

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-23-17-00004-A

Filing No. 540

Filing Date: 2017-07-27

Effective Date: 2017-08-16

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

Action taken: Amendment of Appendix 3 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the labor class.

Text or summary was published in the June 7, 2017 issue of the Register, I.D. No. CVS-23-17-00004-P.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-33-17-00002-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Environmental Conservation, by increasing the number of positions of Maintenance Supervisor 1 Fish Hatchery from 1 to 2.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-33-17-00003-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Victim Services," by increasing the number of positions of Deputy Director from 1 to 2.

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

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

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-33-17-00004-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by adding thereto the positions of Public Information Assistant (Digital Content) (1), Public Information Manager (Digital Content) (1), Public Information Specialist 1 (Digital Content) (5), Public Information Specialist 2 (Digital Content) (1) and Public Information Specialist 3 (Digital Content) (1).

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was

previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-33-17-00005-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by deleting therefrom the position of øGeneral Park Manager 2 (1) and by adding thereto the position of øPark Director 2 (Arboretum) (1).

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-33-17-00006-P

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

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

Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.
Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by adding thereto the position of Park Supervisor 1 (Marine Services) (1).
Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

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

Jurisdictional Classification

I.D. No. CVS-33-17-00007-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision, by increasing the number of positions of Deputy Superintendent of Correctional Health Care Facility from 5 to 6.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was

previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

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

Jurisdictional Classification

I.D. No. CVS-33-17-00008-P

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

Proposed Action: Amendment of Appendices 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt and non-competitive classes.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by adding thereto the positions of Homeland Security Analyst 3 (5), Intelligence Analyst 1 (Information Systems) (4) and Intelligence Analyst 2 (Information Systems) (2) and by increasing the number of positions of Homeland Security Program Analyst 1 from 7 to 58 and Homeland Security Program Analyst 2 from 4 to 14; and

Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by increasing the number of positions of Special Assistant from 18 to 19.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

Department of Corrections and Community Supervision

NOTICE OF ADOPTION

Payment of Costs for Prosecution of Certain Inmates and Certain Inmate-Patients

I.D. No. CCS-10-17-00002-A

Filing No. 538

Filing Date: 2017-07-26

Effective Date: 2017-08-16

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

Action taken: Amendment of sections 410.1, 410.2, 410.3(a) and 410.6 of Title 7 NYCRR.

Statutory authority: Correction Law, sections 112 and 606; Mental Hygiene Law, section 29.28

Subject: Payment of costs for prosecution of certain inmates and certain inmate-patients.

Purpose: To amend the rule in accordance with Mental Hygiene Law and to update the agency name.

Text or summary was published in the March 8, 2017 issue of the Register, I.D. No. CCS-10-17-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Kevin P. Bruen, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue, Harriman State Campus, Albany, NY 12226-2050, (518) 457-4951, email: Rules@DOCCS.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.

Department of Economic Development

EMERGENCY RULE MAKING

START-UP NY Program

I.D. No. EDV-33-17-00001-E

Filing No. 537

Filing Date: 2017-07-26

Effective Date: 2017-07-26

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

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

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

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

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

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

Subject: START-UP NY Program.

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

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

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

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

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

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

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

6) The regulation describes the process for approval of Tax-Free Areas. An eligible institution may submit a plan to the Commissioner identifying land or space to be designated as a Tax-Free Area. This plan must: identify precisely the location of the applicable land or space; describe business activities to be conducted on the land or space; establish that the business activities in question align with the mission of the institution; indicate how the business would generate positive community and economic benefits; summarize the Sponsor's procedures for attracting businesses; include a copy of the institution's conflict of interest guidelines; attest that the proposed Tax-Free Area will not jeopardize or conflict with any existing tax-exempt bonds used to finance the Sponsor; and certify that the Sponsor has not relocated or eliminated programs serving students, faculty, or

staff to create the vacant land. Applications by private institutions require approval by both the Commissioner and START-UP NY Approval Board. The START-UP NY Approval Board is to approve applications so as to ensure balance among rural, urban and suburban areas throughout the state.

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

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

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

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

11) The regulation permits a business that has been rejected from the START-UP program to locate within a Tax-Free Area without being eligible for START-UP program benefits, or to reapply within sixty days via a written request identifying the reasons for rejection and offering verified factual information addressing the reasoning of the rejection. Failure to reapply within sixty days waives the applicant's right to resubmit. Upon receipt of a timely resubmission, the Commissioner may use any resources to assess the claim, and must notify the applicant of his or her determination within sixty days. Disapproval of a reapplication is final and non-appealable.

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires October 23, 2017.

Text of rule and any required statements and analyses may be obtained from: Phillip Harmonick, New York State Department of Economic Development, 625 Broadway, Albany, NY 12207, (518) 292-5122, email: Phillip.Harmonick@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

LEGISLATIVE OBJECTIVES:

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

plication process for the program, clarifying the nature of eligible businesses and facilities, and describing key provisions of the START-UP NY program.

NEEDS AND BENEFITS:

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

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

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

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

COSTS:

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

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

III. Costs to the State government: None.

IV. Costs to local governments: None.

LOCAL GOVERNMENT MANDATES:

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

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Participation in the START-UP NY program is entirely at the discretion of qualifying business that may choose to locate in Tax-Free NY Areas. Neither statute nor the proposed regulations impose any obligation on any business entity to participate in the program. Rather than impose burdens on small business, the program is designed to provide substantial tax benefits to start-up businesses locating in New York, while providing protections to existing businesses against the threat of tax-privileged

start-up companies locating in the same community. Local governments may not be able to collect tax revenues from businesses locating in certain Tax-Free NY Areas. However, the regulation is expected to have a net-positive impact on local governments in light of the substantial economic activity associated with businesses locating their facilities in these communities.

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

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. 580

Filing Date: 2017-07-31

Effective Date: 2017-07-31

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 is-*

sues, 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 September 28, 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 continua-

tion 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.

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. DFS-33-17-00011-E

Filing No. 583

Filing Date: 2017-08-01

Effective Date: 2017-08-02

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

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

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: The legislature required the registration of mortgage loan servicers as part of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") to help address the existing foreclosure crisis in the state. By registering servicers and requiring that servicers engage in the business of mortgage loan servicing in compliance with rules and regulations adopted by the Superintendent, the legislature intended to help ensure that servicers conduct their business in a manner acceptable to the Department. However, since the passage of the Mortgage Lending Reform Law, foreclosures continue to pose a significant threat to New York homeowners. The Department continues to receive complaints from homeowners and housing advocates that mortgage loan servicers' response to delinquencies and their efforts at loss mitigation are inadequate. These rules are intended to provide clear guidance to mortgage loan servicers as to the procedures and standards they should follow with respect to loan delinquencies. The rules impose a duty of fair dealing on loan servicers in their communications, transactions and other dealings with borrowers. In addition, the rule sets standards with respect to the handling of loan delinquencies and loss mitigation. The rule further requires specific reporting on the status of delinquent loans with the

Department so that it has the information necessary to assess loan servicers' performance.

In addition to addressing the pressing issue of mortgage loan delinquencies and loss mitigation, the rule addresses other areas of significant concern to homeowners, including the handling of borrower complaints and inquiries, the payment of taxes and insurance, crediting of payments and handling of late payments, payoff balances and servicer fees. The rule also sets forth prohibited practices such as engaging in deceptive practices or placing homeowners' insurance on property when the servicers has reason to know that the homeowner has an effective policy for such insurance.

Subject: Business conduct of mortgage loan servicers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire October 29, 2017

Text of rule and any required statements and analyses may be obtained from: Christine M. Tomczak, New York State Department of Financial Services, One State Street, New York, New York 10004-1417, (212) 709-1642

Regulatory Impact Statement

1. Statutory Authority.

Article 12-D of the Banking Law, as amended by the Legislature in the

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Legislative Objectives.

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

The Mortgage Lending Reform Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The new law further requires mortgage loan

servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Banking Board and the Superintendent.

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

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

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

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

3. Needs and Benefits.

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

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

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

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

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

Part 419 addresses the business practices of mortgage loan servicers and establishes certain consumer protections for homeowners whose residential mortgage loans are being serviced. These regulations provide stan-

dards and procedures for servicers to follow in their course of dealings with borrowers, including the handling of borrower complaints and inquiries, payment of taxes and insurance premiums, crediting of borrower payments, provision of annual statements of the borrower's account, authorized fees, late charges and handling of loan delinquencies and loss mitigation. Part 419 also identifies practices that are prohibited and imposes certain reporting and record-keeping requirements to enable the Superintendent to determine the servicer's compliance with applicable laws, its financial condition and the status of its servicing portfolio.

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

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

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

4. Costs.

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

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

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

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

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

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

5. Local Government Mandates.

None.

6. Paperwork.

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

7. Duplication.

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

8. Alternatives.

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

9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies, and there are no comprehensive federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan.

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

10. Compliance Schedule.

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

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

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

3. Professional Services:

None.

4. Compliance Costs:

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

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

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

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

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impact:

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

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Types and Estimated Numbers:

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

Compliance Requirements:

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

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

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

Costs:

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

Minimizing Adverse Impact:

As noted in the “Costs” section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas.

In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loans servicers that service not more than 12 mortgage loans or more than \$5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

Rural Area Participation:

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

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities

which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. Part 418 of the Superintendent’s Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the application, exemption and approval procedures for registration as a mortgage loan servicer, as well as financial responsibility requirements for applicants, registrants and exempted persons.

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

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

Department of Health

EMERGENCY RULE MAKING

Lead Testing in School Drinking Water

I.D. No. HLT-20-17-00013-E

Filing No. 581

Filing Date: 2017-07-31

Effective Date: 2017-07-31

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 ($\mu\text{g/L}$) 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 September 28, 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 United 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 of Rule:

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. 584

Filing Date: 2017-08-01

Effective Date: 2017-08-01

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 con-

trolled 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 September 29, 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: regsqa@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 metha-

done 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.

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

Medical Conditions for which an Exemption from Restrictions on Tinted Glass may be Issued

I.D. No. HLT-33-17-00022-P

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

Proposed Action: Amendment of section 69-7.1 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 206(16)

Subject: Medical Conditions for which an Exemption from Restrictions on Tinted Glass may be Issued.

Purpose: Amend the existing list of medical conditions for a NYS registered driver or habitual passenger for an exemption to tinted glass.

Text of proposed rule: Pursuant to the authority vested in the Commissioner of Health by Section 206(16) of the Public Health Law, Section 69-7.1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 69-7.1 Medical conditions for which an exemption from restrictions on tinted glass may be issued.

The following medical conditions, when their existence is certified by a physician, *physician assistant or nurse practitioner*, justify granting an exemption from the limits on light transmittance found in Vehicle and Traffic Law, section 375(12-a)(b), *provided that personal protective measures such as sun protective clothing, sunscreen, or eye protective devices do not offer adequate protection:*

*Albinism;
chronic actinic dermatitis/actinic reticuloid;
dermatomyositis;
lupus erythematosus;
porphyria;
xeroderma [pigmentosa] pigmentosum;
severe drug [photo-sensitivity] photosensitivity, provided that the course of treatment causing the photosensitivity is expected to be of prolonged duration;
photophobia associated with an ophthalmic or neurological disorder;
and
severe photosensitivity in which the individual is required for medical reasons to be shielded from the direct rays of the sun.*

Text of proposed 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.

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.

Regulatory Impact Statement

Statutory Authority:

Subdivision 16 of section 206 of the Public Health Law (PHL) authorizes the Commissioner of Health (Commissioner) to specify the medical conditions based on health and safety which justify granting an exception to the requirements of subparagraphs one and two of paragraph (b) of subdivision twelve-a of section 375 of the Vehicle and Traffic Law, which prohibits vehicle windows composed of, covered by or treated with any material which has a light transmittance of less than 70%.

Legislative Objectives:

The legislative objective of PHL § 206, subdivision 16 is to require the Commissioner to promulgate regulations identifying those medical conditions that justify an exemption from the general prohibition of higher tinted vehicle glass. Individuals suffering from such medical conditions may be unable to drive for extended periods in a vehicle equipped with glass that meets generally applicable transparency requirements, thus limiting their mobility. Exemptions can be granted to registered drivers that suffer from one or more of these conditions as well as registered drivers with habitual passengers with one or more condition.

Needs and Benefits:

The current list of medical conditions, specified in 10 NYCRR 69-7.1, that justify an exemption from the general prohibition of higher tinted vehicle glass was promulgated in 1997 following the New York State Department of Health's (the Department's) consultation with experts, including

the New York State Society of Dermatology and the New York State Ophthalmological Society, who identified the three conditions included in the current regulation – porphyria, xeroderma pigmentosa, and severe drug photosensitivity.

Section 301(c)(1)(a) of the Vehicle and Traffic Law was amended, effective January 1, 2017, to require assessment of vehicle windows for compliance with window tinting limits during the vehicle's annual state inspection. In light of this broader enforcement, the Department conducted a review to determine whether other medical disorders and conditions warrant exemption from the limits on light transmittance, pursuant to Vehicle and Traffic Law § 375(12-a). Based on its review, the Department developed the proposed amendment that provides a revised and expanded list of medical conditions that qualify for an exemption.

The proposed amendment is intended to address the full range of medical disorders and conditions that cause severe photosensitivity in which the individual is required for medical reasons to be shielded from the direct rays of the sun, and for which personal protective measures, such as sun-protective clothing, sunscreen, and eye protective devices, do not provide adequate protection. The proposed amendment also expands the list of medical providers that may certify the existence of a qualifying condition, to include physician assistants and nurse practitioners in addition to physicians. This is consistent with other New York State regulations mandating medical certification of conditions, and should minimize the burden on those seeking medical certifications.

In developing this proposal, the Department reached out to medical associations including the New York State Ophthalmological Society, the New York State Society of Dermatology and Dermatologic Surgery, the Dermatologic Society of Greater New York, the Medical Society of the State of New York and the Brain Injury Association for feedback. The Department also reviewed other states' regulations concerning medical exemptions to the general prohibition of higher tinted vehicle glass.

Costs:

Costs to Regulated Parties:

The proposed amendments to the list of medical conditions that justify an exemption from the general prohibition of higher tinted vehicle glass will not impose any additional costs. The need to obtain a medical certification to support a request for such an exemption is already part of standard practice; the inclusion of additional qualifying medical conditions will not add to the cost burden of regulated parties.

Costs to Local and State Governments:

The NYS Department of Motor Vehicles (DMV) will incur some costs for review and issuance of additional waivers. Since the enactment of Section 301(c)(1)(a) of the Vehicle and Traffic Law, the volume of requests submitted to DMV for waivers has nearly quadrupled. The volume of additional waiver requests is anticipated to increase most significantly within the first year of adoption of the proposed amendment but should decline thereafter.

There are no notable costs that will be incurred by the Department. The Department will continue to engage medical professionals, members of the public, and other stakeholders, to ensure the list of disorders and conditions remains appropriate and accurate. Should the Department identify a medical condition that should be included on the list, the Department will expand the list to include such condition. The Department will also provide guidance as needed to physicians, physician assistants, and nurse practitioners to assist with implementation of this provision.

Local governments should not incur additional costs associated with this amendment.

Local Government Mandates:

This amendment imposes no program, service, duty or other responsibility upon any city, town, village, school district, fire district, or other special district.

Paperwork:

This amendment imposes slightly different reporting requirements, forms, or other paperwork upon regulators and regulated parties. Existing paperwork and forms will need to be amended to include the additional medical conditions for which an exemption to higher tinted vehicle glass may be issued. These forms will require update and posting on the DMV website as well as printing, if applicable, for any public distribution centers. Revised language will be provided to regulated parties to ensure uniformity of paperwork and other forms.

The Department will work with the DMV to revise the paperwork and forms affected by the proposed amendments and will conduct outreach to medical professionals.

Duplication:

There is no duplication of this initiative in existing State or federal laws.

Alternatives:

One alternative is to take no action, and thus continue to offer the exemption to individuals with a medical diagnosis of porphyria, xeroderma pigmentosa, or severe drug photo-sensitivity. Upon review of requests

from members of the public and state legislators, and following consultation with medical experts, the Department identified additional medical conditions that present severe photo-sensitivity that warrant exemption from the general prohibition of higher tinted vehicle glass.

A second alternative was for the Department to list all specific medical disorders that could result in severe photosensitivity or photophobia in the proposed amendment and exclude all of the broader conditions provided. However, there are numerous medical disorders that can result in severe photosensitivity or photophobia in a small percentage of overall cases. Providing exemptions to all individuals diagnosed with such disorder(s) regardless of whether the individual has severe photosensitivity or photophobia is inappropriate and inconsistent with the intent of the legislation and law. In addition, listing specific medical disorders without the broader conditions would likely result in a list that excludes disorders that in rare instances may result in severe photosensitivity or photophobia, requiring the Department to update the list regularly on a case by case basis. As a result of these challenges, the Department's proposed amendment includes a combination of specific medical disorders as well as some broader conditions allowing medical professionals to use professional judgement and discretion to determine whether a patient's condition cannot be addressed by personal protective measures, such as sunscreen or protective eyewear, and as such warrants an exemption.

Federal Standards:

Federal regulations governing windshield light transmittance do not include provisions for medical exemptions.

Compliance Schedule:

The amendment will become effective upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

Pursuant to section 202-b(3) of the State Administrative Procedure Act, a regulatory flexibility analysis statement is not required for this regulation because it does not impose any adverse economic impact on small businesses and does not impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Neither the regulation nor its enabling legislation impose requirements on small businesses and local governments. Under the Vehicle and Traffic Law, individuals seeking an exemption from restrictions on tinted glass found in that statute must obtain a Medical Certification. That exemption may be issued only if the Medical Certification, completed by a physician, physician assistant, or nurse practitioner, identifies a medical disorder or condition identified by the State Commissioner of Health as warranting the exemption.

The medical conditions set apart in this regulation were identified through review of requests from the public and legislators; review of medical literature; and based on feedback from medical associations contacted by the NYS Department of Health.

Rural Area Flexibility Analysis

The proposed rule will apply statewide. It is not expected to have a significant impact on local health units, physicians, physician assistants, nurse practitioners, hospitals and laboratories located in rural areas. A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

Job Impact Statement

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

State Liquor Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Repeal of Archaic Rules Regarding Local Boards, Removals of Package Stores, and Retail Price Affirmations

I.D. No. LQR-33-17-00009-P

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

Proposed Action: This is a consensus rule making to repeal sections 40.6, 65.7, Parts 45 and 66 of Title 9 NYCRR.

Statutory authority: Alcoholic Beverage Control Law, section 101-b(4)

Subject: Repeal of archaic rules regarding local boards, removals of package stores, and retail price affirmations.

Purpose: To repeal archaic rules regarding local boards, removals of package stores, and retail price affirmations.

Text of proposed rule: Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), is hereby amended to repeal parts 45 and 66, as well as subparts 40.6 and 65.7.

Text of proposed rule and any required statements and analyses may be obtained from: Paul Karamanol, Senior Attorney, State Liquor Authority, 80 South Swan Street, Suite 900, Albany, NY 12210, (518) 474-3114, email: paul.karamanol@sla.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.

Consensus Rule Making Determination

This statement is being submitted pursuant to subparagraph (i) of paragraph (b) of subdivision (1) of section 202 of the State Administrative Procedure Act and in support of the New York State Liquor Authority's ("Authority") Notice of Proposed Rulemaking seeking to repeal parts 40.6, 45, 65.7, and 66 of Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (N.Y.C.R.R.).

It is apparent from the nature and purpose of these proposed amendments that no person is likely to object to their adoption as written. Part 40.6 sets forth procedures for incorporating licensing recommendations from local SLA boards. Local boards were abolished in 1995. Part 45 (subparts 45.1 and 45.2) sets forth certain time limited restrictions on removal of package store licenses to different business locations within New York City in preparation for the 1964 World's Fair, and has not been in effect since July 31, 1964. Part 65.7 sets forth requirements for filing of minimum consumer resale price affirmations by retailers prior to making any sale to consumers. New York's minimum consumer resale pricing regime was ruled unconstitutional by the United States Supreme Court (see 324 Liquor Corp. v. Duffy, 479 U.S. 335, 107 S.Ct. 720 (1987)) and the statutory section granting rule making authority for this part (ABCL Sec. 101-bb and 101-bbb) was subsequently repealed via chapter 586 of the Laws of 1990. Part 66 sets forth prohibitions on the sale of any wine by a manufacturer or wholesaler to any retailer without the retailer having filed minimum consumer resale price affirmations for same in accordance with subpart 65.7 above. New York's minimum consumer resale pricing regime was ruled unconstitutional by the United States Supreme Court (see 324 Liquor Corp. v. Duffy, 479 U.S. 335, 107 S.Ct. 720 (1987)) and the statutory section granting rule making authority for this part (ABCL Sec. 101-bb and 101-bbb) was subsequently repealed via chapter 586 of the Laws of 1990. As a result, all of Part 66 (subparts 66.1, 66.2, 66.3, 66.4, 66.5, 66.6, 66.7, 66.8, 66.9, 66.10, 66.11) would be repealed as pertaining to an outdated practice which is no longer applicable.

Consistent with the definition of "consensus rule" as set forth in section 102(11) of the State Administrative Procedure Act, the Authority has determined that this proposal, which rescinds certain archaic local board recommendation procedures, package store removal restrictions dating from the 1964 World's Fair, and unconstitutional provisions setting forth New York's now repealed minimum consumer resale pricing affirmations regime is non-controversial in nature and, therefore, no person is likely to object to its adoption as written.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Liquor Authority's ("Authority") Notice of Proposed Rulemaking seeking to repeal parts 40.6, 45, 65.7, and 66 of Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (N.Y.C.R.R.).

It is apparent from the nature and purpose of these proposed amendments that they have no impact on jobs or employment opportunities in New York. These proposed amendments merely rescind certain archaic local board recommendation procedures, package store removal restrictions dating from the 1964 World's Fair, and unconstitutional provisions setting forth New York's now repealed minimum consumer resale pricing affirmations regime. As a result, the Authority has determined that these proposed amendments will have no substantial adverse impact on any private or public sector jobs or employment opportunities and a full Job Impact Statement is not warranted.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-33-17-00012-P

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

Proposed Action: The Commission is considering the notice of intent of BOP Greenpoint G LLC to submeter electricity at 37 Blue Slip, Brooklyn, 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 BOP Greenpoint G LLC to submeter electricity at 37 Blue Slip, Brooklyn, New York.

Substance of proposed rule: The Commission is considering the notice of intent of BOP Greenpoint G LLC filed on July 25, 2017, to submeter electricity at 37 Blue Slip, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The full text of the notice of intent 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-0453SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Obligation of Electric Utilities to Pay for the Extension of Electric Service to Residential Developments

I.D. No. PSC-33-17-00013-P

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

Proposed Action: The Commission is considering a petition by two developers of residential communities challenging the billing practices of Niagara Mohawk Power Corporation d/b/a National Grid for the extension of electric service to new developments.

Statutory authority: Public Service Law, sections 31(4), 51, 65(1) and 66(1)

Subject: Obligation of electric utilities to pay for the extension of electric service to residential developments.

Purpose: To consider if National Grid should change its practices and compensate the petitioners for past charges.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition by two developers of residential communities challenging the billing practices of Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) for the extension of electric service to new developments. The two developers, United Residential Group, LLC and Fortress Partners, LLC (Petitioners), state that National Grid improperly demanded nonrefundable deposits for work performed on

preexisting infrastructure located in the public right of way, which National Grid claimed was necessary to provide electric service to the Petitioners' development. Petitioners argue that under Commission regulations and National Grid's tariff, National Grid should have performed the work in the right of way at no cost and are requesting that the Commission order National Grid to discontinue the practice of requiring such deposits and return the payments made to Petitioners. 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-0413SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Request for Waiver of 16 NYCRR §§ 96.2(b) and 96.5(m)

I.D. No. PSC-33-17-00014-P

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

Proposed Action: The Commission is considering the request of 8th and C HDFC for waiver of 16 NYCRR §§ 96.2(b) and 96.5(m), requiring a demonstration that the building will participate in demand response programs or employ some advanced energy efficiency design.

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: Request for waiver of 16 NYCRR §§ 96.2(b) and 96.5(m).

Purpose: To consider the request of 8th and C HDFC for waiver of 16 NYCRR §§ 96.2(b) and 96.5(m).

Substance of proposed rule: The Commission is considering the request of 8th and C HDFC (Owner) filed July 24, 2017, for a waiver of 16 NYCRR § 96.2(b) and 16 NYCRR § 96.5(m). Specifically, the Owner seeks a waiver of the requirement that buildings converting from direct-meters to submeters must participate in building level demand response programs or employ on-site co-generation or some alternative, advanced energy efficiency design. The full text of the waiver request 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-0052SP2)

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

Electric Energy Storage Systems to Import from and Export to Con Edison's Distribution System

I.D. No. PSC-33-17-00015-P

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

Proposed Action: The Commission is considering tariff amendments filed by Consolidated Edison Company of New York, Inc. to modify its electric tariff, P.S.C. No. 10, to enable electric energy storage systems to import from and export to its distribution system.

Statutory authority: Public Service Law, sections 65(1), 66(1), (12)(a) and (14)

Subject: Electric energy storage systems to import from and export to Con Edison's distribution system.

Purpose: To consider revisions to P.S.C. No. 10 — Electricity related to electric energy storage systems.

Substance of proposed rule: The Public Service Commission (Commission) is considering a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison or the Company), on July 27 2017, to modify its electric tariff schedule, P.S.C. No. 10, regarding electric energy storage systems. Con Edison proposes revisions to its tariff to enable electric energy storage systems to import from and export to the Company's distribution system. The revisions specify the conditions under which such systems may export to the primary and secondary distribution systems under Service Classification No. 11 – Buy-Back Service, permit such systems to self-supply or export under Non-Wires Alternative projects under special circumstances, expand the availability of Customer with Designed Technologies exempt from standby service rates to electric energy storage systems beyond battery storage systems, and modify the Standby Reliability Credit criteria. The proposed amendments have an effective date of December 1, 2017. The full text of the proposal 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-0458SP1)

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

Gas Service to Power Generators

I.D. No. PSC-33-17-00016-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 report on Phase One of the Power Generation Collaborative filed by KeySpan Gas East Corporation d/b/a/ National Grid, as well as related proposed revisions to its schedule, P.S.C. No. 1 — Gas.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Gas service to power generators.

Purpose: To consider proposals in the report regarding service to power generators and related proposed tariff revisions.

Substance of proposed rule: The Public Service Commission (Commission) is considering proposals in a Report on Phase One of the Power Gen-

eration Collaborative (Report) filed by KeySpan Gas East Corporation d/b/a National Grid (KEDLI) on June 30, 2017, as well as related proposed revisions to its gas tariff schedule, P.S.C. No. 1, filed on July 24, 2017, to effectuate proposals in the Report. The Commission's Order in Case 16-G-0058, et al., issued December 16, 2016, adopted the terms of a joint proposal that provided for the establishment of the Power Generation Collaborative to consider power generation issues. KEDLI filed proposed modifications to include the offering of enhanced daily balancing services; to implement a no harm/no foul balancing mechanism, and to eliminate daily balancing service demand charges from the calculation of the annual monthly bill obligation for power generation customers. The proposed amendments have an effective date of November 1, 2017. The full text of the proposal 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.

(16-G-0058SP4)

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

Notice of Intent to Submeter Electricity

I.D. No. PSC-33-17-00017-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 Bridge Land Vestry LLC to submeter electricity at 70 Vestry 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 Bridge Land Vestry LLC to submeter electricity at 70 Vestry Street, New York, New York.

Substance of proposed rule: The Public Service Commission is considering the notice of intent of Bridge Land Vestry LLC, filed July 20, 2017, to submeter electricity at 70 Vestry Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The full text of the notice of intent 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-0433SP1)

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

Notice of Intent to Submeter Electricity

I.D. No. PSC-33-17-00018-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 Roseland Development Associates, LLC to submeter electricity at 242 West 53rd 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 to submeter electricity at 242 West 53rd Street, New York, New York.

Substance of proposed rule: The Commission is considering the notice of intent of Roseland Development Associates, LLC, filed on June 21, 2017, to submeter electricity at 242 West 53rd Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The full text of the notice of intent 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-0360SP1)

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

Petition to Submeter Electricity

I.D. No. PSC-33-17-00019-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 petition of 225 East 74th Apartments Corp. to submeter electricity at 225 East 74th 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: Petition to submeter electricity.

Purpose: To consider the petition of 225 East 74th Apartments Corp. to submeter electricity at 225 East 74th Street New York, New York.

Substance of proposed rule: The Commission is considering the petition of 225 East 74th Apartments Corp. filed on May 9, 2017, to submeter electricity at 225 East 74th Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. 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-0252SP1)

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

Gas Service to Power Generators

I.D. No. PSC-33-17-00020-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 report on Phase One of the Power Generation Collaborative filed by The Brooklyn Union Gas Company d/b/a National Grid NY, as well as related proposed revisions to its schedule, P.S.C. No. 12 — Gas.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Gas service to power generators.

Purpose: To consider proposals in the report regarding service to power generators and related proposed tariff revisions.

Substance of proposed rule: The Public Service Commission (Commission) is considering proposals in a Report on Phase One of the Power Generation Collaborative (Report) filed by The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) on June 30, 2017, as well as related proposed revisions to its gas tariff schedule, P.S.C. No. 12, filed on July 24, 2017, to effectuate proposals in the Report. The Commission's Order in Case 16-G-0059, et al., issued December 16, 2016, adopted the terms of a joint proposal that provided for the establishment of the Power Generation Collaborative to consider power generation issues. KEDNY filed proposed modifications to include the offering of enhanced daily balancing services; to implement a no harm/no foul balancing mechanism, and to eliminate daily balancing service demand charges from the calculation of the annual monthly bill obligation for power generation customers. The proposed amendments have an effective date of November 1, 2017. The full text of the proposal 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.

(16-G-0059SP3)

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

Notice of Intent to Submeter Electricity

I.D. No. PSC-33-17-00021-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 Site 1 DSA Owner LLC to submeter electricity at 242 Broome 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 1 DSA Owner LLC to submeter electricity at 242 Broome Street, New York, New York.

Substance of proposed rule: The Commission is considering the notice of intent of Site 1 DSA Owner LLC, filed on July 13, 2017, to submeter electricity at 242 Broome Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The full text of the notice of intent 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-0418SP1)

Urban Development Corporation

EMERGENCY RULE MAKING

Life Sciences Initiative Program

I.D. No. UDC-33-17-00010-E

Filing No. 582

Filing Date: 2017-07-31

Effective Date: 2017-07-31

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

Action taken: Addition of Part 4255 to Title 21 NYCRR.

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

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the statutory changes contained in Part TT of Chapter 58 of the Laws of 2017. The emergency rule implements the Capital Assistance component of the Life Sciences Initiative Program. The Capital Assistance component is designed to attract new life sciences technologies to New York State, promote critical public and private sector investment in emerging life sciences fields in New York State and create and expand life sciences related businesses and employment. The rule creates the administrative procedures of the program. It is critical to implement this program immediately because life science companies interested in locating or expanding their activities in New York state are approaching UDC in an effort to access funding for their proposed projects. By waiting for the standard rulemaking process to unfold, the State risks losing important economic development opportunities to states with competing life sciences incentive programs.

Subject: Life Sciences Initiative Program.

Purpose: Allow the Urban Development Corporation to implement the Capital Assistance component of the Life Sciences Initiatives program.

Text of emergency rule: Part 4255 Life Sciences Initiative Program

Section 4255.1 Purpose and General Description.

The Life Sciences Initiatives Program (the "Program") is established for the purpose of nurturing, growing and retaining new life sciences companies in New York State, attracting existing companies from outside

New York State, promoting critical public and private sector investment in emerging life sciences fields in the State, and creating and expanding life sciences related businesses and employment. It is intended to operate in areas identified by the New York State Urban Development Corporation ("the Corporation") as having significant potential for economic growth in New York, or in which the application of new life sciences technologies could significantly enhance the productivity and stability of New York businesses.

The first component of this Program, Capital Assistance, is a critical component to this Initiative as it endeavors to attract new life sciences technologies to the State, promote critical public and private sector investment in emerging life sciences fields in the State and create and expand life sciences related businesses and employment throughout the State. The Corporation anticipates the other elements of the program to include support for venture investments as well as the support of research labs and medical centers. The Corporation may allocate funds from the Program to cover the Corporation's administrative costs associated with the Program.

If the proposal satisfies the applicable requirements and Program funding is available, the proposal may be presented to the Corporation's Directors or President/Chief Executive Officer for consideration and approval in accordance with applicable law and regulations. The Directors normally meet once a month. If the project is approved for funding and if it involves the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of any property, the Corporation will schedule a public hearing in accordance with the Act and will take such further action as may be required by the Act and applicable law and regulations. After approval by the Corporation and a public hearing, if required, the project may then be reviewed by the State Public Authorities Control Board ("PACB"), which also generally meets once a month, in accordance with PACB requirements and policies. Following Directors' approval, and PACB approval, if required, documentation will be prepared by the Corporation. Notwithstanding the foregoing, no Program project shall be funded if sufficient Program monies are not received by the Corporation for such project.

Section 4255.2. Capital Assistance Program.

(a) Definitions. For the purposes of this section, the terms below shall have the following meaning:

(1) "Life Sciences" shall mean advanced and applied sciences that expand the understanding of human physiology and have the potential to lead to medical advances or therapeutic applications including, but not limited to, academic medical centers, agricultural biotechnology, biogenetics, bioinformatics, biomedical engineering, biopharmaceuticals, biotechnology, chemical synthesis, chemistry technology, diagnostics, genomics, image analysis, marine biology, marine technology, medical devices, nanotechnology, natural product pharmaceuticals, proteomics, regenerative medicine, RNA interference, stem cell research, clinical trials, including, but not limited to, neurological clinical trials and veterinary science.

(2) "Life Sciences Entity" shall mean a non-retail business corporation, partnership, firm, or any other non-retail business entity, not for profit organization or academic medical center, unincorporated association, or other entity engaged in life sciences research, development, manufacturing or commercialization.

(3) "Corporation" shall mean the New York State Urban Development Corporation doing business as Empire State Development.

(4) "Life Sciences Economic Development Benefits" means the creation, expansion, enhancement or acceleration of life sciences programs throughout the State that leads to:

- i. the commercialization of life sciences in New York State;*
- ii. the creation or retention of jobs in the life sciences industry employing full time permanent employees;*
- iii. the promotion of the life science ecosystem within a region of the State;*
- iv. new patents in life science;*
- v. additional commercial laboratory space; or*
- vi. additional venture capital money for Life Sciences Entities in New York State.*

(5) "Evaluation Criteria" shall mean the criteria set forth in paragraph d of this Section 4255.2 to be applied by the Corporation in evaluating applications for Capital Assistance Program funding.

(6) "Full Time Permanent Employee" shall mean (i) a full-time, permanent, private-sector employee on a Life Sciences Entity's payroll, who has worked at the Project Location for a minimum of 35 hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by the entity to other employees with comparable rank and duties; or (ii) two part-time, permanent, private-sector employees on the Life Sciences Entity's payroll, who have worked at the project location for a combined minimum of 35 hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by the entity to other employees with comparable rank and duties.

(b) Available Capital Assistance.

The Capital Assistance Program makes available financial assistance in the form of grants or loans (secured or unsecured), or a combination of such assistance, in the Corporation's discretion, for use by Life Sciences Entities for Eligible Uses as set forth in paragraph e of this Section 4255.2.

(c) Application Process.

(1) Applications from Life Sciences Entities will be accepted on a rolling basis throughout the year. Life Sciences Entities requesting Capital Assistance shall provide the following information about the project and the applicant, as applicable, in a form provided by, or otherwise acceptable to, the Corporation:

i. a description of the project or activity, including information indicating how the proposed project or activity will create, expand, enhance or accelerate the commercial life science industry through programs, research, job creation and retention within New York state and will result in the other Life Sciences Economic Development Benefits as defined in paragraph A (4) of this Section 4255.2;

ii. the number and amount of other funding, including federal, that the applicant has applied for, is eligible for or has received for the same initiative;

iii. the number of jobs in the life sciences industry employing Full Time Permanent Employees to be created or retained as a result of the proposed project or activity, the titles or classifications of such jobs and the average annual salaries associated with each;

iv. information about the applicant, including but not limited to, its history, ownership, size, primary products offered or services rendered, major customers, its market and marketing strategy;

v. information about the proposed project financing including, but not limited to, total project cost, total Program assistance requested, a budget breakdown of the sources and proposed uses of all funding, a description of the need for the requested Program funding and justification for the amount requested;

vi. a description of how the project will be implemented, including a project schedule, and the current status of the project;

vii. anticipated project results; and

viii. information with respect to the site of the project and the impact, if any, on the environment and any landmark or historic properties.

(2) Depending on the nature of the project or activity (such as acquisition of machinery and equipment; acquisition, construction or renovation of property, etc.) and the type of assistance requested, Life Science Entities may be required to provide other information about the project, including some or all of the following, as may be appropriate:

i. a complete set of financial statements for at least the three preceding fiscal years, operating pro formas going forward three years, and current financial statements for any proposed guarantors;

ii. a list of proposed collateral, with any available appraisals;

iii. resumes of principal officers and a list of owners, shareholders, or partners;

iv. a copy of any related real estate purchase option or contract for sale;

v. a legal description and survey of the property;

vi. a construction-to-occupancy schedule; and

vii. copies of any preliminary architectural drawings, scope of work, cost estimates and schematics.

(3) Applications may include a request for funding for single or multiple Life Sciences projects or activities.

(4) Upon receipt of the application, the Corporation shall review the application for eligibility, completeness, and conformance with the applicable requirements of these guidelines. Applications shall be processed in full compliance with the applicable provisions of section 16-aa of the Urban Development Corporation Act.

(d) Evaluation Criteria.

The Corporation shall evaluate applications for Capital Assistance in accordance with the following criteria as applicable:

(1) the financial condition of the entity undertaking the project, including its profitability or potential to generate profits; liquidity; ability to service debt and its leverage ratio;

(2) management experience, ability and relevant knowledge and the relevant entity's general ability to carry out the project;

(3) satisfactory credit references;

(4) the absence of state or local tax judgments; provided however, in the case of a tax certiorari proceeding a life sciences entity would not be considered in arrears until a final decision is made with respect to such proceeding;

(5) whether the applicant clearly demonstrates how the proposal will result in Life Sciences Economic Development Benefits and the likelihood that the project will result in Life Sciences Economic Development Benefits to the State;

(6) the availability of other sources of funding, including offers of assistance from locations outside of the State, including the federal govern-

ment, and the amount of private financing leveraged by Program funds; and

(7) The Corporation may consider the terms of any economic development assistance available as an incentive for the location of the proposed project outside the State.

(e) Eligible Uses.

Capital Assistance Program funds may be used for:

(1) new construction, renovation or leasehold improvements;

(2) the acquisition or leasing of land, buildings, machinery and equipment;

(3) working capital, including, without limitation, workforce development; and

(4) feasibility or planning studies.

(f) Ineligible Uses.

Institutions that are exclusively health care providers and/or requests for the purchase of equipment associated with standard healthcare delivery are not eligible for Capital Assistance Program funding.

(g) Reporting Requirements.

Applicants shall submit an annual report satisfactory to the Corporation on the operation and accomplishments of the project including, without limitation, a description of the activities undertaken, the economic impact of the project, the number and amount of other sources of funding for the project including federal funds, jobs employing Full Time Permanent Employees created and retained, and the average salary of such jobs.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire October 28, 2017.

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

Regulatory Impact Statement**STATUTORY AUTHORITY:**

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

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance since it creates the administrative framework for the Capital Assistance component of the Life Sciences Initiatives program. The Capital Assistance component of this program is designed to create and expand life sciences businesses and employment throughout New York State.

NEEDS AND BENEFITS:

The emergency rule is required in order to implement the program in a timely manner as New York State currently has eligible companies seeking program funding that could be lost to states with competing programs if such companies were required to wait for the standard rulemaking process to unfold.

COSTS:

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

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

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making. The program appropriation makes funding available for the Corporation's administrative costs.

LOCAL GOVERNMENT MANDATES:

None. Local governments are not eligible to participate in the Capital Assistance component of the Life Sciences Initiative Program.

PAPERWORK:

The emergency rule imposes no new record-keeping requirements on businesses choosing to participate in the Capital Assistance component of the Life Sciences Initiative program.

DUPLICATION:

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

ALTERNATIVES:

No alternatives were considered with regard to implementing this rulemaking.

FEDERAL STANDARDS:

There are no federal standards with regard to the Capital Assistance

component of the Life Sciences Initiative Program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule does not impose record-keeping requirements on businesses (small, medium and large) that choose to participate in the Capital Assistance component of the Life Sciences Initiative Program. Local governments are unaffected by this rule.

2. Compliance requirements

Each business choosing to participate in the Capital Assistance component of the Life Sciences Initiative Program must provide certain financial information that they keep to the Corporation during the application process. Local governments are unaffected by this rule.

3. Professional services

The information that businesses choosing to participate in the Capital Assistance component of the Life Sciences Initiative Program would be required to keep would be information such as businesses already must establish and maintain in order to operate, i.e. wage reporting, financial records, tax information, etc. No additional professional services would be needed by businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

Businesses (small, medium or large) that choose to participate in the Capital Assistance component of the Life Sciences Initiative Program must create new jobs in order to receive any tax incentives under the Program. If businesses choosing to participate in the Program do not fulfill their job creation, such businesses would not receive financial assistance. There are no other initial capital costs that would be incurred by businesses choosing to participate in the Program. Annual compliance costs are estimated to be negligible for businesses because the information they must provide to demonstrate their compliance with their commitments is information that is already established and maintained as part of their normal operations. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The New York State Urban Development Corporation (“UDC”) estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

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

7. Small business and local government participation

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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