by Pharmacy Interns

I.D. No. EDU-05-19-00016-E

Filing No. 329

Filing Date: 2019-04-12

Effective Date: 2019-04-15

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

Action taken: Amendment of sections 63.4 and 63.9 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2), 6527(7), 6801(2), (4), 6802(22), 6806, 6902(1) and 6909(7); L. 2018, ch. 359

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

Specific reasons underlying the finding of necessity: The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement Chapter 359 of the Laws of 2018 (Chapter 359), which amended Education Law section 6806, effective December 7, 2018, to allow the administration of immunizations by a pharmacy intern, certified to administer immunizations, under the immediate and personal supervision of a licensed pharmacist certified to administer immunizations. Chapter 359 was enacted, in part, to make immunizations more readily available and to provide certified pharmacy interns with valuable hands on clinical experience, while under the oversight and supervision of a licensed pharmacist, who is certified to administer immunizations.

Chapter 359 permits a pharmacy intern to receive a certificate of administration which permits administration of immunizations under the immediate and personal supervision of a licensed pharmacist certified to administer immunizations; establishes procedures and requirements for a pharmacy intern to receive a certificate of administration; and requires a patient to be informed that a pharmacy intern, certified to administer immunizations, will be administering the immunization and that the patient must be given the option of having the immunization administered by the certified pharmacist.

Chapter 359 directs the Commissioner to promulgate regulations that establish standards for training of a pharmacy intern in the following areas: techniques for screening individuals and obtaining informed consent; techniques of administration; indications, precautions and contraindications in the use of an agent or agents; recordkeeping of immunization and information; and handling emergencies, including anaphylaxis and needlestick injuries. Chapter 359 also requires the Commissioner to promulgate rules and regulations relating to the documentation required from the dean or other appropriate official of the registered program that the pharmacy intern has completed the required training.

The proposed addition of subdivision (d) to section 63.4 of the Regulations of the Commissioner of Education establishes the requirements for a pharmacy intern to obtain a certificate to administer immunizations and establishes the required training coursework for such certification.

The proposed amendment to subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education authorizes a certified pharmacist to delegate the administration of immunizations to a pharmacy intern that is properly trained and certified to administer immunizations under the immediate personal supervision of the certified pharmacist.

In addition, the proposed amendment to subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education requires the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, to be informed when a certified pharmacy intern will be administering the immunization and consent to it. The proposed amendment further provides that, if the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, does not consent, then the certified pharmacist will administer the immunization.

The proposed amendment was presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the January 2019 meeting of the Board of Regents, effective January 15, 2019. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for permanent adoption, after expiration of the required 60-day comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the May 6-7, 2019 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the May meeting would be May 22, 2019, the date the Notice of Adoption would be published in the State Register. However, the January emergency rule will expire on April 15, 2019. If the rule were to lapse, it would impede the ability of certified pharmacy interns to continue to administer immunizations to the public, which would adversely impact the public's access to immunizations against several diseases, including, but not limited to, seasonal influenza. It would further impede the ability of certified pharmacy interns to gain valuable hands on clinical experience by administering immunizations to the public.

Therefore, emergency action is necessary at the April 2019 meeting for the preservation of the public health and general welfare in order to continue to implement Chapter 359, which is already in effect, to, inter alia, authorize the administration of immunizations by a pharmacy intern, certified to administer immunizations, after completing required training, under the immediate and personal supervision of a licensed pharmacist certified to administer immunizations, in order to improve the public's access to immunizations and provide certified pharmacy interns with valuable hands on clinical experience.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the May 6-7, 2019 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule makings.

Subject: Administration of certain vaccines by pharmacy interns.

Purpose: To implement the provisions of chapter 359 of the Laws of 2018.

Text of emergency rule: Subdivision (d) of section 63.4 of the Regulations of the Commissioner of Education is added, as follows:

(d) Requirements for a certificate to administer immunizations. No pharmacy intern shall administer immunizing agents without a certificate of administration issued by the department. For purposes of this section, a certified pharmacy intern shall mean a limited permit holder who is issued a certificate of administration pursuant to this subdivision. To meet the requirements for a certificate of administration, the pharmacy intern shall submit an application, on a form prescribed by the department. Each application shall contain an attestation by the dean or other appropriate official of the registered program that the applicant has completed the required training as specified in section 6808 of the Education Law and present satisfactory evidence of completion of the requirements set forth in one of the following subparagraphs:

(1) Training course. Completion of a training course in the administration of immunizations acceptable to the Commissioner and the Commissioner of Health, within the three years immediately preceding application for a certificate of administration. Such course shall include, but not be limited to, instruction in:

(i) techniques for screening patients and for obtaining informed consent;

(ii) techniques in the administration of immunizing agents, including the injection of a harmless, non-medicinal saline solution into voluntary recipients;

(iii) indications, precautions and contraindications in the use of immunizing agents;

(iv) handling of emergencies including needlestick injuries and anaphylaxis, including the use of medications required for emergency treatment of anaphylaxis;

(v) cardio-pulmonary resuscitation techniques; and

(vi) recordkeeping and reporting of immunizations and information; or

(2) A pharmacy intern that has completed a training course associated with Doctor of Pharmacy degree pursuant to the requirements in section 63.9(b)(3)(ii).

Subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education is amended, as follows:

(b) Immunizations

(1) ...

(2) ...

(3) ...

(4) With the exception of a certified pharmacy intern, a certified pharmacist shall not delegate the administration of immunizations to another person. For purposes of this section, a certified pharmacy intern shall mean a pharmacy intern who is certified to administer immunization as specified in section 6808 of the Education Law and has completed the requirements set forth in subdivision (d) of section 63.4 of this Part. Such a certified pharmacy intern may only administer immunizations under the immediate personal supervision of the certified pharmacist.

[(4)] (5) Standards, procedures and reporting requirements for the administration of immunization agents. Each certified pharmacist shall comply with the following requirements when administering an immunization agent pursuant to either a patient specific order or a non-patient specific order and protocol:

(i) ...

(ii) ...

(iii) ...

(iv) ...

(v) a certified pharmacist shall not allow a certified pharmacy intern to administer immunizations unless the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, is informed that the pharmacy intern will be administering the immunization and the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, consents to administration of the immunization by the certified pharmacy intern. If the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, does not consent to administration by the certified pharmacy intern, then the option to receive the immunization from a certified pharmacist shall be provided.

[(v)] (vi) a certified pharmacist shall provide written instructions to the recipient regarding the appropriate course of action in the event of contraindications or adverse reactions, which statements are required to be

developed by a competent entity knowledgeable about the adverse reactions of the immunization agent which shall be administered, such as the Centers for Disease Control of the U.S. Department of Health and Human Services, which issues vaccine information statements;

[(vi)] (vii) a certified pharmacist, when administering an immunization in a pharmacy, shall provide for an area that provides for the patient's privacy, such area shall include:

(a) a clearly visible posting of the most current "Recommended Adult Immunization Schedule" published by the advisory committee for immunization practices (ACIP); and

(b) education materials on influenza vaccines for children as determined by the commissioner and the commissioner of the department of health.

[(vii)] (viii) a certified pharmacist shall provide a copy of the appropriate vaccine information statement to the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, before administering the immunization;

[(viii)] (ix) a certified pharmacist shall provide to each recipient or other person legally responsible when the recipient is incapable of consenting to immunization, a signed certificate of immunization with the recipient's name, date of immunization, address of administration, administering pharmacist, immunization agent, manufacturer and lot number. With the consent of the recipient or a person legally responsible when the recipient is incapable of consenting, the certified pharmacist shall communicate this information to the recipient's primary health care practitioner, if one exists, within one month of the administration of such immunization, and such communication may be transmitted in electronic format;

[(ix)] (x) a certified pharmacist shall report any adverse outcomes as may be required by Federal law on the vaccine adverse event reporting system form of the Centers for Disease Control of the U.S. Department of Health and Human Services, or on the successor form;

[(x)] (xi) a certified pharmacist shall ensure that a record of all persons immunized including the recipient's name, date, address of administration, administering pharmacist, immunization agent, manufacturer and lot number is recorded and maintained in accordance with section 29.2(a)(3) of this Title;

[(xi)] (xii) to the extent required by the Public Health Law, the Education Law and/or the New York City Health Code, a certified pharmacist shall report the administration of any immunizations to the New York State Department of Health and/or the New York City Department of Health and Mental Hygiene, in a manner required by the Commissioner of Health of the State of New York or of the City of New York, as applicable. Such report shall not include any individually identifiable health information unless:

(a) such information is otherwise required by law; or

(b) the recipient has consented to the disclosure of such information, in which case the information may be included to the extent permitted by law; and

[(xii)] (xiii) each certified pharmacist shall provide information to recipients on the importance of having a primary health care practitioner, in a form or format developed by the Commissioner of Health;

[(xiii)] (xiv) each certified pharmacist shall, prior to administering the immunization or immunizations, inform the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, of the total cost of the immunization or immunizations, subtracting any health insurance subsidization, if applicable. In the case where the immunization is not covered, the pharmacist shall inform the recipient, or other person legally responsible for the recipient when the patient is incapable of consenting to the immunization, that the immunization may be covered when administered by a primary care physician or health care practitioner; and

[(xiv)] (xv) Reporting of administration of immunizing agent;

(a) when a licensed pharmacist administers an immunizing agent, he or she shall report such administration by electronic transmission or facsimile to the patient's attending primary health care practitioner or practitioners, if any, unless the patient is unable to communicate the identity of his or her primary health care practitioner, and, to the extent practicable, make himself or herself available to discuss the outcome of such immunization, including any adverse reactions, with the attending primary health care practitioner, or to the statewide immunization registry or the citywide immunization registry, as established pursuant to sections 2168 of the Public Health Law and 11.07 of the New York City Health Code, respectively.

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. EDU-05-19-00016-EP, Issue of January 30, 2019. The emergency rule will expire June 10, 2019.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, 89 Washington Avenue, Room 148, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Subdivision (7) of section 6527 of the Education Law authorizes physicians to prescribe and order a patient specific order or non-patient specific regimen to a licensed pharmacist for administering immunizations to prevent, inter alia, influenza and pneumococcal disease and medications required for emergency treatment of anaphylaxis.

Section 6801 of the Education Law defines the practice of the profession of pharmacy and establishes various requirements relating to the administration of immunizations by licensed pharmacists, including, inter alia, the training requirements licensed pharmacists must satisfy to become certified to administer immunizations, reporting requirements for all vaccines administered by certified pharmacists and requirements regarding the provision of information by the certified pharmacist, regarding the immunization, to either the patient or the person legally responsible for the patient, as well as the requirement that a certified pharmacist, when administering an immunization in a pharmacy, provide for an area that provides for the patient's privacy.

Paragraphs (a) and (b) of subdivision (22) of section 6802 of the Education Law defines the terms administer and immunizing agent and authorizes licensed pharmacists to execute patient specific and non-patient specific orders prescribed by a licensed physician or certified nurse practitioner to administer immunizations to prevent influenza, pneumococcal, acute herpes zoster, meningococcal, tetanus, diphtheria or pertussis disease and medications required for emergency treatment of anaphylaxis to adults and influenza immunizations to children between two and eighteen years of age and medications required for emergency treatment of anaphylaxis resulting from such immunizations.

Subdivision (2) of section 6806 of the Education Law, as amended by Chapter 359 of the Laws of 2018, provides that a pharmacy intern may receive a certificate of administration if he or she provides satisfactory evidence to the Commissioner that he or she meets the requirements in subdivision (3) of section 6806 of the Education Law, as amended by Chapter 359 of the Laws of 2018.

Subdivision (3) of section 6806 of the Education Law, as amended by Chapter 359 of the Laws of 2018, directs the Commissioner, in consultation with the Commissioner of the State Department of Health, to promulgate regulations that establish standards for training of a pharmacy intern, seeking a certificate of administration, in the following areas: techniques for screening individuals and obtaining informed consent; techniques of administration; indications, precautions and contraindications in the use of an agent or agents; recordkeeping of immunization and information; and handling emergencies, including anaphylaxis and needlestick injuries. Chapter 359 also requires that to receive a certificate of administration, a pharmacy intern must submit an application, on a form prescribed by the State Education Department, from the dean or other appropriate official of the registered program that the intern has completed the required training pursuant to the Commissioner's Regulations.

Subdivision (6) of section 6806 of the Education Law, as amended by Chapter 359 of the Laws of 2018, provides that a pharmacy intern, certified to administer immunizations, can only administer immunizations under the immediate personal supervision of a licensed pharmacist certified to administer vaccines; and requires that the person receiving the vaccine must be informed that a pharmacy intern, certified to administer immunizations, will be administering the vaccine and advise him or her that he or she has the option to receive the immunization from a certified pharmacist instead. Paragraph (1) of section 6902 of the Education Law defines the practice of the profession of nursing for registered professional nurses.

Subdivision (7) of section 6909 of the Education Law authorizes nurse practitioners to prescribe and order a patient specific order or non-patient specific regimen to a licensed pharmacist for administering immunizations to prevent, inter alia, influenza.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 359 of the Laws of 2018.

3. NEEDS AND BENEFITS:

Pharmacists licensed in New York State were first authorized to administer immunizations to prevent influenza and pneumococcal disease in December 2008. In order to administer such immunizations, a pharmacist must be certified by the Department following completion of a satis-

factory training program. Since that time, more than 14,800 registered pharmacists in New York State have received the required certification. In 2012 and 2013, vaccinations against acute herpes zoster (shingles) and meningococcal disease, respectively, were added to the types of immunizations that appropriately certified pharmacists are authorized to administer. Additionally, in 2018, pharmacists were authorized to administer seasonal influenza immunizations to children between two and eighteen years of age.

The proposed rule implements Chapter 359 of the Laws of 2018 (Chapter 359), which, effective December 7, 2018, inter alia, amended Education Law section 6806 to allow the administration of immunizations by certain pharmacy interns who are certified to administer immunizations under the immediate and personal supervision of a licensed pharmacist certified to immunize. Chapter 359 was enacted, in part, to make immunizations more readily available and to provide certified pharmacy interns with valuable hands-on clinical experience, while under the oversight and supervision of a licensed pharmacist, who is certified to administer immunizations.

Chapter 359 permits a pharmacy intern to receive a certificate of administration which permits administration of immunizations under the immediate and personal supervision of a licensed pharmacist certified to administer immunizations; establishes procedures and requirements for a pharmacy intern to receive a certificate of administration; and requires a patient to be informed that a pharmacy intern, certified to administer immunizations, will be administering the immunization and that the patient be given the option to have the immunization administered by the certified pharmacist.

Chapter 359 directs the Commissioner to promulgate regulations that establish standards for training of a pharmacy intern in the following areas: techniques for screening individuals and obtaining informed consent; techniques of administration; indications, precautions and contraindications in the use of an agent or agents; recordkeeping of immunization and information; and handling emergencies, including anaphylaxis and needlestick injuries. Chapter 359 also requires that to receive a certificate of administration, a pharmacy intern must submit an application, on a form prescribed by the State Education Department, from the dean or other appropriate official of the registered program that the intern has completed the required training pursuant to the Commissioner's Regulations.

The proposed addition of subdivision (d) to section 63.4 of the Regulations of the Commissioner of Education establishes the requirements for a pharmacy intern to obtain a certificate to administer immunizations and establishes the required training for such certification. Additionally, as required by Chapter 359, Department staff have consulted with the New York State Department of Health regarding these proposed training requirement provisions.

The proposed amendment to subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education authorizes a certified pharmacist to delegate the administration of immunizations to a pharmacy intern who is properly trained and certified to administer immunizations under the immediate personal supervision of the certified pharmacist.

In addition, the proposed amendment to subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education requires the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, to be informed when a certified pharmacy intern will be administering the immunization and consent to it. The proposed amendment further provides that, if the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, does not consent, then the certified pharmacist will administer the immunization.

4. COSTS:

(a) Costs to State government: There are no additional costs to state government.

(b) Costs to local government: There are no additional costs to local government.

(c) Cost to private regulated parties: There are no mandatory costs to private regulated parties.

(d) Cost to the regulatory agency: There are no additional costs to the Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule does not impose any program service, duty, responsibility, or other mandate on local governments.

6. PAPERWORK:

The proposed rule does not impose any paperwork mandates because it does not require pharmacy interns to become certified to administer immunizations. For pharmacy interns, who choose to become certified to administer immunizations, they can only administer immunizations under the immediate personal supervision of a licensed pharmacist, who is certified to administer immunizations, this pharmacist would be responsible for complying with any of the reporting, recordkeeping or other require-

ments that certified licensed pharmacists must comply with when administering immunizations. For instance, such a pharmacist, pursuant to the provisions of section 63.9(b)(4), would be required to, inter alia, ensure that the immunizations administered by pharmacy interns under his or her immediate personal supervision are reported to the patient's attending primary health care practitioner, and to the New York State Immunization Information System or if administered in New York City, to the Citywide Immunization Registry, as required by the Public Health Law or the New York City Health Code.

7. DUPLICATION:

There is no other state or federal requirements on the subject matter of the proposed rule. Therefore, the amendment does not duplicate other existing state or federal requirements.

8. ALTERNATIVES:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 359 of the Laws of 2018. There are no significant alternatives to the proposed rule and none were considered.

9. FEDERAL STANDARDS:

There are no applicable federal standards for authorizing pharmacy interns, who are certified to administer immunization under the immediate personal supervision of a licensed pharmacist, who is certified to administer immunizations, to administer immunizations to patients, pursuant to patient specific or non-patient specific orders prescribed by a licensed physician or certified nurse practitioner.

10. COMPLIANCE SCHEDULE:

It is anticipated that the regulated parties will be able to comply with the proposed rule by the effective date.

Regulatory Flexibility Analysis

The purpose of the proposed rule is to implement Chapter 359 of the Laws of 2018 (Chapter 359), which, effective December 7, 2018, inter alia, amended Education Law section 6806 to allow the administration of immunizations by certain pharmacy interns who are certified to administer immunizations under the immediate and personal supervision of a licensed pharmacist certified to immunize. Chapter 359 was enacted, in part, to make immunizations more readily available and to provide certified pharmacy interns with valuable hands-on clinical experience, while under the oversight and supervision of a licensed pharmacist, who is certified to administer immunizations.

Chapter 359 permits a pharmacy intern to receive a certificate of administration which permits administration of immunizations under the immediate and personal supervision of a licensed pharmacist certified to administer immunizations; establishes procedures and requirements for a pharmacy intern to receive a certificate of administration; and requires a patient to be informed that a pharmacy intern, certified to administer immunizations, will be administering the immunization and that the patient be given the option to have the immunization administered by the certified pharmacist.

Chapter 359 directs the Commissioner to promulgate regulations that establish standards for training of a pharmacy intern in the following areas: techniques for screening individuals and obtaining informed consent; techniques of administration; indications, precautions and contraindications in the use of an agent or agents; recordkeeping of immunization and information; and handling emergencies, including anaphylaxis and needlestick injuries. Chapter 359 also requires that to receive a certificate of administration, a pharmacy intern must submit an application, on a form prescribed by the State Education Department, from the dean or other appropriate official of the registered program that the intern has completed the required training pursuant to the Commissioner's Regulations.

The proposed addition of subdivision (d) to section 63.4 of the Regulations of the Commissioner of Education establishes the requirements for a pharmacy intern to obtain a certificate to administer immunizations and establishes the required training for such certification. Additionally, as required by Chapter 359, Department staff have consulted with the New York State Department of Health regarding these proposed training requirement provisions.

The proposed amendment to subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education authorizes a certified pharmacist to delegate the administration of immunizations to a pharmacy intern who is properly trained and certified to administer immunizations under the immediate personal supervision of the certified pharmacist.

In addition, the proposed amendment to subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education requires the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, to be informed when a certified pharmacy intern will be administering the immunization and consent to it. The proposed amendment further provides that, if the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, does not consent, then the certified pharmacist will administer the immunization.

The proposed rule does not impose any new reporting, recordkeeping, or other compliance requirements on local governments or have any adverse economic impact on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and one has not been prepared.

Rural Area Flexibility Analysis

The purpose of the proposed amendment is to implement Chapter 359 of the Laws of 2018 (Chapter 359), which, effective December 7, 2018, inter alia, amended Education Law section 6806 to allow the administration of immunizations by certain pharmacy interns who are certified to administer immunizations under the immediate and personal supervision of a licensed pharmacist certified to immunize. Chapter 359 was enacted, in part, to make immunizations more readily available and to provide certified pharmacy interns with valuable hands-on clinical experience, while under the oversight and supervision of a licensed pharmacist, who is certified to administer immunizations. Chapter 359 permits a pharmacy intern to receive a certificate of administration which permits administration of immunizations under the immediate and personal supervision of a licensed pharmacist certified to administer immunizations; establishes procedures and requirements for a pharmacy intern to receive a certificate of administration; and requires a patient to be informed that a pharmacy intern, certified to administer immunizations, will be administering the immunization and that the patient be given the option to have the immunization administered by the certified pharmacist.

Chapter 359 directs the Commissioner to promulgate regulations that establish standards for training of a pharmacy intern in the following areas: techniques for screening individuals and obtaining informed consent; techniques of administration; indications, precautions and contraindications in the use of an agent or agents; recordkeeping of immunization and information; and handling emergencies, including anaphylaxis and needlestick injuries. Chapter 359 also requires that to receive a certificate of administration, a pharmacy intern must submit an application, on a form prescribed by the State Education Department, from the dean or other appropriate official of the registered program that the intern has completed the required training pursuant to the Commissioner's Regulations.

The proposed amendment implements Chapter 359 by establishing the requirements for a pharmacy intern to obtain a certificate to administer immunizations, including, but not limited to, the required training for such certification, authorizing a certified pharmacist to delegate the administration of immunizations to a pharmacy intern who is properly trained and certified to administer immunizations under the immediate personal supervision of the certified pharmacist, requiring the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, to be informed when a certified pharmacy intern will be administering the immunization and consent to it, and providing that, if the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, does not consent, then the certified pharmacist will administer the immunization.

Chapter 359 does not provide any exceptions from these requirements for pharmacy interns, pharmacists, and pharmacies located in rural areas. Thus, the proposed amendment does not impact entities in rural areas of New York State because all New York State pharmacy interns, pharmacists, and pharmacies must comply with the same requirements. Accordingly, no further steps were needed to ascertain the impact of the proposed amendment on entities in rural areas and none were taken. Thus, a rural flexibility analysis is not required, and one has not been prepared.

Job Impact Statement

It is not anticipated that the proposed rule will not impact jobs or employment opportunities. This is because the proposed amendment implements Chapter 359 of the Laws of 2018 (Chapter 359) by authorizing the administration of immunizations by certain pharmacy interns who are certified to administer immunizations under the immediate and personal supervision of a licensed pharmacist certified to immunize. Chapter 359 permits a pharmacy intern to receive a certificate of administration which permits administration of immunizations under the immediate and personal supervision of a licensed pharmacist certified to administer immunizations; establishes procedures and requirements for a pharmacy intern to receive a certificate of administration; and requires a patient to be informed that a pharmacy intern, certified to administer immunizations, will be administering the immunization and that the patient be given the option to have the immunization administered by the certified pharmacist. Chapter 359 directs the Commissioner to promulgate regulations that establish standards for training of a pharmacy intern in the following areas: techniques for screening individuals and obtaining informed consent;

techniques of administration; indications, precautions and contraindications in the use of an agent or agents; recordkeeping of immunization and information; and handling emergencies, including anaphylaxis and needlestick injuries. Chapter 359 also requires that to receive a certificate of administration, a pharmacy intern must submit an application, on a form prescribed by the State Education Department, from the dean or other appropriate official of the registered program that the intern has completed the required training pursuant to the Commissioner's Regulations. Therefore, any impact on jobs or employment opportunities created by the proposed amendment is attributable to the statutory requirements, not the proposed amendment, which simply establishes standards that conform the requirements to the statute.

The proposed amendment will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regulations Governing Commercial Fishing and Harvest of Scup

I.D. No. ENV-18-19-00006-EP

Filing No. 330

Filing Date: 2019-04-12

Effective Date: 2019-04-12

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

Proposed Action: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105, 13-0339 and 13-0340-e

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

Specific reasons underlying the finding of necessity: This rule making is necessary for New York to set an incidental small mesh bycatch limit for scup at 2,000 pounds from April 15 through June 15. Scup are one of four species jointly managed by Atlantic States Marine Fisheries Commission (ASMFC) and Mid-Atlantic Fishery Management Council (MAFMC). In August 2018, ASMFC and MAFMC approved an increase of the current incidental possession limit to 2,000 pounds from April 15 through June 15. The goal of this measure is to eliminate the discarding of scup that are inadvertently caught and killed in the small mesh squid fishery. New York Environmental Conservation Law (ECL) § 13-0105(1)(b)(6) requires the Department to "minimize waste and reduce discard mortality of marine fishery resources." Allowing an increased incidental bycatch for scup will prevent scup from being wasted during the time period when they are most abundant in New York's waters.

This rule making is also necessary to avoid placing New York fishermen and women at an economic disadvantage relative to harvesters from other states who will be allowed to catch and sell the incidental harvest limit of scup. ECL § 13-0105(1)(a) requires the Department to "optimize the benefits of resource use so as to provide viable business opportunities for commercial fisheries." New York commercial harvesters and associated industries could lose thousands of dollars per fishing trip if these regulations are not in place by April 15, 2019. An individual harvester making 2 trips per week would be able to catch 4000 pounds of saleable scup. At approximately \$2 per pound, harvesters could potentially make an additional \$8,000.00 per week in 2019 while the increased bycatch is in effect. The scup population is very healthy and can easily sustain any additional fishing pressure that is a result of this change.

The Department is adopting this amendment as an emergency measure so that it will be in effect by April 15, 2019 for the reasons discussed above and for the benefits it will provide to New York's scup fishery and associated industries.

Subject: Regulations governing commercial fishing and harvest of scup.

Purpose: To revise regulations concerning the commercial harvest of scup in New York State waters.

Text of emergency/proposed rule: Existing paragraph 40.5(f)(1) is amended to read as follows:

(1) Trawls – Only nets that have a minimum [mesh] size of at least five inches diamond mesh, inside measure, for at least 75 continuous meshes forward of the terminus of the cod end, may be used in a directed trawl fishery for scup. For nets with cod ends (including an extension) less than 125 meshes, the entire trawl net shall have a minimum mesh size of five inches throughout the net. Any trawl vessel that has on board more than [the threshold amount established by the department within the periods of January 1st to April 30th, May 1st to October 30th and November 1st to December 31st consistent with those established through the FMP by NMFS] *one thousand pounds of scup during the period of January 1 through April 14, two thousand pounds of scup during the period of April 15 through June 15, two hundred pounds of scup during the period of June 16 through September 30, and one thousand pounds of scup during the period of October 1 through December 31,* will be presumed to be engaged in a directed fishery for scup.

Existing paragraph 40.5(f)(2) is amended to read as follows:

(2) It is unlawful to have nets either in use or available for immediate use with mesh less than the required minimum sizes described in paragraph (1) of this subdivision if more than [the threshold amount established by the department within the periods January 1st to April 30th, May 1st to October 30th and November 1st to December 31st consistent with those established through the FMP by NMFS] *the following limits for scup are possessed on any vessel at any time during the designated period: one thousand pounds of scup during the period of January 1 through April 14; two thousand pounds of scup during the period of April 15 through June 15; two hundred pounds of scup during the period of June 16 through September 30; and one thousand pounds of scup during the period of October 1 through December 31.*

Existing paragraph 40.5(f)(3) is amended to read as follows:

(3) It is unlawful to land more than [the threshold amount established by the department within the periods of January 1st to April 30th, May 1st to October 30th and November 1st to December 31st] *one thousand pounds of scup during the period of January 1 through April 14, two thousand pounds of scup during the period of April 15 through June 15, two hundred pounds of scup during the period of June 16 through September 30, and one thousand pounds of scup during the period of October 1 through December 31,* unless nets that have mesh less than the required minimum sizes described in paragraph (1) of this subdivision are not available for immediate use.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire July 10, 2019.

Text of rule and any required statements and analyses may be obtained from: Gina Fanelli, New York State Department of Environmental Conservation, 205 N. Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0482, email: gina.fanelli@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 ECL, the State Environmental Quality Review Act, a Coastal Assessment Form and a Short Environmental Assessment Form with a negative declaration have been prepared, and are on file with the Department.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) §§ 11-0303, 13-0105, 13-0339, and 13-0340-e authorize the New York State Department of Environmental Conservation (Department) to establish by regulation the open season, size, catch limits, possession and sale restrictions, and manner of taking for scup.

2. Legislative objectives:

It is the objective of the above-cited statutes, specifically ECL §§ 13-0105(1)(a), that the Department manages marine fisheries to “optimize the benefits of resource use so as to provide . . . viable business opportunities for commercial . . . fisheries” in a manner that is consistent with marine fisheries conservation and management policies and interstate fishery management plans. Additionally, the Department is charged to “minimize waste and reduce discard mortality of marine fishery resources.” ECL 13-0105(1)(b)(6)

3. Needs and benefits:

This rule making is necessary for New York to set an incidental small mesh bycatch limit for scup at 2,000 pounds from April 15 through June 15. Scup are one of four species jointly managed by Atlantic States Marine

Fisheries Commission (ASMFC) and Mid-Atlantic Fishery Management Council (MAFMC). In August 2018, ASMFC and MAFMC approved an increase of the current incidental possession limit to 2,000 pounds from April 15 through June 15. The goal of this measure is to eliminate the discarding of scup that are inadvertently caught and killed in the small mesh squid fishery. New York Environmental Conservation Law (ECL) § 13-0105(1)(b)(6) requires the Department to “minimize waste and reduce discard mortality of marine fishery resources.” Allowing an increased incidental bycatch for scup will prevent scup from being wasted during the time period when they are most abundant in New York’s waters.

This rule making is also necessary to avoid placing New York fishermen and women at an economic disadvantage relative to harvesters from other states who will be allowed to catch and sell the incidental harvest limit of scup. ECL § 13-0105(1)(a) requires the Department to “optimize the benefits of resource use so as to provide viable business opportunities for commercial fisheries.” New York commercial harvesters and associated industries could lose thousands of dollars per fishing trip if these regulations are not in place by April 15, 2019. An individual harvester making 2 trips per week would be able to catch 4000 pounds of saleable scup. At approximately \$2 per pound, harvesters could potentially make an additional \$8,000.00 per week in 2019 while the increased bycatch is in effect. The scup population is very healthy and can easily sustain any additional fishing pressure that is a result of this change.

The Department is adopting this amendment as an emergency measure so that it will be in effect by April 15, 2019 for the reasons discussed above and for the benefits it will provide to New York’s scup fishery and associated industries.

This rule is also being proposed for adoption on a permanent basis so that the bycatch will be in place for 2020 and future seasons.

4. Costs:

There are no new costs to state and local governments from this action. The Department will incur limited costs associated with both the implementation and administration of these rules. New York harvesters would benefit from being able to sell their scup rather than discarding the dead fish overboard.

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

The amendment does not duplicate any state or federal requirement.

8. Alternatives:

“No action” alternative: Failure to adopt the proposed regulations would result in New York fishermen and women catching and discarding a valuable food fish resource. It would also put New York harvesters at an economic disadvantage relative to harvesters from other states.

9. Federal standards:

The amendments to Part 40 are in compliance with the ASMFC and MAFMC’s Fishery Management Plan for scup.

10. Compliance schedule:

These regulations are being adopted by emergency rule making and therefore will take effect immediately upon filing with Department of State. Regulated parties will be notified of the changes to the regulations through publication in the State Register, appropriate news releases, and through the Department’s website.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule making will allow an incidental bycatch for scup of 2,000 pounds from April 15 through June 15 pursuant to recent revisions to the applicable Fishery Management Plan (FMP) by the Atlantic States Marine Fisheries Commission (ASMFC) and Mid-Atlantic Fishery Management Council (MAFMC). The goal of this measure is to eliminate the discarding of scup inadvertently caught and killed in the small mesh squid fishery. Allowing an increased incidental bycatch for scup will prevent scup from being discarded during the time period when they are most abundant in New York’s waters.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

None.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses to comply with the changes. The proposed regulations will likely increase the income of some commercial fishermen, marinas, seafood dealers, restaurants, marine bait and tackle shops and other businesses that depend upon the commercial scup fishery.

6. Minimizing adverse impact:

This rule making will not impose any adverse impacts on the regulated community.

7. Small business and local government participation:

Scup are one of four species jointly managed by ASMFC and MAFMC. Any regulation adopted by the Department must be consistent with the compliance requirements of the Fishery Management Plan (FMP). The general public, including small businesses and local governments, can submit comments during the FMP amendment process and during this rulemaking process.

8. For rules that either establish or modify a violation or penalties associated with a violation:

Pursuant to SAPA § 202-b(1-a)(b), no such cure period is included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure the general welfare of the public and the resource is protected.

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

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

Rural Area Flexibility Analysis

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

Job Impact Statement

1. Nature of impact:

This rule making will allow an incidental bycatch for scup of 2,000 pounds from April 15 through June 15 pursuant to recent revisions to the applicable Fishery Management Plan (FMP) by the Atlantic States Marine Fisheries Commission (ASMFC) and Mid-Atlantic Fishery Management Council (MAFMC). The goal of this measure is to eliminate the discarding of scup inadvertently caught and killed in the small mesh squid fishery. Allowing an increased incidental bycatch for scup will prevent scup from being discarded during the time period when they are most abundant in New York's waters. Scup typically do not survive when removed from the mesh nets of the squid fishery. The scup population is very healthy and can easily sustain any additional fishing pressure that may result from this change.

2. Categories and numbers affected:

In 2018, there were 949 commercial Food Fish License holders, 496 permitted NYS Food Fish and Crustacea dealers, many retail and wholesale marine bait and tackle shops and other related businesses operating in New York. Data available from the 2017 New York State Scup Compliance Report show that there were 3,464,423 pounds of scup landed and sold by commercial harvesters. According to dealer reports from the Standard Atlantic Fisheries Information System (SAFIS), there were 12,350 commercial fishing trips in New York in 2018 that involved the harvest and sale of scup. NOAA Fisheries' annual Fisheries Economics of the United States Report provides economic information related to U.S. commercial and recreational fishing activities and fishing-related industries. The 2015 report indicates that in New York, 6.2 billion dollars in sales were generated by commercial and recreational fishing. In the U.S., commercial fishing alone creates a rough total of 1.18 million jobs, \$39.7 billion dollars in income, \$144.2 billion dollars in sales, \$60.6 billion dollars in value and \$5.2 billion dollars in revenue.

An individual harvester making 2 trips per week would be able to catch 4000 pounds of marketable scup. At approximately \$2 per pound, harvesters could potentially make an additional \$8,000.00 per week in 2019 while the increased bycatch is in effect.

3. Regions of adverse impact:

There are no anticipated adverse impacts. The proposed amendment increases the number of scup commercial harvesters can catch and sell as bycatch instead of discarding the dead fish overboard. This will result in a significant increase in revenue for commercial permit holders, retail and wholesale bait and tackle shops, and other associated businesses in the scup fishery.

4. Minimizing adverse impact:

There are no anticipated adverse impacts.

5. Self-employment opportunities:

Commercial harvesters, bait and tackle shops, marinas, seafood dealers and other related businesses are, in many cases, small businesses, owned and often operated by a single owner. The commercial fishing industry is mostly self-employed. This rule will not have a negative effect upon op-

portunities for businesses related to the harvest of scup. However, failing to adopt this rule making will prevent New York commercial harvesters of scup from taking advantage of the opportunity for increased income allowed under the scup FMP and result in them being at a competitive disadvantage compared to harvesters in neighboring states.

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

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

Department of Financial Services

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. DFS-18-19-00003-E

Filing No. 328

Filing Date: 2019-04-11

Effective Date: 2019-04-11

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

Action taken: Addition of Part 419 to Title 3 NYCRR.

Statutory authority: Banking Law, art.12-D

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

Specific reasons underlying the finding of necessity: The legislature required the registration of mortgage loan servicers as part of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") to help address the existing foreclosure crisis in the state. By registering servicers and requiring that servicers engage in the business of mortgage loan servicing in compliance with rules and regulations adopted by the Superintendent, the legislature intended to help ensure that servicers conduct their business in a manner that protects homeowners. Part 419 is intended to provide clear guidance to mortgage loan servicers as to the procedures and standards they should follow with respect to loan delinquencies. The rules impose a duty of fair dealing on loan servicers in their communications, transactions and other dealings with borrowers. In addition, the rule sets standards with respect to the handling of loan delinquencies and loss mitigation. The rule further requires specific reporting on the status of delinquent loans with the Department so that it has the information necessary to assess loan servicers' performance.

In addition to addressing mortgage loan delinquencies and loss mitigation, the rule addresses other areas of significant concern to homeowners, including the handling of borrower complaints and inquiries, the payment of taxes and insurance, crediting of payments and handling of late payments, payoff balances and servicer fees.

Fair and effective account management and loss mitigation practices are necessary to protect borrowers in the home mortgage lending market. Accordingly, it is imperative that Part 419 of the Superintendent's Regulations be promulgated on an emergency basis for the public's general welfare.

Subject: Business conduct of mortgage loan servicers.

Purpose: To implement the purpose and provisions of the Mortgage Lending Reform Law of 2008 with respect to mortgage loan servicers.

Substance of emergency rule (Full text is posted at the following State website: https://www.dfs.ny.gov/industry_guidance/regulations/emergency_banking): Section 419.1 contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including "Servicer", "Qualified Written Request" and "Loan Modification".

Section 419.2 establishes a duty of fair dealing for Servicers in connection with their transactions with borrowers, which includes a duty to pursue loss mitigation with the borrower as set forth in Section 419.11.

Section 419.3 requires compliance with other State and Federal laws relating to mortgage loan servicing, including Banking Law Article 12-D, RESPA, and the Truth-in-Lending Act.

Section 419.4 describes the requirements and procedures for handling to consumer complaints and inquiries.

Section 419.5 describes the requirements for a servicer making payments of taxes or insurance premiums for borrowers.

Section 419.6 describes requirements for crediting payments from borrowers and handling late payments.

Section 419.7 describes the requirements of an annual account statement which must be provided to borrowers in plain language showing the unpaid principal balance at the end of the preceding 12-month period, the interest paid during that period and the amounts deposited into and disbursed from escrow. The section also describes the Servicer's obligations with respect to providing a payment history when requested by the borrower or borrower's representative.

Section 419.8 requires a late payment notice be sent to a borrower no later than 17 days after the payment remains unpaid.

Section 419.9 describes the required provision of a payoff statement that contains a clear, understandable and accurate statement of the total amount that is required to pay off the mortgage loan as of a specified date.

Section 419.10 sets forth the requirements relating to fees permitted to be collected by Servicers and also requires Servicers to maintain and update at least semi-annually a schedule of standard or common fees on their website.

Section 419.11 sets forth the Servicer's obligations with respect to handling of loan delinquencies and loss mitigation, including an obligation to make reasonable and good faith efforts to pursue appropriate loss mitigation options, including loan modifications. This Section includes requirements relating to procedures and protocols for handling loss mitigation, providing borrowers with information regarding the Servicer's loss mitigation process, decision-making and available counseling programs and resources.

Section 419.12 describes the quarterly reports that the Superintendent may require Servicers to submit to the Superintendent, including information relating to the aggregate number of mortgages serviced by the Servicer, the number of mortgages in default, information relating to loss mitigation activities, and information relating to mortgage modifications.

Section 419.13 describes the books and records that Servicers are required to maintain as well as other reports the Superintendent may require Servicers to file in order to determine whether the Servicer is complying with applicable laws and regulations. These include books and records regarding loan payments received, communications with borrowers, financial reports and audited financial statements.

Section 419.14 sets forth the activities prohibited by the regulation, including engaging in misrepresentations or material omissions and placing insurance on a mortgage property without written notice when the Servicer has reason to know the homeowner has an effective policy in place.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire July 9, 2019.

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

Regulatory Impact Statement

1. Statutory Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Legislative Objectives.

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

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

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

Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, addresses the first component of the mortgage servicing statute by setting standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as setting financial responsibility standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. This part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices.

Collectively, the provisions of Part 418 and 419 implement the intent of the Legislature to register and supervise mortgage loan servicers.

3. Needs and Benefits.

The Mortgage Lending Reform Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry, particularly with respect to servicing and foreclosure. It addressed a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Until July 1, 2009, when the mortgage loan servicer registration provisions first became effective, the Department regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also act as agents for owners of mortgages in negotiations relating to loss mitigation when a mortgage becomes delinquent. As “middlemen,” moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

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

More than 2,000,000 loans on residential one-to-four family properties are being serviced in New York. Of these over 9% were seriously delinquent as of the first quarter of 2012. Despite various initiatives adopted at the state level and the creation of federal programs such as Making Home Affordable to encourage loan modifications and help at risk homeowners, the number of loans modified, have not kept pace with the number of foreclosures. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

As noted above, Part 418, initially adopted on an emergency basis on July 1 2009, relates to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It was intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers. It also provided for the suspension, revocation and termination of licenses involved in wrongdoing and establishes minimum financial standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers and establishes certain consumer protections for homeowners whose residential mortgage loans are being serviced. These regulations provide standards and procedures for servicers to follow in their course of dealings with borrowers, including the handling of borrower complaints and inquiries, payment of taxes and insurance premiums, crediting of borrower payments, provision of annual statements of the borrower’s account, authorized fees, late charges and handling of loan delinquencies and loss mitigation. Part 419 also identifies practices that are prohibited and imposes certain reporting and record-keeping requirements to enable the Superintendent to determine the servicer’s compliance with applicable laws, its financial condition and the status of its servicing portfolio.

Since the adoption of Part 418, 67 entities have been approved for registration or have pending applications and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements.

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

These regulations will improve accountability and the quality of service in the mortgage loan industry and will help promote alternatives to foreclosure in the state.

4. Costs.

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply

with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation’s securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent’s Regulations).

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

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

5. Local Government Mandates.

None.

6. Paperwork.

Part 419 requires mortgage loan servicers to keep books and records related to its servicing for a period of three years and to produce quarterly reports and financial statements as well as annual and other reports requested by the Superintendent. It is anticipated that the quarterly reporting relating to mortgage loan servicing will be done electronically and would therefore be virtually paperless. The other recordkeeping and reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations. The various federal laws that touch upon aspects of mortgage loan servicing are noted in Section 9 “Federal Standards” below.

8. Alternatives.

The Mortgage Lending Reform Law required the registration of mortgage loan servicers and empowered the Superintendent to prescribe rules and regulations to guide the business of mortgage servicing. The purpose of the regulation is to carry out this statutory mandate to register mortgage loan servicers and regulate the manner in which they conduct business. The Department circulated a proposed draft of Part 419 and received comments from and met with industry and consumer groups. The current Part 419 reflects the input received. The alternative to these regulations is to do nothing or to wait for the newly created federal bureau of consumer protection to promulgate national rules, which could take years, may not happen at all or may not address all the practices covered by the rule. Thus, neither of those alternatives would effectuate the intent of the legislature to address the current foreclosure crisis, help at-risk homeowners vis-à-vis their loan servicers and ensure that mortgage loan servicers engage in fair and appropriate servicing practices.

9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies, and there are no comprehensive federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff

statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan.

Additionally, the newly created Bureau of Consumer Financial Protection established by the Dodd-Frank Act may soon propose additional regulations for mortgage loan servicers.

10. Compliance Schedule.

Similar emergency regulations first became effective on October 1, 2010.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The rule will not have any impact on local governments. The Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") requires all mortgage loan servicers, whether registered or exempt from registration under the law, to service mortgage loans in accordance with the rules and regulations promulgated by the Banking Board or Superintendent. The functions and powers of the Banking Board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89. Of the 67 entities which have been approved for registration or have pending applications and the nearly 400 entities which have indicated that they are exempt from the registration requirements, it is estimated that very few are small businesses.

2. Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers who are not a bank, mortgage banker, mortgage broker or other exempt organizations (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "Mortgage Loan Servicer Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, sets for the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting of borrower payments, late payments, account statements, delinquencies and loss mitigation, fees and recordkeeping.

3. Regulatory Services:

None.

4. Compliance Costs:

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publishes quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data

provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

Compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

5. Economic and Technological Feasibility:

For the reasons noted in Section 4 above, the rule should impose no adverse economic or technological burden on mortgage loan servicers that are small businesses.

6. Minimizing Adverse Impact:

As noted in Section 1 above, most servicers are not small businesses. Many of the requirements contained in the rule derive from federal or state laws, existing servicer guidelines utilized by Fannie Mae and Freddie Mac and best industry practices.

Moreover, the ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, help borrowers at risk of foreclosure and decrease the number of foreclosures in this state.

7. Small Business and Local Government Participation:

The Department distributed a draft of proposed Part 419 to industry representatives, received industry comments on the proposed rule and met with industry representatives in person. The Department likewise distributed a draft of proposed Part 419 to consumer groups, received their comments on the proposed rule and met with consumer representatives to discuss the proposed rule in person. The rule reflects the input received from both industry and consumer groups.

Rural Area Flexibility Analysis

Types and Estimated Numbers. Since the adoption of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), which required mortgage loan servicers to be registered with the Department unless exempted under the law, 67 entities have pending applications or have been approved for registration and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements. Only one of the non-exempt entities applying for registration is located in New York and operating in a rural area. Of the exempt organizations, all of which are required to comply with the conduct of business contained in Part 419, approximately 400 are located in New York, including several in rural areas. However, the overwhelming majority of exempt organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

Compliance Requirements. The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers that are not a bank, mortgage banker, mortgage broker or other exempt organization (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2010, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Costs. The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from federal or state laws, current federal loan modification programs, servicing guidelines utilized by Fannie Mae and Freddie Mac or servicers' own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Of the 67 entities that have been approved for registration or that have pending applications, only one is located in a rural area of New York State. Of the few exempt organizations located in rural areas of New York, virtually all are banks or credit unions. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

Minimizing Adverse Impact. As noted in the "Costs" section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas. In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loans servicers that service not more than 12 mortgage loans or more than \$5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

Rural Area Participation. The Department issued a draft of Part 419 in December 2009 and held meetings with and received comments from industry and consumer groups following the release of the draft rule. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers and its work in the area of foreclosure prevention. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the application, exemption and approval procedures for registration as a mortgage loan servicer, as well as financial responsibility requirements for applicants, registrants and exempted persons.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices.

Compliance with Part 419 is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. The vast majority of mortgage loan servicers are sophisticated financial entities that service millions, if not billions, of dollars in loans and have the experience, resources and systems to comply with the requirements of the rule. Moreover, many of the requirements of the rule reflect derive from federal or state laws and reflect existing best industry practices.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Servicing Mortgage Loans: Business Conduct Rules

I.D. No. DFS-18-19-00005-P

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

Proposed Action: Addition of Part 419 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 10, 11, 14, art. 12-D; Financial Services Law, sections 102, 201, 202, 301 and 302

Subject: Servicing Mortgage Loans: Business Conduct Rules.

Purpose: Sets standards governing the servicing of residential home mortgage loans.

Substance of proposed rule (Full text is posted at the following State website: <https://www.dfs.ny.gov/legal/regulations.htm>): Section 419.1 contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including, but not limited to, "affiliated business arrangements," "loss mitigation option," and "single point of contact."

Section 419.2 describes the requirements for the handling of monies placed by a servicer into an escrow account.

Section 419.3 describes requirements for crediting payments from borrowers and handling late payments.

Section 419.4 describes the requirements of an annual account statement which must be provided to borrowers in plain language showing: the unpaid principal balance at the end of the preceding 12-month period, the interest paid during that period, and the amounts deposited into and disbursed from escrow. The section also describes the servicer's obligations with respect to providing a payment history when requested by the borrower or borrower's representative.

Section 419.5 sets forth the requirements relating to fees permitted to be collected by servicers and how often such fees may be charged to a borrower.

Section 419.6 describes the requirements for handling borrower complaints and inquiries.

Section 419.7 sets forth the servicer's obligations with respect to handling of loan delinquencies and loss mitigation, including an obligation to make reasonable and good faith efforts to pursue appropriate loss mitigation options, including loan modifications. This section includes requirements relating to procedures and protocols for handling loss mitigation, including providing borrowers with information regarding the servicer's loss mitigation process, decision-making, and available counseling programs and resources.

Section 419.8 describes the Volume of Servicing Report that the Superintendent may require servicers to submit to the Superintendent, including information regarding the servicer's mortgage loans servicing activities.

Section 419.9 describes the books and records that servicers are required to maintain as well as other reports the Superintendent may require servicers to file in order to determine whether the servicer is complying with applicable laws and regulations. These include books and records regarding loan payments received, communications with borrowers, financial reports and audited financial statements.

Section 419.10 sets forth the activities prohibited by the regulation, including engaging in misrepresentations or material omissions and establishes a duty of fair dealing for servicers in connection with their transactions with borrowers.

Section 419.11 sets forth a servicer's obligations with respect to the oversight of third-party providers, including requiring a servicer to perform appropriate due diligence and conduct periodic reviews of third-party providers' qualifications.

Section 419.12 sets forth requirements for mortgage servicing transfers, including a requirement that servicers permit borrowers to continue making existing trial modification payments.

Section 419.13 establishes a procedure for the handling and reporting of affiliated business arrangements requiring, among other things, notice to the borrower of such an arrangement and market rate terms.

Text of proposed rule and any required statements and analyses may be obtained from: Elizabeth Butler, Department of Financial Services, One State Street, New York, NY 10004, (212) 709-3598, email: Elizabeth.Butler@DFS.ny.gov

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

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

Regulatory Impact Statement

I. Statutory Authority.

Section 102 of the New York Financial Services Law (the "Financial Services Law" or "FSL"), declares that the purpose of the FSL is "to ensure the continued safety and soundness of New York's banking, insurance and financial services industries, as well as the prudent conduct of the providers of financial products and services, through responsible regulation and supervision."

Pursuant to FSL Section 201, the Department of Financial Services (the "Department") has broad authority to take such actions as are necessary to ensure the continued solvency, safety, soundness and prudent conduct of the providers of financial products and services; to protect users of financial products and services from financially impaired or insolvent

providers of such services; and to eliminate financial fraud, other criminal abuse and unethical conduct in the industry.

FSL Section 202 creates the office of the Superintendent of Financial Services (the “Superintendent”) and confers on the Superintendent all “the rights, powers, and duties in connection with financial services and protection in this state, expressed or reasonable implied by [the FSL] or any other applicable law of this state.”

FSL Section 301 gives the Department broad power “to protect users of financial products and services.” In addition, FSL Section 302 provides the Department with equally broad authority to adopt regulations relating to “financial products and services,” which are broadly defined in the Financial Services Law to mean essentially any product or service offered by a Department-regulated entity. Accordingly, the Department has ample authority to adopt the proposed rule.

Section 10 of the New York Banking Law (the “Banking Law” or “BL”) sets forth a declaration of policy, including that banking institutions will be regulated in a manner to insure safe and sound conduct and maintain public confidence. And BL § 11 sets forth that the Department is charged with the execution of the laws relating to entities regulated under the Banking Law.

BL § 14 references, without limitation, the policy of BL § 10 and sets forth certain powers of the Superintendent under the Banking Law, including the power to “make, alter and amend orders, rules and regulations not inconsistent with law” and, under certain enumerated circumstances, to “make variations from the requirements” of the Banking Law, provided such variations are “in harmony with the spirit of the law.”

Article 12-D of the Banking Law, as amended by the Legislature in the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the “Mortgage Lending Reform Law” or the “MLRL”), creates a framework for the regulation of mortgage loan servicers (hereinafter, “servicers”). That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2) (b-1) and 595-b)

Subsection (3) of Section 590 was amended by the MLRL to clarify the power of the banking board – now the power of DFS – to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover servicers, as well as mortgage bankers, mortgage brokers and exempt organizations.

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

New Subsection (1) of Section 595-b was added by the MLRL and authorizes the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a servicer.

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

Section 596 was amended by the MLRL to extend the Superintendent’s examination authority over licensees and registrants to cover servicers.

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

2. Legislative Objectives.

The MLRL was intended to address various problems related to the servicing of residential mortgage loans in this State. The law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing and the creation of mortgage loan servicing standards. The provisions of Part 419 implement the intent of the Legislature by establishing basic mortgage loan servicing standards in line with current federal and state law.

The proposed regulation also protects New York consumers and ensures safe and sound operation of the industry in fulfillment of the objectives of the Legislature in creating the Department.

3. Needs and Benefits.

Servicing is a vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans, to governmental agencies for taxes, and to insurance companies for insurance premiums. Servicers also act as agents for owners of mortgages in negotiations relating to loss mitigation when a mortgage becomes delinquent. As “middlemen,” moreover, servicers play an important role when a property is foreclosed upon. For example, the servicer may act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot “shop around” for servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer makes it important that servicing standards are established and adhered to by the industry for the protection of consumers. Recent years have provided ample evidence of problems in the servicing industry, including: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; failing to engage in prompt and appropriate loss mitigation efforts; and failing to properly oversee third-party providers.

Approximately 2,000,000 loans on residential one-to-four family properties are being serviced in New York. Of these, over 5% were seriously delinquent as of the first quarter of 2018. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

Part 419 addresses the business practices of servicers and establishes certain consumer protections for homeowners whose residential mortgage loans are being serviced. These regulations provide standards and procedures for servicers to follow in their course of dealings with borrowers, including the handling of borrower complaints and inquiries, payment of taxes and insurance premiums, crediting of borrower payments, provision of annual statements of the borrower’s account, authorized fees, late charges, and handling of loan delinquencies and loss mitigation. Part 419 also identifies practices that are prohibited and imposes certain reporting and record-keeping requirements to enable the Superintendent to determine the servicer’s compliance with applicable laws, its financial condition and the status of its servicing portfolio.

These regulations will improve accountability and the quality of service in the mortgage loan industry and will help promote alternatives to foreclosure in the state.

4. Costs.

Although servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation, are consistent with or substantially similar to standards found in other federal or state laws, or servicers’ own protocols.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent’s Regulations). Further, many of the requirements are currently in force under emergency rulemaking, and thus servicers are already complying with those parts of the proposed regulation.

The regulation is expected to reduce costs associated with responding to consumers’ complaints, decrease unnecessary expenses borne by mortgagors, and assist in decreasing the number of foreclosures in this state.

The regulation will not result in any fiscal implications to the State.

5. Local Government Mandates.

There are no new requirements imposed by the rule on any county, city, town, village, school, fire or other special district.

6. Paperwork.

Part 419 requires servicers to keep books and records related to servicing for a period of three years and produce quarterly reports and financial statements, as well as annual and other reports requested by the Superintendent. It is anticipated that the quarterly reporting relating to mortgage loan servicing will be done electronically. The other recordkeeping and reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

7. Duplication.

The regulation does not duplicate or conflict with any other regulations. The various federal laws and regulations that touch upon aspects of mortgage loan servicing are noted in Section 9 “Federal Standards” below.

8. Alternatives.

The Mortgage Lending Reform Law required the registration of servicers and empowered the Superintendent to prescribe rules and regulations to guide the business of mortgage servicing. The purpose of the regulation is to carry out this statutory mandate to regulate the manner in which servicers conduct business. The Department considered not

promulgating this rule and instead rely on the current federal regulations. The federal regulations, however, do not fully address several problematic practices that the Department has identified in New York. Further, federal regulations are subject to changes which do not take into account the specific nature of New York markets, nor the interests of New York consumers. Thus, such an alternative would not effectuate the intent of the legislature to address the foreclosure crisis in New York, help at-risk homeowners vis-à-vis their servicers and ensure that servicers engage in fair and appropriate servicing practices. Nor would it appropriately protect New York borrowers.

9. Federal Standards.

Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing. Amendments to federal laws and regulations are regularly made to address mortgage loan servicing. Regulation Z, 12 C.F.R. section 226.36(c), was amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, responding to borrower requests and providing information related to the owner of the loan. The CFPB regulations are codified at 12 C.F.R. section 2601 et seq.

10. Compliance Schedule.

It is anticipated that servicers subject to the regulation are presently complying with many of the requirements of the proposed regulation. Further similar emergency regulations first became effective on October 1, 2010. Therefore, it is not anticipated that regulated persons will need additional time to achieve compliance.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The proposed regulation will not have any impact on local governments. The proposed regulation applies to mortgage loan servicers, no local government is a mortgage loan servicer. The Department is not aware of any servicer which is a small business. To the extent any servicer is a small business they are operating in a highly regulated environment and should be adequately prepared to comply with the proposed rule.

2. Compliance Requirements:

Part 419 implements the provisions of the Mortgage Lending Reform Law by setting the standards by which mortgage loan servicing is conducted. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting of borrower payments, late payments, account statements, delinquencies and loss mitigation, fees and recordkeeping.

3. Professional Services:

It is not anticipated that any additional professional services will be needed in order to comply with the requirements of this regulation.

4. Compliance Costs:

Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation, are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, and crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

Compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans. It is anticipated that these will also produce cost savings to the industry.

5. Economic and Technological Feasibility:

As set forth above no local government should be impacted by this regulation. Any servicer that is a small business will need to comply with the regulation. Given that Part 419 is necessary to protect New York consumers, and given further that any servicer that is a small business choose to enter an industry which is heavily regulated, the economic and technological costs of the regulation are necessary. Additionally, many of the requirements of the regulation have been in place and compliance has

been required under the emergency regulation, or are codifications of best practices within the industry. As such servicers should already be in a position to comply with those requirements of the regulation.

6. Minimizing Adverse Impact:

Many of the requirements contained in the rule derive from federal or state laws, existing servicer guidelines utilized by servicers and best industry practices. Therefore, the Department has determined that uniform requirements across the industry are appropriate here and no other approach is viable.

Moreover, the proposed regulation is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, help borrowers at risk of foreclosure and decrease the number of foreclosures in this state.

7. Small Business and Local Government Participation:

Prior to its original emergency adoption, the Department distributed a draft of the proposed Part 419 to industry representatives, received industry comments on the proposed rule and met with industry representatives in person. The Department distributed a draft of proposed emergency Part 419 to consumer groups and received their comments on the proposed rule. The rule reflects the input received from consumer groups as well as incorporates new standards developed at both a state and federal level since its original emergency adoption. Any servicer who is a small business also has the opportunity to submit public comments on the regulation.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: The Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), required mortgage loan servicers to be registered with the Department unless exempted under the law. There are currently 37 registered servicers and over 550 mortgage bankers, brokers, banks or other organizations exempt from the registration requirements, all of which are required to comply with the conduct of business contained in Part 419. Approximately 400 of those entities are located in New York, including several in rural areas. However, the overwhelming majority of these organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

2. Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services: The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices.

Compliance with Part 419 will apply uniformly across all servicers and it is not anticipated that mortgage servicers located in rural areas will have need for any professional services other than used in the normal course of their business including compliance with current regulatory requirements.

3. Costs: The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from federal or state laws, current federal loan modification programs, servicing guidelines utilized by Fannie Mae and Freddie Mac or servicers' own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and already have the experience, resources and systems to comply with these requirements. The requirements of Part 419 will apply uniformly across all servicers and it is not anticipated that mortgage servicers located in rural areas will have any different costs to those servicers not located in a rural area. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclo-

tures and reduce consumer complaints regarding the servicing of residential mortgage loans, all of which should have positive effects on the costs borne by servicers. Additionally, many of the requirements contained in the proposed regulation are currently in force under emergency rulemaking, thus reducing the costs based on existing compliance infrastructure already in place.

4. **Minimizing Adverse Impact:** The requirements of Part 419 will apply uniformly across all servicers. Given that virtually all of the servicers located in rural areas of New York are banks or credit unions the Department has determined that uniform regulatory requirements are appropriate.

5. **Rural Area Participation:** Prior to its emergency adoption, the Department issued a draft of the Part 419 in December 2009 and held meetings with and received comments from industry and consumer groups. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers and its work in the area of foreclosure prevention. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation as well as new standards developed at both a state and federal level since Part 419's emergency adoption. Rural area participants will also have the opportunity submit public comments on the proposed rule.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of parties servicing mortgage loan for their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices. Further, this part imposes obligations concerning the transfer of mortgage loan servicing, and requires mortgage loan servicers to engage in oversight of third-party providers.

Compliance with Part 419 is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. The vast majority of mortgage loan servicers are sophisticated financial entities that service millions, if not billions, of dollars in loans and have the experience, resources and systems to comply with the requirements of the rule. Moreover, many of the requirements of the rule derive from federal or state laws and reflect existing best industry practices. Additionally, many of the requirements of this Part have been in force under emergency rulemaking and thus are not new to industry.

efforts to ensure the provision of risk reduction education and nutritional counseling for each child with an elevated blood lead level equal to or greater than [10] 5 micrograms per deciliter of whole blood.

(9) Primary health care providers shall confirm blood lead levels equal to or greater than [10] 5 micrograms per deciliter of whole blood obtained on a capillary specimen from a child using a venous blood sample.

(10) For each child who has a confirmed blood lead level equal to or greater than [15] 5 micrograms per deciliter of whole blood, primary health care providers shall provide or make reasonable efforts to ensure the provision of a complete diagnostic evaluation; medical treatment, if necessary; and referral to the appropriate local or State health unit for environmental management. A complete diagnostic evaluation shall include at a minimum: a detailed lead exposure assessment, a nutritional assessment including iron status, and a developmental screening.

Section 67-3.3 is repealed.

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

Public Health Law (PHL) § 206(1)(n) authorizes the Commissioner of Health to establish rules and regulations for the protection of the public health against lead poisoning. PHL § 1370 authorizes the New York State Department of Health (Department) to establish a blood lead level that constitutes an elevated lead level. As part of the New York State Fiscal Year (NYS FY) 2020 Enacted Budget, the Legislature amended PHL § 1370 to change the definition of "elevated lead levels" to a blood lead level equal to or greater than 5 micrograms per deciliter (µg/dL). PHL § 1370-a authorizes the Department to establish programs to prevent lead poisoning, including requirements for follow-up of children who have elevated blood lead levels.

Legislative Objectives:

PHL sections 206(1)(n), 1370 and 1370-a charge the Department with regulating testing, reporting, follow-up and prevention of lead poisoning. This proposal implements that charge by updating the blood lead level that constitutes an elevated lead level, as well as the blood lead levels that trigger medical and environmental interventions, to reflect current understanding of the risks of lead poisoning to children and to meet the statutory mandate of the recently enacted amendment to the definition of "elevated lead level" in PHL § 1370.

Needs and Benefits:

Lead is a toxic metal that is harmful to human health if ingested or inhaled. Children under six years old are more likely to get lead poisoning than any other age group. Most often, children get lead poisoning from breathing in or swallowing dust from old lead paint that gets on floors, window sills, hands, and toys. Children are at the greatest risk from lead exposure as scientists have linked lead exposure to reduced growth indicators; delayed puberty; lowered IQ; hyperactivity; attention, behavior, and learning problems; as well as other adverse health effects.

For these reasons, and to meet the statutory mandate of the recently enacted amendment to the definition of "elevated lead level" in PHL § 1370, the Department is proposing to change the definition of an elevated blood lead level from greater than or equal to 10 µg/dL, to greater than or equal to 5 µg/dL. This lowers the level at which primary health care providers must provide education and counseling on risk reduction and nutrition, complete a diagnostic evaluation, provide follow-up blood testing, and perform medical treatment and/or other activities. The local or State health departments must also ensure primary health care providers are performing the required activities and may assist with the delivery of these services, including providing education, counseling, and follow-up interventions.

Additionally, the Department is proposing to lower the level at which local or State health departments conduct environmental management activities to address lead sources, from a blood lead level greater than or equal to 15 µg/dL, to greater than or equal to 5 µg/dL. Environmental management activities include education, exposure assessment, inspection, and enforcement.

Costs:

Costs to Private Regulated Parties:

The number of children with blood lead levels of 5 µg/dL or greater is larger than the number of children who have a blood lead level of 10 µg/dL or greater. Therefore, there will be an increase in the number of children

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Blood Lead Level

I.D. No. HLT-18-19-00016-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 67 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 206(1)(n), 1370 and 1370-a

Subject: Blood Lead Level.

Purpose: To improve the current understanding of lead poisoning risks to children and pregnant women.

Text of proposed rule: Subdivision (e) of section 67-1.1 is amended to read as follows:

(e) "Elevated blood lead level" means a blood lead concentration equal to or greater than [10] 5 micrograms per deciliter of whole blood.

Paragraphs (8) through (10) of subdivision (a) of section 67-1.2 are amended to read as follows:

(8) Primary health care providers shall provide or make reasonable

(from approximately 3,000 children to an expected 18,200 per year) who will require education, counseling, diagnostic evaluation, and medical treatment from a primary health care provider. This will likely increase costs to the health care industry, including private and public insurers, as primary health care providers will likely bill for time spent providing education, counseling, diagnostic evaluation, and medical treatment to a greater number of children.

Also, lowering the blood lead level that triggers environmental management to 5 µg/dL will increase the number of properties that may need remediation to address lead exposures to children. Remediation actions may include replacing leaded components, covering lead paint with durable materials, removing lead paint, and stabilizing and maintaining defective lead paint. Since remediation can encompass a variety of different actions, the costs to an owner of a property that is determined, after an environmental investigation, to have condition(s) conducive to lead poisoning can range from approximately \$600 to \$10,000.

Costs to State and Local Government:

Current regulations require local and State health departments to implement measures to identify and provide case management for children with elevated blood lead levels. The number of children with blood lead levels of 5 µg/dL or greater is expected to be six times greater than the number of children with blood lead levels equal to or greater than 10 µg/dL, which will result in a six-fold increase in the number of children in need of case coordination by local and State health departments. Case coordination typically includes ensuring primary health care providers are performing the required activities and assisting with the delivery of these services including providing education, counseling, and follow-up interventions at an estimated cost of \$713 per child. Because each county differs in population, the costs of the proposed amendment will vary by county.

In addition, lowering the blood lead level that triggers environmental management to 5 µg/dL will increase the number of environmental management activities that will need to be conducted by the local or State health departments. Environmental management activities include education, exposure assessment, inspection, and enforcement. The estimated number of children that may require environmental management activities is expected to increase statewide from approximately 1,100 to 18,200. It is estimated that local and State health departments spend \$2,123 per environmental investigation. However, as stated above, the costs to each local health department will depend on the number of children with elevated blood lead levels in each county.

Additionally, the State will fund a portion of the local health department costs through State Aid available pursuant to Article 6 of the Public Health Law. As part of the NYS FY 2020 Enacted Budget, approximately \$9,400,000 was invested to support local health department implementation of this proposal. In addition, approximately \$4,400,000 was invested to support costs to the State to implement this proposal.

Local Government Mandates:

Current regulations require the local and State health departments to implement measures to identify and provide case coordination to children with blood lead levels of 10 µg/dL or greater to ensure appropriate follow-up, and to provide environmental management activities for children with blood lead levels of 15 µg/dL or greater. The proposed amendments require that these services be provided to children with blood lead levels equal to 5 µg/dL or greater, which is a larger number of children.

Paperwork:

The proposed regulation will not impose any new paperwork. The current paperwork that is utilized when a child has an elevated blood lead level will continue to be used, however it is expected that there will be an increase in the volume of paperwork needed as the number of children with an elevated blood lead level will increase.

Duplication:

There will be no duplication of existing State or Federal regulations.

Alternatives:

No alternatives were considered with regard to changing the definition of an "elevated lead level" as this proposed regulation is a result of a statutory mandate. Additionally, no alternatives were considered for lowering the level at which primary health care providers must provide education and counseling on risk reduction and nutrition, complete a diagnostic evaluation, provide follow-up blood testing, and perform medical treatment and/or other activities, as these activities occur when a child is determined to have an elevated lead level.

With regard to the blood lead level that triggers environmental management, leaving the blood lead level unchanged at 15 mcg/dL was considered. This option had the lowest associated cost but left a wide disparity in the number of children with blood lead levels considered elevated and those receiving environmental management. This option would result in approximately 16,200 children with an elevated blood lead level not receiving environmental management.

Another alternative that was considered was to provide environmental management at a blood lead level of 10 mcg/dL. This option would reach

more children with an elevated blood lead level, but still results in approximately 13,500 children with an elevated blood lead level not receiving environmental management.

Consequently, lowering the blood lead level that requires environmental management activities to 5 mcg/dL was determined to be the most appropriate action. Matching the blood lead level that requires environmental management with the definition of an elevated blood lead level ensures that all children with an elevated blood lead level are receiving environmental management activities. Additionally, this change would harmonize State regulations with federal reference level as well as the activities and local requirements of a number of municipalities, standardizing responses across the State.

Federal Standards:

The Centers for Disease Control and Prevention currently has a recommended reference level of 5 µg/dL to identify if a child has an elevated blood lead level.

Compliance Schedule:

The proposed regulations will become effective October 1, 2019.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed amendments will increase the number of children that have an elevated blood lead level (from approximately 3,000 children to an expected 18,200 per year). Therefore, primary health care providers will now be required to provide education, counseling, diagnostic evaluation, and medical treatment to a greater number of children. Many primary health care providers are small businesses.

The proposed amendments will also require local health departments to provide services at blood lead levels of 5 µg/dL or greater, rather than 10 µg/dL and 15 µg/dL or greater, which will result in the local health department providing care coordination to a larger number of children, as well as conducting a greater number of environmental management activities.

Additionally, the proposed amendments will also affect small businesses that include landlords of residential rental properties, childcare facilities and any other small businesses where a child with an elevated blood lead level spends a significant amount of time. As a result of the anticipated increase in environmental investigations, more properties owned or leased by these small businesses will now be investigated by local health departments, and more small business owners will be required to remediate environmental lead hazards.

Compliance Requirements:

This proposal lowers the level at which primary health care providers must conduct education, counseling, diagnostic evaluation, and medical treatment, and at which local health departments must conduct care coordination, including ensuring primary health care providers are performing the required activities and assisting with the delivery of these services including providing education, counseling, and follow-up interventions. Similarly, it lowers the levels at which the local health departments must provide environmental management activities.

Reporting and Recordkeeping:

The proposed regulation will not impose any new reporting or paperwork. The current reporting and paperwork that is utilized when a child has an elevated blood lead level will continue to be used; however, it is expected that there will be an increase in the volume of reporting and paperwork needed as the number of children with an elevated blood lead level will increase.

Professional Services:

Some local health departments may hire additional professional staff to handle the increased number of children who require care coordination and environmental management activities, which may include nurses and lead risk assessors.

Compliance Costs:

Costs to Small Businesses:

The number of children with blood lead levels of 5 µg/dL or greater is larger than the number of children who have a blood lead level of 10 µg/dL or greater. Therefore, there will be an increase in the number of children (from approximately 3,000 children to an expected 18,200 per year) who will require education, counseling, diagnostic evaluation, and medical treatment. This will likely create increased costs to the health care industry.

Also, lowering the blood lead level that triggers environmental management to 5 µg/dL will increase the number of properties that may need remediation to address lead exposures to children. Remediations may include replacing leaded components, covering lead paint with durable materials, removing lead paint and stabilizing and maintaining defective lead paint. Since remediation can encompass a variety of different actions the costs to an owner of a property that is determined, after an environmental investigation, to have condition(s) conducive to lead poisoning can range from approximately \$600 to \$10,000.

Costs to Local Government:

Current regulations require local health departments to implement measures to identify and provide case management for children with

elevated blood lead levels. The number of children with blood lead levels of 5 µg/dL or greater is expected to be six times greater than the number of children with blood lead levels equal to or greater than 10 µg/dL, which will result in a six-fold increase in the number of children in need of care coordination by local health departments. Case coordination typically includes ensuring primary health care providers are performing the required activities and assisting with the delivery of these services including providing education, counseling, and follow-up interventions at an estimated cost of \$713 per child. Because each county differs in population, the cost of the proposed amendment will vary by county.

In addition, lowering the blood lead level that triggers environmental management to 5 µg/dL will increase the number of environmental management activities that will need to be conducted by the local or state health departments. Environmental management activities include education, exposure assessment, inspection, and enforcement. The estimated number of children that may require environmental management activities would increase statewide from approximately 1,100 to 18,200. It is estimated that local health departments spend \$2,123 per environmental investigation. However, as stated above, the costs to each local health department will depend on the number of children with elevated blood lead levels in each county.

Additionally, the State will fund a portion of the local health department costs through State Aid pursuant to Article 6 of the Public Health Law. As part of the NYS FY 2020 Enacted Budget, approximately \$9,400,000 was invested to support local health department implementation of this proposal. In addition, approximately \$4,400,000 was invested to support costs to the State to implement this proposal.

Economic and Technological Feasibility:

Currently available technology is adequate to meet the proposal.

Minimizing Adverse Impact:

The State will be providing financial assistance, as stated above, to local governments to reduce the financial burden of this proposal.

Small Business and Local Government Participation:

Small business and local governments were consulted on this proposal. This proposal was included in the NYS FY 2020 Executive Budget. Additionally, the Department held a webinar to present the NYS FY 2020 Executive Budget proposals related to lead poisoning prevention to key stakeholders including members of the Advisory Council on Lead Poisoning Prevention as well as representatives of the New York State Association of County Health Officials, the Conference of Environmental Health Directors, Children's Environmental Health Centers of Excellence, Regional Lead Resource Centers, American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists. The Department also convened the Advisory Council on Lead Poisoning Prevention, which was open to the public, to further discuss this proposal.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

The proposed amendments apply uniformly throughout the state, including rural areas.

Compliance Requirements:

This proposal lowers the level at which primary health care providers, including those in rural areas, must conduct education, counseling, diagnostic evaluation, and medical treatment, and at which local health departments must conduct care coordination, including ensuring primary health care providers are performing the required activities and assisting with the delivery of these services including providing education, counseling, and follow-up interventions. Similarly, it lowers the levels at which the local health departments must provide environmental management activities.

Reporting and Recordkeeping:

The proposed regulation will not impose any new reporting or paperwork. The current reporting and paperwork that is utilized when a child has an elevated blood lead level will continue to be used; however, it is expected that there will be an increase in the volume of reporting and paperwork needed as the number of children with an elevated blood lead level will increase.

Professional Services:

Some rural local health departments may hire additional professional staff to handle the increased number of children who require follow-up and environmental management activities, which may include nurses and lead risk assessors.

Costs:

Costs to Rural Private Regulated Parties:

The number of children with blood lead levels of 5 µg/dL or greater is larger than the number of children who have a blood lead level of 10 µg/dL or greater. Therefore, there will be an increase in the number of children (from approximately 3,000 children to an expected 18,200 per year) who will require education, counseling, diagnostic evaluation, and medical treatment. This will likely increase costs to the health care industry, including private and public insurers, as primary health care providers will likely

bill for time spent providing services to a greater number of children who have an elevated blood lead level.

Also, lowering the blood lead level that triggers environmental management to 5 µg/dL will increase the number of properties that may need remediation to address lead exposures to children. Remediation may include replacing leaded components, covering lead paint with durable materials, removing lead paint and stabilizing and maintaining defective lead paint. Since remediation can encompass a variety of different actions the costs to an owner of a property that is determined, after an environmental investigation, to have condition(s) conducive to lead poisoning can range from approximately \$600 to \$10,000.

Costs to Rural Local Government:

Current regulations require local health departments to implement measures to identify and provide case management for children with elevated blood lead levels. The number of children with blood lead levels of 5 µg/dL or greater is expected to be six times greater than the number of children with blood lead levels equal to or greater than 10 µg/dL, which will result in a six-fold increase in the number of children in need of care coordination by local health departments. Case coordination typically includes ensuring primary health care providers are performing the required activities and assisting with the delivery of these services including providing education, counseling, and follow-up interventions at an estimated cost of \$713 per child. Because each county differs in population, the costs of the proposed amendment will vary by county.

In addition, lowering the blood lead level that triggers environmental management to 5 µg/dL will increase the number of environmental management activities that will need to be conducted by the local or state health departments. Environmental management activities include education, exposure assessment, inspection, and enforcement. The estimated number of children that may require environmental management activities is expected to increase statewide from approximately 1,100 to 18,200. It is estimated that local and State health departments spend \$2,123 per environmental investigation. However, as stated above, the costs to each local health department will depend on the number of children with elevated blood lead levels in each county.

Additionally, the State will fund a portion of the local health department costs through State Aid, pursuant to Article 6 of the Public Health Law. As part of the NYS FY 2020 Enacted Budget, approximately \$9,400,000 was invested to support local health department implementation of this proposal. In addition, approximately \$4,400,000 was invested to support costs to the State to implement this proposal.

Economic and Technological Feasibility:

Currently available technology is adequate to meet the proposal.

Minimizing Adverse Impact:

The State will be providing financial assistance, as stated above, to local governments to reduce the financial burden of this proposal.

Rural Area Participation:

Small business and local governments were consulted on this proposal. This proposal was included in the NYS FY 2020 Executive Budget. Additionally, the Department held a webinar to present the NYS FY 2020 Executive Budget proposals related to lead poisoning prevention to key stakeholders including members of the Advisory Council on Lead Poisoning Prevention as well as representatives with New York State Association of County Health Officials, the Conference of Environmental Health Directors, Children's Environmental Health Centers of Excellence, and Regional Lead Resource Centers. The Department also convened the Advisory Council on Lead Poisoning Prevention, which was open to the public, to further discuss this proposal.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities. The Department believes this regulation will have a positive impact on jobs.

Niagara Frontier Transportation Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Procurement Guidelines of the Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc.

I.D. No. NFT-18-19-00004-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 sections 1159.4 and 1159.5 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1299-t

Subject: Procurement Guidelines of the Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc.

Purpose: To amend Procurement Guidelines to reflect changes in law, clarifying provisions and change in signing authority.

Substance of proposed rule (Full text is posted at the following State website: www.nfta.com): Section 1159.4(a)(1)(ii) is hereby amended to add a new clause (i) immediately following clause (h), as follows:

(i) Develop MWBE and SDVOB participation goals, monitor MWBE and SDOV participation, and report MWBE and SDVOB utilization to appropriate state agencies.

Section 1159.4(a)(2)(ii) is hereby amended as follows:

(ii) For the procurement of any product or service of \$25,000, or more, the user department shall prepare a written requisition and submit same to the procurement department a minimum of three months prior to the desired delivery, bid opening, performance, or proposal due date. For purchases under \$25,000, the requisitions shall be submitted to the procurement department 10 days in advance. The requisition shall serve as the mechanism by which the user department communicates its specific procurement need to the procurement department and it represents the beginning of the procurement process.

Section 1159.4(a)(3)(ii)(6) is hereby amended as follows:

(6) EEO/diversity development department. The Office of EEO/ Diversity Development shall develop DBE goals. EEO/diversity development will monitor DBE participation for Federal and State funded project. The EEO/diversity development department will also report DBE utilization to appropriate Federal and State agencies.

Section 1159.4(d)(1) is hereby amended as follows:

(1) Federal requirements. Procurements which include Federal funds are subject to Federal Buy America requirements. Generally, this means that steel, iron, and/or manufactured products which are incorporated in public works or product purchases are to have been produced in the United States, unless a waiver has been granted by a Federal agency or the project is subject to a general waiver (see, 49 CFR 661.7 appendix A). General waivers have been established for microcomputer equipment, including software, and purchases for less than \$150,000 or less. Rolling stock must have a 65 percent domestic content in years 2018 and 2019 and a 70 percent domestic content in 2020 and beyond, and final assembly must take place in the United States.

Section 1159.4(j)(3)(v) is hereby amended as follows:

(v) the published selection criteria for procurements less than \$250,000 shall be as follows: professional services, 40 percent qualifications and experience, 30 percent technical criteria and 30 percent cost; revenue generating and other services, 20 percent qualifications and experience, 30 percent technical criteria and 50 percent cost; technical/operation sensitive services, 20 percent qualifications and experience, 40 percent technical criteria and 40 percent cost; specialty vehicles, equipment and technical products, 20 percent qualifications and experience, 50 percent technical criteria and 30 percent cost;

Diversity practices will be assessed for procurements anticipated to be \$250,000 or greater when it is practical, feasible and appropriate. Published section criteria shall be as follows: professional services, 35 percent qualifications and experience, 30 percent technical criteria, 30 percent cost and 5 percent diversity practices; revenue generating and other services, 20 percent qualifications and experience, 30 percent technical criteria and 50 percent cost; technical/operation sensitive services, 20 percent qualifications and experience, 40 percent technical criteria, 35 percent cost and 5 percent diversity practices; specialty vehicles, equipment and technical products, 20 percent qualifications and experience, 45 percent technical criteria, 30 percent cost and 5 percent diversity practices.

Section 1159.4(u)(3) is hereby amended as follows:

(3) The Procurement Manager shall ensure that the authority establishes appropriate goals for participation by MWBEs and SDVOBs in procurement contracts awarded by the authority and for the utilization of MWBEs and SDVOBs as subcontractors and suppliers by entities having procurement contracts with the authority. Statewide numerical participation target goals shall be established by the authority based on the findings of the most current disparity study.

Section 1159.4(u)(4) is hereby amended as follows:

(4) Every effort will be made to achieve the MWBE and SDVOB goals assigned to projects. The authority's procurement solicitation documents shall include MWBE and SDVOB goals as appropriate. These documents are advertised and posted on the authority's website. MWBE and SDVOB utilization will be monitored and reported by the Procurement department with assistance from the Engineering department.

Section 1159.5(g)(1) is hereby amended as follows:

(1) All advertising placed in facilities and vehicles owned and operated by the Authority must reflect a high level of good taste, decency and community standards in copy and art. All advertising should harmonize with the environment of its placement.

Section 1159.5(g)(4) is hereby amended as follows:

(4) Testimonials should be authentic and should honestly reflect the response of the person making them. The advertising sales contract provides for the indemnification of the Authority against any action by any person quoted or referred to in any advertisement placed in Authority-owned facilities and vehicles.

Section 1159.5(g)(8) is hereby amended as follows:

(8) Use of Authority graphics or representations in advertising is subject to approval by the Executive Director or other proper official.

Section 1159.5(g)(9) is hereby amended as follows:

(9) No implied or declared endorsement of any product or service by the Authority is permitted.

Text of proposed rule and any required statements and analyses may be obtained from: Michelle Maniccia, Esq., Niagara Frontier Transportation Authority, 181 Ellicott Street, Buffalo, NY 14203, (716) 855-7000, email: michelle_maniccia@nfta.com

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

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

Consensus Rule Making Determination

No person is likely to object to the adoption of the rule, as written, because the changes made are technical in nature and limited to (i) memorializing recent changes in the law with respect to contracting and procurement opportunities, with which the NFTA is legally required to comply, (ii) reflecting an immaterial increase in the purchasing authority of certain members of management, (iii) making conforming changes for purposes of consistency throughout the rule and (iv) making clarifying changes that are expected to be beneficial to individuals who participate in the NFTA contracting and procurement processes. In addition, the changes made to the referenced rule are not expected to adversely impact jobs or employment opportunities, nor are they expected to adversely impact any business or industry that participates, or is eligible to participate, in the NFTA contracting and/or procurement processes.

Job Impact Statement

1. Nature of impact:

The Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc. (together, the NFTA) are amending 21 NYCRR Part 1159, Sections 1159.4, 1159.5 in order to (i) memorialize recent changes in related law with respect to contracting opportunities, with which the NFTA is legally required to comply, (ii) reflect an increase in the purchasing authority of certain members of management, (iii) make conforming changes for purposes of consistency and (iv) make clarifying changes that are expected to be beneficial to individuals who participate in the NFTA contract and procurement processes.

The changes to the referenced regulation are not expected to adversely impact jobs or employment opportunities as the overall level of NFTA contracting and procurement opportunities will not be adversely impacted by the changes made.

2. Categories and numbers affected:

The changes made to the referenced regulation are not expected to adversely impact any business or industry that participates, or is eligible to participate in, the NFTA contracting and procurement processes. The changes are not expected to result in any competitive disadvantage to any business or industry that participates in the NFTA contracting and procurement processes. In fact, certain changes made may result in an increase in NFTA contracting and procurement opportunities for Service-Disabled Veteran-Owned Businesses.

3. Regions of adverse impact:

No region of New York State is expected to be adversely impacted by the changes made to the referenced regulation.

4. Minimizing adverse impact:

The changes made to the referenced regulation are not expected to adversely impact any business or industry that participates, or is eligible to participate, in the NFTA contracting and/or procurement processes as the changes made apply to all businesses and industries equally and compliance is not expected to impose additional costs on any business or industry that participates, or is eligible to participate in the NFTA contracting/or procurement processes.

5. Self-employment opportunities:

The NFTA is currently unaware of any adverse impact on self-employment as a result of the changes made to the referenced regulation.

Office for People with Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transportation of Female Patients at OPWDD Facilities

I.D. No. PDD-18-19-00002-P

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

Proposed Action: This is a consensus rule making to repeal section 17.7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 13.15(a) and 16.00

Subject: Transportation of female patients at OPWDD facilities.

Purpose: Repeal as statutory language has been revised and on longer is reflective in this regulation.

Text of proposed rule: Existing section 17.7 is REPEALED.

Text of proposed rule and any required statements and analyses may be obtained from: Mary Beth Babcock, Office for People with Developmental Disabilities, 44 Holland Avenue, 3rd Floor, Albany, NY 12229, (518) 474-7700, email: rau.unit@opwdd.ny.gov

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

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

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

Consensus Rule Making Determination

OPWDD is repealing Title 14 NYCRR Section 17.7 to coincide with chapter 251 of the laws of 2018. This correction is necessary to comply with state law.

OPWDD has determined that due to the nature and purpose of the amendment, no person is likely to object to the rule as written.

Job Impact Statement

A Job Impact Statement for the repeal of Section 17.7 is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

The regulations repeal Title 14 NYCRR Section 17.7 which requires the treatment team to determine who will accompany a female patient when being transferred to or from a facility. Under chapter 251 of the laws of 2018 any patient may be accompanied by a same sex staff member within staffing limitations when requested. The repeal will not result in costs, including staffing costs, or new compliance requirements for providers and consequently, the repeal will not have a substantial impact on jobs or employment opportunities in New York State. Rather, the repeal will provide fairness, independence, and treat each patient with dignity.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Energy Efficiency Programs, Budgets, and Targets for Investor-Owned Utilities

I.D. No. PSC-18-19-00010-P

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

Proposed Action: The Commission is considering the recommendations and proposals in the NY Utilities Report Regarding Energy Efficiency Budgets and Targets, Collaboration, Heat Pump Technology, and Low- and Moderate-Income Customers and Requests for Approval.

Statutory authority: Public Service Law, sections 5(1)(b), (2), 65(1), 66(1) and (2)

Subject: Energy efficiency programs, budgets, and targets for investor-owned utilities.

Purpose: To encourage the delivery and procurement of energy efficiency by investor-owned utilities.

Substance of proposed rule: The Public Service Commission (Commission) is considering the recommendations and proposals in the NY Utilities Report Regarding Energy Efficiency Budgets and Targets, Collaboration, Heat Pump Technology, and Low- And Moderate-Income Customers and Requests for Approval (NY Utilities Report), filed on April 5, 2019 by Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., KeySpan Gas East Corporation d/b/a National Grid, The Brooklyn Union Gas Company d/b/a National Grid NY, Niagara Mohawk Power Corporation d/b/a National Grid, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation (collectively, the Joint Utilities).

The NY Utilities Report was filed pursuant to the Commission's December 13, 2018 Order Adopting Accelerated Energy Efficiency Targets (New Efficiency Order), which established an incremental target of 31 trillion British thermal units (TBtu) of customer-level energy reduction by investor-owned utilities by 2025, to support achievement of a statewide goal of 185 TBtu of customer-level energy reduction by 2025. The New Efficiency Order established specific by-utility budgets and targets for 2019 and 2020 and directed the Joint Utilities, in collaboration with the New York State Energy Research and Development Authority (NYSERDA), to file a proposal for energy efficiency budgets and targets for 2021 through 2025 to meet the 31 TBtu goal. The NY Utilities Report was filed in compliance with this requirement. As required by the New Efficiency Order, in developing the NY Utilities Report, the Joint Utilities conducted a stakeholder technical conference.

Consistent with the New Efficiency Order, the NY Utilities Report makes proposals on a number of related issues, including specific by-utility budgets and targets, sub-budgets and -targets for heat pump development and for energy efficiency for low- and moderate-income ratepayers, the use of earnings adjustment mechanisms, and collaboration among utilities and between utilities and NYSERDA. The Joint Utilities request that the Commission approve and direct implementation of the recommendations and proposal in the NY Utilities Report.

The full text of the NY Utilities Report and the full record of the proceeding may be viewed 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 recommendations and proposals in the NY Utilities Report and may resolve related matters.

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

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

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

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

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

(18-M-0084SP2)

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

Policies, Budgets and Targets for Support of Heat Pump Deployment by Investor-Owned Utilities

I.D. No. PSC-18-19-00011-P

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

Proposed Action: The Commission is considering efficiency program policies, budgets and targets related to heat pump deployment.

Statutory authority: Public Service Law, sections 5(1)(b), (2), 65(1), 66(1) and (2)

Subject: Policies, budgets and targets for support of heat pump deployment by investor-owned utilities.

Purpose: To encourage the support for heat pump deployment by investor-owned utilities.

Substance of proposed rule: The Public Service Commission (Commission) is considering efficiency program policies, budgets, and targets related to heat pump deployment, as informed by the Commission's December 13, 2018 Order Adopting Accelerated Energy Efficiency Targets (New Efficiency Order) and the recommendations and proposals in the NY Utilities Report Regarding Energy Efficiency Budgets and Targets, Collaboration, Heat Pump Technology, and Low- And Moderate-Income Customers and Requests for Approval (NY Utilities Report), filed on April 5, 2019 by Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., KeySpan Gas East Corporation d/b/a National Grid, The Brooklyn Union Gas Company d/b/a National Grid NY, Niagara Mohawk Power Corporation d/b/a National Grid, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation (collectively, the Joint Utilities).

The NY Utilities Report was filed pursuant to the New Efficiency Order, which established a target of 5 trillion British thermal units (BTU) in customer-level energy reduction through heat pump deployment, as a subsidiary target to the incremental target of 31 BTU of customer-level energy reduction by investor-owned utilities by 2025, to support achievement of a statewide goal of 185 BTU of customer-level energy reduction by 2025. The New Efficiency Order directed the Joint Utilities, in collaboration with the New York State Energy Research and Development Authority (NYSERDA), to include a plan for meeting the 5 BTU heat pump target in their proposal for energy efficiency budgets and targets for 2021 through 2025. The NY Utilities Report was filed in compliance with this requirement. As required by the New Efficiency Order, in developing the NY Utilities Report, the Joint Utilities conducted a stakeholder technical conference.

Consistent with the New Efficiency Order, the NY Utilities Report makes proposals for a statewide heat pump policy framework to accelerate heat pump deployment and meet the 5 BTU target. The proposals include target and budget proposals, incentive structure recommendations, proposed eligibility rules, and other recommendations. The Joint Utilities request that the Commission approve and direct implementation of the recommendations and proposal in the NY Utilities Report.

The full text of the New Efficiency Order and NY Utilities Report and the full record of the proceeding may be viewed 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 recommendations and proposals regarding heat pump deployment in the NY Utilities Report, and may resolve related matters.

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

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

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

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

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

(18-M-0084SP3)

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

Policies, Budgets and Targets for Support of Energy Efficiency Programs for Low- and Moderate-Income Customers

I.D. No. PSC-18-19-00012-P

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

Proposed Action: The Commission is considering efficiency program policies, budgets and targets related to energy efficiency programs targeted at low- and moderate-income ratepayers.

Statutory authority: Public Service Law, sections 5(1)(b), (2), 65(1), 66(1) and (2)

Subject: Policies, budgets and targets for support of energy efficiency programs for low- and moderate-income customers.

Purpose: To encourage the support of energy efficiency programs for low- and moderate-income customers by investor-owned utilities.

Substance of proposed rule: The Public Service Commission (Commission) is considering efficiency program policies, budgets, and targets related to energy efficiency programs targeted at low- and moderate-income (LMI) customers, as informed by the Commission's December 13, 2018 Order Adopting Accelerated Energy Efficiency Targets (New Efficiency Order) and the recommendations and proposals in the NY Utilities Report Regarding Energy Efficiency Budgets and Targets, Collaboration, Heat Pump Technology, and Low- And Moderate-Income Customers and Requests for Approval (NY Utilities Report), filed on April 5, 2019 by Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., KeySpan Gas East Corporation d/b/a National Grid, The Brooklyn Union Gas Company d/b/a National Grid NY, Niagara Mohawk Power Corporation d/b/a National Grid, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation (collectively, the Joint Utilities).

The NY Utilities Report was filed pursuant to the New Efficiency Order, which established minimum budgets and policies for energy efficiency programs targeting LMI customers as part of the overall energy efficiency programs directed in the New Efficiency Order. The New Efficiency Order directed the Joint Utilities, in collaboration with the New York State Energy Research and Development Authority (NYSERDA), to include a plan for serving LMI customers consistent with these requirements in their proposal for energy efficiency budgets and targets for 2021 through 2025. The NY Utilities Report was filed in compliance with this requirement. As required by the New Efficiency Order, in developing the NY Utilities Report, the Joint Utilities conducted a stakeholder technical conference.

Consistent with the New Efficiency Order, the NY Utilities Report makes proposals for a statewide LMI energy efficiency portfolio through which the Joint Utilities will coordinate with NYSEDA to meet the requirements of the New Efficiency Order and advance the State's affordability. The proposals include target and budget proposals, proposed divisions of roles and responsibilities of the Joint Utilities and NYSEDA, and other recommendations. The Joint Utilities request that the Commission approve and direct implementation of the recommendations and proposal in the NY Utilities Report.

The full text of the New Efficiency Order and NY Utilities Report and the full record of the proceeding may be viewed 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 recommendations and proposals regarding energy efficiency programs targeted at LMI customers in the NY Utilities Report, and may resolve related matters.

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

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

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

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

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

(18-M-0084SP4)

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

Notice of Intent to Submeter Electricity**I.D. No.** PSC-18-19-00013-P

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

Proposed Action: The Commission is considering the notice of intent of ACC OP (Park Point SU) LLC to submeter electricity at 417 Comstock Avenue, Syracuse, New York.

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

Subject: Notice of intent to submeter electricity.

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

Substance of proposed rule: The Commission is considering the notice of intent filed by ACC OP (Park Point SU) LLC on April 1, 2019, to submeter electricity at 417 Comstock Avenue, Syracuse, New York, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid (National Grid).

By stating its intent to submeter electricity, ACC OP (Park Point SU) LLC requests authorization to take electric service from National Grid and then distribute and meter that electricity to its residents. Submetering of electricity to residential residents is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96.

The full text of the notice of intent and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(19-E-0206SP1)

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

Revenue Neutral Revenue Adjustment to the Demand and Energy Charges Under SC No. 3**I.D. No.** PSC-18-19-00014-P

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

Proposed Action: The Commission is considering a proposal filed by the Village of Sherburne, to modify P.S.C. No. 1 — Electricity to implement new demand and energy charges under Service Classification (SC) No. 3 — General Service — Demand Metered.

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

Subject: Revenue neutral revenue adjustment to the demand and energy charges under SC No. 3.

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

Substance of proposed rule: The Commission is considering a proposal filed by the Village of Sherburne (Sherburne) on April 5, 2019, to modify its electric tariff schedule, P.S.C. No. 1. Sherburne proposes a net neutral revenue adjustment to the energy and demand charges under Service Classification (SC) No. 3 — General Service — Demand Metered.

The proposed revisions to S.C. No. 3 would increase the energy charge (from \$0.0089 per kWh to \$0.0109 per kWh) and reduce the demand charge (from \$5.57 per kW to \$5.05 per kW). Sherburne states the proposed amendment is the second of a five-year phase-in of the SC No. 3 energy rate. The phase-in is meant to establish an energy rate that is at or above the base fuel cost for SC No. 3, while limiting customer specific bill impacts to approximately 5%. The proposed amendments have an effective date of August 15, 2019.

The full text of the proposal 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-0261SP1)

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

Minor Rate Filing**I.D. No.** PSC-18-19-00015-P

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

Proposed Action: The Commission is considering a proposal filed by Southside Water Inc. to increase its annual revenues by about \$37,474 or 53.14% and to increase the maximum balance in its escrow account from \$5,520 to \$11,000.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (3), (10)(a), (b) and (f)

Subject: Minor rate filing.

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

Substance of proposed rule: The Commission is considering a proposal filed by Southside Water Inc. (Southside or the Company) on April 2, 2019 to amend its tariff schedule, P.S.C. No. 1 — Water, to increase its annual revenues by approximately \$37,474 or 53.14%, and to increase the maximum balance in its escrow account from \$5,520 to \$11,000.

The Company states that the revenue increase is necessary to cover current and projected increases to operating expenses such as salaries, water testing and other operational expenses, and that increase to the escrow account is needed because extraordinary repair expenses frequently exceed the current maximum allowed balance.

Southside is also proposing to increase the restoration of service charges on Leaf No. 10 of its tariff, and to make minor wording revisions to this section to reflect that those customers that request that their service be turned off will not be subject to a restoration of service charge because they are currently assessed a turn off charge. Finally, the Company proposes to revise its Purchased Water Adjustment Statement to reflect the current rate charged by the City of Watertown. The proposed amendments have an effective date of November 1, 2019.

The full text of the minor rate filing and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(19-W-0253SP1)

Department of State

NOTICE OF ADOPTION

Education and Experience Requirements for Original Appraiser Applications

I.D. No. DOS-07-19-00008-A

Filing No. 331

Filing Date: 2019-04-16

Effective Date: 2019-05-01

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

Action taken: Amendment of sections 1102.2 and 1103.2 of Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d

Subject: Education and Experience Requirements for Original Appraiser Applications.

Purpose: To conform existing regulations to current Federal guidelines.

Text or summary was published in the February 13, 2019 issue of the Register, I.D. No. DOS-07-19-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: David A. Mossberg, Esq., NYS Dept. of State, 123 William St., 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

Assessment of Public Comment

The agency received no public comment.

Department of Taxation and Finance

EMERGENCY RULE MAKING

Congestion Surcharge

I.D. No. TAF-09-19-00005-E

Filing No. 327

Filing Date: 2019-04-10

Effective Date: 2019-04-10

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

Action taken: Addition of Part 700 to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First, 1096(a) and art. 29-C

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

Specific reasons underlying the finding of necessity: Specific reasons underlying the finding of necessity: Pursuant to Article 29-C of the Tax Law, a surcharge is in effect, beginning January 1, 2019, on certain intrastate for-hire transportation that begins in, ends in, or passes through the geographic area of the city of New York, in the borough of Manhattan, south of and excluding 96th Street (the "congestion zone"). The Commissioner is required to administer this surcharge, and to accept the registration of persons liable for the surcharge.

This rule is being readopted on an emergency basis so that persons liable for the congestion surcharge can timely register, and ensure that proper transportation records are kept, beginning January 1, 2019.

Subject: Congestion Surcharge.

Purpose: To implement the Congestion Surcharge and related registration, recordkeeping and reporting requirements.

Substance of emergency rule (Full text is posted at the following State website: <https://www.tax.ny.gov/rulemaker/default.htm>): Tax Law Article 29-C mandates the payment of a surcharge, effective January 1, 2019, on the provision of certain intrastate for-hire transportation that begins in, ends in, or passes through the geographic area of the city of New York, in the borough of Manhattan, south of and excluding 96th Street (the "congestion zone"). The provisions of Article 29-C require, among other things, that persons liable for the congestion surcharge register with the Commissioner of Taxation and Finance and keep records of the transportation they are responsible for.

This rule adds a new Subchapter E (section 700.1 through section 700.4) to Chapter IV of Title 20 NYCRR. Section 700.1 contains definitions that are applicable throughout Subchapter E, while section 700.2 reflects the imposition of the congestion surcharge. Section 700.3 sets forth registration and renewal requirements (including the payment of fees) for persons liable for the surcharge. Finally, section 700.4 identifies the types of records and information that must be kept, how they must be kept and transmitted, and who is responsible for keeping them (i.e., persons liable for the congestion surcharge).

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. TAF-09-19-00005-EP, Issue of February 27, 2019. The emergency rule will expire June 8, 2019.

Text of rule and any required statements and analyses may be obtained from: Kathleen D. Chase, Tax Regulations Specialist II, Department of Taxation and Finance, Office of Counsel, Room 200, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: kathleen.chase@tax.ny.gov

Regulatory Impact Statement

1. **Statutory authority:** Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 1096(a) of the Tax Law generally authorizes the Commissioner to make such rules and regulations, and to require such facts and information to be reported, as it may deem necessary to enforce the provisions of Article 27 of the Tax Law; section 1299-G of Article 29-C of the Tax Law states that the provisions of Article 27 of the Tax Law apply with respect to the administration of and procedure with respect to the congestion surcharge; section 1299-A of Article 29-C of the Tax Law imposes a surcharge on for-hire transportation trips that begin in, end in, or pass through the geographic area of the city of New York, in the borough of Manhattan, south of and excluding 96th Street (the "congestion zone"); Article 29-C of Tax Law requires the Commissioner to administer the congestion surcharge, and to accept the registration of persons liable for the surcharge. Section 1299-C of Article 29-C requires that persons liable for the congestion surcharge file with the Commissioner a completed application for a certificate of registration, in a form prescribed by the Commissioner, subject to renewal in accordance with rules promulgated by the Commissioner. Section 1299-E of Article 29-C requires records to be kept by persons liable for the surcharge.

2. **Legislative objectives:** New Subchapter E (section 700.1 through section 700.4) of Chapter IV of Title 20 NYCRR reflects the imposition of the congestion surcharge. Subchapter E implements the registration and administration requirements of Article 29-C of the Tax Law. Section 700.1 of Subchapter E contains definitions that are applicable throughout Subchapter E, while section 700.2 reflects the imposition of the congestion surcharge. Section 700.3 sets forth registration and renewal requirements (including the payment of fees) for persons liable for the surcharge. Finally, section 700.4 identifies the types of records and information that must be kept, how they must be kept and transmitted, and who is responsible for keeping them (i.e., persons liable for the congestion surcharge).

3. **Needs and benefits:** This rule sets forth the renewal and registration requirements necessary to comply with Article 29-C, as well as the records that must be kept to accomplish compliance with Article 29-C. This rule benefits taxpayers by putting in place the means for complying with the congestion surcharge effective January 1, 2019.

4. **Costs:** (a) Costs to regulated parties for the implementation and continuing compliance with this rule: There is no additional cost or burden to comply with these amendments. There is no additional time period needed for compliance.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to make

amendments to the New York State Sales and Use and Other Miscellaneous Tax Regulations under Article 29-C of the Tax Law arises due to the statutory changes requiring that the Commissioner administer the congestion surcharge, and accept the registration of those who will be liable for the surcharge, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

(c) Information and methodology: This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department's Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis Bureau of Tax and Fiscal Studies, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: There are no costs or burdens imposed on local governments to comply with this amendment.

6. Paperwork: This rule will not require any new forms or information. The rule merely implements the registration, renewal and recordkeeping requirements of Article 29-C of the Tax Law.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since Article 29-C, as added by Part NNN of Chapter 59 of the Laws of 2018, requires that the Commissioner administer the congestion surcharge, and prescribes renewal, registration and recordkeeping requirements, there are no viable alternatives to providing for registration, renewal and recordkeeping procedures and methods.

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

10. Compliance schedule: The required registration, renewal and recordkeeping information has been made available to regulated parties, by means of the emergency adoption of New Subchapter E of the Sales and Use and Other Miscellaneous Tax Regulations on November 19, 2018, and the subsequent readoption as an emergency measure and proposal as a permanent rule on February 12, 2019, in sufficient time for affected parties to comply with the congestion surcharge effective January 1, 2019. This rule readopts the amendments relating to the congestion surcharge as an emergency measure in order to maintain the effectiveness of the amendments and permit continuing compliance with the requirements of Article 29-C of the Tax Law.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because it will not impose any adverse economic impact or any additional reporting, recordkeeping, or other compliance requirement on small businesses or local governments.

The purpose of the rule is to add a new Subchapter E to 20 NYCRR, to implement Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018. Article 29-C generally imposes a surcharge on for-hire transportation that begins in, ends in, or passes through the geographic area of the City of New York, in the borough of Manhattan, south of and excluding 96th Street (the "congestion zone"). The Commissioner is required to administer the congestion surcharge imposed by Article 29-C, and to accept the registration of persons liable for surcharge.

Section 1299-C of Article 29-C requires that persons liable for the congestion surcharge file with the Commissioner a completed application for a certificate of registration, in a form prescribed by the Commissioner, subject to renewal in accordance with rules promulgated by the Commissioner. The rule implements section 1299-C by setting forth registration and renewal requirements. Section 1299-E of Article 29-C requires records to be kept by persons liable for the surcharge. The rule implements section 1299-E by enumerating those records to be kept by persons liable for the surcharge. Without a recordkeeping requirement, it would be impossible to ensure compliance with section 1299-A of Article 29-C, which imposes the congestion surcharge.

This rule merely complies with the mandates of Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018, by adding a new Subchapter E to 20 NYCRR, setting forth renewal, registration and recordkeeping requirements relating to the congestion surcharge.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on any rural areas. The purpose of the rule is to add a new Subchapter E to 20 NYCRR, to implement Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018. Article 29-C generally imposes a surcharge on for-hire transportation that begins in, ends in, or passes through the geographic area of the City of New York, in the borough of Manhattan, south of and excluding 96th Street (the "congestion zone"). The Commissioner is required to administer the congestion surcharge imposed by Article 29-C, and to accept the registration of persons liable for the surcharge.

Section 1299-C of Article 29-C requires that persons liable for the congestion surcharge file with the Commissioner a completed application for a certificate of registration, in a form prescribed by the Commissioner,

subject to renewal in accordance with rules promulgated by the Commissioner. The rule implements section 1299-C by setting forth registration and renewal requirements. Section 1299-E of Article 29-C requires records to be kept by those liable for the surcharge. The rule enumerates those records to be kept by persons liable for the surcharge. Without a recordkeeping requirement, it would be impossible to ensure compliance with section 1299-A of Article 29-C, which imposes the congestion surcharge.

This rule merely complies with the mandates of Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018, by adding a new Subchapter E to 20 NYCRR, setting forth renewal, registration and recordkeeping requirements relating to the congestion surcharge.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it will have no adverse impact on jobs and employment opportunities.

The purpose of the rule is to add a new Subchapter E to 20 NYCRR, to implement Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018. Article 29-C generally imposes a surcharge on for-hire transportation that begins in, ends in, or passes through the geographic area of the City of New York, in the borough of Manhattan, south of and excluding 96th Street (the "congestion zone"). The Commissioner is required to administer the congestion surcharge imposed by Article 29-C, and to accept the registration of persons liable for the surcharge.

Section 1299-C of Article 29-C requires that persons liable for the congestion surcharge file with the Commissioner a completed application for a certificate of registration, in a form prescribed by the Commissioner, subject to renewal in accordance with rules promulgated by the Commissioner. Section 1299-E of Article 29-C requires records to be kept by persons liable for the surcharge. The rule enumerates those records to be kept by persons liable for the surcharge. Without a recordkeeping requirement, it would be impossible to ensure compliance with section 1299-A of Article 29-C, which imposes the congestion surcharge.

This rule merely complies with the mandates of Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018, by adding a new Subchapter E to 20 NYCRR, setting forth renewal, registration and recordkeeping requirements relating to the congestion surcharge.

Assessment of Public Comment

The agency received no public comment.

Workers' Compensation Board

NOTICE OF ADOPTION

Fees for Emergency Room, Rural Area Outpatient Clinics, Hospital Based Mental Health Clinics and Private Psychiatric Hospitals

I.D. No. WCB-04-19-00029-A

Filing No. 332

Filing Date: 2019-04-16

Effective Date: 2019-06-01

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

Action taken: Amendment of Subpart 329-3 of Title 12 NYCRR.

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

Subject: Fees for emergency room, rural area outpatient clinics, hospital based mental health clinics and private psychiatric hospitals.

Purpose: Update and incorporate fees for medical services provided to injured workers.

Text of final rule: Subpart 329-3 of 12 NYCRR is hereby amended to amend section 329-3.1 and add new sections 329-3.3 and 329-3.4

SUBPART 329-3 [OUTPATIENT HOSPITAL SERVICES] EMERGENCY ROOM, HOSPITAL-BASED MENTAL-HEALTH CLINIC SERVICES, AND RURAL OUTPATIENT CLINIC SERVICES FEE SCHEDULE

Section 329-3.1 Schedule of rates for [outpatient] hospital emergency room services

The fee schedule applicable to [outpatient hospital services, including minor surgery or] hospital emergency room services [treatment rendered

in a room other than an operating room.] shall be *one hundred fifty percent* of the Department of Health's EAPG Base Rates Fees as published on the table of EAPG Weights, Procedure Based Weights and Units on the Department of Health's website, as described in (a) and (b) below, and payable under the enhanced ambulatory patient grouping (EAPG) methodology governing reimbursement for hospital emergency department services on the date the emergency room services were rendered regardless of the date of accident or disability and, as set forth herein and subject to WCB specific adjustments.

(a) EAPG methodology means the methodology developed and published by Minnesota Mining and Manufacturing Corporation (3M), including the software developed to process CPT-4 and ICD-10 code information to assign patient visits to the appropriate EAPG category or categories and apply appropriate bundling, packaging, consolidation and discounting to assign the appropriate final EAPG weight and associated reimbursement.

(b) The table of EAPG Weights, Procedure Based Weights and Units, and EAPG Fee Schedule fees and units for each effective period are published on the New York State Department of Health website at: http://www.health.state.ny.us/health_care/medicaid/rates/apg/docs/apg_payment_components.xls and are herein incorporated by reference. Copies of the EAPG Fee Schedule fees and units may be downloaded without cost. Hard copies can also be requested by email at GENERAL_INFORMATION@wcb.ny.gov or by submitting a request in writing to the New York State Workers' Compensation Board, 328 State Street, Schenectady, New York 12305-2318.

[the outpatient fee schedule in effect on the date on which the outpatient hospital services were rendered, regardless of the date of accident.]

Section 329-3.3 Schedule of Rates for Rural Outpatient Clinics

(a) For the purposes of this section, Rural Outpatient Clinic means a medical clinic (i) which is located in a rural area that meets the definition of a Health Professional Shortage Area, as defined in section 254e of Title 42 of the U.S. Code; and (ii) and is listed at <https://data.hrsa.gov/tools/shortage-area/hpsa-find> as a facility located in New York State, offering primary care services in an area identified as rural or partially rural with a HPSA score of 15 to 26.

(b) The fee schedule for Rural Outpatient Clinic facility services shall be the fees for Clinics in the Upstate region on the date the service is rendered and as published on the New York State Department of Health website at: https://www.health.ny.gov/health_care/medicaid/rates/apg/rates/hospital/hosp_base_rates_5-2-15.htm and such fees shall be payable upon submission of proof of the Health Professional Shortage Area qualification set forth in subdivision (a) herein on the date of service.

(c) Such fees shall be in addition to fees payable pursuant to Subpart 329-1 of this Part (Medical Fee Schedule).

Section 329-3.4 Schedule of Rates for Outpatient Hospital Based Mental Health Clinics and Private Psychiatric Hospitals

(a) Outpatient Hospital Based Mental Health Clinics

1. means a mental health clinic associated to a hospital that possesses the required operating certificate under Article 31 of the Mental Hygiene Law as required by subdivision (a)(2) of section 31.02 of that Article when such Clinic provides medical care and treatment to workers' compensation claimants by a Board authorized psychiatrist, psychologist or physician with a rating code of PN-ADP (Addiction Medicine) or PN-PM (Pain Management) or under the active and personal supervision of a Board authorized psychiatrist or Board authorized physician with a rating code of PN-ADP (Addiction Medicine) or PN-PM (Pain Management).

2. The fee schedule for Hospital Based Mental Health Clinic facility services shall be the APG Peer Group Base Rates on the date the service is rendered and as published on the New York State Office of Mental Health website at: https://www.omh.ny.gov/omhweb/medicaid_reimbursement/

3. Such fees shall be in addition to fees payable pursuant to Subpart 329-1 of this Part (Medical Fee Schedule) and section 333.2 of this Chapter (Behavioral Health Fee Schedule).

(b) Private Psychiatric Hospital Inpatient Services

1. Private Psychiatric Hospitals are listed on the New York State Office of Mental Health website at: https://omh.ny.gov/omhweb/medicaid_reimbursement/

2. The facility fees for the listed Private Psychiatric Hospitals shall be the rates published by New York State Office of Mental Health and associated to each listed hospital.

3. Fees for inpatient psychiatric services provided by a hospital other than those listed as Private Psychiatric Hospitals shall be at the Inpatient Hospital Fee Schedule rate for the year the service is rendered and published on the Board's website.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 329-3.3(a) and (b).

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

Revised Regulatory Impact Statement

A revised Regulatory Impact Statement is not required because the change made to the last published rule does not necessitate revision to the previously published document. The regulatory text still seeks to update existing fees for emergency room services and add fee schedules for rural area outpatient clinics and private psychiatric hospitals in a way that accomplishes the goals highlighted in the Regulatory Impact Statement. The change does not affect the meaning of any statements in the document.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis is not required because the change made to the last published rule does not necessitate revision to the previously published document. The regulatory text still seeks to update existing fees for emergency room services and add fee schedules for rural area outpatient clinics and private psychiatric hospitals in a way that accomplishes the goals highlighted in the Regulatory Flexibility Analysis. The change does not affect the meaning of any statements in the document.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis is not required because the change made to the last published rule does not necessitate revision to the previously published document. The regulatory text still seeks to update existing fees for emergency room services and add fee schedules for rural area outpatient clinics and private psychiatric hospitals in a way that accomplishes the goals highlighted in the Rural Area Flexibility Analysis. The change does not affect the meaning of any statements in the document.

Revised Job Impact Statement

A revised Job Impact Statement is not required because the change made to the last published rule does not necessitate revision to the previously published document. The regulatory text still seeks to update existing fees for emergency room services and add fee schedules for rural area outpatient clinics and private psychiatric hospitals in a way that accomplishes the goals highlighted in the Job Impact Statement. The change does not affect the meaning of any statements in the document.

Initial Review of Rule

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

Assessment of Public Comment

During the public comment period, the Board received two written comments, which are summarized below.

One comment expressed concerns about increased costs to the NYS workers' compensation system as a result of this proposal being adopted. The proposal increases emergency room reimbursement rates that have not been updated since 1995, and for the first time establishes fees for rural clinics and private psychiatric hospitals using Medicaid reimbursement rates. The Board believes these fees are reasonable and expects a decrease in frictional costs by establishing certainty and guidelines in this area. Accordingly, no change has been made in response to this comment.

The other comment raised several concerns and suggested changes to decrease confusion and provide further clarity on the rules. In response to this comment, the Board has amended section 329-3.3 to clarify when fees may be payable under the fee schedule for Rural Outpatient Clinic services. The remaining suggestions as to clarification will be handled administratively.

The Board has also removed the provision in section 329-3.3(a) relating to supervision of nurse practitioners and physician assistants. Supervision rules will change with the effective date of the amendment of workers' compensation law section 13-b and current supervision rules are fully described in the Official New York State Worker's Compensation Fee Schedule adopted on April 1, 2019. Accordingly, no rules regarding supervision are included in this regulatory amendment.