RULE MAKING ACTIVITIES

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

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

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

Office for the Aging

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Administration of the Long Term Care Ombudsman Program

I.D. No. AGE-42-17-00001-P

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

Proposed Action: Repeal of Part 6660; addition of new Part 6660 to Title 9 NYCRR.

Statutory authority: Elder Law, section 218; The Federal Older Americans Act 711 (42 USC section 3056f), 712 (42 USC section 3058g); 45 CFR section 1321.11 and 45 CFR Part 132

Subject: Administration of the Long Term Care Ombudsman Program.

Purpose: To bring NYSOFA's rules and regulations governing LTCOP into conformance with the Federal Statute and regulations.

Substance of proposed rule (Full text is posted at the following State website: www.aging.ny.gov and www.ltcombudsman.ny.gov): The purpose of this rule is to bring NYSOFA's rules and regulations governing the New York State Long-Term Care Ombudsman Program (LTCOP) in line with federal statute and regulations. 9 NYCRR Part 6660 is being repealed and replaced with a new Part 6660 to bring NYSOFA's regulations into compliance with federal statute and regulations.

Section 6660.1 of the regulations provides the definitions to bring New York State LTCOP into conformance with the definitions found in the federal regulations.

Section 6660.2. This section enumerates the responsibilities of the LTCOP and includes the responsibilities that are required by federal law and regulation. This section also lists the qualifications required of an individual who is being considered for the position of State Long-Term Care Ombudsman. This section also directs the LTCOP to develop a grievance procedure regarding determinations or actions of the state ombudsman, which are also dictated by federal law and regulation.

Section 6660.3 of the regulations lists requirements around identification, removal and remedy of both organizational and individual conflicts of interest. Specifically, it enumerates both organizational and individual conflicts of interest that are problematic to the LTCOP and the procedure for identifying, remedying or removing those conflicts. Additionally, this section puts forth the responsibilities of local ombudsman entities with regard to conflicts of interest. The requirements regarding organizational and individual conflicts of interest detailed in this section bring NYSOFA's regulations into conformance with the federal regulations.

Section 6660.4 addresses the responsibilities of local long- term care ombudsmen. This section is added to conform with federal regulations.

The new Section 6660.5 sets forth the requirements for the designation of an ombudsman. This section also brings the LTCOP's process of designating ombudsmen into compliance with federal regulations.

By adding section 6660.6 of the regulations, NYSOFA is bringing LTCOP's criteria for designating and de-designation of local ombudsman entities into compliance with federal requirements.

Section 6660.7 lists the responsibilities of local ombudsman entity coordinators and conforms them with federal requirements.

NYSOFA is adding section 6660.8 which enumerates the program standards for local long-term care ombudsman programs for the purpose of bringing LTCOP's program standards into compliance with federal law and regulations.

Section 6660.9 addresses ombudsmen access to residents and long-term care facilities. In addition, this section contains language that prohibits the interference with an ombudsman while the ombudsman is carrying out his or her duties.

Section 6660.10 specifically addresses ombudsmen access to resident and facility records. This section specifies the types of records to which the ombudsmen have access and under what circumstances ombudsmen may access those records. These requirements conform with the federal requirements that address access to resident and facility records.

NYSOFA added Section 6660.11 which dictates the circumstances under which ombudsmen may reveal a resident's personal information to an individual not associated with the LTCOP. This section also discusses the manner in which a resident may provide informed consent to an ombudsman for the purpose of disclosing the resident's personal information. Finally, this section addresses how ombudsmen can obtain permission to disclose a resident's personal information when that resident is unable to give consent for such disclosure. These additions bring NYSOFA's regulations into compliance with the federal regulations governing the program.

Section 6660.12 outlines the procedure that an ombudsmen must undertake when investigating a resident's complaint. This section is in conformance with federal regulations and lists the procedures to be followed by ombudsmen when they are investigating complaints.

A copy of the full text of the regulatory proposal is available on the New York State Office for the Aging's website at www.aging.ny.gov and https://ltcombudsman.ny.gov/

Text of proposed rule and any required statements and analyses may be obtained from: Stephen Syzdek, New York State Office for the Aging, Two Empire State Plaza, Albany, NY 12223, (518) 474-5041, email: stephen.syzdek@aging.ny.gov

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

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. Statutory Authority: Section 218(10) of the New York State Elder Law authorizes the Director of the New York State Office for the Aging to promulgate regulations to implement the provisions of section 218 of the Elder Law.

New York State Elder Law Section 218 establishes the office of the long-term ombudsman (LTCOP) and governs its administration.

The Federal Older Americans Act Sections 711(42 USC § 3058f) and 712 (42 USC § 3058g) governs the Administration of the LTCOP.

Federal Regulations 45 CFR § 1321.11 and 45 CFR Part 1324 govern the administration of the LTCOP and the New York State Office for the Aging's responsibilities to the LTCOP.

2. Legislative Objectives: The LTCOP is established in the Older Americans Act (OAA) and the legislative objective for the program is to serve as a resource and advocate for residents of nursing homes, adult homes, assisted living facilities and family type homes. As required by the OAA, Ombudsmen work to resolve problems of individual residents and to bring about changes at the local, state and national levels that will improve residents' care and quality of life. The New York State Elder Law establishes the office of the long-term care ombudsman and mirrors the objectives of the OAA.

3. Needs and Benefits: The purpose of this rule is to bring NYSOFA's rules and regulations governing the LTCOP in line with federal statute and regulations. This rulemaking is essentially a consensus rulemaking as NYSOFA is compelled to have its state regulations in compliance and conformance with federal law and regulations. Failure by NYSOFA to achieve that compliance and conformance would jeopardize federal funding not only for the LTCOP, but for all OAA funded services administered by New York State and our network of aging services providers which includes county sponsored area agencies on aging and not-for-profit aging services providers.

9 NYCRR Part 6660 is being repealed and replaced with a new Part 6660 to bring NYSOFA's regulations into compliance with federal statute and regulations.

Section 6660.1 of the regulations provides the definitions to bring New York State LTCOP into conformance with the definitions found in the federal regulations.

Section 6660.2. This section enumerates the responsibilities of the LTCOP and includes the responsibilities that are required by federal law and regulation. This section also lists the qualifications required of an individual who is being considered for the position of State Long-Term Care Ombudsman. This section also directs the LTCOP to develop a grievance procedure regarding determinations or actions of the state ombudsman, which are also dictated by federal law and regulation.

Section 6660.3 of the regulations lists requirements around identification, removal and remedy of both organizational and individual conflicts of interest. Specifically, it enumerates both organizational and individual conflicts of interest that are problematic to the LTCOP and the procedure for identifying, remedying or removing those conflicts. Additionally, this section puts forth the responsibilities of local ombudsman entities with regard to conflicts of interest. The requirements regarding organizational and individual conflicts of interest detailed in this section bring NYSOFA's regulations into conformance with the federal regulations.

Section 6660.4 addresses the responsibilities of local long-term care ombudsmen. This section is added to conform with federal regulations.

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NYSOFA added Section 6660.11 which dictates the circumstances under which ombudsmen may reveal a resident's personal information to an individual not associated with the LTCOP. This section also discusses the manner in which a resident may provide informed consent to an ombudsman for the purpose of disclosing the resident's personal information. Finally, this section addresses how ombudsmen can obtain permission to disclose a resident's personal information when that resident is unable to give consent for such disclosure. These additions bring NYSOFA's regulations into compliance with the federal regulations governing the program.

Section 6660.12 outlines the procedure that ombudsmen must undertake when investigating a resident's complaint. This section is in conformance with federal regulations and lists the procedures to be followed by ombudsmen when they are investigating complaints.

4. Costs: This proposed rule imposes no additional costs to the regulated parties, NYSOFA or state and local governments to implement and to continue to comply with this proposed rule. The LTCOP will essentially continue to function as it has and this rulemaking ensures that New York State's rules governing the LTCOP are in compliance with federal law and regulations.

5. Paperwork: The proposed rule does not change any of the reporting requirements, forms or other paperwork from what is already required of the entities administering the program. The LTCOP will essentially continue to function as it has and this rulemaking ensures that New York State's rules governing the LTCOP are in compliance with federal law and regulations.

6. Local Government Mandates: The proposed rule does not impose any program, service, duty or responsibility upon any city, county, town, village, school district or other special district. The LTCOP will essentially continue to function as it has and this rulemaking ensures that New York State's rules governing the LTCOP are in compliance with federal law and regulations.

7. Duplication: There are no laws, rules or other legal requirements that duplicate, overlap or conflict with this proposed rule. This rule does not impose duplicative or overlapping requirements on the regulated parties. This rulemaking brings the NYSLTCOP into compliance with federal requirements.

8. Alternatives: NYSOFA did not consider programmatic alternatives during the development of this proposal. Failure by NYSOFA to achieve compliance would jeopardize federal funding not only for the LTCOP, but for all OAA funded services administered by New York State and our network of aging services providers which includes county sponsored area agencies on aging and not-for-profit aging services providers.

9. Federal Standards: This rule does not exceed Federal standards.

10. Compliance Schedule: The New York state long-term care ombudsman program and the Local Ombudsman entities will be able to comply with this proposed rule immediately after promulgation.

Regulatory Flexibility Analysis

This proposed rule will not have an adverse economic impact on small businesses or local governments nor will it impose reporting, record keeping or compliance requirements above those already required by the New York State Long Term Care Ombudsman Program on small businesses or local governments. This proposed rule updates the regulations for the Long Term Care Ombudsman Program to bring them into compliance with the Older Americans Act and the Federal regulations promulgated thereunder. The proposed rule only affects the New York State Office for the Aging, the New York State Long Term Care Ombudsman Program and the entities that administer the Long Term Care Ombudsman Program on a regional level by ensuring that the New York State Ombudsman Program is administered and operated in compliance with Federal requirements.

Rural Area Flexibility Analysis

This proposed rule will not have an adverse economic impact on public or private entities in rural areas nor will it impose reporting, record keeping or compliance requirements above those already required by the New York State Long Term Care Ombudsman Program on public or private entities in rural areas. This proposed rule updates the regulations for the Long Term Care Ombudsman Program to bring them into compliance with the Older Americans Act and the Federal regulations promulgated thereunder. The proposed rule only affects the New York State Office for the Aging, the New York State Long Term Care Ombudsman Program and the entities that administer the Long Term Care Ombudsman Program on a regional level by ensuring that the New York State Ombudsman Program is administered and operated in compliance with Federal requirements.

Job Impact Statement

The New York State Office for the Aging has determined that this proposed rule will not have a substantial adverse impact on jobs. This proposed rule updates the regulations for the Long Term Care Ombudsman Program to bring them into compliance with the Older Americans Act and the Federal regulations promulgated thereunder. The proposed rule only affects the New York State Office for the Aging, the New York State Long Term Care Ombudsman Program and the entities that administer the Long Term Care Ombudsman Program on a regional level by ensuring that the New York State Ombudsman Program is administered and operated in compliance with Federal requirements.

Division of Criminal Justice Services

NOTICE OF ADOPTION

Familial Search Policy

I.D. No. CJS-30-17-00025-A
Filing No. 832
Filing Date: 2017-10-03
Effective Date: 2017-10-18

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

Action taken: Amendment of Part 6192 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 837(13), 995-b(9) and (13)

Subject: Familial Search Policy.

Purpose: To codify a familial search policy.

Text of final rule: 1. Subdivision (q) of Section 6192.1 of 9 NYCRR is amended to read as follows:

(q) The [phrase] *phrases* indirect association *and partial match* [refers] *refer* to the determination during the CODIS candidate match confirmation process that a forensic DNA profile is similar to a DNA profile in the offender index and a comparison reveals that the offender may be a *close biological* relative of the source of the forensic index profile. *The phrases may be used interchangeably.*

2. New subdivisions (ab), (ac) and (ad) are added to Section 6192.1 of 9 NYCRR to read as follows:

(ab) The phrases familial DNA search and familial search refer to a targeted evaluation of offenders' DNA profiles in the DNA databank which generates a list of candidate profiles based on kinship indices to indicate potential biologically related individuals to one or more sources of evidence.

(ac) The phrase offender refers to anyone in the Databank who has been convicted of a crime.

(ad) The phrases State CODIS administrator and State System administrator refer to an employee of the state CODIS laboratory who is responsible for administration and security of the databank.

3. New subdivisions (h), (i), (j) and (k) are added to Section 6192.3 of 9 NYCRR to read as follows:

(h) When there is not a match or a partial match to a sample in the DNA databank a familial search may be performed. To perform a familial search, the following case and sample requirements must be met:

(1) The forensic DNA profile must be associated with:

(i) a Penal Law Article 125 felony offense, other than one defined in Penal Law sections 125.40 or 125.45; or

(ii) a Penal Law Article 130 offense that is defined as a violent felony offense pursuant to Penal Law section 70.02; or

(iii) a class A felony offense defined in Article 130, 135, 150 or 490 of the Penal Law; or

(iv) a crime presenting a significant public safety threat.

(2) The investigating agency and appropriate prosecutor must certify, in the form and manner required by the division, that:

(i) reasonable investigative efforts have been taken in the case; or

(ii) exigent circumstances exist warranting a familial search.

Nothing in this section shall preclude an investigating agency and the appropriate prosecutor from requesting a familial search of an unidentified profile meeting the criteria set forth in the policy which is associated with a case in which a defendant was previously convicted.

(3) The forensic DNA profile must:

(i) be a single source, or a deduced profile originating from a mixture;

(ii) appear to have a direct connection with the putative perpetrator of the crime;

(iii) reside in SDIS; and

(iv) have been searched against DNA profiles in the DNA databank's offender index.

(i) Any request for a familial DNA search must be made jointly by the appropriate investigating agency and the prosecutor (hereinafter "the requestors") through an application to the division in the form and manner specified by the division.

(1) Upon receipt of an application:

(i) The division will confirm that the requestors have certified that the case requirements in paragraph (1) of subdivision (h) of this Part have been satisfied; and

(ii) The state CODIS administrator will confirm that the sample requirements in subparagraphs (i) and (ii) of paragraph (3) of subdivision (h) of this Part have been verified by the forensic laboratory that generated the forensic DNA profile; and

(iii) The state CODIS administrator will confirm that the sample requirements in subparagraphs (iii) and (iv) of paragraph (3) of subdivision (h) of this Part have been met.

(2) The commissioner shall review all completed applications.

(i) If, upon review and evaluation of such application, the commissioner determines that any of the case and/or any of the sample requirements are not satisfied, the division shall notify the requestors, in writing, that a familial search cannot be performed and identify the requirements not satisfied.

(ii) If, upon review and evaluation of such application, the commissioner determines that all of the case and sample requirements have been satisfied, the law enforcement agency, the district attorney, the director of the new york state police crime laboratory or his or her designee, and the commissioner of the division or his or her designee, must execute a memorandum of understanding among themselves detailing the role of each organization.

(j) Upon receipt of the memorandum of understanding described in subparagraph (ii) of paragraph (2) of subdivision (i) of this Part, the new york state police crime laboratory will:

(1) use validated software, which has been approved by the DNA subcommittee and the commission, to perform a familial search of the DNA databank and generate a candidate list;

(2) evaluate the candidate list based on established kinship threshold value(s) approved by the DNA subcommittee and commission;

(3) perform Y-STR testing on the candidate sample(s) if the forensic DNA profile is from a male individual and sufficient forensic DNA sample exists for Y-STR testing; and

(4) if appropriate, ensure additional testing is performed on the candidate sample, provided there is sufficient forensic DNA sample available for testing.

(k) In order for the results of the familial DNA search to be released, the following conditions must be met:

(1) The requestors must satisfactorily complete, and demonstrate an understanding of, a mandatory, in-person or at the discretion of the commissioner, video conference training. At a minimum, the training shall address:

(i) how a familial search is conducted, including the limitations of the method;

(ii) guidance on how to best evaluate leads from a familial search in order to protect unknown family relationships (donor parents/adoptions, previously unknown relatives);

(iii) the confidentiality requirements associated with the DNA profiles generated (see, Executive Law §§ 995-c; 995-d; 995-f);

(iv) the requirement to withdraw a request if a suspect is identified through other means before the familial search is completed; and

(v) the requirement to provide follow-up information to the division regarding the case at intervals determined by the division.

(2) If the candidate profile(s) exceed the established kinship threshold value(s), and are not excluded by additional testing performed, the name(s) of the offender(s) in the DNA databank will be released. The familial DNA search results shall be provided in writing and shall include the following statements:

(i) The information provided is for investigatory law enforcement purposes only;

(ii) The forensic DNA profile could not have come from the named offender in the DNA databank;

(iii) The information provided is not a definitive statement of a familial (i.e., biological) relationship; and

(iv) The information provided shall be treated only as an investigative lead.

(3) If no candidate profile(s) on the candidate list exceed the established kinship threshold value(s), no name will be released and the requestors will be notified, in writing, that no potential relatives were identified through a familial search.

(4) The forensic DNA sample can be re-searched against the DNA databank upon renewal of the request. In the absence of exigent circumstances, such requests may be made every six months.

Final rule as compared with last published rule: Nonsubstantial changes were made in section 6192.3(k)(2) and (3).

Text of rule and any required statements and analyses may be obtained from: Natasha M. Harvin-Locklear, Esq., NYS Division of Criminal Justice Services, Alfred E. Smith State Office Building, 80 South Swan St., Albany, New York 12210, (518) 457-8413, email: dcjslegalrulemaking@dcjs.ny.gov

Revised Regulatory Impact Statement
A revised RIS is not being submitted because it is not required. This is a technical amendment exempt from SAPA § 202-a.

Revised Regulatory Flexibility Analysis
A revised RFASBLG is not being submitted because the non-substantive changes to the proposed rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This is a technical amendment.

Revised Rural Area Flexibility Analysis
A revised RAFA is not being submitted because the non-substantive changes to the proposed rule will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This is a technical amendment.

Revised Job Impact Statement
A revised JIS is not being submitted because the non-substantive changes to the proposed rule will not impose a substantial adverse impact on jobs and employment opportunities. This is a technical amendment.

Initial Review of Rule
As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment
Pursuant to Executive Law § 995-b(9), the Commission on Forensic Science (Commission), in consultation with the DNA Subcommittee, must promulgate a policy for the establishment and operation of a DNA Databank.

The DNA Databank became operational in 1996. Since its inception, the policy for the establishment and operation of the DNA Databank required pursuant to Executive Law § 995-b(9) has been promulgated by the Division of Criminal Justice Services (Division) in 9 NYCRR Part 6192. The proposed rule will amend 9 NYCRR Part 6192 to codify a familial search policy.

DNA profiles generated from evidence associated with criminal investigations are routinely searched against DNA databanks. Currently, the regulations permit "partial matches" that occur inadvertently and may indicate that a perpetrator is a close blood relative of an individual whose DNA is on file. In situations when there is not an association ("match") or an indirect association ("partial match") to a sample in the New York State DNA Databank, familial searching would be utilized. Familial searching is a targeted evaluation of the convicted offenders in the DNA Databank. This search generates a list of candidates based on kinship statistics to indicate potential biologically related individuals. Familial searching could greatly increase the pool of potential suspects, thereby increasing the number of crimes solved.

After receiving the necessary approval, the Division formally proposed an amendment to 9 NYCRR Part 6192, which was published in the July 26, 2017 issue of the State Register under I.D. No. CJS-30-17-00025-P, to permit the use of familial searching in New York. This publication initiated a 45-day public comment period, i.e., through Monday, September 11, 2017.

The Division received written comments pertaining to the familial search policy from four organizations – the New York State Sheriffs' Association (NYSSA), on September 7, 2017; the New York Civil Liberties Union (NYCLU), on September 8, 2017; the Innocence Project (IP), on September 8, 2017; and the Legal Aid Society (LAS), on September 11, 2017. The comments focused on issues which had been raised, and already considered and addressed by the Commission. NYSSA supports the rule. NYCLU, IP and LAS oppose the rule. Excerpts of the comments are presented below. The original comment letters are held on file with the Division and may be viewed upon request. The comments and the Division's responses are grouped as follows:

General Comments

Comment: NYSSA asserted that "[t]his amendment will generate more leads for police and prosecutors and will aid in the resolution of otherwise unsolvable crimes. Furthermore, the regulation is properly balanced, such that a familial search can only be performed if a qualifying offense has been committed and other investigatory options have been exhausted."

Response: Comment noted; no response required.

Comment: IP asserted that if the State proceeds with the adoption and promulgation of the rule, the rule must contain oversight and privacy protections.

Response: Comment noted; responses provided herein below. The Division asserts there is appropriate oversight as provided in the regulation proposed by the DNA Subcommittee and the Commission.

Statutory/Legislative Authority

Executive Law

Comment #1: The NYCLU asserted that the Division and/or the Commission exceeded their statutory authority and/or lack such authority with regard to the proposed familial search policy. Citing Weiss v. City of New York, 731 N.E.2d 594 (N.Y. 2000), and Nicholas v. Goord, 430 F.3d 652 (2d. Circ. 2005), the NYCLU noted that "[r]egulatory enactments must be in harmony with statute; rules and regulations may be promulgated only to the extent they are consistent with the will of the legislature *** state law does not authorize, and does not anticipate, the use of DNA profiles in the state's databank to facilitate criminal investigations of individuals based solely upon the fact their DNA is similar to a family member whose DNA profile may be in the state's data bank *** the statutory scheme intends to prevent recidivism, and to facilitate the prosecution of recidivist offenders, by maintaining DNA identifiers of certain convicted offenders." NYCLU further noted that "if lawmakers saw a need for partial-match of familial search techniques in the analysis of forensic DNA, they would have passed a bill."

Comment #2: The LAS asserted that the Commission and the DNA Subcommittee lack the authority to authorize familial searching stating that the Legislature "is the appropriate venue" since it "has historically made determinations concerning database expansion."

Response: No specific provision expressly prohibits a familial search policy. Indeed, the court in Gallo v. Pataki, 831 N.Y.S.2d 896, 899 (N.Y. Sup. Ct., 2007) held that "Executive Law section 995–c(3) sets forth one class of people subject to testing, but does not forbid other groups from being tested. Accordingly, requiring DNA testing as a condition of parole does not violate the DNA Database law." Also, the Legislature authorized the Commission to promulgate a policy for the establishment and operation of a DNA Databank, and authorized the Division to establish and operate the Databank (see, Executive Law §§ 995-b[9], 995-c[1],[2]). Thus, the Legislature clearly intended that the Commission and Division establish and maintain effective procedures governing the DNA Databank (see, Gallo at 898 ["the DNA Database law constituted a large-scale delegation of authority to the executive branch."]). As the administrative arm of the Commission, the Division intends to carry out its duty to maintain effective procedures governing the DNA Databank by adopting and promulgating the proposed regulations.

In addition, the State DNA Databank, which contains DNA profiles of convicted offenders, was created so that law enforcement officials can identify the perpetrators of crimes when DNA evidence is found at a crime scene (see, Executive Law § 995-c[6][a] which provides, in part, "DNA records contained in the state DNA identification index shall be released…to a federal law enforcement agency, or to a state or local law enforcement agency or district attorney's office for law enforcement identification purposes upon submission of a DNA record in connection with the investigation of the commission of one or more crimes…."). Through the proposed familial search policy, law enforcement officials will have a better opportunity to solve crimes and prevent additional ones from occurring.

Based upon the broad jurisdiction of the Commission and the legality of the DNA Databank, the proposal of the familial search policy is supported by statute and case law.

Civil Rights Law

Comment: The NYCLU asserted that the "proposed familial search policy is in conflict with statutory protections of genetic information". The NYCLU noted that the policy "overrides" Civil Rights Law § 79-l(3)(a) which provides, "[a]ll records, findings and results of any genetic test performed on any person shall be deemed confidential and shall not be disclosed without the written informed consent of the person to whom such genetic test relates."

Response: Civil Rights Law § 79-l prohibits laboratories from performing genetic tests on biological samples unless prior written consent has been obtained. Specifically, subdivision 2 of that section states that generally "[n]o person shall perform a genetic test on a biological sample taken from an individual without the prior written informed consent of such individual ****."

However, Civil Rights Law § 79-l(4)(b) expressly states that "genetic tests" are permitted. That section provides that such tests "may be performed without the consent of the person who is the subject of the tests pursuant to an order of a court of competent jurisdiction or as provided pursuant to article forty-nine-B of the executive law ****." Article 49-B of the Executive Law contains provisions pertaining to the Commission, the DNA Subcommittee, the State DNA Databank, and the confidentiality of the results of DNA testing, and DNA records maintained outside the State DNA Databank. The provisions of Article 49-B pertain to DNA records belonging to convicted offenders maintained in the State DNA Databank, as well as to DNA records belonging to individuals who have provided a DNA sample to law enforcement authorities during a criminal investigation and maintained in local forensic laboratories and/or local DNA databases.

Based on the foregoing, Executive Law Article 49-B extends to all forensic testing, including biological samples obtained from convicted of-

fenders and suspects in crimes. As such, biological samples obtained from convicted offenders and suspects in crimes may be tested and DNA profiles developed there from without first obtaining the written consent of the offender or suspect.

Privacy

Comment #1: The NYCLU asserted that "[t]he proposed Familial Search Policy poses serious risks to the privacy rights of individuals whose DNA profile is held in the state's databank, and to the privacy rights of those individuals' family members".

Comment #2: IP asserted that "privacy protections and judicial oversight are omitted in the proposed rule."

Response: The proposed rule is designed to ensure that the familial search policy is applied fairly and in accordance with constitutional safeguards and accepted scientific procedures. Familial searching is not conducted automatically and can only be performed upon a joint request by the appropriate prosecutor and police agency, and only where certain case and sample requirements are met.

The forensic DNA profile must be associated with: (1) a Penal Law Article 125 felony offense, other than one defined in Penal Law sections 125.40 or 125.45; (2) a Penal Law Article 130 offense that is defined as a violent felony offense pursuant to Penal Law section 70.02; (3) a class A felony offense defined in Article 130, 135, 150, or 490 of the Penal Law; or (4) a crime presenting a significant public safety threat. Also, the investigating agency and the appropriate prosecutor must certify, in the form and manner required by the Division, that: (1) reasonable investigative efforts have been taken in the case; or (2) exigent circumstances exist warranting a familial search. In addition, the forensic DNA profile must: (1) be a single source, or a deduced profile originating from a mixture; (2) appear to have a direct connection with the putative perpetrator of the crime; (3) reside in the State DNA Index System (SDIS); and (4) have been searched against DNA profiles in the DNA Databank's offender index. Upon receipt of an application for a familial DNA search, which must be jointly made by the appropriate investigating agency and the prosecutor, the Division will confirm that the requestors have certified that the case requirements have been satisfied. The State Combined DNA Index System (CODIS) administrator will confirm that the sample requirements have been met. If any of the case and/or sample requirements are not satisfied, the requestors will be notified that a familial search cannot be performed and the specific requirements that were not met.

If, upon review and evaluation of the application, the Commissioner of the Division determines that the case and sample requirements are satisfied, the law enforcement agency, the district attorney, the director of the New York State Police Crime Laboratory, or his or her designee, and the Commissioner of the Division, or his or her designee, must enter into a memorandum of understanding that outlines their duties.

The Laboratory must follow conduct required by scientific procedures utilizing validated software. The requestors must attend the training that will address, at a minimum: (1) how a familial search is conducted, including the limitations of the method; (2) guidance on how to best evaluate leads from a familial search in order to protect unknown family relationships (donor parents/adoptions, previously unknown relatives); (3) the confidentiality requirements associated with the DNA profiles generated (see, Executive Law §§ 995-c,995-d, 995-f); (4) the requirement to withdraw a request if a suspect is identified through other means before the familial search is completed; and (5) the requirement to provide follow-up information to the Division regarding the case at intervals determined by the Division.

If any candidate profile(s) on the candidate list exceed the established kinship threshold value(s), and are not excluded by additional testing performed, the name(s) of the offender(s) in the DNA Databank will be released. The familial DNA search results will be provided in writing and will include the following statements: (1) the information provided is for investigatory law enforcement purposes only; (2) the forensic DNA profile could not have come from the named offender in the DNA Databank; (3) the information provided is not a definitive statement of a familial (i.e., biological) relationship; and (4) the information provided shall be treated only as an investigative lead. However, if no candidate profile(s) exceed the established kinship threshold value(s), no name will be released and the requestors will be notified, in writing, that no potential relatives were identified through the familial search.

Under this proposed rule, familial searches will only be conducted in extremely limited circumstances, where there is only one source to the DNA profile or a deduced profile originating from a mixture, and all other investigative leads have been exhausted, or exigent circumstances exist. Thus, the proposal of the familial search policy is not violative of any privacy protections and its enactment is warranted.

Racial Disparities

Comment #1: The NYCLU asserted that "the proposed familial DNA searching policy poses great risks to constitutional protections of privacy; and it will be persons of color – blacks and Latinos – whose constitutional rights are most likely to be violated by the use of family DNA searching". The NYCLU noted that "data substantiate a well-founded concern that partial-match DNA analysis and familial DNA searching techniques will lead to criminal investigations and prosecutions tainted by racial and ethnic bias."

Comment #2: The IP asserted that "[f]amilial searching virtually guarantees that the DNA databases will create suspects out of innocent people, and because the racial composition of DNA databases is disproportionate to the level of crime committed by racial groups, those innocent suspects will disproportionately be people of color."

Comment #3: The LAS asserted that "[f]amilial searching represents expansion of investigative authority that will disparately impact African Americans, Latinos, and poor communities". The LAS noted that "[t]his disparate effect would be a grave violation of the Equal Protection Clause *** systematic targeting of innocent people based on race is a statistical reality of familial searching because of the overrepresentation of people of color in the database."

Response: The Supreme Court, in Washington v. Davis, 426 U.S. 229 (1976), opined that a neutral law that serves a legitimate government interest does not violate the Equal Protection Clause simply because there is a racially disproportionate impact. There must be a "racially discriminatory purpose" (id. at 240). Familial searching will be used only as an investigative tool in limited situations to help apprehend violent offenders. Particular families or ethnic groups will not be targeted or singled out. As previously stated, familial searching is not conducted automatically and can only be performed if certain case and sample requirements are met. Thus, the proposal of the familial search policy, which is very limited in scope, is warranted.

Accountability

Comment #1: The NYCLU asserted that "in light of rapidly advancing forensic technology, including the use of forensic DNA, New York State must develop a far more rigorous system of oversight and accountability." The NYCLU noted that there needs to be a strong and independent entity, and the Commission needs to be reconstituted to meet such task.

Comment #2: The IP asserted that the decision to allow familial searching is an "inherently judicial function" that must be exercised by one who is independent and well-versed in DNA evidence. The IP noted that the Division "is not a neutral entity" and while the current Commissioner may have the expertise in forensic technology, "this proposed rule must also protect the process from future commissioners with unknown qualifications."

Comment #3: The LAS asserted that the proposed rule "provides no mechanisms for accountability****." The LAS noted that there must be "checks and balances***to hold those with power accountable."

Response: The necessary oversight provisions are provided in the proposed rule. The Commission is established by the Legislature pursuant to Executive Law § 995-a. It consists of 14 members, including scientists who have experience in the areas of laboratory standards or quality assurance regulation and monitoring, defense attorneys, prosecutors, and an attorney or judge with a background in privacy issues and biomedical ethics.

Among other things, as described in Executive Law § 995-b(1), the Commission has the authority to "develop minimum standards and a program of accreditation for all forensic laboratories in New York state…and approval of forensic laboratories for the performance of specific forensic methodologies ****." In accordance with Executive Law § 995-b(2), the aforementioned standards and program shall be designed to achieve, among other things, the following objectives:

- Accurate, effective, efficient and reliable forensic laboratories, including forensic DNA laboratories;
- Forensic analyses, including forensic DNA testing, are performed in accordance with the highest scientific standards practicable;
- Cooperation and coordination among forensic laboratories and other criminal justice agencies; and
- Compatibility with other state and federal forensic laboratories in order to share and exchange information, data and results of forensic analyses and tests, to the extent consistent with the provisions of Article 49-B and any other applicable areas of law.

The Commission is an independent entity and, pursuant to Executive Law § 995-b(5), is assisted by the Division's Office of Forensic Services' staff with regard to administrative assistance, and other resources necessary to carry out its powers and duties. Also, general guidance is provided by the NYS Crime Laboratory Advisory Committee (NYCLAC), and technical working groups (TWGs) of forensic experts from State and local crime laboratories which have been established for each forensic discipline and for quality control managers to promote uniform analytical protocols and quality assurance procedures, to identify technical training needs, and to provide technical consultation services to the Division in the evaluation of laboratories' performance on proficiency tests and conformance with accreditation standards. Executive Law § 837(13) authorizes the Division to adopt, amend or rescind regulations "as may be necessary

or convenient to the performance of the functions, powers and duties of the [D]ivision."

In addition, the DNA Subcommittee, which, pursuant to Executive Law § 995-b(13), has been granted authority through binding recommendations to the Commission, regarding matters relating to the establishment and operation of the DNA Databank, is comprised of scientists with expertise in the fields of molecular biology, population genetics, forensic science, and laboratory standards and quality assurance. However, in the event that the Commission disagrees with any of the recommendations submitted by the DNA Subcommittee, the Commission may request that the DNA Subcommittee review such recommendations. The DNA Subcommittee may either provide revised recommendations to the Commission or delineate reasons why its recommendations will not be revised (see, Executive Law § 995-b[2-a]).

Further, there are strict procedures regarding the use of familial searching. As previously stated under "Privacy" comments, familial searching can only be performed and results can only be released after certain requirements have been met. Accordingly, the proposal of the familial search policy is warranted.

Transparency

Comment #1: The NYCLU asserted that there was a "[l]ack of transparency and accountability regarding the proposed Familial Search Policy".

Comment #2: The LAS asserted that familial searching should be "considered by elected officials in the normal legislative context where all community stakeholders have the opportunity to be heard."

Response: The legal and policy implications associated with the familial search policy were discussed by the Commission at several open meetings. At the joint meeting/public hearing of the Commission and DNA Subcommittee, held on February 10, 2017, a full day of speakers were heard and there were written comments received regarding the familial search policy. At its April 12, 2017 meeting, the Commission reviewed and discussed the draft familial search policy, regulations and implementation plan as proposed by the DNA Subcommittee at its March 27, 2017 meeting. After the matter was thoroughly debated, the Commission voted to send the policy, regulations and implementation plan, along with the Commission's recommendations, back to the DNA Subcommittee for consideration.

The DNA Subcommittee reviewed the draft familial search policy and recommendations provided by the Commission at its April 12, 2017 meeting. Each section requiring revision or input from the DNA Subcommittee was considered and discussed. The policy was amended in part, and those changes were subsequently made to the regulations and implementation plan. On May 19, 2017, the DNA Subcommittee reviewed and discussed the familial search policy, and made a recommendation to the Commission to adopt the policy. The Commission formally adopted the policy on June 16, 2017.

The Commission acted only after lengthy discussions on various aspects of the policy, and the matter was thoroughly debated by its members and researched and recommended by the DNA Subcommittee. A majority of the Commission members were in favor of implementing the policy and regulatory changes.

Accordingly, and based upon the assessment of the foregoing comments, the Division will not withdraw nor revise the proposed rule, except for minor typographical corrections.

NOTICE OF ADOPTION

Handling of Ignition Interlock Cases Involving Certain Criminal Offenders

I.D. No. CJS-31-17-00004-A

Filing No. 827

Filing Date: 2017-10-02

Effective Date: 2017-11-15

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

Action taken: Amendment of sections 358.1-358.3, 358.4(a), (c), (d), 358.5-358.8; and addition of section 358.10 to Title 9 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 1193(1)(g) and 1198(5)(a); L. 2009, ch. 486

Subject: Handling of Ignition Interlock Cases Involving Certain Criminal Offenders.

Purpose: To promote public/traffic safety, offender accountability and quality assurance through the establishment of minimum standards.

Substance of final rule: These adopted Amendments update, clarify, and strengthen regulatory provisions of the Division of Criminal Justice Services rule, entitled "Handling of Ignition Interlock Cases Involving Certain Criminal Offenders" to better enhance public/traffic safety, achieve greater offender accountability, and guarantee quality assurance with respect to Ignition Interlock Device (IID) program service delivery. Non-substantive changes in the earlier proposed rule Amendments were made in § 358.5(c)(2), § 358.5(c)(3), § 358.7(b)(3), and § 358.10.

Rule Sections 358.1 and 358.2 were amended to update the objectives and applicability regulatory language to reflect recent statutory changes.

Rule Section 358.3 governing definitions, was amended to refine and/or reinforce certain definitional terms. Two new definitions of "Emergency Notification Program" and "real time reporting" were also added to reflect new programmatic features which are now operational.

Several amendments were made to Rule Section 358.4 governing Ignition Interlock Program Plans. Plan content was updated to incorporate recent statutory changes as to imposition of IIDs in advance of sentencing and to better ensure that plans reflect handling of interim probation supervision cases. Additional language will facilitate timely notification procedures to monitors where a court approves reduction in a breath sample in accordance with new regulatory provisions.

Rule Section 358.5, governing the Approval Process and Responsibilities of Qualified Manufacturers, was amended with respect to application procedures, including but not limited to, updating outdated language, and establishing parameters surrounding open application process and contractual term to promote consistency. Other changes achieve greater offender and service delivery accountability. For example, new reporting language with respect to test results will better guarantee serious failed tests by operators are timely reported. Other changes strengthen provisions to establish timely DCJS notification of significant operational service delivery problems. Significantly, a new regulatory provision establishes a mechanism consistent with National Highway Traffic Safety Administration Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs) which will permit court authorization of a reduced breath sample for certain operators with certain health issues which prevent them from regular operational usage of the IID.

Rule Section 358.6 governing cancellation, suspension, and revocation of qualified manufacturers, installation and service providers and IIDs, has been modified to clarify that verbal and/or written notification or communication of disapproval, suspension in whole or in part, of revocation or cancellation of a manufacturer's device, services, and/or operations by another state or jurisdiction, may result in revocation of a certified IID or suspension or removal of a qualified manufacturer or installation/service provider in New York State.

Changes to Rule Section 358.7 governing monitoring and Rule Section 358.8 governing installation and costs, update these regulatory provisions to reflect recent statutory changes and reference interim probation supervision. Additionally, Rule Section 358.7 sets forth revised intrastate and interstate monitoring procedures to establish that for intrastate conditional discharge cases, the sentencing county monitor shall contact the monitor in the county of residence to determine the class of IID available and the sentencing county monitor shall perform monitor services. Further where there is an Emergency Notification Program, the monitor shall notify the IID Manufacturer so that the designated law enforcement agency within the county of residence shall receive all applicable communications/notifications. Further, where an IID is to be imposed in advance of sentencing, the monitor in the county of residence is to be similarly contacted by the monitor in the county where the court orders installation to determine the specific class and features of the IID available and an identical procedure will be required for Emergency Notification Programming in the county of residence. With respect to interstate transfer, regulatory language is streamlined.

Among adopted regulatory changes are the following:

- Reflects the imposition and monitoring of IIDs installed in conjunction with interim probation supervision and in cases prior to sentencing pursuant to a court order.
- Clarifies that the period of IID restriction will commence from the earlier of the date of sentencing, or the date of installation in advance of sentencing and that a court may not authorize the operation of a motor vehicle by any individual whose license or privilege to operate a motor vehicle has been revoked.
- Establishes that monitors select the class and features of IIDs available from an available manufacturer in the region where an operator resides.
- Requires that the applicable monitor coordinate monitoring with the NYS Department of Corrections and Community Supervision (DOCCS) where the operator is under DOCCS supervision and promptly provide such agency with reports of any failed tasks or failed reports.
- Requires a court authorization for a reduction in breath sample to be consistent with NHTSA specifications and that every county plan establishes a procedure whereby the probation department and any other monitor be notified no later than five (5) business days from any such court approval.

• Requires all jurisdictions to submit an IID plan reflective of all operators who may be subject to IID installation and maintenance with monitoring ordered by a court in advance of sentencing or at sentencing, and to make modifications or updates, as required by DCJS. DCJS has required since 2014 that plans have procedures in this area and to amend plans to be consistent with law and regulatory provisions.

• Clarifies recent statutory changes to better ensure that youth adjudicated as Youthful Offenders of DWI and/or other alcohol related offenses are subject to IID installation and related compliance provisions.

• Clarifies recent statutory change that affected operators provide proof of installation compliance with the IID requirement to the court and the applicable monitor where such person is under probation or conditional discharge supervision.

• Requires that manufacturers:

o Provide documentation and verification of their respective Standby Letter of Credit (SLOC) as specified in the manufacturer's contract with New York State;

o The SLOC was previously incorporated in DCJS 2013 contracts with manufacturers.

o Adhere to any county plan real time reporting and emergency notification program requirements;

o Provide immediate written notice to DCJS and the DOH whenever their IID devices, services, and/or operations has been compromised or does not function as intended in NYS or any other state or jurisdiction or disapproved or suspended in whole or in part, revoked or otherwise cancelled by another state or jurisdiction or has received notice or communication from another state or jurisdiction that any such actions are imminent.

Additionally, as existing DOH regulations require prior approval with respect to any operational modification of IIDs, new regulatory language reiterates this requirement and for any manufacturer to provide necessary documentation to DOH and that any such manufacturer notify DCJS of any intent to do so and provide a written summary of any requested or approved modification.

Lastly, a new Section 358.10 is added which incorporates by reference the National Highway Traffic Safety Administration's Model Specifications for Breath Alcohol Ignition Interlock Devices and cites where these may be found.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 358.5(c)(2), (3), 358.7(b)(3) and 358.10.

Text of rule and any required statements and analyses may be obtained from: Linda J. Valenti, Assistant Counsel, New York State Division of Criminal Justice Services, Alfred E. Smith Office Building-Room 832, Albany, New York 12210, (518) 457-8413, email: linda.valenti@dcjs.ny.gov

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

The adopted changes to Part 358 Amendments were technical in nature and therefore there were no changes to the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The New York State Division of Criminal Justice received only one comment to its recently proposed rule amendments to 9 NYCRR Part 358, DCJS' rule entitled ''Handling of Ignition Interlock Cases Involving Certain Criminal Offenders.'' The comment came from one probation department relative to monitor notification workload and it was determined that the comment was based on an inaccurate interpretation of the existing regulation.

Currently, the existing Ignition Interlock regulation, Section 358.7(d)(1), requires that the monitor notify the appropriate court and District Attorney (DA) when a device enters lockout mode. As listed in Section 358.5 (c)(2), all failed/missed rolling re-tests (see definition below) will cause a device to enter lockout mode. The proposed rule replaces certain lockout mode language in Section 358.7(d)(1) relative to notification with the specific events which give rise to a lockout mode. Since reporting to the court and DA of a device entering lock out mode, including occurrences due to failed/missed rolling re-test, is already required under the existing regulation, the proposed language specific to this area would not adversely affect the monitor's workload.

Applicable Definitions/Rule Section 358.3

(u) The term "rolling re-test" shall mean a breath test, taken by the operator while the vehicle is running, within one (1) to three (3) minutes after a failed or missed rolling test.

(1) The term "failed rolling re-test" shall mean a rolling re-test in which the operator's BAC is at or above the set point.

(2) The term "missed rolling re-test" shall mean failure to take the rolling re-test within the time period allotted to do so.

DCJS' Office of Probation and Correctional Alternatives directly communicated with the probation official and explained the aforementioned current and proposed regulatory requirements to ensure there was no misunderstanding of the existing and proposed regulatory requirements.

State Board of Elections

NOTICE OF ADOPTION

Administrative Complaint Procedure for Resolution of Violations of Title III Provisions of HAVA

I.D. No. SBE-21-17-00002-A
Filing No. 820
Filing Date: 2017-09-28
Effective Date: 2017-10-18

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

Action taken: Amendment of sections 6216.2 and 6216.3 of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-102(1), (16) and 3-105

Subject: Administrative Complaint Procedure for Resolution of Violations of Title III Provisions of HAVA.

Purpose: To streamline the HAVA complaint procedure and clarify that Counsel's Office at SBOE administers the procedure.

Substance of final rule: §§ 3-102(16) and 3-105 of the Election Law requires that the State Board of Elections administer an administrative complaint procedure pursuant to Title III of the Help America Vote Act of 2002 (hereinafter HAVA Complaint Procedure). The procedure enables voters to file a formal complaint with the State Board of Elections in writing which is adjudicated through the Board. Once filed, the State Board conducts a hearing on the record. The hearings are conducted by two State Commissioners of opposite parties, or their designees. If the State panel fails to make a determination on a complaint within 90 days, it is referred to an Alternative Dispute Resolution Process (ADR). An ADR decision must be reached within 60 days from the end of the 90 day time period.

The HAVA Complaint procedure is effectuated via 9 NYCRR §§ 6216.2 and 6216.3, adopted on December 27, 2006.

The proposed amendment clarifies that Counsel's Office performs the administrative duties related to the HAVA Complaint procedure, including; reviewing the complaint, accepting the Complaint, assigning a tracking number to the complaint, forwarding the Complaint to the Chief Enforcement Counsel, and scheduling the hearing.

Second, the proposed amendment streamlines the HAVA Complaint procedure. The proposed amendments to the process include:

Section 6216.2(a) provides that accessible Complaint forms shall be made available on the SBOE website;

Section 6216.2(b)(1) permits a voter to use any other writing, other than the formal Complaint form, when filing a formal complaint, provided that the writing contains the same information required by the SBOE Complaint form;

Section 6216.2(b)(3) provides that the Complaint be "reasonably" specific as to times, places, and names of witnesses;

Section 6216.2(c)(4) requires SBOE to serve the Complaint and responsive papers upon the parties;

Section 6216.2(d)(6) permits hearings to be held telephonically; and

Section 6216.2(d)(8) requires that rules of evidence as outlined in the regulations be "substantially" followed at the hearing.

Lastly, the proposal amends section 6216.3, which relates to the alternate dispute resolution requirement for HAVA complaints. The proposal deletes paragraphs (c) and (d) of section 6216.3, which relate to the contracting of an alternative dispute resolution agency. Additionally, section 6216.3 is amended to permit ADR hearings to be held telephonically.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 6216.2(a).

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

Revised Regulatory Impact Statement
This is a technical amendment exempt from SAPA § 202-a. The word "accessible" is placed in front of "Complaint forms available on its website."

Revised Regulatory Flexibility Analysis
This is a technical amendment with no substantive change requiring a Regulatory Flexibility Analysis. The word "accessible" is placed in front of "Complaint forms available on its website."

Revised Rural Area Flexibility Analysis
This is a technical amendment with no substantive change requiring a Revised Rural Area Flexibility Analysis. The word "accessible" is placed in front of "Complaint forms available on its website."

Revised Job Impact Statement
This is a technical amendment with no substantive change requiring a Revised Job Impact Statement. The word "accessible" is placed in front of "Complaint forms available on its website."

Initial Review of Rule
As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment
The proposed amendment streamlines the HAVA complaint procedure and clarifies that Counsel's Office at SBOE administers the procedure. The State Board of Elections received four public comments from organizations that advocate for persons with disabilities.

Comment: One organization expressed concern that the proposal does not address requests for reasonable accommodations. Specifically, the organization stated: "We are concerned that accessibility, particularly for people who are low vision or blind, is not addressed here, and that accommodations are not directed. If this information is not included in the regulation, many will not understand that they are required to provide reasonable accommodations and accessibility."

Response: The State Board of Elections is obligated to provide reasonable accommodations through the Americans with Disabilities Act("ADA"). The Board does not believe that amending regulations is the most effective way of education the parties of its obligations under the ("ADA"); rather, parties should be informed about their obligations directly. As such, the Board intends to amend the HAVA Complaint form to inform Complainants that they may request reasonable accommodations in filling out the complaint and during the complaint/hearing process. Further, the Board intends to draft guidance to County Boards of Elections, informing them of their obligations to assist Complainants with a disability in filling out a complaint, which shall include making reasonable accommodations.

Comment: One organization suggested that the online complaint form be screen readable and fillable, and that the complaint form enable Complainants to request a hearing via telephone.

Response: The State Board intends to make the form screen readable and intends to provide an option for a telephonic hearing on the Complaint form. To effectuate this, the proposed language was amended to provide that the online Complaint form be "accessible."

Comment: One organization suggested the requirement that complaints be notarized be eliminated from regulations.

Response: Election Law 3-105(3) requires that all formal complaints be written and sworn to. Absent statutory changes, the notary requirement cannot be eliminated from regulations.

Department of Environmental Conservation

NOTICE OF EXPIRATION

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

Waste Fuels

I.D. No.	Proposed	Expiration Date
ENV-31-16-00003-P	August 3, 2016	September 30, 2017

Department of Financial Services

EMERGENCY RULE MAKING

Establishment and Operation of Market Stabilization Mechanisms for Certain Health Insurance Markets

I.D. No. DFS-18-17-00020-E
Filing No. 813
Filing Date: 2017-09-28
Effective Date: 2017-09-28

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

Action taken: Amendment of Part 361 of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 1109 and 3233

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

Specific reasons underlying the finding of necessity: Insurance Law § 3233 requires the Superintendent of Financial Services ("Superintendent") to promulgate regulations to ensure an orderly implementation and ongoing operation of the open enrollment and community rating requirements in Insurance Law §§ 3231 and 4317, applicable to small groups and individual health insurance policies and contracts, including member contracts under Article 44 health maintenance organizations ("HMOs") and Medicare Supplemental policies and contracts. The regulations may include mechanisms designed to share risks or prevent undue variations in issuer claims costs. Pursuant to this mandate, the Superintendent promulgated 11 NYCRR 361 (Insurance Regulation 146), under which the Department established risk adjustment for community rated small group and individual health insurance and Medicare Supplemental policies and contracts. Subsequently, the federal Affordable Care Act ("ACA") required the Center for Medicare and Medicaid Services to administer a risk adjustment program for the individual and small group health insurance markets, but not for Medicare Supplemental policies and contracts. A state may establish its own risk adjustment program pursuant to 45 C.F.R. § 153.310(a)(1). In addition, a U.S. Health and Human Services interim final rule, dated May 11, 2016, invites states to examine local approaches under state legal authority to help ease the transition to new health insurance markets. See 81 Fed. Reg. at 29152. Starting with plan year 2014, the Superintendent suspended New York's risk adjustment program for individual and small group health insurance markets because of the ACA, and New York's individual and small group health insurance markets since have been subject only to the federal program.

This rule establishes a market stabilization pool for the small group health insurance market for the 2017 plan year to ameliorate a possible disproportionate impact that federal risk adjustment may have on insurers and HMOs (collectively, "carriers"), address the needs of the small group health insurance market in New York, and prevent unnecessary instability in the health insurance market.

Carriers soon will begin binding coverage for policies written outside of the health exchange. In addition, New York State of Health, the official health insurance marketplace, has set September 9, 2016 as the date by which carriers must commit to selling certain policies or contracts on the health exchange. In order to implement the rule for the 2017 plan year and to minimize market issues, it is imperative that this rule be promulgated on an emergency basis for the general welfare.

Subject: Establishment and Operation of Market Stabilization Mechanisms for Certain Health Insurance Markets.

Purpose: To allow for the implementation of a market stabilization pool for the small group health insurance market.

Text of emergency rule: The title of Part 361 is amended to read as follows:

ESTABLISHMENT AND OPERATION OF MARKET STABILIZATION MECHANISMS FOR [INDIVIDUAL AND SMALL GROUP-]*CERTAIN* HEALTH INSURANCE [AND MEDICARE SUPPLEMENT INSURANCE] *MARKETS*

The title of Section 361.6 is amended to read as follows:

Section 361.6 Pooling of variations of costs attributable to high cost claims beginning in 2006 *through 2013* for individual and small group policies, other than Medicare supplement and Healthy New York policies.

Section 361.9 is added to read as follows:

Section 361.9 Market stabilization pools for the small group health insurance market for the 2017 plan year.

(a)(1) The superintendent has been assessing the federal risk adjustment program developed under the federal Affordable Care Act and its impact on the health insurance market in this State. In its simplest terms, the federal risk adjustment program requires that carriers whose insureds or members have relatively better loss experience pay into the risk adjustment pool and those with relatively worse experience receive payment from that pool. The broad purpose of the risk adjustment program is to balance out the experience of all carriers.

(2) In certain respects, however, the calculations for the federal risk adjustment program do not take into account certain factors, resulting in unintended consequences. The department has been working cooperatively with the Department of Health and Human Services and the Centers for Medicare and Medicaid Services (CMS) on risk adjustment. Recently, CMS has announced certain changes to the methodology. CMS has also stated that it will continue to review the methodology in the future.

(3) The federal risk adjustment program has led to a situation in which some carriers in this State are receiving large payments out of the risk adjustment program that are paid by other carriers. For many of these other carriers, the millions to be paid represent a significant portion of their revenue. The money transfers among carriers in this State under the federal risk adjustment program have been among the largest in the nation.

(4) CMS's changes and planned reviews are much appreciated and anticipated. The superintendent will continue to work with CMS and hopes that over time the federal risk adjustment program will be improved so that it fully meets its intended purposes. The federal risk adjustment methodology as applied in this State does not yet adequately address the impact of administrative costs and profit of the carriers and how this State counts children in certain calculations. These two factors are identifiable, quantifiable and remediable for the 2017 plan year in the small group market.

(5) This section applies only to risk adjustment experience in the small group health insurance market for the 2017 plan year to be applied to payments and receipts in 2018. The department will continue its review of the federal risk adjustment program and its impact on the individual and small group health insurance markets in this State. Among other issues, the department will continue to examine whether federal risk adjustment adequately accounts for demographic regional diversity in this State, as well as whether federal risk adjustment dissuades carriers from using networks and plan designs that seek to integrate care and deliver value. The superintendent will take all necessary and appropriate action to address the impact on both markets in the future.

(b)(1) The superintendent anticipates that the federal risk adjustment program will adversely impact the small group health insurance market in this State in 2017 to such a degree as to require a remedy. Several factors are expected to cause the adverse impact, including:

(i) the federal risk adjustment program results in inflated risk scores and payment transfers in this State because the calculation is based in part upon a medical loss ratio computation that includes administrative expenses, profits and claims rather than only using claims; and

(ii) the federal risk adjustment program results in inflated risk scores and payment transfers in this State because the program does not appropriately address this State's rating tier structure. For this State, the federal risk adjustment program alters the definition of billable member months to include a maximum of one child per contract in the billable member month count. This understatement of billable member month counts: (a) lowers the denominator of the calculation used to determine the statewide average premium and plan liability risk scores; (b) results in the artificial inflation of both the statewide average premium and plan liability risk scores; and (c) further results in inflated payments transfers through the federal risk adjustment program.

(2) Accordingly, if, for the 2017 plan year, the superintendent determines that the federal risk adjustment program has adversely impacted the small group health insurance market in the State and that amelioration is necessary, the superintendent shall implement a market stabilization pool for carriers participating in the small group health insurance market, other than for Medicare supplement insurance, pursuant to subdivision (e) of this section to ameliorate the disproportionate impact that the federal risk adjustment program may have on carriers, to address the unique aspects of the small group health insurance market in this State, and to prevent unnecessary instability for carriers participating in the small group health insurance market in this State, other than for Medicare supplement insurance.

(c) As used in this section, small group health insurance market means all policies and contracts providing hospital, medical or surgical expense insurance, other than Medicare supplement insurance, covering one to 100 employees.

(d) Following the annual release of the federal risk adjustment results for the 2017 plan year, the superintendent shall review the impact of the federal risk adjustment program established pursuant to 42 U.S.C. section 18063 on the small group health insurance market in this State for that plan year.

(e) If, after reviewing the impact of the federal risk adjustment program on the small group health insurance market in this State for the 2017 plan year, including payment transfers, the statewide average premiums, and the ratio of claims to premiums, the superintendent determines that a market stabilization mechanism is a necessary amelioration, the superintendent shall implement a market stabilization pool in such market as follows:

(1) every carrier in the small group health insurance market that is designated as a receiver of a payment transfer from the federal risk adjustment program shall remit to the superintendent an amount equal to a uniform percentage of that payment transfer for the market stabilization pool. The uniform percentage shall be calculated as the percentage necessary to correct any one or more of the adverse market impact factors specified in subdivision (b)(1) of this section. The uniform percentage shall be determined by the superintendent based on reasonable actuarial assumptions and shall not exceed 30 percent of the amount to be received from the federal risk adjustment program;

(i) the superintendent shall send a billing invoice to each carrier required to make a payment into the market stabilization pool after the federal risk adjustment results are released pursuant to 45 CFR section 153.310(e);

(ii) each carrier shall remit its payment to the superintendent within ten business days of the later of its receipt of the invoice from the superintendent or receipt of its risk adjustment payment from the Secretary of the United States Department of Health and Human Services pursuant to 42 U.S.C. section 18063; and

(iii) payments remitted by a carrier after the due date shall include the amount due plus compound interest at the rate of one percent per month, or portion thereof, beyond the date the payment was due; and

(2) for the 2017 plan year:

(i) every carrier in the small group health insurance market that is designated as a payor of a payment transfer into the federal risk adjustment program shall receive from the superintendent an amount equal to the uniform percentage of that payment transfer, referenced in paragraph (1) of this subdivision, from the market stabilization pool;

(ii) the superintendent shall send notification to each carrier of the amount the carrier will receive as a distribution from the market stabilization pool after the federal risk adjustment results are released; and

(iii) the superintendent shall make a distribution to each carrier after receiving all payments from payors. However, nothing in this section shall preclude the superintendent from making a distribution prior to receiving all payments from payors.

(f) The superintendent may modify the amounts determined in subdivision (e) of this section to reflect any adjustments resulting from audits required under 45 CFR section 153.630.

(g) In the event the payments received by the superintendent pursuant to subdivision (e)(1) of this section are less than the amounts payable pursuant to subdivision (e)(2) of this section, the amount payable to each carrier pursuant to this section shall be reduced proportionally to match the funds available in the pool.

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. DFS-18-17-00020-P, Issue of May 3, 2017. The emergency rule will expire November 26, 2017.

Text of rule and any required statements and analyses may be obtained from: Laura Evangelista, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 480-4738, email: Laura.Evangelista@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: Financial Services Law §§ 202 and 302 and Insurance Law §§ 301, 1109, and 3233.

Financial Services Law § 202 establishes the office of the Superintendent of Financial Services ("Superintendent"). Financial Services Law § 302 and Insurance Law § 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, Insurance Law, or any other law, and to prescribe regulations interpreting the Insurance Law.

Insurance Law § 1109 subjects health maintenance organizations ("HMOs") complying with Public Health Law Article 44 to certain sections of the Insurance Law and authorizes the Superintendent to promulgate regulations effecting the purpose and provisions of the Insurance Law and Public Health Law Article 44.

Insurance Law § 3233 requires the Superintendent to promulgate regulations to assure an orderly implementation and ongoing operation of the open enrollment and community rating requirements in Insurance Law

§§ 3231 and 4317, which may include mechanisms designed to share risks or prevent undue variations in insurer claims costs.

2. Legislative objectives: Insurance Law § 3233 requires the Superintendent to promulgate regulations to assure an orderly implementation and ongoing operation of the open enrollment and community rating requirements in Insurance Law §§ 3231 and 4317, applicable to small group and individual health insurance policies and contracts, including member contracts under Article 44 HMOs and Medicare Supplement policies and contracts. The regulations may include mechanisms designed to share risks or prevent undue variations in claims costs. A risk adjustment program is intended, in part, to reduce or eliminate premium differences between insurers and HMOs (collectively, "carriers") based solely on expectations of favorable or unfavorable risk selection.

Pursuant to this mandate, the Superintendent promulgated 11 NYCRR 361 (Insurance Regulation 146), under which the Department established risk adjustment for community rated small group and individual health insurance and Medicare Supplement policies and contracts. Subsequently, the federal Affordable Care Act ("ACA") required the Center for Medicare and Medicaid Services ("CMS") to administer a risk adjustment program for the individual and small group health insurance markets, but not for Medicare Supplement policies and contracts. A state may establish its own risk adjustment program pursuant to 45 C.F.R. § 153.310(a)(1). In addition, a U.S. Health and Human Services ("HHS") interim final rule, dated May 11, 2016, invites states to examine local approaches under state legal authority to help ease the transition to new health insurance markets. See 81 Fed. Reg. at 29152. Starting with policy year 2014, the Superintendent suspended New York's risk adjustment program for individual and small group health insurance markets because of the ACA, and New York's individual and small group health insurance markets since have been subject only to the federal program.

This rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law § 3233 by establishing market stabilization pools for the small group health insurance market for the 2017 plan year to ameliorate a possible disproportionate impact that federal risk adjustment may have on carriers, address the unique aspects of the small group health insurance market in New York, and prevent unnecessary instability in the health insurance market.

3. Needs and benefits: In the early 1990s, the New York Legislature enacted Insurance Law § 3233 because it recognized the need for a mechanism to stabilize the health insurance markets and premium rates in New York so that premiums do not unduly fluctuate and carriers are reasonably protected against unexpected significant shifts in the number of insureds. More recently, the federal government recognized in the ACA that a federal risk adjustment mechanism would help provide affordable health insurance, reduce incentives for carriers to avoid enrolling less healthy people, and stabilize premiums in the individual and small group health insurance markets.

Prior to implementation of the ACA in 2014, the New York Department of Financial Services ("Department"), after consultation with carriers, concluded New York should use the federal risk adjustment program and the Superintendent suspended New York's risk adjustment program for the individual and small group health insurance markets. CMS conducted risk adjustment in 2014 and announced preliminary risk adjustment results for plan year 2015 in April 2016. These results have had a disproportionate impact on certain carriers in the New York market as a whole.

CMS has proposed changes to its programs and may make additional changes. The Superintendent will continue to work with CMS and hopes that by the 2018 plan year the federal risk adjustment program will be improved to better accomplish its intended purposes. However, the federal risk adjustment methodology does not yet adequately address the impact of administrative costs or profit of the carriers, or the manner in which New York counts children in certain calculations. These factors are identifiable, quantifiable and remediable for the 2017 plan year. The Superintendent anticipates that the federal risk adjustment program will adversely impact the small group health insurance market in this State in 2017 to such a degree as to require a remedy. Many factors are expected to cause the adverse impact, including:

(1) the federal risk adjustment program results in inflated risk scores and payment transfers in this State because the calculation is based in part upon a medical loss ratio computation that includes administrative expenses, profits and claims rather than only using claims; and

(2) the federal risk adjustment program results in inflated risk scores and payment transfers in this State because the program does not appropriately address this State's rating tier structure. For New York, the federal risk adjustment program alters the definition of billable member months to include a maximum of one child per contract in the billable member month count. This understatement of billable member month counts: (a) lowers the denominator of the calculation used to determine the statewide average premium and plan liability risk scores; (b) results in the artificial inflation of both the statewide average premium and plan liability risk scores; and (c) further results in inflated payments transfers through the federal risk adjustment program.

This rule authorizes the Superintendent to implement a market stabilization pool for the New York small group health insurance market if, after reviewing the impact of the federal risk adjustment program on this market for the 2017 plan year, the Superintendent determines that a market stabilization mechanism is a necessary amelioration.

The rule requires a carrier designated as a receiver of a payment transfer from the federal risk adjustment program to remit to the Superintendent an amount equal to a uniform percentage of that payment transfer for the market stabilization pool. The Superintendent will determine the uniform percentage based on reasonable actuarial assumptions, which may not exceed 30% of the amount to be received from the federal risk adjustment program. Department actuaries considered the fact that (1) the federal risk adjustment program calculates risk scores and payment transfers based in part upon a medical loss ratio computation that includes administrative expenses, profits, and claims, and (2) it does not appear to fully address New York's rating tier structure. The actuaries determined that up to 30% of the amount to be received from the federal risk adjustment program is the maximum amount that would be necessary for a payment transfer under this rule.

The market stabilization mechanism under the rule is distinct from the federal risk adjustment and will provide a more accurate representation of the state's market. The state mechanism would merely fine-tune the federal mechanism to address the needs of the New York market, not serve to undo the federal mechanism. It would not hinder or impede the ACA's implementation because the federal risk adjustment still would be performed. A carrier is able to comply with both the federal risk adjustment program and this state's market stabilization mechanism because the state risk adjustment would be implemented after the federal risk adjustment.

4. Costs: This rule imposes compliance costs on carriers that elect to issue policies or contracts subject to the rule. The costs are difficult to estimate and will vary from carrier to carrier depending on the impact of the federal risk adjustment program on the market, including federal payment transfers, statewide average premiums, and the ratio of claims to premiums.

The Department will incur costs for the implementation and continuation of this rule. Department staff are needed to review the impact that the federal risk adjustment program will have on the market. Furthermore, if the Superintendent implements a market stabilization pool, the Department must then send a billing invoice to each carrier required to make a payment into the pool, collect the payments, notify each carrier of the amount the carrier will receive from the market stabilization pool, and distribute the payments from the pool. However, the Department should be able to absorb these costs in its ordinary budget. Under § 361.7 of the existing rule, the Superintendent also could hire a firm to administer the pool. The cost necessary to hire such a firm would have to be determined.

This rule does not impose compliance costs on state or local governments.

5. Local government mandates: This rule does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: This rule requires carriers designated as receivers of a payment transfer from the federal risk adjustment program to remit a uniform percentage of that payment transfer to the Superintendent as determined by the Superintendent. The rule also requires the Superintendent to send a billing invoice to each carrier required to make a payment, collect the payments, notify each carrier of the amount the carrier will receive from the market stabilization pool, and make distributions from the pool to the carriers.

7. Duplication: This rule does not duplicate or conflict with any existing state or federal rules or other legal requirements. The rule supplements the federal risk adjustment mechanism under the ACA and merely serves to fine-tune that risk adjustment to meet the needs of the New York market.

8. Alternatives: The Department considered not establishing a market stabilization pool for the small group health insurance market for the 2017 plan year. However, the Department is concerned about the disproportionate impact that federal risk adjustment may have on carriers in the New York market and possible unnecessary instability in the health insurance market that would adversely impact insureds. As a result, the Department determined that it is necessary to establish a market stabilization pool for the small group health insurance market.

The Department also considered a cap of other than 30% of the amount to be received from the federal risk program, with regard to the uniform percentage of the payment transfer for the market stabilization pool under this rule. However, Department actuaries considered the fact that (1) the federal risk adjustment program calculates risk scores and payments transfers based in part upon a medical loss ratio computation that includes administrative expenses, profits, and claims, and (2) it does not appear to

fully address New York's rating tier structure. The actuaries determined that up to 30% of the amount to be received from the federal risk adjustment program is the maximum amount that would be necessary for a payment transfer under this rule.

9. Federal standards: The rule does not exceed any minimum standards of the federal government for the same or similar subject areas. Rather, the amendment to the rule complements the federal risk adjustment program.

10. Compliance schedule: The Department is promulgating this rule on an emergency basis so that the Superintendent may establish a New York risk adjustment pool for plan year 2017 if the Superintendent determines that it will be necessary following CMS's annual release of the federal risk adjustment results for the 2017 plan year. If the Superintendent does establish the pool, carriers will have to comply in 2018.

Regulatory Flexibility Analysis

Small businesses: The Department of Financial Services finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at insurers and health maintenance organizations ("HMOs") that elect to issue policies or contracts subject to the rule. Such insurers and HMOs do not fall within the definition of "small business" as defined by State Administrative Procedure Act § 102(8), because in general they are not independently owned and do not have fewer than 100 employees.

Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at insurers and HMOs that elect to issue policies or contracts subject to the rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers and health maintenance organizations ("HMOs") (collectively, "carriers") affected by this rule operate in every county in this state, including rural areas as defined by State Administrative Procedure Act § 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule imposes additional reporting, recordkeeping, and other compliance requirements by requiring carriers, including carriers located in rural areas, designated as receivers of a payment transfer from the federal risk adjustment program, to remit a uniform percentage of that payment transfer to the Superintendent of Financial Services ("Superintendent") as determined by the Superintendent. However, no carrier, including carriers in rural areas, should need to retain professional services to comply with this rule.

3. Costs: This rule imposes compliance costs on carriers that elect to issue policies or contracts subject to the rule, including carriers in rural areas. The costs are difficult to estimate and will vary from carrier to carrier depending on the impact of the federal risk adjustment program on the market, including federal payment transfers, statewide average premiums, and the ratio of claims to premiums. However, any additional costs to carriers in rural areas should be the same as for carriers in non-rural areas.

4. Minimizing adverse impact: This rule uniformly affects carriers that are located in both rural and non-rural areas of New York State. The rule should not have an adverse impact on rural areas.

5. Rural area participation: The Department of Financial Services ("Department") is promulgating this rule on an emergency basis because carriers soon will begin binding coverage for policies written outside of the health exchange. In addition, the New York State of Health, the official health insurance marketplace, has set September 9, 2016 as the date by which carriers must commit to selling certain policies or contracts on the health exchange. In order to implement the rule for the 2017 plan year and to minimize market issues, it is imperative that this rule be promulgated on an emergency basis. Carriers in rural areas will have an opportunity to participate in the rule making process when the proposed rule is published in the State Register and posted on the Department's website.

Job Impact Statement

This rule should not adversely impact jobs or employment opportunities in New York State. This rule authorizes the Superintendent of Financial Services ("Superintendent") to implement a market stabilization pool for the small group health insurance market if, after reviewing the impact of the federal risk adjustment program on this market, the Superintendent determines that a market stabilization mechanism is a necessary amelioration. This rule prudently ameliorates a possible disproportionate impact that federal risk adjustment may have on insurers and health maintenance organizations, addresses the needs of the small group health insurance market in New York, and prevents unnecessary instability in the health insurance market.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Title Insurance Rates, Expenses and Charges

I.D. No. DFS-18-17-00021-A
Filing No. 829
Filing Date: 2017-10-02
Effective Date: 2017-12-18

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

Action taken: Addition of Part 228 (Regulation 208) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 301 and 302; Insurance Law, sections 301, 2110, 2119, 2303, 2304, 2306, 2315, 6409 and art. 23

Subject: Title Insurance Rates, Expenses and Charges.

Purpose: To ensure proper, non-excessive rates, compliance with Insurance Law 6409(d), and reasonable charges for ancillary services.

Substance of final rule: This rule interprets and implements Insurance Law section 6409(d) by clarifying what constitutes an inducement when provided by title insurance corporations or title insurance agents for title insurance business. The rule mandates new reporting requirements to exclude all improper expenditures from the rates, thereby ensuring that these expenditures do not contribute to excessive rates. The rule further sets parameters with respect to ancillary charges, ensuring that title insurance corporations and title insurance agents do not charge consumers in New York improper and excessive closing costs.

Section 228.0 sets forth the purpose of the rule.

Section 228.1 provides definitions applicable to the rule.

Section 228.2 sets forth that an inducement prohibited by Insurance Law section 6409(d) includes providing any consideration or thing of value to a person or entity for title insurance business including for the purpose of maintaining existing business or obtaining future title insurance business, regardless of whether it is provided as a quid pro quo for specific business. It includes a list of expenses that are prohibited under section 6409(d) and a list of types of expenses that are permitted.

Section 228.3 provides a framework for reporting expenses so that only proper expenditures are included in the title insurance rate. This section also requires all licensed title insurance corporations to provide to its appointed title insurance agents, revenue and expenses schedules in connection with the annual data call. It requires all licensed title insurance agents, unless their revenue and expenses are reported by an employer or affiliated entity, to submit revenue and expense schedules in connection with the annual data call, and ensure that prohibited expenditures are excluded. It further requires the title insurance corporations to compile the schedules and submit them to the statistical agent. In addition, the section requires each licensed title insurance corporation to file with the Superintendent individual annual premium and expense reports.

Section 228.4 provides that expenses allocated by a title insurance corporation to New York may not exceed the percent of premium written in New York by that insurer, compared to nationwide premiums written, and that improper expenditures may not be allocated to New York.

Section 228.5 provides parameters for ancillary closing costs charged in residential transactions including maximum charges for Patriot, bankruptcy, and municipal searches. The regulation provides for a flat fee that may be charged for certain services, including escrow services and recording of closing documents. The regulation also provides that every title insurance corporation and title insurance agent shall pay the title insurance closer for closing services and prohibit a closer from receiving any compensation from the applicant. It permits the title insurance closer to charge a reasonable fee for remitting a loan payoff.

Section 228.6 requires that at least once every four years a filing must be made demonstrating that the title insurance corporation's or rate service organization's title insurance rates comply with Article 23 (i.e., they are not excessive, inadequate or discriminatory).

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 228.0, 228.1, 228.2, 228.3, 228.4 and 228.5.

Text of rule and any required statements and analyses may be obtained from: Ellen Buxbaum, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5383, email: Ellen.Buxbaum@dfs.ny.gov

Summary of Revised Regulatory Impact Statement

1. Statutory authority: Financial Services Law ("FSL") sections 202, 301, and 302 and Insurance Law sections 301, 2110, 2119, 2303, 2304, 2306, 2315, and 6409 and Articles 23 and 24.

2. Legislative objectives: To address excessive rates, unfair methods of competition and improper inducements.

3. Needs and benefits: The Department's investigation revealed industry-wide practices that violate Insurance Law section 6409(d), contribute to excessive rates, and constitute untrustworthiness and deceptive acts and practices. This rule provides consumers with additional protection against excessive rates and unreasonable closing costs and helps to ensure that (a) title insurance corporations and agents comply with the Insurance Law, (b) selection of a title insurance corporation or agent is not based on which entity can provide the most lavish inducements, (c) rates are not excessive, and (d) unreasonable and excessive markups of ancillary charges are eliminated.

The rule provides guidance, by clarifying unequivocally that nothing of value may be given as an inducement for title insurance business, including maintaining current business or obtaining future business, and that a quid pro quo is not necessary for an inducement to exist. It also provides lists of specific expenditures that are prohibited to be made to or on behalf of those persons specified in Insurance Law section 6409(d), and lists of specific expenditures that are permitted.

4. Costs: The rule requires title insurance corporations to restate any expense schedule submitted in the past six years that includes improper expenditures, which will impose a cost. To reduce costs to regulated parties, the rule permits the option of filing a request for a five percent rate reduction, which may be submitted by a title insurance corporation or a rate service organization on behalf of its members that adopt the filing.

Compliance with the rule's reporting requirements should not cause any title insurance agent to incur substantial costs, the majority of which have reported expenses since 2010, are familiar with the schedules, and have already incurred any necessary set-up cost. The rule does not require title insurance agents to restate expense schedules.

The rule imposes maximum charges for ancillary services in connection with residential transactions, and requires title closers to be compensated by the title insurance corporation or agent that engaged their services for the services provided on their behalf at the closing, which will impact revenue. However, closers will be permitted to charge for the remittance of a loan payoff, which will provide revenue to closers.

The rule also requires that at least once every four years, the title insurance corporation or rate service organization submit a filing to the Superintendent demonstrating that title insurance rates comply with Article 23. The cost of making the filings will vary, depending upon the amount of premium written and the amount of work required to prepare the submission.

5. Local government mandates: The rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The rule requires a one-time restatement of certain expense schedules and requires title insurance corporations and agents to submit certain schedules in response to the annual agent data call. The rule also requires title insurance corporations or a rate service organization to report compliance with Article 23 to the Superintendent every four years.

7. Duplication: This rule does not duplicate or conflict with any other existing state or federal rule, or other legal requirement.

8. Alternatives: The Department proposed a similar rule on May 6, 2015, to which the Department received more than 1,000 written comments. The Department considered a number of alternatives and suggestions from the industry and has significantly revised the earlier proposal but believes that there is no other viable alternative to address abuses in the title insurance industry, particularly in connection with violations of Insurance Law section 6409(d).

9. Federal standards: The Real Estate Settlement Procedures Act ("RESPA"), 12 USC § 2607, provides little guidance regarding the type of expenditures considered to be inducements for referring business. This rule is more inclusive than RESPA, thereby providing greater protection to consumers. As such, this rule is not inconsistent with RESPA.

10. Compliance schedule: The provisions relating to prohibited expenditures and caps on ancillary charges go into effect as soon as the regulation is effective. The reporting requirements go into effect 120 - 180 days after the effective date of the rule.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis for Small Businesses and Local Governments ("RFA") is not required for the adoption of new 11 NYCRR 218 (Insurance Regulation 208) because the non-substantive revisions to the regulation do not require a change to the previously published RFA.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis ("RAFA") is not required for the adoption of new 11 NYCRR 218 (Insurance Regulation 208) because the non-substantive revisions to the regulation do not require a change to the previously published RAFA.

Revised Job Impact Statement

A revised Job Impact Statement ("JIS") is not required for the adoption of new 11 NYCRR 218 (Insurance Regulation 208) because the non-substantive revisions to the regulation do not require a change to the previously published JIS.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Department of Financial Services ("Department") originally published a proposal to clarify what constitutes an inducement for title insurance business pursuant to Insurance Law section 6409(d), to provide guidance with respect to expense reporting and allocation of expenses, and to impose limits on ancillary searches and services, including the payment to title insurance closers on May 6, 2015. The Department received more than 1,000 written comments and met with industry representatives with regard to the proposed regulation. A revised version of the initial proposal was newly proposed on May 3, 2017. The summary of comments herein address that proposal.

The Department received almost 300 written comments from many interested parties in response to its publication of the rule in the New York State Register, including from title insurance corporations, title insurance agents, title insurance closers, attorneys, trade associations, a rate service organization, and public officials. The Department met with several stakeholders, industry representatives and interested parties to listen to their concerns.

Comments were made with respect to 11 NYCRR 228 sections 228.1 (definitions); 228.2 (regarding prohibitions on inducements for future title insurance business); 228.3 (regarding expense reporting and rate filings); and 228.5 (regarding ancillary charges, including payment to title insurance closers).

The Department addresses each of the comments in full in the complete version of the assessment of public comments, which will be posted on the Department's website. Where appropriate, the Department made certain non-substantive revisions, as discussed in the complete version of the assessment.

NOTICE OF ADOPTION

Title Insurance Agents, Affiliated Relationships, and Title Insurance Business

I.D. No. DFS-18-17-00022-A

Filing No. 828

Filing Date: 2017-10-02

Effective Date: 2017-10-18

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

Action taken: Amendment of Parts 20 (Regulations 9, 18, 29), 29 (Regulation 87), 30 (Regulation 194), 34 (Regultion 125); and addition of Part 35 (Regulation 206) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 107(a)(54), 301, 2101(k), 2109, 2112, 2113, 2119, 2120, 2122, 2128, 2129, 2132, 2139, 2314 and 6409

Subject: Title insurance agents, affiliated relationships, and title insurance business.

Purpose: To implement requirements of chapter 57 of Laws of NY 2014 regarding title insurance agents and placement of title insurance business.

Substance of final rule: The following sections are amended:

Section 20.1, which specifies forms for temporary licenses, is amended to make technical changes and to add references to title insurance agents.

Section 20.2, which specifies forms of notice for termination of agents, is amended to make technical changes and to add references to title insurance agents.

Section 20.3, which governs fiduciary responsibility of insurance agents and brokers, including maintenance of premium accounts, is amended to make technical changes, add references to title insurance agents, and permit other withdrawals and transfers from premium accounts.

Section 20.4, which governs insurance agent and broker recordkeeping requirements for fiduciary accounts, is amended to make technical changes and to add references to title insurance agents.

Section 20.6 is amended by adding new language that clarifies (1) the manner in which an insurance agent, title insurance agent, insurance broker, insurance consultant or a life settlement broker may charge or collect compensation from an insured through the use of a written memorandum pursuant to Insurance Law section 2119, and (2) that an insurance agent, title insurance agent, or insurance broker must segregate or promptly withdraw compensation from fiduciary funds.

Section 29.5, which implements Insurance Law section 2128, governing placement of insurance business by licensees with governmental entities, is amended to make technical changes and to conform to amendments to section 2128, with respect to title insurance agents.

Section 29.6 is amended for technical changes and to remove language regarding return of disclosure statements.

Section 30.3, which governs notices by insurance producers regarding the amount and extent of their compensation, is amended by adding a new subdivision that modifies the requirements of the section with respect to title insurance agents, in order to conform to new Insurance Law section 2113(b).

Section 34.1(a) and (b) are amended for technical purposes and to add reference to title insurance agents.

Section 34.2, which governs satellite offices for insurance producers, is amended by adding a new subdivision that exempts from certain provisions of that section a title insurance agent that is a licensed attorney transacting title insurance business from the agent's law office.

A new Part 35 is added governing the activities of title insurance agents and the placement of title insurance business. The new sections are:

Section 35.1, containing definitions for new Part 35;

Section 35.2, specifying forms for title insurance agent licensing applications;

Section 35.3, specifying change of contact information required to be filed with the Department;

Section 35.4, addressing affiliated business relationships and certain prohibited transactions;

Section 35.5, addressing referrals by affiliated persons and the required disclosures in such circumstances;

Section 35.6, addressing minimum disclosure requirements for title insurance corporations and title insurance agents with respect to fees charged by such corporation or agent, including discretionary or ancillary fees;

Section 35.7, providing certain other minimum disclosure requirements;

Section 35.8, governing the use of title closers by title insurance agents and title insurance corporations; and

Section 35.9, establishing record retention requirements for title insurance agents.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 20.6, 35.1, 35.4, 35.6 and 35.8.

Text of rule and any required statements and analyses may be obtained from: Paul Zuckerman, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5286, email: Paul.Zuckerman@dfs.ny.gov

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

A revised summary of the Regulatory Impact Statement ("RIS summary"), Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement is not required for the adoption of this consolidated rulemaking because the non-substantive revisions to sections 20.6, 35.1, 35.4, 35.6 and 35.8 do not require a change to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement summary.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The consolidated rulemaking implements Part V of Chapter 57 of the Laws of 2014, which required title insurance agents to become licensed in New York. The Department of Financial Services ("Department") originally published a proposal to amend the rules and add a new rule on July 23, 2014. The Department promulgated a revised version of the proposal on an emergency basis on September 27, 2014 and without any substantive change from the September 27, 2014 version, readopted the revised version on an emergency basis on December 23, 2014, February 20, 2015, April 20, 2015, June 11, 2015, August 13, 2015, November 10, 2015, February 5, 2016, May 4, 2016, August 1, 2016, October 28, 2016, January 25, 2017, April 24, 2017, June 22, 2017 and August 18, 2017. The emergency rulemaking addressed some of the comments that the Department had received on the initial proposed rulemaking that needed to be immediately made while the Department considered other changes. The July 23, 2014 proposal expired and a revised version of the initial proposal was proposed on May 3, 2017. The summary of comments herein address the current proposal.

The Department received written comments from many interested parties in response to its publication of the rule in the New York State Register, including from several New York State legislators; an association representing the title insurance industry; an association representing New York banks; the real property law section of a state bar association; an association of real estate providers from all segments of the residential home buying and financing industry; an association of realtors; title insurance corporations; and numerous title insurance agents and other interested parties. The Department met with several stakeholders, industry representatives and interested parties to listen to their concerns.

Comments were made with respect to 11 NYCRR sections 20.3 (regarding funds maintained in a premium account); 20.4 (regarding application process); 20.6 (regarding defining compensation and commission); 35.1 (regarding creating an affiliate; defining affiliated person; requiring operational control; defining core title services); 35.4 (regarding affiliated business relationships); 35.5 (regarding required disclosures; calculating return on investments for affiliates and amount an affiliate may receive from a transaction); 35.6 (regarding posting of charges on website or place of business); and 35.8 (regarding use of title insurance closer).

The Department addresses each of the comments in full in the complete version of the assessment of public comments, which will be posted on the Department's website. Where appropriate, the Department made certain non-substantive revisions, as discussed in the complete version of the assessment.

NOTICE OF EXPIRATION

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

Charges for Professional Health Services

I.D. No.	Proposed	Expiration Date
DFS-39-16-00007-RP	September 28, 2016	September 28, 2017

Department of Health

EMERGENCY RULE MAKING

Lead Testing in School Drinking Water

I.D. No. HLT-20-17-00013-E
Filing No. 821
Filing Date: 2017-09-28
Effective Date: 2017-09-28

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

Action taken: Addition of Subpart 67-4 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 1370-a and 1110

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

Specific reasons underlying the finding of necessity: Lead exposure is associated with impaired cognitive development in children. The known adverse health effects for children from lead exposure include reduced IQ and attention span, learning disabilities, poor classroom performance, hyperactivity, behavioral problems, and impaired growth. Although measures can be taken to help children overcome any potential impairments on cognition, the effects are considered irreversible.

Lead can enter drinking water from the corrosion of plumbing materials. Facilities such as schools, which have intermittent water use patterns, may have elevated lead concentration due to prolonged water contact with plumbing material. This source is increasingly being recognized as an important relative contribution to a child's overall lead exposure. Recent voluntary testing by school districts in New York State and other jurisdictions demonstrate the need to provide clear direction to schools on the requirements and procedures to sample drinking water for lead.

Every school should supply drinking water to students that meets or exceeds federal and state standards and guidelines. Although the federal Environmental Protection Agency ("EPA") has established a voluntary testing program—known as the "3Ts for Reducing Lead in Drinking Water in Schools"—there is no federal law that requires schools to test their drinking water for lead or that requires an appropriate response, if lead is determined to be present in school drinking water.

To help ensure that children are protected from lead exposure while in school, the Commissioner of Health has determined it necessary to file these regulations on an emergency basis. State Administrative Procedure Act § 202(6) empowers the Commissioner to adopt emergency regulations

when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest.

Subject: Lead Testing in School Drinking Water.

Purpose: Requires lead testing and remediation of potable drinking water in schools.

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by Public Health Law sections 1370-a and 1110, Subpart 67-4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is added, to be effective upon filing with the Secretary of State, to read as follows:

SUBPART 67-4: Lead Testing in School Drinking Water

Section 67-4.1 Purpose.

This Subpart requires all school districts and boards of cooperative educational services, including those already classified as a public water system under 10 NYCRR Subpart 5-1, to test potable water for lead contamination and to develop and implement a lead remediation plan, where applicable.

Section 67-4.2 Definitions.

As used in this Subpart, the following terms shall have the stated meanings:

(a) Action level means 15 micrograms per liter (µg/L) or parts per billion (ppb). Exceedance of the action level requires a response, as set forth in this Subpart.

(b) Building means any structure, facility, addition, or wing of a school that may be occupied by children or students. The terms shall not include any structure, facility, addition, or wing of a school that is lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(c) Commissioner means the State Commissioner of Health.

(d) Department means the New York State Department of Health.

(e) Outlet means a potable water fixture currently or potentially used for drinking or cooking purposes, including but not limited to a bubbler, drinking fountain, or faucets.

(f) Potable water means water that meets the requirements of 10 NYCRR Subpart 5-1.

(g) School means any school district or board of cooperative educational services (BOCES).

Section 67-4.3 Monitoring.

(a) All schools shall test potable water for lead contamination as required in this Subpart.

(b) First-draw samples shall be collected from all outlets, as defined in this Subpart. A first-draw sample volume shall be 250 milliliters (mL), collected from a cold water outlet before any water is used. The water shall be motionless in the pipes for a minimum of 8 hours, but not more than 18 hours, before sample collection. First-draw samples shall be collected pursuant to such other specifications as the Department may determine appropriate.

(c) Initial first-draw samples.

(1) For existing buildings in service as of the effective date of this regulation, schools shall complete collection of initial first-draw samples according to the following schedule:

(i) for any school serving children in any of the levels prekindergarten through grade five, collection of samples is to be completed by September 30, 2016;

(ii) for any school serving children in any of the levels grades six through twelve that are not also serving students in any of the levels prekindergarten through grade five, and all other applicable buildings, collection of samples is to be completed by October 31, 2016.

(2) For buildings put into service after the effective date of this regulation, initial first-draw samples shall be performed prior to occupancy; provided that if the building is put into service between the effective date of this regulation but before October 31, 2016, the school shall have 30 days to perform first-draw sampling.

(3) Any first-draw sampling conducted consistent with this Subpart that occurred after January 1, 2015 shall satisfy the initial first-draw sampling requirement.

(d) Continued monitoring. Schools shall collect first-draw samples in accordance with subdivision (b) of this section again in 2020 or at an earlier time as determined by the commissioner. Schools shall continue to collect first-draw samples at least every 5 years thereafter or at an earlier time as determined by the commissioner.

(e) All first-draw samples shall be analyzed by a laboratory approved to perform such analyses by the Department's Environmental Laboratory Approval Program (ELAP).

Section 67-4.4 Response.

If the lead concentration of water at an outlet exceeds the action level, the school shall:

(a) prohibit use of the outlet until:

(1) a lead remediation plan is implemented to mitigate the lead level of such outlet; and

(2) test results indicate that the lead levels are at or below the action level;

(b) provide building occupants with an adequate supply of potable water for drinking and cooking until remediation is performed;

(c) report the test results to the local health department as soon as practicable, but no more than 1 business day after the school received the laboratory report; and

(d) notify all staff and all persons in parental relation to students of the test results, in writing, as soon as practicable but no more than 10 business days after the school received the laboratory report; and, for results of tests performed prior to the effective date of this Subpart, within 10 business days of this regulation's effective date, unless such written notification has already occurred.

Section 67-4.5 Public Notification.

(a) List of lead-free buildings. By October 31, 2016, the school shall make available on its website a list of all buildings that are determined to be lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(b) Public notification of testing results and remediation plans.

(1) The school shall make available, on the school's website, the results of all lead testing performed and lead remediation plans implemented pursuant to this Subpart, as soon as practicable, but no more than 6 weeks after the school received the laboratory reports.

(2) For schools that received lead testing results and implemented lead remediation plans in a manner consistent with this Subpart, but prior to the effective date of this Subpart, the school shall make available such information, on the school's website, as soon as practicable, but no more than 6 weeks after the effective date of this Subpart.

Section 67-4.6 Reporting.

(a) As soon as practicable but no later than November 11, 2016, the school shall report to the Department, local health department, and State Education Department, through the Department's designated statewide electronic reporting system:

(1) completion of all required first-draw sampling;

(2) for any outlets that were tested prior to the effective date of this regulation, and for which the school wishes to assert that such testing was in substantial compliance with this Subpart, an attestation that:

(i) the school conducted testing that substantially complied with the testing requirements of this Subpart, consistent with guidance issued by the Department;

(ii) any needed remediation, including re-testing, has been performed;

(iii) the lead level in the potable water of the applicable building(s) is currently below the action level; and

(iv) the school has submitted a waiver request to the local health department, in accordance with Section 67-4.8 of this Subpart; and

(3) a list of all buildings that are determined to be lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(b) As soon as practicable, but no more than 10 business days after the school received the laboratory reports, the school shall report data relating to test results to the Department, local health department, and State Education Department, through the Department's designated statewide electronic reporting system.

Section 67-4.7 Recordkeeping.

The school shall retain all records of test results, lead remediation plans, determinations that a building is lead-free, and waiver requests, for ten years following the creation of such documentation. Copies of such documentation shall be immediately provided to the Department, local health department, or State Education Department, upon request.

Section 67-4.8 Waivers.

(a) A school may apply to the local health department for a waiver from the testing requirements of this Subpart, for a specific school, building, or buildings, by demonstrating in a manner and pursuant to standards determined by the Department, that:

(1) prior to the publication date of these regulations, the school conducted testing that substantially complied with the testing requirements of this Subpart;

(2) any needed remediation, including re-testing, has been performed; and

(3) the lead level in the potable water of the applicable building(s) is currently below the action level.

(b) Local health departments shall review applications for waivers for compliance with the standards determined by the Department. If the local health department recommends approval of the waiver, the local health department shall send its recommendation to the Department, and the Department shall determine whether the waiver shall be issued.

Section 67-4.9 Enforcement.

(a) Upon reasonable notice to the school, an officer or employee of the Department or local health department may enter any building for the purposes of determining compliance with this Subpart.

(b) Where a school does not comply with the requirements of this Subpart, the Department or local health department may take any action authorized by law, including but not limited to assessment of civil penalties as provided by law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-20-17-00013-P, Issue of May 17, 2017. The emergency rule will expire November 26, 2017.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authorities for the proposed regulation are set forth in Public Health Law (PHL) §§ 1110 and 1370-a. Section 1110 of the PHL directs the Department of Health (Department) to promulgate regulations regarding the testing of potable water provided by school districts and boards of cooperative education services (BOCES) (collectively, "schools") for lead contamination. Section 1370-a of the PHL authorizes the Department to establish programs and coordinate activities to prevent lead poisoning and to minimize the risk of exposure to lead.

Legislative Objective:

The legislative objective of PHL § 1110 is to protect children by requiring schools to test their potable water systems for lead contamination. Similarly, PHL § 1370-a authorizes the Department to establish programs and coordinate activities to prevent lead poisoning and to minimize the risk of exposure to lead. Consistent with these objectives, this regulation adds a new Subpart 67-4 to Title 10 of the New York Codes, Rules, and Regulations, establishing requirements for schools to test their potable water outlets for lead contamination.

Needs and Benefits:

Lead is a toxic material that is harmful to human health if ingested or inhaled. Children and pregnant women are at the greatest risk from lead exposure. Scientists have linked lead exposure with lowered IQ and behavior problems in children. It is also possible for lead to be stored in bones and it can be released into the bloodstream later in life, including during pregnancy. Further, during pregnancy, lead in the mother's bloodstream can cross the placenta, which can result in premature birth and low birth weight, as well as problems with brain, kidney, or nervous system development, and learning and behavior problems. Studies have also shown that low levels of lead can negatively affect adults, leading to heart and kidney problems, as well as high blood pressure and nervous system disorders.

Lead is a common metal found in the environment. The primary source of lead exposure for most children is lead-based paint. However, drinking water is another source of lead exposure due to the lead content of certain plumbing materials and source water.

Laws now limit the amount of lead in new plumbing materials. However, plumbing materials installed prior to 1986 may contain significant amounts of lead. In 1986, the federal government required that only "lead-free" materials be used in new plumbing and plumbing fixtures. Although this was a vast improvement, the law still allowed certain fixtures with up to 8 percent lead to be labeled as "lead free." In 2011, amendments to the Safe Drinking Water Act appropriately re-defined the definition of "lead-free." Although federal law now appropriately defines "lead-free," some older fixtures can still leach lead into drinking water.

Elevated lead levels are commonly found in the drinking water of school buildings, due to older plumbing and fixtures and intermittent water use patterns. Currently, only schools that have their own public water systems are required to test for lead contamination in drinking water.

In the absence of federal regulations governing all schools, the Department's regulations require all schools to monitor their potable drinking water for lead. The new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the drinking water of school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and report results to the Department. The Environmental Protection Agency's "3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance" will be used as a technical reference for implementation of the regulation.

Costs:

Costs to Private Regulated Parties:

These regulations only applies to public schools. No private schools are affected.

Costs to State Government and Local Government:

These regulations applies to schools, which are a form of local government. There are approximately 733 school districts and 37 BOCES in New York State, which include over 5,000 school buildings that will be subject to this regulation.

The regulations require schools to test each potable water outlet for lead, in each school building occupied by children, unless the building is determined to be lead-free pursuant to federal standards. The cost for a single lead analysis ranges from $20 - $75 per sample. Initial monitoring requires one sample per outlet. The number of outlets will vary from building to building.

If lead is detected above 15 ppb at any potable water outlet, the outlet must be taken out of service and a remedial action plan must be developed to mitigate the lead contamination, at the school's initial expense. Remediation costs can vary significantly depending on the plumbing configuration and source of lead. The school will also incur minor costs for notification of the school community and local health department, posting the information on their website, and reporting electronically to the Department. Recently enacted legislation authorizes schools to receive State Aid through the State Education Department ("SED") to defray these costs.

Local health departments will also incur some administrative costs related to tracking local implementation, reviewing waiver applications, and compliance oversight. These activities will be eligible for State Aid through the Department's General Public Health Work program.

Local Government Mandates:

Schools, as a form of local government, are required to comply with the regulations, as detailed above.

Paperwork:

The regulation imposes recordkeeping requirements related to: monitoring of potable water outlets; notifications to the public and local health department; and electronic reporting to the Department.

Duplication:

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

Alternatives:

There are no significant alternatives to these regulations, which are being promulgated pursuant to recent legislation.

Federal Standards:

There are no federal statutes or regulations pertaining to this matter. However, the Department's regulations are consistent with the Unites States Environmental Protection Agency's guidance document titled 3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance (available at: https://www.epa.gov/sites/production/files/2015-09/documents/toolkit_leadschools_guide_3ts_leadschools.pdf). EPA's document will serve as guidance to schools for implementing the program.

Compliance Schedule:

For existing buildings put into service as of the effective date of this regulation, all sampling shall be performed according to the following schedule:

(i) for any school serving children in any of the levels prekindergarten through grade five, collection of samples is to be completed by September 30, 2016;

(ii) for any school serving children in any of the levels grades six through twelve that are not also serving students in any of the levels prekindergarten through grade five, and all other applicable buildings, collection of samples is to be completed by October 31, 2016.

For buildings put into service after the effective date of this regulation, sampling shall be performed prior to occupancy.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

This regulation applies to schools, which are a form of local government. As explained in the Regulatory Impact Statement, the new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the drinking water of school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and report results to the Department. The Environmental Protection Agency's 3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance will be used as a technical reference for implementation of the regulation. Local health departments will also incur some administrative costs related to tracking local implementation and oversight of the regulation.

Additionally, the regulations require the services of a laboratory certified by the Department under its Environmental Laboratory Approval Program (ELAP). Some schools may also wish to hire environmental consultants to assist with compliance. Some labs and environmental consultants qualify as small businesses and, at least initially, their services will be in greater demand due to the new regulation.

Compliance Requirements:

As noted above, the new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the

drinking water in school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and requiring reporting of results to the Department.

Reporting and Recordkeeping:

The regulation will impose new monitoring, reporting, and public notification requirements for schools.

Professional Services:

As noted above, the regulations require the services of a laboratory certified by the Department under its Environmental Laboratory Approval Program (ELAP). Some schools may also wish to hire environmental consultants to assist with compliance.

Compliance Costs:

The regulation will require schools to test each potable water outlet for lead, in each school building occupied by children. The cost for a single lead analysis ranges from $20 - $75 per sample. Initial monitoring requires one sample per outlet. The number of outlets will vary from building to building.

If lead is detected above 15 ppb at any potable water outlet, the outlet must be taken out of service and a remedial action plan must be developed to mitigate the lead contamination, at the school's expense. Remediation costs can vary significantly depending on the plumbing configuration and source of lead. The school will also incur minor costs for notification of the school community and local health department, posting the information on their website, and reporting electronically to the Department. Recently enacted legislation authorizes schools to receive State Aid through the State Education Department ("SED") to defray these costs.

Local health departments will also incur some administrative costs related to tracking local implementation, reviewing waiver applications, and compliance oversight. These activities will be eligible for State Aid through the Department's General Public Health Work program.

Cost to Private Parties:

There are no costs to private parties.

Economic and Technological Feasibility:

The technology for lead testing of drinking water is well-established. With respect to schools' costs of compliance, State Aid will be available through the State Education Department to ensure that compliance is feasible. Local health department activities will be eligible for State Aid through the Department's General Public Health Work program.

Minimizing Adverse Impact:

Any school that has already performed testing in compliance with these regulations, as far back as January 1, 2015, does not need to perform sampling again. Further, consistent with the requirements of PHL § 1110, if a school has performed testing that substantially complies with the regulations, the school may apply to the Department for a waiver, so that additional testing is not required. In either case, the requirement to report sample results, and other requirements, remain in place.

School buildings that are determined to be "lead-free," as defined in section 1417 of the Federal Safe Drinking Water Act, do not need to test their outlets. School will be required to make available on their website a list of all buildings that are determined to be lead-free.

Small Business and Local Government Participation:

Although small businesses were not consulted on these specific regulations, the dangers of lead in school drinking water has garnered significant local, state, and national attention. The New York State School Board Association (NYSSBA) requested a meeting with the Department to discuss the impacts of the enabling legislation. NYSSBA provided feedback on testing, prior monitoring, and other matters. The Department took this feedback into consideration when drafting the regulation. The Department will also conduct public outreach, and there will be an opportunity to comment on the proposed permanent regulations. The Department will review all public comments received.

Rural Area Flexibility Analysis

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas. The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any disproportionate reporting, recordkeeping or other compliance requirements on the regulated entities in rural areas.

Job Impact Statement

The Department expects there to be a positive impact on jobs or employment opportunities. Some school districts will likely hire firms or individuals to assist with regulatory compliance. Schools impacted by this amendment will require the professional services of a certified laboratory to perform the analyses for lead, which will create a need for additional laboratory capacity.

Categories and Numbers Affected:

The Department anticipates no negative impact on jobs or employment opportunities as a result of the proposed regulations.

Regions of Adverse Impact:

The Department anticipates no negative impact on jobs or employment opportunities in any particular region of the state.

Minimizing Adverse Impact:

Not applicable.

Assessment of Public Comment

The agency received no public comment.

EMERGENCY RULE MAKING

Physician and Pharmacies; Prescribing, Administering and Dispensing for the Treatment of Narcotic Addiction

I.D. No. HLT-21-17-00001-E

Filing No. 822

Filing Date: 2017-09-28

Effective Date: 2017-09-28

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

Action taken: Amendment of section 80.84 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3308(2)

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

Specific reasons underlying the finding of necessity: Drug addiction and accidental overdoses due to opioid prescription medication and heroin are at an all-time high in New York State and across the nation. The Drug Addiction Treatment Act of 2000 (DATA 2000) and New York State regulations currently permit qualified physicians to prescribe or dispense buprenorphine for the treatment of individuals with substance use disorder (SUD). Buprenorphine has been shown to be an effective treatment option for opioid dependence, providing a safe, controlled level of medication to overcome the use of a problem opioid. Recently enacted federal law and regulations allow for the expanded access to buprenorphine. However, to implement this in New York State, the Department's regulations must be amended.

In September 2016, the federal Substance Abuse and Mental Health Services Administration (SAMHSA) adopted a new rule that increased the number of patients that a practitioner can treat for opioid addiction in an office-based practice setting. Further, on July 22, 2016, the Comprehensive Addiction and Recovery Act of 2016 (CARA) was signed into law by President Obama, extending prescribing privileges to nurse practitioners and physician assistants to treat patients for opioid addiction with buprenorphine. Regulations in 10 NYCRR Part 80 are now outdated because they refer to a patient limit of thirty and restrict prescribing privileges to physicians.

According to the New York State Office of Alcohol and Substance Abuse Services (OASAS) data, more than 107,000 people were treated for opioid addiction in 2015, with approximately 1,540 physicians certified to prescribe buprenorphine. It is clear that increased access to treatment is necessary, based upon the ratio of certified physicians to patients suffering from SUD. Expanding the authority to treat patients with SUD to physician assistants (PAs) and nurse practitioners (NPs), will greatly improve access for thousands of individuals across the state.

To ensure that individuals addicted to opioids have immediate access to treatment from authorized providers, including PAs and NPs, the Commissioner of Health has determined it necessary to file these regulations on an emergency basis. State Administrative Procedure Act § 202(6) empowers the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest. Removing the outdated legal obstacles in the current regulations would immediately allow experienced practitioners to treat addiction.

Subject: Physician and Pharmacies; Prescribing, Administering and Dispensing for the Treatment of Narcotic Addiction.

Purpose: To allow any authorized practitioner to prescribe, administer and dispense buprenorphine for the treatment of narcotic addiction.

Text of emergency rule: Section 80.84 is amended as follows:

Section 80.84 [Physicians] *Practitioners* and pharmacies; prescribing, administering and dispensing for the treatment of narcotic addiction.

Pursuant to the provisions of the federal Drug Addiction Treatment Act of 2000 *(DATA 2000)* (106 P.L. 310, Div. B, Title XXXV, Section 3502(a)), an authorized [physician] *practitioner* may prescribe, administer or dispense an approved controlled substance, and a licensed registered

pharmacist may dispense an approved controlled substance, to a patient participating in an authorized controlled substance maintenance program approved pursuant to Article 32 of the Mental Hygiene Law for the treatment of narcotic addiction.

(a) An approved controlled substance shall mean the following controlled substance which has been approved by the Food and Drug Administration (FDA), *or its successor agency,* and the New York State Department of Health for the treatment of narcotic addiction:

(1) buprenorphine

(b) An authorized [physician] *practitioner* is a [physician] *practitioner* specifically registered with the Drug Enforcement Administration to prescribe, administer or dispense an approved controlled substance for the treatment of narcotic addiction, and approved for such purpose pursuant to the provisions of Article 32 of the Mental Hygiene Law.

(1) The total number of such patients of an authorized [physician] *practitioner* at any one time shall not exceed [30] *the limit established by DATA 2000 and the Department of Health and Human Services (HHS) Substance Abuse and Mental Health Services Administration (SAMHSA), or its successor agency*.

(2) An authorized [physician] *practitioner* prescribing an approved controlled substance for the treatment of narcotic addiction, in addition to preparing and signing an official New York State prescription *or an electronic prescription* in accordance with Section 3332 of the Public Health Law and Section 80.69 of this Part, shall also include his/her unique DEA identification number on the prescription.

(3) An authorized practitioner may dispense an approved controlled substance for the treatment of narcotic addiction in accordance with Section 3331 of the Public Health Law and Section 80.71 of this Part.

(c) A pharmacist may dispense an approved controlled substance for the treatment of narcotic addiction pursuant to a prescription issued by an authorized [physician] *practitioner*. Such dispensing shall be in accordance with Section 3333 of the Public Health Law and Section 80.74 of this Part.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-21-17-00001-P, Issue of May 24, 2017. The emergency rule will expire November 26, 2017.

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

Regulatory Impact Statement

Statutory Authority:

Section 3308(2) of the Public Health law authorizes and empowers the Commissioner to make any regulations necessary to supplement the provision of Article 33 of the Public Health Law in order to effectuate their purpose and intent.

Legislative Objectives:

The legislative purpose of Article 33, and its associated regulations, is to combat illegal use of and trade in controlled substances and to allow legitimate use of controlled substances in health care authorized by the article or other law. This amendment will provide for increased access to treatment for persons addicted to opioids.

Needs and Benefits:

The rise of heroin and pharmaceutical opioid use has increased the need and demand for treatment throughout New York State. Deaths in New York have risen 50 percent in the last five years due to opioid overdose. Many of these deaths can be attributed to untreated opioid use disorder.

Statistics published in the "2015 New York State Opioid Poisoning, Overdose and Prevention Report to Governor Cuomo and the NYS Legislature" provide significant information of the widespread epidemic that has reached this state. According to the Report:

In 2009, there were 1,538 reported deaths from unintentional drug poisonings in NYS. Toxicology tests identified heroin in 242 (16 percent) of these deaths and opioid analgesics in 735 (48 percent). In 2013, the latest full year for which data are available, the number of reported drug overdose deaths increased to 2,175, a 41 percent increase from 2009. The number of heroin-related deaths increased in 2013 to 637, and opioid analgesics related deaths rose to 952, increases of 163 percent and 30 percent from 2009, respectively. Opioid-related emergency department visits increased 73 percent from 2010 to 2014, 75,110 opioid-related inpatient hospital admissions were reported in 2014, an increase of 3 percent from 2010, and 118,875 (42 percent) of the 281,800 admissions to NYS certified substance abuse treatment programs in 2014 included "any opioid" as the primary, secondary or tertiary drug problem, up 19 percent from 2010 (100,004).

(See 2015 New York State Opioid Poisoning, Overdose and Prevention Report to Governor Cuomo and the NYS Legislature, page 1, available at: https://www.health.ny.gov/diseases/aids/general/opioid_overdose_prevention/docs/annual_report2015.pdf)

Under the federal Drug Addiction Treatment Act of 2000 (DATA 2000), qualified physicians are authorized to treat patients with opioid dependency, including heroin, with buprenorphine. Prior to the legislation the only treatment option for patients dependent on opioids was in a methadone treatment clinic. DATA 2000 increased the accessibility of treatment for opioid use disorder, or more commonly referred to as, opiate addiction, in a community setting.

Many patients with substance use disorders, especially those living in rural areas, are underserved due to the lack of authorized physicians under DATA 2000. In July 2016, to address this issue, President Obama signed the Comprehensive Addiction and Recovery Act of 2016 (CARA) into law. CARA allows nurse practitioners and physician assistants to treat patients dependent on opioids with buprenorphine in an office-based setting. (See P.L. 114-198.) However, the Department's regulations, which were drafted in 2004, do not currently allow for this expanded field of providers and should be amended.

Further, to address the rapidly growing need to treat opioid use disorder in the office-based setting nationwide, the Department of Health and Human Services (HHS) recently adopted a rule to lift the limits on the number of patients doctors can treat with buprenorphine from 100 to 275. The rule increased access to medication-assisted treatment (MAT), which includes opioid treatment programs (OTPs). (See 81 FR 44711.) MAT combines medications, such as buprenorphine, and behavioral therapy to treat substance use disorders. With the adoption of this new federal rule, the Department's regulations refer to the now outdated prescribing limits.

The Department is proposing amendments to Section 80.84 to ensure consistency with these federal laws and regulations.

Costs:

Costs to Regulated Parties:

The amendment would not impose costs to regulated parties. The regulations simply increase access to treatment for persons addicted to opioids.

Costs to State Government:

There will be no additional costs to state government as a result of the proposed amendment.

Costs to Local Governments:

There will be no additional costs to local government as a result of the proposed amendment.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

This amendment will not impose any program, service, duty, additional cost, or responsibility on any county, city, town, village, school district, fire district, or other special district.

Paperwork:

The proposed amendments would not increase paperwork requirements.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

The Department could choose to retain existing standards. This option was rejected because the discrepancy between federal and State standards would confuse practitioners and defeat the purpose of CARA, which is to expand access to treatment of people addicted to opioids.

Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government.

Compliance Schedule:

This regulation will become effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no other compliance costs imposed on public or private entities in rural areas as a result of the amendments.

Job Impact Statement

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

Assessment of Public Comment

The agency received no public comment.

New York State Joint Commission on Public Ethics

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Financial Disclosure Statements

I.D. No. JPE-42-17-00003-P

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

Proposed Action: Amendment of Parts 935, 936, 941 and 942 of Title 19 NYCRR.

Statutory authority: Executive Law, sections 94(9)(c), (k), (i-1), (14); Public Officers Law, sections 73-a(8)(b-1), (b-2) and (c)

Subject: Financial disclosure statements.

Purpose: To add a right of appeal to provisions governing exemptions related to filing a financial disclosure statement.

Substance of proposed rule (Full text is posted at the following State website: http://www.jcope.ny.gov/advice/proposed %20regs.html): Parts 935 and 942 are amended to provide that applications for exemption from filing a financial disclosure statement or from disclosing client information in a financial disclosure statement are decided in the initial instance by the Executive Director, and a denial by the Executive Director may be appealed to the Commission pursuant to the provisions in Part 941. Part 941 is amended to provide a procedure by which the Executive Director's denial of an application under Part 935 or 942 is appealed to the Commission. Part 936 is amended for a technical change, and includes no substantive amendments.

Text of proposed rule and any required statements and analyses may be obtained from: Martin Levine, Deputy General Counsel, Joint Commission on Public Ethics, 540 Broadway, Albany, NY 12207, (518) 408-3976, email: martin.levine@jcope.ny.gov

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

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority: Executive Law section 94(9)(c) generally directs the Joint Commission on Public Ethics ("JCOPE") to adopt, amend, and rescind rules and regulations to govern JCOPE's various procedures, including the procedure for requesting a extension of time to file a financial disclosure statement required pursuant to Public Officers Law section 73-a ("FDS").

Executive Law section 94(9)(k) directs JCOPE to promulgate rules and regulations to permit certain individuals to request an exemption from filing an FDS.

Executive Law section 94(14) authorizes JCOPE to adopt rules and regulations relating to adjudicatory proceedings and appeals for matters arising under the Commission's jurisdiction.

Executive Law section 94(9)(i-1) and Public Officers Law sections 73-a(8)(b-1); 73-a(8)(b-2); and 73-a(8)(c) authorize JCOPE to receive, and to adopt rules and regulations relating to, requests for exemptions from certain disclosure requirements with respect to FDSs.

2. Legislative objectives: To provide procedures regarding the right to appeal a determination of the Executive Director on a request for an exemption from filing an FDS or from disclosing client information on an FDS, and to address certain technical issues in an existing rule.

3. Needs and benefits: JCOPE's and its predecessor agencies created regulations regarding procedures for requesting an exemption from filing an FDS, or disclosing client information on an FDS. The proposed rulemaking will clarify that these requests are decided in the initial instance by the Executive Director and that a filer may seek an appeal of a denial by the Executive Director to the Commission for a ruling on whether the Executive Director made an erroneous determination. The proposed rulemaking also will effect a technical change to the existing regulation on requesting an extension of time to file an FDS for justifiable cause or undue hardship (Part 936).

4. Costs:

a. costs to regulated parties for implementation and compliance: Minimal.

b. costs to the agency, state and local government: Minimal costs to the agency.

c. cost information is based on the fact that there will be minimal costs to regulated parties and state agencies as the regulation merely adds a right of appeal to an existing regulatory process. The cost to the agency is based on the estimated slight increase in staff resources to implement the regulations.

5. Local government mandate: The proposed regulation imposes no new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: This regulation may require the preparation of additional forms or paperwork. Such additional paperwork is expected to be minimal.

7. Duplication: This regulation does not duplicate any existing federal, state, or local regulations.

8. Alternatives: JCOPE could promulgate a resolution or guidance to incorporate a right of appeal. However, amending the existing financial disclosure exemption regulations through the formal rulemaking process provides more clarity to affected parties.

9. Federal standards: These regulations do not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: Compliance will take effect upon adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice of Proposed Rule Making because the proposed rulemaking will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, record-keeping, or other affirmative acts on the part of these entities for compliance purposes. The New York State Joint Commission on Public Ethics notes that this regulation only adds a right of appeal in cases where an individual's request to be exempted from filing a financial disclosure statement or from disclosing client information in a financial disclosure statement has been denied, and does not impose record-keeping requirements or other adverse economic impact on small businesses and local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this Notice of Proposed Rule Making because the proposed rulemaking will not impose any adverse economic impact on rural areas, nor will compliance require or impose any reporting, record-keeping, or other affirmative acts on the part of rural areas. The Joint Commission on Public Ethics makes these findings based on the fact that the financial disclosure statement regulations govern the process by which certain state officers or employees seek an exemption from filing a financial disclosure statement or from disclosing client information on a financial disclosure statement during the period of their State service. Rural areas are not affected in any way.

Job Impact Statement

A Job Impact Statement is not submitted with this Notice of Proposed Rule Making because the proposed rulemaking will have a limited impact on jobs or employment opportunities. The Joint Commission on Public Ethics makes these findings based on the fact that the regulations apply only to limited state officers and employees during the period of their State service.

Long Island Power Authority

NOTICE OF ADOPTION

Low-Income Customer Discounts in the Authority's Tariff

I.D. No. LPA-28-17-00010-A

Filing Date: 2017-10-03

Effective Date: 2017-10-18

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

Action taken: The Long Island Power Authority adopted modifications to the Authority's Tariff for Electric Service to update provisions regarding the Authority's discounts for low income customers.

Statutory authority: Public Authorities Law, section 1020-f(u) and (z)

Subject: Low-income customer discounts in the Authority's tariff.

Purpose: To expand the Authority's low income customer discounts consistent with New York state policy.

Text or summary was published in the July 12, 2017 issue of the Register, I.D. No. LPA-28-17-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Justin Bell, Long Island Power Authority, 333 Earle Ovington Blvd, Suite 403, Uniondale, NY 11553, (516) 719-9886, email: jbell@lipower.org

Revised Regulatory Impact Statement

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

Revised Regulatory Flexibility Analysis

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

Revised Rural Area Flexibility Analysis

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

Revised Job Impact Statement

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

Assessment of Public Comment

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

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Certification of Facilities and Home and Community Based Services (HCBS)

I.D. No. PDD-08-17-00006-A

Filing No. 831

Filing Date: 2017-10-03

Effective Date: 2017-10-18

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

Action taken: Amendment of Parts 633, 635, 671, 679, 681, 686 and 690; addition of Part 619 to Title 14 NYCRR.

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

Subject: Certification of Facilities and Home and Community Based Services (HCBS).

Purpose: To update, reorganize, and relocate existing requirements for certification of programs and services in OPWDD's system.

Text or summary was published in the February 22, 2017 issue of the Register, I.D. No. PDD-08-17-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Office of Counsel, Bureau of Policy and Regulatory Affairs, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue 3rd Floor, Albany, NY 12229, (518) 474-7700, email: rau.unit@opwdd.ny.gov

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment and an E.I.S. is not needed.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Public comments were submitted to the Office for People With Developmental Disabilities (OPWDD) in response to the regulation. The public comment period for this regulation ended on April 10, 2017. The Office received a total of 2 comments from 2 individuals representing the developmental disability provider community.

COMMENT: Commenter asked if the regulations will change incident reporting for voluntary providers of developmental disability services, and if voluntary providers will be required to report all Reportable Abuse Neglect or Reportable Significant Incidents to the Justice Center.

RESPONSE: There was no intention to expand Justice Center requirements when OPWDD began certifying HCBS waiver services. Justice Center reporting requirements apply to voluntary-operated certified facilities only.

COMMENT: Commenter asked if the regulations require an out of state provider under OPWDD to obtain an operating certificate, when obtaining an operating certificate was not a part of the provider's contract with OPWDD.

REPONSE: The new regulations in Part 619 were developed to update existing Department of Mental Hygiene certification regulations in Part 70 that have always applied to certification of OPWDD state-operated and voluntary-operated agencies serving individuals with developmental disabilities in New York State.

Public Service Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Complaint for Review of Rates Charged for Water Service to Commercial and Residential Customers of Water Works Corporation

I.D. No. PSC-42-17-00005-P

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

Proposed Action: The Commission is considering a complaint by customers of Bristol Water Works Corporation (Bristol) requesting review of the rates charged by Bristol for water service to commercial and residential customers.

Statutory authority: Public Service Law, sections 5, 89-c, 89-i and 89-j

Subject: Complaint for review of rates charged for water service to commercial and residential customers of water works corporation.

Purpose: To consider the complaint filed on January 3, 2017 by Bristol customers.

Public hearing(s) will be held at: 10:30 a.m., December 6, 2017 and daily on succeeding business days as needed at Department of Public Service, Agency Bldg. 3, 3rd Fl. Hearing Rm., Albany, NY. (Evidentiary Hearing)*

*On occasion, there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 17-W-0049.

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

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

Substance of proposed rule: On January 3, 2017, the Bristol Harbour Village Association (Association) filed a petition, signed by more than 25 ratepayers, requesting that the Public Service Commission (PSC) determine whether the rates of Bristol Water Works Corporation (Bristol) are fair and equitable to residential and commercial customers.

Under Public Service Law § 89-I, when a complaint regarding the rates, charges or classifications of service is filed by 25 or more ratepayers of a water utility, the Commission may undertake an investigation of the water utility's plant and books to determine if the water utility is providing safe and adequate service at just and reasonable rates.

Pursuant to the Association's complaint, the Commission is instituting an investigation into the rates and service of Bristol and may take any action it determines is necessary to ensure just and reasonable rates any may resolve related matters. The full text of the filing may be reviewed online at the Department of Public Service web page: www.dps.ny.gov.

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

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

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

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

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

(17-W-0049SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

NYSRC's Revisions to Its Rules and Measurements

I.D. No. PSC-42-17-00004-P

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

Proposed Action: The Commission is considering revisions to the rules and measurements of the New York State Reliability Council (NYSRC) contained in Version 41 of the NYSRC's Reliability Rules.

Statutory authority: Public Service Law, sections 4(1), 5(2), 65(1), 66(1), (2), (4) and (5)

Subject: NYSRC's revisions to its rules and measurements.

Purpose: To consider revisions to various rules and measurements of the NYSRC.

Substance of proposed rule: The Public Service Commission (Commission) is considering revisions to the rules and measurements of the New York State Reliability Council (NYSRC) contained in Version 41 of the NYSRC's Reliability Rules, which were filed with the PSC on September 26, 2017, in Case 05-E-1180. Subsequent to the Commission's adoption of Version 38 of the NYSRC Reliability Rules, the rules include revised requirements for System Restoration Plans (SRP) and related measures and levels of non-compliance, removal of the reliability rule for coordinated SRP training programs and related requirements and compliance elements, new requirements for Loss of Gas Supply – New York City and related measures and levels of non-compliance, and removal of the reliability rule and related requirements and compliance elements related to Disturbance Recording. The rules also include revisions to define the term "relevant system conditions," and to clarify compliance with rules for identifying Eligible Black Start Resources and related measures and levels of non-compliance, and revised requirements to clarify the Transmission Data Reliability Rule requiring market participants to apply data screening guidelines. Further, the revised version includes the retirement of the Reliability Rule for Underfrequency Load Shedding and related requirements and compliance elements, includes a revised introduction to Transmission Planning Rule, and updates several references to the North American Electric Reliability Corporation and Northeast Power Coordinating Council. The full text of the filing and revisions subsequent to the Commission's adoption of Version 38 of the NYSRC Reliability Rules 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 revised rules and measurement, and may resolve other 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: 45 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.

(05-E-1180SP18)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-42-17-00006-P

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

Proposed Action: The Commission is considering the Notice of Intent of 45 John NY LLC, to submeter electricity at 45 John Street, New York, New York.

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

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent of 45 John NY LLC to submeter electricity at 45 John Street, New York, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent of 45 John NY LLC filed on July 31, 2017, to submeter electricity at 45 John Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). By stating its intent to submeter electricity, 45 John NY LLC has requested authorization to take electric service from Con Edison and then distribute and meter that electricity to tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission's regulations at 16 NYCRR Part 96. The full text of the Notice of Intent may be reviewed online at the Department of Public Service web page: www.dps.ny.gov under case number 17-E-0465. The Commission may adopt, reject or modify, in whole or in part, the relief requested 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: 45 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.

(17-E-0465SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Ampersand Kayuta Lake Hyrdo, LLC's 460 KW Hydroelectric Facility in Boonville, New York

I.D. No. PSC-42-17-00007-P

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

Proposed Action: The Commission is considering the request of Ampersand Kayuta Lake Hydro, LLC to provide financial support for its 460 kW hydroelectric facility in Boonville, New York, under the Tier 2 "Maintenance Tier" Program in the Renewable Energy Standard.

Statutory authority: Public Service Law, sections 4(1), 5(1), (2), 66(2); Energy Law, section 6-104(5)(b)

Subject: Ampersand Kayuta Lake Hyrdo, LLC's 460 kW hydroelectric facility in Boonville, New York.

Purpose: To promote and maintain renewable electric energy resources.

Substance of proposed rule: The Commission is considering a September 28, 2017, petition by Ampersand Kayuta Lake Hydro, LLC. The petition seeks an order authorizing a Tier 2 Maintenance Tier contract offered through the Renewable Energy Standard (RES) program to allow the continued operation of a 460kW run-of-the river hydroelectric generating facility located in Boonville, New York. Ampersand Kayuta Lake Hydro, LLC. Is requesting a maintenance REC contract for 10 years at $17.28/MWh.

The full text of the petition 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 relief 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: 45 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.

(17-E-0603SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Ampersand Chasm Falls Hydro, LLC's 1.6 MW Hydroelectric Facility in Chateaugay, New York

I.D. No. PSC-42-17-00008-P

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

Proposed Action: The Commission is considering the request of Ampersand Chasm Falls Hydro, LLC to provide financial support for its 1.6 MW hydroelectric facility in Chateaugay, New York, under the Tier 2 ''Maintenance Tier'' Program in the Renewable Energy Standard.

Statutory authority: Public Service Law, sections 4(1), 5(1), (2), 66(2); Energy Law, section 6-104(5)(b)

Subject: Ampersand Chasm Falls Hydro, LLC's 1.6 MW hydroelectric facility in Chateaugay, New York.

Purpose: To promote and maintain renewable electric energy resources.

Substance of proposed rule: The Commission is considering a September 25, 2017, petition by Ampersand Chasm Falls Hydro, LLC. The petition seeks an order authorizing a Tier 2 Maintenance Tier contract offered through the Renewable Energy Standard (RES) program to allow the continued operation of a 1.6 MW run-of-the river hydroelectric generating facility located in Chateaugay, New York. Ampersand Chasm Falls Hydro, LLC. Is requesting a maintenance REC contract for 10 years at $10.40/MWh.

The full text of the petition 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 relief 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: 45 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.

(17-E-0603SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Obtain a Letter of Credit and Increase the Currently Capped Debt

I.D. No. PSC-42-17-00009-P

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

Proposed Action: The Commission is considering a petition from Rensselaer Generating LLC and Roseton Generating LLC (Petitioners) seeking approval to obtain a letter of credit and increase the currently capped debt secured by their assets.

Statutory authority: Public Service Law, sections 2(12), 13, 5(1)(b), 69 and 70

Subject: To obtain a letter of credit and increase the currently capped debt.

Purpose: To consider the Petitioner's request for a letter of credit and increase the currently capped debt.

Substance of proposed rule: The New York State Public Service Commission (Commission) is considering a petition filed by Rensselaer Generating LLC and Roseton Generating LLC (collectively, the Petitioners) requesting that they be authorized to obtain a letter of credit and increase to $375 million the currently capped debt secured by their New York assets. The assets to be used as security include the approximately 80 MW electric generating facility that Rensselaer Generating LLC owns in Rensselaer, New York, as well as the approximately 1,160 MW electric generating facility that Roseton Generating LLC owns in Newburgh, New York. The full text of the petition 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 relief 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: 45 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.

(17-E-0545SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Rehearing of Negative Revenue Adjustment and Contents of Annual Performance Report

I.D. No. PSC-42-17-00010-P

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

Proposed Action: The Commission is considering a petition for rehearing submitted by National Fuel Gas Distribution Corporation (NFGD) of the Commission's August 28, 2017 Order on Appeal.

Statutory authority: Public Service Law, sections 5(1), 22, 65 and 66

Subject: Petition for rehearing of negative revenue adjustment and contents of annual Performance Report.

Purpose: To consider NFGD's petition for rehearing.

Substance of proposed rule: The Commission is considering a September 26, 2017, petition for rehearing filed by National Fuel Gas Distribution Corporation (NFGD), alleging errors of law and fact in the Commission's August 28, 2017 Order on Appeal. NFGD's petition seeks to reverse the Commission's determinations that three negative revenue adjustments stemming from the Department of Public Service's annual gas safety audits should be sustained and that the 2015 Gas Safety Performance Report should not be amended in the manner NFGD sought in its initial

appeal. The Commission granted NFGD's request for reversal of one negative revenue adjustment. NFGD reiterates its original arguments with respect to each remaining violation – that the violation of 16 NYCRR § 255.739(a) occurred before the Gas Safety Metric went into effect; that NFGD's twice-monthly inspection of a known leak meets the requirement that surveillance occur "every two weeks" within the meaning of 16 NYCRR § 255.813(c); and that the requirement that gas companies wait 14 days to perform a follow-up inspection of a repaired leak under 16 NYCRR § 255.819(a) should be satisfied by NFGD's follow-up inspection that took place 8 days later, which was scheduled due to the weather.

NFGD also seeks rehearing of the August 28, 2017 Order on Appeals' decision that determined the Department of Public Service's 2015 annual Gas Safety Performance Measures Report to the Commission need not be amended to state that NFGD had five, not 25 "High Risk Non-Compliances" in 2014. NFGD continues to seek to change the Gas Safety Performance Measures Report so that it includes only the five High Risk violations for which the Department assessed a negative revenue adjustment.

The full text of the filing 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 relief 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: 45 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.

(13-G-0136SP6)

Department of State

NOTICE OF ADOPTION

Appraiser Experience Log and Qualifications

I.D. No. DOS-26-17-00001-A
Filing No. 824
Filing Date: 2017-10-02
Effective Date: 2017-10-18

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

Action taken: Amendment of section 1102.3 of Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d

Subject: Appraiser Experience Log and Qualifications.

Purpose: To clarify and update Department of State policy in reviewing appraisal experience.

Text or summary was published in the June 28, 2017 issue of the Register, I.D. No. DOS-26-17-00001-P.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Distance Learning for Qualifying Real Estate Appraisal Courses

I.D. No. DOS-26-17-00002-A
Filing No. 826
Filing Date: 2017-10-02
Effective Date: 120 days after filing

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

Action taken: Amendment of sections 1103.2(e) and 1103.3(i); addition of sections 1103.12, 1103.13, 1103.14, 1103.15, 1107.29, 1107.30, 1107.31 and 1107.32 to Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d

Subject: Distance learning for qualifying real estate appraisal courses.

Purpose: To authorize distance learning for qualifying real estate appraisal courses.

Text or summary was published in the June 28, 2017 issue of the Register, I.D. No. DOS-26-17-00002-P.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Electronic Storage of Safety Data Sheets

I.D. No. DOS-28-17-00005-A
Filing No. 825
Filing Date: 2017-10-02
Effective Date: 2017-10-18

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

Action taken: Amendment of section 160.25(d) of Title 19 NYCRR.

Statutory authority: General Business Law, section 404

Subject: Electronic storage of safety data sheets.

Purpose: To permit appearance enhancement licensees to maintain safety data sheets electronically.

Text or summary was published in the July 12, 2017 issue of the Register, I.D. No. DOS-28-17-00005-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 Mossberg, NYS Dept. of State, 123 William St., 20th Fl., New York NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Appraisal Standards

I.D. No. DOS-42-17-00002-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 amend section 1106.1 of Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d(1)(d)

Subject: Appraisal Standards.

Purpose: To adopt the 2018-2019 edition of the Uniform Standards of Professional Appraisal Practice.

Text of proposed rule: Section 1106.1 of Title 19 of the NYCRR is amended as follows:

(a) Every appraisal assignment shall be conducted and communicated in accordance with the following provisions and standards set forth in the [2016-2017] *2018-2019* edition of the Uniform Standards of Professional Appraisal Practice:

[(1) Definitions;
(2) Preamble;
(3) Ethics rule;
(4) Record keeping rule;
(5) Competency rule;
(6) Scope of work rule;
(7) Jurisdictional exception rule;
(8) Standard 1—Real Property Appraisal, Development;
(9) Standard 2—Real Property Appraisal, Reporting;
(10) Standard 3—Appraisal Review, Development and Reporting;
(11) Retired;
(12) Retired;
(13) Standard 6—Mass Appraisal, Development and Reporting;
(14) Standard 7—Personal Property Appraisal, Development;
(15) Standard 8—Personal Property Appraisal, Reporting;
(16) Standard 9—Business Appraisal, Development; and
(17) Standard 10—Business Appraisal, Reporting.]

UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

(1) FOREWORD
(2) TABLE OF CONTENTS
(3) PREAMBLE
(4) DEFINITIONS
(5) ETHICS RULE
(6) RECORD KEEPING RULE
(7) COMPETENCY RULE
(8) SCOPE OF WORK RULE
(9) JURISDICTIONAL EXCEPTION RULE

STANDARDS AND STANDARD RULES

(10) STANDARD 1: REAL PROPERTY APPRAISAL, DEVELOPMENT
(11) STANDARD 2: REAL PROPERTY APPRAISAL, REPORTING
(12) STANDARD 3: APPRAISAL REVIEW, DEVELOPMENT
(13) STANDARD 4: APPRAISAL REVIEW, REPORTING
(14) STANDARD 5: MASS APPRAISAL, DEVELOPMENT
(15) STANDARD 6: MASS APPRAISAL, REPORTING
(16) STANDARD 7: PERSONAL PROPERTY APPRAISAL, DEVELOPMENT
(17) STANDARD 8: PERSONAL PROPERTY APPRAISAL, REPORTING
(18) STANDARD 9: BUSINESS APPRAISAL, DEVELOPMENT
(19) STANDARD 10: BUSINESS APPRAISAL, REPORTING

(b) The [2016-2017] *2018-2019* edition of the Uniform Standards of Professional Appraisal Practice is published by the Appraisal Foundation, which is authorized by the United States Congress as the source of appraisal standards. Copies may be obtained from: The Appraisal Foundation 1155 15th Street, NW, Suite 1111, Washington, DC 20005 tel: 202-347-7722 www.appraisalfoundation.org. The [2016-2017] *2018-2019* edition of the Uniform Standards of Professional Appraisal Practice can be viewed, downloaded and printed from http://www.appraisalfoundation.org. Copies are also available for inspection and copying at the following offices of the Department of State:

Division of Licensing Services
N.Y.S. Department of State
One Commerce Plaza
99 Washington Avenue, 5th Floor,
Albany, NY 12231
tel: 518-473-2728

Division of Licensing Services
N.Y.S. Department of State
65 Court Street
Buffalo, NY 14202
tel: 716-847-7110

Division of Licensing Services
N.Y.S. Department of State
123 William Street
New York, NY 10038
tel: 212-417-5747

Division of Licensing Services
N.Y.S. Department of State
250 Veterans Memorial Highway
Hauppauge, NY 11788
tel: 631-952-6579

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

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

Public comment will be received until: 45 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

This rule is being proposed as a consensus rule making. The New York State Board of Real Estate Appraisal does not expect that any person is likely to object to its adoption because the proposed rule merely implements a nondiscretionary statutory direction, i.e., the adoption of these appraisal standards is mandated by § 160-(d)(1)(d) of the Executive Law.

Section 160-d(1)(d) of the Executive Law provides, in part, that the New York State Board of Real Estate Appraisal shall adopt standards for the development and communication of real estate appraisals; provided, however, that those standards must, at minimum, conform to the uniform standards of professional appraisal promulgated by the Appraisal Standards Board of the Appraisal Foundation.

Acting pursuant to Title IX of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C.A. §§ 3310-3351), the Appraisal Standards Board has adopted and, from time to time, amended the Uniform Standards of Professional Appraisal Practice, which set forth national standards for developing an appraisal and for reporting its results.

This proposal will adopt the 2018-2019 edition of the Uniform Standards of Professional Appraisal Practice relating to real estate appraisals. Since § 160-d(1)(d) directs that the standards adopted by the State Board of Real Estate Appraisal conform, at a minimum, to the standards promulgated by the Appraisal Standards Board, the State Board does not expect that any person is likely to object to the adoption of the 2018-2019 edition of the Uniform Standards of Professional Appraisal Practice. The State Board has previously adopted the 2002, 2003, 2004, 2005, 2006, 2007, 2008-2009, 2010-2011, 2012-2013, 2014-2015, 2016-2017 editions of the Uniform Standards of Professional Appraisal Practice without objection.

Job Impact Statement

Licensed and certified real estate appraisers are currently subject to the 2016-2017 edition of the Uniform Standards of Professional Appraisal Practice, which will be revised and updated by the 2018-2019 edition. The changes, which are required to be adopted, are not anticipated to impact job opportunities for real estate appraisers. Accordingly, the New York State Board of Real Estate Appraisal does not believe that adoption of the 2018-2019 edition of the Uniform Standards of Professional Appraisal Practice will have any substantial adverse impact on jobs and employment opportunities.