

RULE MAKING ACTIVITIES

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

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

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

Department of Environmental Conservation

ERRATUM

A Notice of Proposed Rule Making, I.D. No. ENV-06-17-00001-P, pertaining to Amendments to 6 NYCRR Part 617 (which implement the State Environmental Quality Review Act [Article 8 of the ECL]), published in the February 6, 2017 issue of the *State Register* contained an incorrect web address in the substance of the proposed rule. Following is the correct web address to access the full text of the amendments to 6 NYCRR Part 617: <http://www.dec.ny.gov/permits/83389.html>

NOTICE OF ADOPTION

Science-Based State Sea-Level Rise Projections

I.D. No. ENV-45-15-00028-A

Filing No. 111

Filing Date: 2017-02-07

Effective Date: 2017-02-22

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

Action taken: Addition of Part 490 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 3-0319

Subject: Science-based State sea-level rise projections.

Purpose: To establish a common source of sea-level rise projections for consideration in relevant programs and decision-making.

Text or summary was published in the November 10, 2015 issue of the Register, I.D. No. ENV-45-15-00028-P.

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

Revised rule making(s) were previously published in the State Register on November 30, 2016.

Text of rule and any required statements and analyses may be obtained from: Mark Lowery, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-1030, (518) 402-8448, email: climatechange@dec.ny.gov

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file.

Initial Review of Rule

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

Assessment of Public Comment

General Support

Comment 1: Ten of the fourteen parties expressed general support for adoption of sea-level rise projections. (Dunn, Freudenberg, Gally, Gruskin, Noble, Ross, Tabak, Wentz and Zarrilli).

Response to Comment 1: Thank you for your comments.

Statewide Consistency

Comment 2: Adoption of projections consistent with New York City Panel on Climate Change projections will allow for coordinated decision making and avoid unnecessary confusion of competing projections. (Dunn, Zarilli)

Response to Comment 2: While this comment does not address the revisions to the proposed regulation, the Department agrees. See Response to Comment 2, Assessment of Public Comments Received from November 10, 2015 through December 28, 2015 (“Initial APC”).

Additional Requirements and Regulations Needed

Comment 3: We are astonished that this proposal comes with no government mandates; we ask that this proposal be actively used to cut costs to NY State taxpayers who are currently investing heavily in developments in areas at high risk of sea-level inundation. (Donnelly)

Response to Comment 3: This comment does not address the revisions to the proposed regulation, but see Response to Comment 3, Initial APC.

Comment 4: DEC should apply information in Part 490 to administration of the state Brownfield Cleanup Programs to prevent any further taxpayer investment in housing developments in coastal areas that will be inundated by high water table and eventually higher water levels. (Donnelly)

Response to Comment 4: This comment does not address the revisions to the proposed regulation, but see Response to Comment 3, Initial APC.

Basis of Projections

Comment 5: These projections represent the best currently available science. (Dunn, Freudenberg, Gruskin, Noble, Tabak, Wentz and Zarrilli)

Response to Comment 5: While this comment does not address the revisions to the proposed regulation, the Department agrees. See also Response to Comment 8, Initial APC.

Comment 6: DEC should extend projections through 2200. (Gally)

Response to Comment 6: This comment does not address the revisions to the proposed regulation. Regardless, the Department acknowledges the need to consider sea-level rise beyond 2100 in the design of long-lived infrastructure and land-use changes. As explained in the RIS and in Response to Comments 7, 8, and 15 in the Initial APC, the Department’s projections in Part 490 are based on the ClimAID Report. The ClimAID Report, however, does not include projections through 2200. Moreover, New York State-specific, peer-reviewed projections through 2200 are not otherwise available. Therefore, at this time, the Department has not identified any appropriate science-based projections upon which to base State projections beyond 2100 in Part 490.

Furthermore, Environmental Conservation Law (ECL) § 3-0319 requires the Department to update its sea-level rise projection regulations at least every five years. Such future updates may include consideration of extended projections beyond 2100 and through 2200.

Finally, the Department, in consultation with the Department of State, is developing implementation guidance that will describe how to consider sea-level rise in the programs specified by CRRA and will consider including guidance on use of long-range projections not included in Part 490.

Comment 7: DEC should include a storm-surge “reminder” with the sea level projections. (Gallay)

Response to Comment 7: This comment does not address the revisions to the proposed regulation, and CRRA does not include a provision for the Department to include a storm-surge “reminder” in the sea-level rise projections in Part 490. However, as required by CRRA, the Department, in consultation with the Department of State, is developing implementation guidance that will describe how to consider sea-level rise, storm surge and flooding in the programs specified by CRRA.

Comment 8: You should be concerned with the coming cold period and what it means for New York residents, not making plans for any global warming. (Lisenbee)

Response to Comment 8: This comment does not address the revisions to the proposed regulation. Moreover, no scientific information exists to suggest an imminent global cooling period.

Alternative Approach Suggested

Comment 9: The Department should adopt a “pledge and review” approach to establish sea-level rise policy. Sea-level rise planning values would be based on observed rates of rise at specified tide gauges during 5-year periods and would be adjusted according to the observed rates of sea-level change during the most recent 5-year period at the selected gauges. (Caiazza)

Response to Comment 9: This comment does not address the revisions to the proposed regulation, but see Response to Comment 9, Initial APC.

Rulemaking Procedure

Comment 10: The regulated community cannot meaningfully comment on the sea-level rise projection numbers in the absence of the remainder of the regulatory scheme. (Caiazza, Hamling)

Response to Comment 10: This comment does not address the revisions to the proposed regulation, but see Response to Comments 3, 10, 11, and 12, Initial APC.

Comment 11: This is an improper and illegal rulemaking as the proposed regulation has no context and cannot be understood by the regulated community. (Hamling)

Response to Comment 11: See response to Comments 3, 10, 11, and 12, Initial APC.

Comment 12: Precluding meaningful input while simultaneously putting into place a binding requirement affecting future regulatory enactments is illegal and is an improper attempt to insulate the regulation from challenge. (Hamling)

Response to Comment 12: This comment does not address the revisions to the proposed regulation, but see Response to Comments 3, 10, 11, and 12, Initial APC.

Comment 13: Although the Department’s webpage states that all of the regulatory documents are available on the Department’s website, the required regulatory flexibility analysis and the rural area flexibility analysis are not included. (Hamling)

Response to Comment 13: See Response to Comment 13, Initial APC. Moreover, while a Rural Area Flexibility Analysis (RAFA) and a Regulatory Flexibility Analysis for Small Businesses and Local Governments (RFASBLG) are not required for Part 490, statements in lieu of a RAFA and RFASBLG are available on the Department’s website.

Comment 14: Enactment of Part 490 as a stand-alone regulation results in improper segmentation. Proposed Part 490 enacts numerical standards that will, pursuant to the express terms of the CRRA, be utilized as part of permitting requirements for thirteen (13) separate regulatory programs administered by the Department. Promulgating these numerical standards without considering the entirety of the CRRA regulatory program, as a matter of law, fails to consider the entire “action” as required by SEQRA. (Hamling)

Response to Comment 14: See response to Comment 14, Initial APC.

Comment 15: Notice of Revised Rulemaking provides different contact information for submission of comments on or inquiries related to the proposed Part 490 than the notice placed in the Environmental Notice Bulletin on November 30, 2016.

Response to Comment 15: The Department responded to inquiries and accepted comments addressed to either of the two e-mail addresses provided.

Comment 16: This rulemaking is improper because, although it is labeled a “revised rulemaking,” it contains no “substantial revisions” as is required to issue a revised rulemaking. (Hamling)

Response to Comment 16: As described in the Regulatory Impact Statement (RIS) and in Response to Comments 6, 7, 9, and 15 of the Initial APC, the Department made substantial revisions to Part 490 in response to public comments received on the initial notice of proposed rulemaking.

First, the Department substantially revised the definition of “high pro-

jection” in subdivision 490.3(i). Pursuant to this revision, in addition to being “very unlikely” to occur, the “high projection” is defined as being “associated with high rates of melt of land-based ice.” This revision is intended to acknowledge the fact that, if the high projection is reached by a given time interval, it would be associated with high rates of melt of land-based ice. Second, the Department substantially revised the definition of the term “low projection” in subdivision 490.3(m). Pursuant to this revision, in addition to being “very likely” to be exceeded, the “low projection” is defined as being “consistent with historical rates of sea-level rise.” This revision accounts for the fact that future sea-level rise is not projected to be consistent with historical trends, but is instead projected to accelerate with increased warming.

As described in the RIS and in Response to Comments 3, 10, 11, 12, 13, and 14 of the Initial APC, Part 490 will serve as common source of sea-level rise projections for consideration within the programs specified by CRRA. The primary scope and purpose of this regulation is to establish science-based projections of sea-level rise, rather than to establish numerical standards or impose any requirements on any entity. Especially given this unique scope and purpose of Part 490, the two changes described above amount to substantial revisions because they materially alter the regulation’s meaning and effect. These changes directly affect the meaning and sole substance and topic of the regulation: the science-based projections of sea-level rise. By adding new language that changes and expands upon the scientific basis and significance of particular projection levels in the regulation, these changes to Part 490 materially alter both the meaning and effect of the overall regulation.

In addition, the Department made changes to Sections 490.1 and 490.2 to expand upon the purpose and applicability of Part 490. The change to the applicability provision in Section 490.2 included the addition of “funding” to the types of programs covered by the regulation. This change also amounts to a substantial revision, because a change that expands the applicability of the regulation materially alters the regulation’s effect.

Finally, the Department determined that, because of the public interest in and comments on the initial proposed rule, as well as the changes made to Part 490, the rule would benefit from additional opportunity for public review, as required by the State Administrative Procedure Act.

Definitions

Comment 17: We agree with the changes to the definitions of the high and low projections. (Caiazza)

Response to Comment 17: Thank you for your comment.

Comment 18: Definitions should more clearly articulate the likelihood of that rate of sea-level rise occurring. (Gruskin)

Response to Comment 18: See response to Comment 15, Initial APC.

Comment 19: DEC should clarify the potential to exceed the high projection. DEC should emphasize the lower probability, higher consequence outcomes and de-emphasize low and medium projections. (Gallay, Wentz)

Response to Comment 19: The Department’s intent with regard to Part 490 is to provide projections of sea-level rise that represent the best available scientific research, specific to New York State, in a policy-neutral manner. The Department, in consultation with the Department of State, is developing implementation guidance that will describe how to consider sea-level rise, in the programs specified by CRRA, including recommendations on the specific sea-level rise projections in Part 490 to be considered. As explained in Response to Comment 15, Initial APC, probabilities of specified amounts of sea-level rise cannot be assigned based on available peer-reviewed, New York State-specific information. Further, there is not general scientific agreement that ten feet of sea-level rise by 2100, as suggested by one commenter, is physically possible.

Adopt Part 490 Quickly

Comment 20: DEC is currently in violation of a clear statutory directive to adopt sea-level rise projections by January 1, 2016 to complete a mandatory duty. Further, the CRRA applies automatically to all permit applications received by DEC after January 1, 2017. Thus, the agency’s failure to adopt projections and guidance frustrates efforts by permit applicants to remain in compliance with the law. (Freudenberg, Gallay, Gruskin, Wentz)

Response to Comment 20: The Department acknowledges it did not adopt this regulation by January 1, 2016, but believes allowing sufficient time for assessment of all available scientific information and opportunity for robust public input has been critical to development of this regulation. Moreover, during this time, the Department, in consultation with the Department of State, has been developing guidance regarding the implementation of CRRA, including guidance that will describe how to consider sea-level rise, storm surge and flooding in the programs specified by CRRA. The adoption of Part 490, together with the CRRA implementation guidance, will facilitate permit applicants’ and state agencies’ consideration of sea-level rise, storm surges, and flooding in the programs specified by CRRA, in compliance with the law.

Waste of Funds

Comment 21: I do not support this proposal. It is a waste of NY State funds. (Hutchison)

Response to Comment 21: This comment does not address the revisions to the proposed regulation. In any case, the proposed regulation does not directly require the expenditure of any New York State funds. Moreover, pursuant to ECL § 3-0319, which was added by CRRA, the Legislature directed the Department to adopt a regulation establishing science-based State sea-level rise projections.

List of Commenters

	Name	Organization
1	Daniel Zarrilli	City of New York
2	Roger Caiazza	Environmental Energy Alliance of New York
3	Marlene Donnelly	Friends & Residents of Greater Gowanus
4	Jay Ross	NA
5	Julie Noble	Kingston Conservation Advisory Council
6	Len Lisenbee	NA
7	David Hamling	New York Construction Materials Association
8	Robert Freudenberg	Regional Plan Association
9	Paul Gally	Hudson Riverkeeper et al.*
10	Robert Hutchison	NA
11	Jessica Wentz	Sabin Center for Climate Change Law
12	Nava Tabak	Scenic Hudson
13	Maureen Dunn	Seatuck Environmental Association
14	Stuart Gruskin	The Nature Conservancy

*Submitted on behalf of Citizens Campaign for the Environment; Hudson Riverkeeper; Natural Resources Defense Council; New York/New Jersey Baykeeper; Peconic Baykeeper; Super Law Group, LLC

NOTICE OF ADOPTION

Chemical Bulk Storage (CBS)

I.D. No. ENV-19-16-00006-A

Filing No. 108

Filing Date: 2017-02-01

Effective Date: 30 days after filing

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

Action taken: Amendment of Part 597 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 17-0301, 17-0303, 17-0501, 17-1743, 27-1301, 37-0101 through 37-0107 and 40-0101 through 40-0121

Subject: Chemical Bulk Storage (CBS).

Purpose: To amend Part 597 of the CBS regulations.

Text or summary was published in the May 11, 2016 issue of the Register, I.D. No. ENV-19-16-00006-EP.

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

Text of rule and any required statements and analyses may be obtained from: Russ Brauksieck, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7020, (518) 402-9553, email: derweb@dec.ny.gov

Additional matter required by statute: Negative Declaration, Coastal Assessment Form, and Short Environmental Assessment Form have been completed for the proposed rule making.

Summary of Revised Regulatory Impact Statement

Full text of the Revised Regulatory Impact Statement is available on the New York State Department of Environmental Conservation’s website at <http://www.dec.ny.gov/regulations/104968.html>

1. STATUTORY AUTHORITY

The State law authority that empowers the New York State Department of Environmental Conservation (Department) to create a list of hazardous substances is found in Title One of Article 37 of the Environmental Conservation Law (ECL), sections 37-0101 through 37-0111, entitled “Substances Hazardous to the Environment” (Article 37). The Department is authorized to adopt regulations to implement ECL provisions (ECL sections 3-0301(2)(a) and (m)). Moreover, section 37-0105 explicitly

authorizes the Department to promulgate rules and regulations pertaining to the storage and prevention of releases of hazardous substances to the environment. Specifically, section 37-0103 directs the Department to create and maintain “a list of substances hazardous to the public health, safety or the environment,” including substances which, “because of their quantity, concentration, or physical, chemical or infectious characteristics cause physical injury or illness when improperly treated, stored, transported, disposed of, or otherwise managed” or “pose a present or potential hazard to the environment when improperly treated, stored, transported, disposed of, or otherwise managed.”

2. LEGISLATIVE OBJECTIVES

The legislative objectives of Article 37 include prevention of pollution, protection of natural resources such as groundwater, and requiring safe storage and handling of hazardous substances in order to protect public health and the environment.

3. NEEDS AND BENEFITS

The purpose of this rule is to:

- Add perfluorooctanoic acid (PFOA-acid, Chemical Abstracts Service (CAS) No. 335-67-1), ammonium perfluorooctanoate (PFOA-salt, CAS No. 3825-26-1), perfluorooctane sulfonic acid (PFOS-acid, CAS No. 1763-23-1), and perfluorooctane sulfonate (PFOS-salt, CAS No. 2795-39-3) (also collectively referred to within as PFOA and PFOS) to the list of hazardous substances at 6 NYCRR Section 597.3 (Section 597.3);
- Allow continued use of firefighting foam that may contain PFOA or PFOS to fight fires (but not for training or any other purposes) on or before April 25, 2017 even if such use may result in the release of a reportable quantity (RQ), which is otherwise prohibited; and
- Correct the list of hazardous substances by providing units for RQs. Need for and Benefit of Adding PFOA and PFOS to the List of Hazardous Substances

The Department concluded that these substances meet the definition of hazardous substances based upon the conclusion of New York State Department of Health (NYSDOH) that prolonged exposure to significantly elevated levels of these compounds can affect health and, consequently, pose a threat to public health in the State when improperly treated, stored, transported, disposed of, or otherwise managed. The Department also concluded that these substances meet the definition of hazardous substances based upon a Department ecotoxicologist’s identification of these compounds as potential hazards to the environment. Proper management of these compounds is needed to protect public health and the environment.

As documented in NYSDOH’s April 11, 2016 Health Hazard Review, appended to NYSDOH’s April 20, 2016 letter requesting the Department’s listing of PFOA and PFOS as hazardous substances and attached to the full Regulatory Impact Statement, the combined weight of evidence from human and experimental animal studies indicates that prolonged exposure to significantly elevated levels of these compounds can adversely affect health and, consequently, pose a threat to the public. In addition, as documented by Department ecotoxicologist Timothy J. Sinnott in two October 7, 2016 evaluations of Environmental Risk, attached to the full Regulatory Impact Statement, each of these four compounds (PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt) poses a potential hazard to the environment.

There are at least three benefits of listing PFOA and PFOS as hazardous substances in 6 NYCRR Part 597 (Part 597). First, if a mixture containing PFOA or PFOS in concentrations of 1% or more is stored in an above-ground tank of 185 gallons or more or any size underground tank, the tank would be subject to the requirements of the Chemical Bulk Storage (CBS) regulations (6 NYCRR Parts 596 – 599). Second, this rule prohibits releases of an RQ of PFOA or PFOS, subject to the limited exception of 6 NYCRR 597.4(a). Third, if PFOA or PFOS is released into the environment, creating contamination that represents a significant threat to public health or the environment, resulting in the need for site cleanup, the Department is authorized to pursue clean-up of the contamination under one of the Department’s remedial programs (6 NYCRR Part 375). All of these benefits enhance protection of public health and the environment.

Need for and Benefit of Allowing Limited Continued Use of PFOA and PFOS in Firefighting

The release prohibition includes an exception allowing entities storing firefighting foam to use the foam to fight fires, but not for training or other purposes, on or before April 25, 2017. This exception is necessary in order to ensure the availability of materials to control fires effectively to benefit public safety.

Need for and Benefit of Correction of the List of Hazardous Substances
After the 2015 rule making pertaining to 6 NYCRR Parts 596-599, it was determined that the units for RQs were inadvertently left out of the table causing some uncertainty regarding when a release would need to be reported. This rule adds units back to the column heading of the table so that it is clear that RQs are measured in pounds.

4. COSTS

Costs to Regulate Parties

Although the production of PFOA and PFOS has been largely phased out, PFOA- and PFOS-related substances continue to be stored and used in the State.

Costs Relating Primarily to Storage

The initial costs of complying with this rule are twofold: determining whether products containing PFOA or PFOS at concentrations of 1 percent or more are stored at each facility, and registering each facility with one or more regulated storage tanks that store these hazardous substances. Information regarding the presence and concentration of PFOA or PFOS in particular substances may be available free of charge through Safety Data Sheets prepared by chemical manufacturers, distributors, and importers or access to results of analysis undertaken by business consortiums or others. In the event laboratory analysis is necessary, the Department's experience is that the cost to analyze a sample to determine the presence and concentration of PFOA or PFOS is expected to be in the several hundred dollar range. Registration fees, set forth at 6 NYCRR Section 596.3(a), are determined by the number of regulated tanks and the capacity of each tank. The fees range from \$50 per tank for tanks with capacities less than 550 gallons to \$125 per tank for tanks with capacities greater than 1,100 gallons. Under 6 NYCRR Section 596.2(c), these registration costs recur every two years for as long as the entity continues to store hazardous substances listed in Section 597.3.

Non-registration storage-related costs of initial and continued compliance are expected to vary primarily based on quantity of hazardous substances stored at each facility. If a facility discontinues storage by April 25, 2018, when the storage and handling standards go into effect, there will be no regulatory costs associated with storage of these substances beyond the payment of the initial registration fee. If a facility continues to store these hazardous substances after April 25, 2018, costs associated with continued compliance will include costs of annual spill prevention reports and inspection of storage equipment every five years. The Department's experience with other CBS facilities suggests that these costs may range from hundreds to thousands of dollars. The Department is unable to provide a more complete estimate of costs because it is unknown how many facilities store these hazardous substances and costs will vary greatly by facility depending on quantity of hazardous substances stored and whether professional services are utilized.

Costs Relating Primarily to Release Prohibition

Although not a cost of complying with this rule, some entities will likely incur costs to determine if stored firefighting foam contains one or more of these hazardous substances and/or to replace the foam if the use of the foam could result in the release of an RQ of a hazardous substance. The cost to replace firefighting foam, based on information gathered from firefighting foam suppliers, ranges from \$16 to \$32 per gallon.

Avoiding releases is not expected to present significant compliance costs because normal operations should not include releases of reportable quantities of hazardous substances.

Costs Relating to Remediation

Remediation costs are not costs of complying with this rule. However, as noted above, where PFOA or PFOS has been released into the environment, regulated entities may be subject to costs associated with remediation of these hazardous substances under Part 375.

Costs to the Department, State, and Local Government

Aside from potential costs as regulated parties, government entities are not expected to incur any costs associated with implementation or continued administration of this rule.

Department Costs for Implementation and Continued Administration

This rule is not expected to create significant new costs associated with implementation or continued administration of the CBS program because this rule making adds only four substances to the list of hazardous substances regulated by the CBS program. The Department is unable to provide a more complete estimate of costs because the number of facilities that may enter and remain in the CBS program as a result of this rule is unknown.

Costs of responding to releases of PFOA and PFOS, including costs of determining whether remediation is required and costs of overseeing and/or conducting any required remediation of these hazardous substances, may be significant. The Department is unable to provide a more complete estimate of costs expected as a result of remediation of these hazardous substances.

5. LOCAL GOVERNMENT MANDATES

This is not a local government mandate.

6. PAPERWORK

Existing reporting and record keeping requirements include: registration forms, spill prevention reports, reporting of releases above an RQ or other standard, and record keeping for inspection of storage equipment.

7. DUPLICATION

The listing of PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt as hazardous substances in Part 597 causes no duplication, overlap, or conflict with Toxic Substances Control Act, the Safe Drinking Water Act or any other state or federal government programs or rules.

8. ALTERNATIVES

The Department declined to take no action because, as determined by NYSDOH and the Department, the combined weight of evidence from human and experimental animal studies indicates that prolonged exposure to significantly elevated levels of these compounds can affect health and, consequently, pose a threat to public health in the State when improperly treated, stored, transported, disposed of, or otherwise managed, and because each of these substances poses a potential hazard to the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

9. FEDERAL STANDARDS

Listing PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt as hazardous substances exceeds the current federal approach, as USEPA has not listed PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt as hazardous substances under the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq., or under the applicable regulation, 40 CFR Part 302 ("Designation, Reportable Quantities, and Notification").

10. COMPLIANCE SCHEDULE

Registration

The Department estimates that it should take approximately one hour of effort for an applicant to complete the registration application and approximately one week after submission of the registration application for the applicant to receive the registration certificate from the Department.

Handling and Storage Requirements

For those facilities that continue to store PFOA or PFOS after April 25, 2018, achieving compliance with the storage and handling requirements may take up to several months.

Release Prohibition

The Department estimates that it may take up to one month or longer to determine whether foam contains PFOA or PFOS, depending upon laboratory availability.

Summary of Revised Regulatory Flexibility Analysis

Full text of the Revised Regulatory Flexibility Analysis for Small Businesses & Local Governments is available on the New York State Department of Environmental Conservation's (Department) website at <http://www.dec.ny.gov/regulations/104968.html>

1. EFFECT OF RULE

This rule applies statewide in all 62 counties of New York State (State). In total, there are over 1,400 registered facilities in the Department's Chemical Bulk Storage (CBS) database. These facilities store a wide variety of hazardous substances.

The Department is presently unable to estimate how many small businesses and local governments will be newly subject to regulation as a result of this rule, or to identify the size of businesses that are or may be affected by the rule. The Department is aware of approximately 1,800 local government agencies (fire departments) that may maintain stocks of firefighting foam which could be subject to the registration requirement. Although the rule applies to all small businesses and local governments in the State, the number of facilities that would be required to register as a CBS facility or report a release of a hazardous substance as a result of this rule making is expected to be small.

2. COMPLIANCE REQUIREMENTS

This rule makes no changes to reporting, recordkeeping, or other compliance requirements for CBS facilities other than to place perfluorooctanoic acid (PFOA-acid, Chemical Abstracts Service (CAS) No. 335-67-1), ammonium perfluorooctanoate (PFOA-salt, CAS No. 3825-26-1), perfluorooctane sulfonic acid (PFOS-acid, CAS No. 1763-23-1), and perfluorooctane sulfonate (PFOS-salt, CAS No. 2795-39-3) (also collectively referred to within as PFOA and PFOS) on the list of hazardous substances in 6 NYCRR Section 597.3 (Section 597.3). This rule requires that CBS facilities storing PFOA or PFOS: register each facility with one or more regulated storage tanks that store listed hazardous substances, display the registration certificate issued by the Department, maintain appropriate storage tank systems as explained in 6 NYCRR Parts 598 and 599, complete annual spill prevention reports, and inspect storage equipment every five years.

6 NYCRR Part 597 prohibits releases of a reportable (RQ) of a hazardous substance. As a result of this rule, any release of an RQ of PFOA or PFOS is required to be reported to the Department's Spill Hotline.

3. PROFESSIONAL SERVICES

Small businesses and local governments that continue to store PFOA or PFOS after April 25, 2018, when the storage and handling standards go into effect for existing facilities, may need professional services to assist them in meeting the handling and storage requirements for hazardous substances. Professional services that may be needed for compliance with this rule could include professional engineers or qualified environmental professionals to complete annual spill prevention reports and inspection of storage equipment.

If a small business or local government becomes a remedial party

subject to requirements to implement a remedial program under 6 NYCRR Part 375 (Part 375), it would likely require consulting and contractual services to assist in carrying out the remedial program. This could include professional engineers or qualified environmental professionals as defined in Part 375 and contractual services needed to undertake site investigation field work, analyses of environmental samples, or other specialized services.

4. COMPLIANCE COSTS

Although the production of PFOA and PFOS has been largely phased out, these substances have not been completely eliminated from the marketplace. PFOA- and PFOS-related substances continue to be stored and used in the State.

Costs Relating Primarily to Storage

The initial costs of complying with this rule are twofold: determining whether products containing PFOA or PFOS at concentrations of 1 percent or more are stored at each facility, and registering each facility with one or more regulated storage tanks that store these hazardous substances. Information regarding the presence and concentration of PFOA or PFOS in particular substances may be available free of charge through Safety Data Sheets prepared by chemical manufacturers, distributors, and importers or access to results of analysis undertaken by business consortiums or others. In the event laboratory analysis is necessary, the Department's experience is that the cost to analyze a sample to determine the presence and concentration of PFOA or PFOS is expected to be in the several hundred dollar range. Registration fees, set forth at 6 NYCRR Section 596.3(a), are determined by the number of regulated tanks and the capacity of each tank. The fees range from \$50 per tank for tanks with capacities less than 550 gallons to \$125 per tank for tanks with capacities greater than 1,100 gallons. Under 6 NYCRR Section 596.2(c), these registration costs recur every two years for as long as the entity continues to store hazardous substances listed in Section 597.3.

Non-registration storage-related costs of initial and continued compliance are expected to vary primarily based on quantity of hazardous substances stored at each facility. If a facility discontinues storage by April 25, 2018, when the storage and handling standards go into effect, there will be no continued compliance costs associated with storage of these substances. If a facility continues to store these hazardous substances after April 25, 2018, costs of compliant tank systems could include costs for design, construction, and ongoing maintenance of these tank systems to ensure they are capable of meeting the technical requirements for release prevention, release detection, and containment of any spills that may occur. Additional costs associated with continued compliance will include costs of annual spill prevention reports and inspection of storage equipment every five years; these costs are expected to range from hundreds to thousands of dollars, but will vary greatly by facility depending on quantity of hazardous substances stored and whether professional services are utilized.

Costs Relating Primarily to Release Prohibition

Most of the PFOA- and PFOS-related substances that continue to be used or stored in the State are firefighting foams that were produced prior to 2016. Although not a cost of complying with this rule, some entities, including some small businesses or local government entities, will likely incur costs to determine if stored foam contains one or more of these hazardous substances and/or to replace the foam if the use of the foam could result in the release of an RQ of a hazardous substance. The cost of laboratory analysis of a sample to determine its concentration of PFOA or PFOS is expected to be in the several hundred dollar range. The cost to replace firefighting foam ranges from \$16 to \$32 per gallon.

Avoiding releases is not expected to present significant compliance costs because normal operations should not include releases of reportable quantities of hazardous substances.

Costs Relating to Remediation

Remediation costs are not costs of complying with this rule. However, where PFOA or PFOS has been released into the environment creating contamination that represents a significant threat to public health or the environment, regulated entities including small businesses and local governments may be subject to costs associated with remediation of these hazardous substances under Part 375.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Compliance with this rule is technologically feasible for all entities, including small businesses and local governments. The storage tank systems required by this rule are readily available and commonly used for storage of other hazardous substances. The technology required for compliance with this rule is no different than the technology already in use by entities storing other hazardous substances.

The economic feasibility for small businesses or local governments to comply with this rule depends upon whether, and to what extent, these entities are storing or using PFOA or PFOS. The Department expects that most small businesses and local governments are not storing or using significant quantities of these hazardous substances, with the possible excep-

tion of entities storing firefighting foam (such as fire departments). For entities that do not store or use significant quantities of PFOA or PFOS, it should be economically feasible to achieve and maintain compliance with this rule. For entities storing or using significant quantities of these hazardous substances, particularly entities storing large quantities of old firefighting foams, initial compliance with this rule may present some challenges in terms of economic feasibility if there is a need to replace stockpiled foam. Economic feasibility of compliance for entities using firefighting foams is improved due to the rule's provision allowing such entities until April 25, 2017 to use foams to fight fires, but not for other purposes, allowing time to replace foams, if necessary. Continued compliance with this rule should be economically feasible for all entities.

Although separate from compliance with this rule, regulated entities, including small businesses and local governments, may be subject to the requirements of Part 375 where releases of PFOA or PFOS have occurred. The economic and technological feasibility for such entities to remediate a PFOA- or PFOS-contaminated site will depend upon the circumstances.

6. MINIMIZING ADVERSE IMPACT

This action does not lend itself to the mitigating measures listed in State Administrative Procedure Act section 202-b(1), specific to small businesses and local governments. The timing of the applicability of an element of the rule allows entities with firefighting foams until April 25, 2017 to continue to use foams to fight fires, but not for other purposes, allowing time to determine whether the foams contain one of these newly listed hazardous substances and replace foams if necessary. Additionally, there are existing requirements established in the regulations that are intended to minimize adverse economic impacts on regulated entities, including small businesses and local governments. For example, the CBS regulations allow a two-year period after a new chemical is added to the list of hazardous substances before the handling and storage requirements of 6 NYCRR Part 598 apply to existing tanks storing one of these substances (subdivision 598.1(h)).

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The Department provided and continues to provide statewide outreach, including outreach to small businesses and local governments. The Department ensured public notice and input for this rule by issuing public notices of the proposed rule making in the State Register, newspapers, and the Department's Environmental Notice Bulletin. The Department held three public hearings in June 2016 during the public comment period. Information was made available to the public on the Department's website and, in print, immediately prior to each hearing. Interested parties, including small businesses and local governments, had the opportunity to submit written comments and participate in the public hearings. The Department maintains a listserv to which persons/entities, including small businesses and local governments, may subscribe so that they can receive information about this rule. The Department also continues to post relevant rule making documents on its website.

8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

If a facility is subject to the CBS facility registration requirement due to storage of PFOA or PFOS, and fails to register in accordance with 6 NYCRR Part 596, the facility owner/operator would be subject to penalties that have been in place and imposed by the Department for decades. Facilities with existing tank systems storing PFOA or PFOS have until April 25, 2018 to come into compliance with existing requirements. Violations of these compliance requirements have well-established and exercised enforcement procedures including imposition of monetary penalties when appropriate. These penalties are applicable to all types of entities, including small businesses and local governments.

As discussed above, this rule provides firefighting entities until April 25, 2017 to continue to use foams that contain a concentration of PFOA or PFOS that would result in the release of an RQ when used, to fight fires, but not for other purposes. There can be no other ameliorative actions or cure period regarding the prohibition against releasing an RQ of PFOA or PFOS to the environment. If there has been a release to the environment that requires remediation under a Department remedial program, the timing and content of the remediation is developed on a case-by-case basis.

9. INITIAL REVIEW OF THE RULE

The Department will conduct an initial review of the rule within three years of the promulgation of the final rule.

Revised Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS

This rule:

- Adds perfluorooctanoic acid (PFOA-acid, Chemical Abstracts Service (CAS) No. 335-67-1), ammonium perfluorooctanoate (PFOA-salt, CAS No. 3825-26-1), perfluorooctane sulfonic acid (PFOS-acid, CAS No. 1763-23-1), and perfluorooctane sulfonate (PFOS-salt, CAS No. 2795-39-3) (also collectively referred to within as PFOA and PFOS) to 6 NYCRR Section 597.3 (Section 597.3);

- Allows continued use of firefighting foam that may contain PFOA or PFOS to fight fires (but not for training or any other purposes) on or before April 25, 2017 even if such use may result in the release of a reportable quantity (RQ), which is otherwise prohibited; and

- Corrects the list of hazardous substances by providing units for RQs.

There are 44 counties in New York State (State) that have populations of less than 200,000 people and 71 towns in non-rural counties where the population density is less than 150 people per square mile. Since this rule applies statewide, it applies to all rural as well as non-rural areas of the State. There is no reason to believe that the actions under this rule will disproportionately impact rural areas.

2. REPORTING, RECORDKEEPING, OTHER COMPLIANCE REQUIREMENTS, AND NEED FOR PROFESSIONAL SERVICES

This rule makes no changes to reporting, recordkeeping, or other compliance requirements for Chemical Bulk Storage (CBS) facilities other than to place PFOA and PFOS on the list of hazardous substances in Section 597.3.

Facilities that store PFOA or PFOS in specified quantities and use certain tanks that make them subject to the registration requirements of 6 NYCRR Part 596 must include these tank systems on their facility registration with the New York State Department of Environmental Conservation (Department), and pay a registration fee associated with the CBS program. Facilities regulated under 6 NYCRR Parts 596-599 most commonly store hazardous substances in stationary aboveground tank systems with a capacity greater than 185 gallons.

A facility that stores PFOA or PFOS that is subject to the CBS registration requirements, as explained above, must submit its registration application to the Department and pay the commensurate fee at the time it becomes subject to regulation. If a facility is already storing PFOA or PFOS subject to the registration requirements, the registration requirements became effective on April 25, 2016. If a facility plans to start storing PFOA or PFOS, and is subject to the registration requirement, it must obtain a valid registration certificate prior to storing the material. Facilities with existing storage of PFOA or PFOS have until April 25, 2018 before they must comply with the applicable handling and storage requirements for these hazardous substances (6 NYCRR 598.1(h)). Since the Department anticipates that most facilities currently storing PFOA or PFOS will phase out storage of these substances prior to April 25, 2018, few facilities are expected to have substantive CBS compliance requirements regarding these chemicals beyond the registration requirement.

Existing 6 NYCRR Part 597 (Part 597) prohibits the release of an RQ of a hazardous substance to the environment unless a release is authorized or is continuous and stable and has been reported to the Department (6 NYCRR 597.4(a)). This rule allows entities with firefighting foam to use foam to fight fires on or before April 25, 2017 while they determine if the stored foam contains one or more of these hazardous substances and replace the foam if its use would result in the release of an RQ of a hazardous substance. Replacement foam may not contain a hazardous substance at a concentration that would result in the release of the RQ (one pound) or more when used as a firefighting foam. However, if foam is used to fight a fire and there is a release of a hazardous substance at or above the RQ stated in Part 597 for the substance, the release must be reported to the Department's spill hotline to allow the Department to determine if remediation of the release is appropriate (6 NYCRR 597.4(b)).

No new or additional professional services are anticipated to be needed by facilities located in rural areas to comply with this rule regarding the CBS requirements if they discontinue storing PFOA and PFOS before the handling and storage requirements for existing facilities take effect on April 25, 2018. If facilities continue to store these substances, facility owners/operators may need professional services to assist them in meeting the handling and storage requirements for hazardous substances. Professional services that may be needed for compliance with this rule could include professional engineers or qualified environmental professionals to complete annual spill prevention reports and inspection of storage equipment.

Beyond any costs associated with complying with this rule making, regulated entities may be subject to costs associated with remediation of PFOA and PFOS where these hazardous substances have been released into the environment, creating contamination that represents a significant threat to public health or the environment. For example, listing PFOA and PFOS as hazardous substances under Part 597 results in sites contaminated with PFOA or PFOS being subject to the inactive hazardous waste disposal sites regulatory requirements of 6 NYCRR Part 375 (Part 375). Requirements for investigation and cleanup of contaminated sites are established by Part 375 and by Department orders and agreements with regulated entities. Part 375 sets forth requirements for the investigation of site conditions to determine the nature and extent of environmental contamination, evaluate remedial alternatives, design and construct a remedy, complete the operation and maintenance activities required to achieve the remedial action objectives for the site, and maintain any institutional or engineering controls needed to maintain the effectiveness of the remedy.

If an owner/operator in a rural area becomes a remedial party subject to requirements to implement a remedial program under Part 375, it would likely require consulting and contractual services to assist in carrying out the remedial program. This could include professional engineers or qualified environmental professionals, as defined in Part 375, and contractual services needed to complete site investigation field work, analyses of environmental samples, or other specialized services.

3. COSTS

The Department does not anticipate a variation in compliance costs for different types of public and private entities in rural areas. Since PFOS-acid, PFOS-salt, and PFOS-related substances were restricted beginning in 2002 and, under the EPA's Stewardship Program addressing PFOA-related substances, eight companies voluntarily removed PFOA-acid, PFOA-salt, and PFOA-related substances from new products by December 2015, and because the substantive CBS tank system requirements for handling and storing PFOA or PFOS will not apply to existing facilities until April 25, 2018, the Department expects that the compliance costs for meeting the CBS requirements will be minimal. Hazardous substances regulated under Parts 596-599 are most commonly stored in stationary aboveground tank systems with a capacity greater than 185 gallons. Registration fees apply to each regulated tank and depend upon the capacity of each tank. The fees range from \$50 per tank for tanks with capacities less than 550 gallons to \$125 per tank for tanks with capacities greater than 1,100 gallons. If the regulated party were to discontinue storage of PFOA and PFOS by April 25, 2018, when the storage and handling standards go into effect, there would be no substantive costs associated with storage of these substances beyond payment of the registration fee. If the regulated party were to continue to store PFOA or PFOS, it would be subject to the costs of complying with the handling and storage requirements in 6 NYCRR Parts 598 and 599.

The prohibition of releases of an RQ of hazardous substances is not expected to present significant compliance costs for public or private entities in rural areas, with the possible exception of entities in possession of firefighting foams that may contain PFOA- or PFOS-related substances, such as Class B foams. The timing of the applicability of an element of the rule allows entities with firefighting foams until April 25, 2017 to continue to use foams to fight fires, but not for other purposes, allowing time to determine whether the foams contain one of these newly listed hazardous substances and replace foams if necessary. Replacement foam may not contain a hazardous substance at a concentration that would result in the release of the RQ (one pound) or more when used as a firefighting foam. The cost to replace the foam ranges from \$16 to \$32 per gallon, dependent on the amount and type of foam that is being replaced. Since PFOA and PFOS have not been classified as hazardous wastes under the federal Resource Conservation and Recovery Act, older foams may be disposed of as a solid waste after solidifying the firefighting foam (i.e., mix with concrete) as follows:

- Individuals and institutions may dispose of the solidified foam in a permitted landfill.
- Generators of industrial wastes (e.g., factories and major oil storage facilities) must have a specific Department authorization to dispose of solidified foam in a permitted landfill and must contact the Department's Division of Materials Management prior to disposal.

As noted above, where PFOA or PFOS has been released into the environment, creating contamination that represents a significant threat to public health or the environment, regulated entities may be subject to costs beyond the costs of complying with this rule making. The costs of complying with the requirements of Part 375 to implement a remedial program where PFOA or PFOS is a primary contaminant will vary widely as the costs depend upon many factors. These factors include the quantity released to the environment; media contaminated (e.g., soil, groundwater, surface water, sediment); horizontal and vertical extent of contamination for each medium; accessibility of the contamination; whether there are human or environmental receptors to be protected while a remedial program is being undertaken; difficulty of removing PFOA and PFOS from the contaminated environmental media; future anticipated use of the area of contamination; and other factors. Because of the wide variety of scenarios, it is not possible to meaningfully estimate the potential costs to persons managing PFOA or PFOS resulting from the listing of PFOA and PFOS as hazardous substances other than to note that remedial program costs for other hazardous substances can range from the thousands to millions of dollars on a case-by-case basis.

4. MINIMIZING ADVERSE IMPACT

This action does not lend itself to the mitigating measures listed in State Administrative Procedure Act section 202-bb(2), but there are requirements established in the regulations to minimize adverse impacts on all regulated entities, including those in rural areas. For example, the CBS regulations allow a two-year period after a new chemical is added to the list of hazardous substances before the handling and storage requirements of 6 NYCRR Part 598 apply to facilities with existing storage of the chemi-

cal (6 NYCRR 598.1(h)). Similarly, the rule allows entities with firefighting foams until April 25, 2017 to continue to use foams to fight fires, but not for other purposes, allowing time to determine whether the foams contain one of these hazardous substances and replace if necessary.

5. RURAL AREA PARTICIPATION

The Department provided and continues to provide statewide outreach, including outreach to public and private interests in rural areas. The Department ensured public notice and input for this rule by issuing public notices of the proposed rulemaking in the State Register, newspapers, and the Department's Environmental Notice Bulletin. The Department held three public hearings in June 2016 during the public comment period. Information was made available to the public on the Department's website and in print immediately prior to each hearing. Interested parties, including those from rural areas, had the opportunity to submit written comments and participate in the public hearings. The Department maintains a listserv to which persons/entities may subscribe so that they can receive information about this rule. The Department also continues to post relevant rule making documents on its website.

6. INITIAL REVIEW OF THE RULE

The Department will conduct an initial review of the rule within three years of the promulgation of the final rule.

Revised Job Impact Statement

1. NATURE OF IMPACT

This rule:

- Adds perfluorooctanoic acid (PFOA-acid, Chemical Abstracts Service (CAS) No. 335-67-1), ammonium perfluorooctanoate (PFOA-salt, CAS No. 3825-26-1), perfluorooctane sulfonic acid (PFOS-acid, CAS No. 1763-23-1), and perfluorooctane sulfonate (PFOS-salt, CAS No. 2795-39-3) (also collectively referred to within as PFOA and PFOS) to 6 NYCRR Section 597.3 (Section 597.3);
- Allows continued use of firefighting foam that may contain PFOA or PFOS to fight fires (but not for training or any other purposes) on or before April 25, 2017 even if such use may result in the release of a reportable quantity (RQ), which is otherwise prohibited; and
- Corrects the list of hazardous substances by providing units for RQs.

The substantive effects of listing PFOA and PFOS to the list of hazardous substances in Section 597.3 are to (1) make the handling and storage of PFOA and PFOS subject to the registration and other regulatory standards for Chemical Bulk Storage (CBS) facilities (6 NYCRR Parts 596-599); (2) prohibit the unauthorized release of an RQ of PFOA or PFOS to the environment (6 NYCRR 597.4(a)) and require that any releases at or above the RQ (one pound) be reported to the New York State Department of Environmental Conservation's (Department) spill hotline (6 NYCRR 597.4(b)); and (3) make the investigation and remediation of releases of PFOA and PFOS to the environment subject to the Department's remedial program requirements (6 NYCRR Part 375).

The substantive effect of allowing firefighting foam to be used to fight fires (but not for training or any other purposes) on or before April 25, 2017 is to provide entities the time necessary to determine if stored foam contains one or more of these hazardous substances and replace the foam if the use of the foam would result in the release of an RQ of a hazardous substance. Replacement foam may not contain a hazardous substance at a concentration that would result in the release of the RQ (one pound) or more when used as a firefighting foam.

Since PFOA and PFOS have not been classified as hazardous wastes under the federal Resource Conservation and Recovery Act, older foams may be disposed of as a solid waste after solidifying the firefighting foam (i.e., mix with concrete) as follows:

- Individuals and institutions may dispose of the solidified foam in a permitted landfill.
- Generators of industrial wastes (e.g., factories and major oil storage facilities) must have a specific Department authorization to dispose of solidified foam in a permitted landfill and must contact the Department's Division of Materials Management prior to disposal.

The effect of correcting the tables listing hazardous substances is to include the units for RQs to remove uncertainty regarding when a release must be reported.

Under the federal Toxic Substances Control Act, the United States Environmental Protection Agency (USEPA) completed a significant new use rule (SNUR) to limit the production and importation of PFOS-related substances in 2002. USEPA worked with industry to voluntarily phase out the use of PFOA-related substances by December 2015, and proposed a SNUR to limit the production and importation of PFOA-related substances in anticipation of the phase-out deadline (80 FR 2885; January 21, 2015).

Since production of PFOA-related and PFOS-related substances has reportedly already been phased out or restricted, and alternative substances have been developed to take the place of these hazardous substances, the Department does not expect this rule to have a significant impact on jobs and employment either in terms of lost jobs or the creation of new jobs. Employment opportunities should remain the same or may increase somewhat due to remediation activities.

2. CATEGORIES AND NUMBERS AFFECTED

Since PFOA and PFOS are reportedly no longer being produced in the United States, the CBS regulations would only apply to stored PFOA-containing or PFOS-containing materials produced before the phase-out or imported. Since replacement materials are already in place and the number of facilities storing PFOA or PFOS in quantities large enough to be subject to the CBS regulations is expected to be small, the number of jobs affected is expected to be small. Existing employees may be required to arrange for the disposal of older stocks of PFOA- and PFOS-containing materials, but this should not require the creation of new jobs or the loss of existing jobs.

As noted above, as a consequence of this rule, the Department is authorized to pursue clean-up of PFOA and PFOS contamination under Part 375. Where PFOA or PFOS has been released into the environment and represents a significant threat to public health or the environment resulting in the need for cleanup, a limited number of jobs may be created in order to complete the necessary investigation and remediation of sites contaminated with these hazardous substances. Job categories would include, for example, drilling contractors and other heavy equipment operators, field investigation technicians, hydrogeologists, engineers, analytical chemists and technicians, and others with training and experience related to site remediation.

The number of sites that may enter remedial programs because of the addition of PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt to Section 597.3 is unknown. As of December 30, 2016, the Department had listed four sites on the Registry of Inactive Hazardous Waste Disposal Sites (Registry) as a result of adding these substances to Section 597.3. The Department expects that other sites that used PFOA or PFOS in commercial or industrial processes may have PFOA or PFOS environmental contamination. Locations where PFOA or PFOS releases or disposal occurred that represent a significant threat to public health or the environment may become remedial sites subject to the requirements of Part 375. Nationally, research by the United States Department of Defense (DoD) found that approximately 600 DoD sites are categorized as fire/crash/training areas and thus have the potential for contamination with perfluoroalkyl compounds (including PFOA-related and PFOS-related substances) due to historical use of certain firefighting foams [Strategic Environmental Research and Development Program (SERDP), FY 2014 Statement of Need (SON), Environmental Restoration (ER) Program Area, "In Situ Remediation of Perfluoroalkyl Contaminated Groundwater," SON Number: ERSON-14-02, October 25, 2012]. It is possible that the Department will list additional sites on the Registry of Inactive Hazardous Waste Disposal Sites. The work needed to investigate and remediate these sites may be accomplished by existing staff or new jobs may be added depending upon the number and complexity of sites.

3. REGIONS OF ADVERSE IMPACT

There are no regions of the State where jobs or employment opportunities are expected to be adversely impacted by this rule.

4. MINIMIZING ADVERSE IMPACT

For the reasons described above, this rule is not expected to have a significant adverse impact on jobs and employment.

5. SELF-EMPLOYMENT OPPORTUNITIES

This rule is not expected to impact self-employment opportunities.

6. INITIAL REVIEW OF RULE

The Department will conduct an initial review of the rule within three years of the promulgation of the final rule.

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

Full text of the Assessment of Public Comment is available on the New York State Department of Environmental Conservation's website at <http://www.dec.ny.gov/regulations/104968.html>

Introduction

This summary reflects the responses of the New York State Department of Environmental Conservation (DEC) to the main comments submitted by the public regarding the adoption of amendments to 6 NYCRR Part 597. This rule making was proposed on April 25, 2016 and included a 58 day comment period that ended on July 8, 2016. Public hearings were held in June 2016 in Albany, Rochester and Garden City, for a total of three public hearings, with an information session prior to each hearing. DEC received 40 comments during the hearings and from written submissions. Oral comments were received at the Albany and Garden City hearings, but none were provided during the Rochester hearing.

In this document, 'PFOA/PFOS' collectively means: perfluorooctanoic acid (PFOA-acid, Chemical Abstracts Service (CAS) No. 335-67-1), ammonium perfluorooctanoate (PFOA-salt, CAS No. 3825-26-1), perfluorooctane sulfonic acid (PFOS-acid, CAS No. 1763-23-1), and perfluorooctane sulfonate (PFOS-salt, CAS No. 2795-39-3).

Main Themes

1. Support of the Listing of PFOA/PFOS as Hazardous Substances

Five commenters indicated their support of listing PFOA/PFOS in Part 597, noting that their assessment of the substances causes them to support the classification as hazardous substances. DEC agrees with these commenters.

2. Challenge of the Listing of PFOA/PFOS as Hazardous Substances

One commenter stated that the information available regarding PFOA/PFOS does not indicate that they meet the regulatory criteria for classification as hazardous substances. The commenter specifically noted the following in support of its position:

a. Human exposures to PFOA and PFOS in the United States are declining and are low compared to historical occupational exposure levels and doses used in laboratory animal studies.

b. Human epidemiologic studies do not demonstrate that occupational or environmental exposures to PFOA or PFOS cause human health effects.

c. Animal toxicology studies conducted at high doses do not prove harm to human health.

d. The New York State Department of Health (DOH) did not conclude that exposure to PFOA or PFOS causes physical injury or illness to humans.

DEC disagrees with the commenter.

With regard to the first point, the issue of the level of exposure is not relevant to whether the substances meet the regulatory criteria for including chemicals on the list of hazardous substances.

With regard to the second point, the toxicities of PFOA/PFOS have been reviewed and summarized by numerous authoritative bodies which have determined that there is an association between increased PFOA/PFOS exposure and an increased risk for human health effects.

With regard to the third point, laboratory animal studies support human hazard identification, particularly when health endpoints associated with human exposures in epidemiological studies are also observed in exposed animals.

With regard to the fourth point, DOH concluded that, overall, the combined weight of evidence from human and experimental animal studies indicates that prolonged exposure to significantly elevated levels of PFOA or PFOS can negatively affect human health. Moreover, the United States Environmental Protection Agency (EPA) released updated editions of its Health Effects Support Documents in support of the lifetime health advisories issued by EPA in May 2016 for PFOA and PFOS. All of the summaries identify important studies on the health effects associated with exposure to these chemicals, including studies on chronic, developmental, and reproductive effects observed in humans and animals, and provide additional support for listing PFOA/PFOS as hazardous substances.

A draft report issued by the National Toxicology Program (NTP) provides additional support, concluding that both PFOA and PFOS are presumed to be an immune hazard to humans. Presumed hazards are one step below known hazards and one step above suspected hazardous on the five-step scale NTP uses for hazard identification.

Based on the review of human epidemiology and animal toxicology data for PFOA and PFOS, and DOH's conclusions that significantly elevated exposure to PFOA or PFOS can affect human health, there is sufficient information to conclude that PFOA/PFOS meet the criteria to be listed as hazardous substances.

In addition, PFOA/PFOS pose a threat to the environment by impacting the survival rate of fish when exposed to these substances.

3. Concerns with Firefighting Foam

a. Commenters expressed concern with allowing continued use of foam that may contain PFOA/PFOS through April 25, 2017.

Balancing the risks posed by PFOA/PFOS against the risks posed by fires in support of our mission to protect public health and the environment, DEC is allowing the use of firefighting foams that may contain PFOA/PFOS to fight fires that occur on or before April 25, 2017. DEC recognizes that facilities that possess supplies of firefighting foam need time to determine if their existing supplies of foam contain one or more of these newly listed hazardous substances and to make arrangements to dispose of and replace firefighting foam that contains PFOA/PFOS where the concentration of PFOA/PFOS is such that the foam cannot be used without causing a reportable spill (one pound of PFOA or PFOS). Allowing facilities that possess firefighting foam to continue to use foams that may contain PFOA/PFOS on a limited basis to fight fires furthers protection of public health and safety. DEC is not allowing use of firefighting foam that would result in a reportable spill of PFOA/PFOS for other purposes such as training. If firefighting foam containing PFOA/PFOS is used to fight a fire and there is a release of one pound or more of a hazardous substance, the release needs to be reported to DEC's spill hotline to allow DEC to determine if remediation of the release is necessary. DEC believes this is an appropriate approach that allows for the protection of the public and the environment.

b. A commenter expressed concern about economic and financial

impacts on fire departments, fire districts, and municipalities which must determine whether firefighting foams contain PFOA/PFOS and dispose and replace PFOA/PFOS foams.

DEC understands the concern regarding costs to fire departments of determining whether foams contain PFOA/PFOS in concentrations such that the foams cannot be used without causing a reportable spill (one pound of PFOA or PFOS) and the costs of disposing and replacing foams. DEC has been working with the Fire Fighting Foam Coalition and the manufacturers of firefighting foam to make available information on foams that may contain PFOA/PFOS. In addition, DEC has posted a fact sheet on firefighting foam on DEC's website (see <http://www.dec.ny.gov/regulations/106078.html>). DEC believes the information in the fact sheet will minimize costs to fire departments in determining whether foams contain PFOA/PFOS and disposing of foams that contain PFOA/PFOS where the concentration of PFOA/PFOS is such that the foam cannot be used without causing a reportable spill (one pound of PFOA or PFOS). DEC is unable to provide assistance with costs associated with replacement of firefighting foam. In addition, the regulation seeks to minimize costs by allowing the use of such foam to fight fires until April 25, 2017, a year after the emergency rule went into effect.

c. The same commenter requested clarification regarding who will be responsible for the cost of the cleanup of any foam used for fire extinguishment.

DEC understands the concern regarding liability for cleanup costs associated with the use of firefighting foam. DEC will evaluate on a case-by-case basis the need for remediation of any release of PFOA/PFOS and who will be liable for cleanup costs.

d. Another commenter, a manufacturer of firefighting foam, noted that fluorine-free foams are now being developed.

4. Requests for additional action

While DEC understands the concerns raised by the commenters below, each of these additional actions goes beyond the scope of this rule making. Below is a summary of the requested actions and DEC's responses.

Commenters requested that DEC:

a. Regulate the disposal of PFOA/PFOS as hazardous wastes.

b. Regulate the discharge of PFOA/PFOS under the State Pollutant Discharge Elimination System (SPDES) and set effluent limits to non-detect.

c. Regulate the discharge of air emissions of PFOA/PFOS and set the reportable limit to zero pounds.

d. Require manufacturers of PFOA/PFOS to monitor the water, soil, and air within the communities where they do business, regardless of the size of the community.

These requested actions are beyond the scope of the current rulemaking, however, DEC may consider these issues in a future rule making or policy document.

Commenter requested that DEC:

e. Set a drinking water maximum contaminant level for PFOA/PFOS.

f. Require public water supplies be tested for the presence of PFOA/PFOS.

These requested actions are outside of the scope of DEC authority.

Commenter requested that DEC:

g. List all fluorinated chemicals in Part 597.

h. Review and list other emerging contaminants.

As DEC becomes aware of unregulated chemicals of concern, DEC will evaluate each such chemical to determine whether it is appropriate to classify it as a hazardous substance.

i. Commenter requested that DEC require remediation of other sites that are contaminated.

As DEC becomes aware of contaminated properties, DEC will evaluate appropriate response and remediation for these properties in the same manner that DEC addresses any other property that is contaminated by a hazardous substance. Companies that contaminate properties are among the parties responsible for costs associated with remediation.

j. Commenter requested that DEC collaborate with DOH, the New York State Department of State, and local governments to conduct communication campaigns to raise awareness about the effects of PFOA/PFOS.

DEC has provided and will continue to provide information to interested parties regarding DEC's efforts to address these issues.

k. Commenter requested that DEC communicate to the public the results of EPA's progress regarding its voluntary PFOA Stewardship Program.

EPA developed and administers the voluntary PFOA Stewardship Program. Information about this program is available on EPA's website at <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/and-polyfluoroalkyl-substances-pfass-under-tsca#tab-3>.

l. Commenter requested that DEC hold Legislative Hearings on New York State's water quality.

Legislative hearings were held to address New York State's water quality.

Department of Financial Services

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. DFS-08-17-00004-E

Filing No. 110

Filing Date: 2017-02-06

Effective Date: 2017-02-08

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: The full text of the rule can be found at: <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 obliga-

tions 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 May 6, 2017.

Text of rule and any required statements and analyses may be obtained from: Hadas A. Jacobi, Senior Attorney, NYS Department of Financial Services, 1 State Street, New York, NY 10004, (212) 480-5890, email: hadas.jacobi@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

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

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

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

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

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

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

or prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

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

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

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

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

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

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

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

2. Legislative Objectives.

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

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

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

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

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

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

3. Needs and Benefits.

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

foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

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

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

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

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

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

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

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

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

4. Costs.

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

with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

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

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC 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).

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 Impacts:

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 of Rural Areas. 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 Impacts. 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 though 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Minimum Standards for the Form and Rating of Family Leave Benefits Coverage, Including a Risk Adjustment Mechanism

I.D. No. DFS-08-17-00009-P

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

Proposed Action: Addition of Part 363 (Regulation 211) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 3201, 3217, 3221 and 4235; Workers' Compensation Law, sections 204(2)(a), 208(2) and 209(3)(b)

Subject: Minimum Standards for the Form and Rating of Family Leave Benefits Coverage, Including a Risk Adjustment Mechanism.

Purpose: Implement statutory mandates for family leave benefits coverage set forth in Insurance Law, section 4235(n); and Workers' Compensation Law, sections 204(2)(a), 208(2) and 209(3)(b)

Substance of proposed rule (Full text is posted at the following State website: www.dfs.ny.gov): As enacted by Part SS of Chapter 54 of the Laws of 2016, Insurance Law Section 4235(n)(1) requires the Superintendent of Financial Services ("Superintendent"), in consultation with the Chair of the Workers' Compensation Board ("Chair"), to determine by regulation whether family leave benefits coverage issued pursuant to Workers' Compensation Law Article 9 will be experience rated or community rated. Pursuant to Insurance Law Section 4235(n)(1), if the determination is made to community rate such coverage, then the regulation may include subjecting the family leave benefits coverage to a risk adjustment mechanism. Insurance Law Section 4235(n)(1) also authorizes the Superintendent to establish the rates and Workers' Compensation Law Section 209(3)(b) authorizes the Superintendent to set the maximum employee contribution applicable to family leave benefits coverage.

New Part 363 (Insurance Regulation 211) establishes that family leave benefits coverage must be community rated and may be subject to a risk adjustment mechanism. The regulation also establishes the procedures for establishing the community rate, a risk adjustment mechanism, the rules relating to the content and sale of policy forms for family leave benefits coverage, the maximum employee contribution, and data collection.

The regulation consists of ten sections addressing the regulation of family leave benefits coverage.

Section 363.1 is the preamble of the regulation, which sets forth the Superintendent's authority for the regulation and summarizes the content of the regulation.

Section 363.2 is the applicability section, which describes that the regulation is applicable to issuers providing family leave benefits coverage to employers pursuant to Workers' Compensation Law Section 211 for their employees. The requirements apply to issuers, which includes authorized insurers that write family leave benefits coverage and the State Insurance Fund. Certain reporting requirements and the maximum employee contribution provision also apply to self-funded employers.

Section 363.3 adds the definitions used within the regulation.

Section 363.4 sets forth that family leave benefits coverage will be community rated and provides the procedures for establishing rates. The Superintendent sets the community rate as a defined dollar amount per employee or as a percentage of an employee's weekly wage or the Superintendent may utilize one of the three classification methodologies specified in the section. Pursuant to the regulation, the community rate for premiums shall also be the maximum employee contribution.

In establishing the community rate for premiums, the Superintendent will apply commonly accepted actuarial principles to establish rates for family leave benefits coverage that are not excessive, inadequate or unfairly discriminatory. The Superintendent may use data collected from the previous calendar year from issuers and self-funded employers to establish the community rate.

Every issuer must file and maintain a current rate manual that includes specific information for a group accident and health insurance policy providing family leave benefits. The rate manual pages for family leave benefits must be separately maintained from all other types of insurance.

Section 363.5 contains the risk adjustment mechanism, which is not applicable to self-funded employers. Risk adjustment will be applied for calendar year 2018 and the Superintendent will determine, in consultation with the Chair, if risk adjustment will apply in each subsequent year. Every issuer is required to participate in the risk adjustment mechanism, although the Superintendent has the discretion to exempt the State Insurance Fund if the Superintendent finds that such exemption facilitates a fair and efficient market for family leave benefits coverage. The risk adjustment mechanism will be applied by the Superintendent to equalize the per member per month claim amounts among issuers by group size in order to protect issuers from disproportionate adverse risks in accordance with Insurance Law Section 4235(n)(3).

If the Superintendent determines that risk adjustment is appropriate, then the Superintendent may employ one of two alternative mechanisms. One mechanism equalizes the risk by pooling within each group size by loss ratio. The loss ratio is determined by the experience of each individual group size and issuers use their specific loss ratio to determine whether each issuer shall be required to make a payment into the applicable risk adjustment pool or collect a distribution from the applicable risk pool. The

group sizes are: small group with one to 49 employees, medium group with 50 to 499 employees, and large group with 500 or more employees. The second mechanism targets a defined loss ratio per group size and equalizes the risk to that target loss ratio. A specified initial target loss ratio is applied to each of the group sizes and each group size pays into or collects from the risk adjustment pool. The Superintendent may audit the issuer calculations each calendar year. If the Superintendent finds that adjustments are necessary to correct any errors, then the corrections will be made to the issuer's risk adjustment payment or distribution in the following calendar year.

Section 363.6 contains the rules relating to the content and sale of policy forms for family leave benefits coverage, including notification to the Superintendent when an issuer elects to discontinue the sale of disability and family leave benefits coverage.

Section 363.7 provides that the Superintendent will set the maximum employee contribution on or before June 1, 2017 and annually thereafter on or before September 1 in accordance with Workers' Compensation Law Section 209(3)(b).

Section 363.8 requires data submissions. Issuers and self-funded employers must electronically submit data to the Superintendent for each employer and each self-funded employer, details for each family leave benefits coverage claim, and any other data requested by the Superintendent. The employer data must be provided to the Superintendent quarterly. The claims data must be provided to the Superintendent monthly. Issuers must also report to the Superintendent on a quarterly basis the data necessary to administer and monitor the risk adjustment program including earned premiums and incurred claim data by group size. An officer of the issuer or self-funded employer must sign the data submissions, attesting to the best of his or her knowledge and belief that the information provided is accurate.

Section 363.9 allows for an exemption from the electronic filing and submission requirements for issuers and self-funded employers that provide a written request to the Superintendent.

Section 363.10 sets forth the authority for the Superintendent to ensure compliance with the regulation.

Text of proposed 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

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

1. Statutory authority: Financial Services Law ("FSL") Sections 202 and 302, Insurance Law ("IL") Sections 301, 3201, 3217, 3221, and 4235, and Workers' Compensation Law ("WCL") Sections 204(2)(a), 208(2) and 209(3)(b).

FSL Section 202 establishes the office of the Superintendent of Financial Services ("Superintendent"). FSL Section 302 and IL Section 301, in pertinent part, authorize the Superintendent to prescribe regulations interpreting the IL and to effectuate any power granted to the Superintendent in the IL, FSL, or any other law.

IL Section 3201 subjects policy forms to the Superintendent's approval.

IL Section 3217 authorizes the Superintendent to issue regulations to establish minimum standards, including standards for full and fair disclosure, for the form, content and sale of accident and health insurance policies and subscriber contracts of corporations organized under IL Article 32 and Article 43, and Public Health Law Article 44.

IL Section 3221 prohibits a policy of group or blanket accident and health insurance, except as provided in IL Section 3221(d), to be delivered or issued for delivery in New York unless it contains in substance the provisions set forth therein or provisions that are in the opinion of the Superintendent more favorable to the holders of such certificates or not less favorable to the holders of such certificates and more favorable to policyholders.

IL Section 4235 defines a group accident insurance policy, a group health insurance policy, and a group accident and health insurance policy.

IL Section 4235(n)(1) provides that on or before June 1, 2017, the Superintendent, by regulation, in consultation with the Chair of the Workers' Compensation Board ("Chair"), must determine whether the family leave benefits coverage of a group accident and health insurance policy providing disability and family leave benefits pursuant to WCL Article 9, including policies issued by the State Insurance Fund, will be experience rated or community rated, which may include subjecting the family leave benefits coverage of the policy to a risk adjustment mechanism.

IL Section 4235(n)(1) also requires the Superintendent to establish the rates for any community rated family leave benefits coverage and apply

commonly accepted actuarial principles to establish community rated family leave benefits coverage rates that are not excessive, inadequate or unfairly discriminatory. It further requires the Superintendent, on June 1, 2017 and September 1 of each year thereafter, to publish all community rated family leave benefits rates for the policy period beginning on the following January 1.

IL Section 4235(n)(2) states that if the policy is subjected to a risk adjustment mechanism, then the Superintendent must promulgate regulations necessary for the implementation of Section 4235(n) in consultation with the Chair, and that the Superintendent, or a third party vendor selected by the Superintendent, must administer the risk adjustment mechanism in consultation with the Chair.

IL Section 4235(n)(3) defines "risk adjustment mechanism" to mean the process used to equalize the per member per month claim amounts among issuers in order to protect issuers from disproportionate adverse risks.

WCL Section 204(2)(a) grants the Superintendent the discretion to delay the increases in the family leave benefits level provided in WCL Section 204(2)(a)(ii), (iii), and (iv) by one or more calendar years, and sets forth the criteria the Superintendent must consider when determining whether delay the increase in the family leave benefits for any year.

WCL Section 208(2) permits the Superintendent and Chair to require an issuer to file a report as to any claim whenever such information is deemed necessary, and states that the Chair and Superintendent may prescribe the format of such report and may promulgate regulations to effectuate WCL Article 9.

WCL Section 209(3)(b) states that on June 1, 2017 and annually thereafter on September 1, the Superintendent must set the maximum employee contribution, using sound actuarial principles and the reports provided in WCL Section 208. The maximum employee contribution applies to both insured employers and self-funded employers.

2. Legislative objectives: In April 2016, Governor Andrew M. Cuomo signed into law Chapter 54 of the Laws of 2016, Part SS of which amended the WCL and IL to create a program to pay employees a percentage of their income while taking leave from work to care for a family member under certain conditions. Specifically, Part SS added a new IL Section 4235(n) to authorize the Superintendent to determine, by regulation, whether family leave benefits coverage will be experience rated or community rated, which may include subjecting the family leave benefits to a risk adjustment mechanism. The subsection also authorizes the Superintendent to establish the rates and apply commonly accepted actuarial principles to establish a rate that is not excessive, inadequate or unfairly discriminatory, and to publish the community rate on June 1, 2017 for 2018 and on September 1 for each year thereafter. If the family leave benefits coverage is subjected to a risk adjustment mechanism, then the Superintendent must promulgate regulations necessary for implementation of the risk adjustment mechanism.

In addition, WCL Section 204(2)(a) grants the Superintendent the discretion to delay the increases in the family leave benefits level provided in WCL Section 204(2)(a)(ii), (iii), and (iv) by one or more calendar years, while WCL Section 208(2) permits the Superintendent and Chair to require an issuer to file a report as to any claim whenever such information is deemed necessary. WCL Section 209(3)(b) states that on June 1, 2017, and annually thereafter on September 1, the Superintendent must set the maximum employee contribution, using sound actuarial principles and the reports provided in WCL Section 208.

This regulation accords with the public policy objectives that the Legislature sought to advance in IL Section 4235(n) and WCL Sections 204(2)(a), 208(2), and 209(3)(b) by establishing that family leave benefits coverage under WCL Article 9 must be community rated and may be subject to a risk adjustment mechanism, sets the maximum employee contribution, and requires issuers and self-funded employers to submit information electronically on claims.

3. Needs and benefits: This regulation implements the statutory mandates set forth in IL Section 4235(n) and WCL Sections 204(2)(a), 208(2), and 209(3)(b). This regulation establishes that family leave benefits coverage under WCL Article 9 must be community rated and may be subject to a risk adjustment mechanism, sets the procedures for publishing the maximum employee contribution, and requires issuers and self-funded employers to submit information electronically on claims. Permitting the Superintendent to establish rates and granting the Superintendent the flexibility to apply a risk adjustment mechanism should ensure the success of family leave benefits coverage in this State and will allow employees the ability to take paid leave from work to fulfill important familial obligations without jeopardizing their job security.

4. Costs: This regulation may impose compliance costs on state or local governments that opt in to family leave benefits coverage for their employees. For state or local governments that obtain coverage from an issuer, such costs, if any, are a consequence of Part SS of Chapter 54 of the Laws of 2016 and are not attributable to this rule. State or local govern-

ments that choose to self-fund family leave benefits coverage will be required to administer the coverage and submit data electronically to the Superintendent. Any further costs on state or local governments should be minimal as the law provides that the employer is not obligated to pay for the actual family leave benefits coverage.

The Department of Financial Services ("Department") also may incur costs for the implementation and continuation of this regulation. The Department may need to implement a risk adjustment mechanism and will need to review and approve policy forms, establish rates, and collect data from issuers and self-funded employers. However, any additional costs incurred by the Department should be minimal and the Department expects to absorb the costs in its ordinary budget.

Issuers that choose to offer the family leave benefits coverage will incur costs to file their rate and policy forms and submit data electronically to the Superintendent. Such issuers also may incur costs if they are subject to a risk adjustment mechanism. However, the rate and form filing requirements are imposed by the Insurance Law and not by this regulation. And any additional costs should be minimal and should be offset by additional income earned from the new business.

Employers other than state and local governments that elect to self-fund the family leave benefits coverage may incur additional costs associated with administering the coverage and providing data electronically to the Superintendent. However, any additional costs incurred by an employer choosing to self-fund the family leave benefits coverage is voluntarily undertaken as an alternative to purchasing coverage through an issuer. The Department has no basis to estimate such additional costs but believes that the costs will be minimal.

Employees covered by the family leave benefits program will be required to pay for the coverage. It is the statute, rather than the regulation, that imposes this coverage requirement. The regulation cannot vary a requirement imposed by law.

5. Local government mandates: This regulation imposes a new mandate on any county, city, town, village, school district, fire district or other special district that elects to self-fund family leave coverage by requiring the local government to submit data electronically to the Superintendent. However, the decision to provide the coverage and to self-fund is optional with the local government.

6. Paperwork: This regulation requires issuers and self-funded employers to submit data electronically to the Superintendent, and requires issuers to submit payments to the Superintendent if required by the applicable risk adjustment program. Issuers will be required to file rates and policy forms with the Superintendent if they choose to provide the coverage; this filing requirement is not imposed by this regulation but by the Insurance Law.

7. Duplication: This regulation does not duplicate, overlap, or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: The Department considered allowing the family leave benefits coverage to be experience rated, but opted for community rating because community rating promotes a fair and efficient market for family leave benefits coverage. Community rating ensures that all employees are charged a rate based upon the same principles and are not subject to cost variations based upon age, gender, geographic location or any other demographic factor. Community rating ensures that all employees are similarly treated. The Department also opted to include a risk adjustment mechanism in the regulation. The risk adjustment mechanism was deemed necessary to prevent issuers from experiencing disproportionate losses due to high utilization of benefits and also to eliminate any disincentives that the statewide community rate would have on the issuance of policies to employers with high utilization of benefits.

9. Federal standards: The regulation does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The regulation will take effect 30 days after publication of the Notice of Adoption in the State Register. However, since the Superintendent is not required to publish the rates for the family leave benefits until June 1, 2017 for the 2018 policy year, issuers and self-funded employers will have more than 30 days to come into compliance with the regulation.

Regulatory Flexibility Analysis

1. Effect of rule: The new rule applies to insurers in New York State that opt to issue family leave benefits coverage as well as to the State Insurance Fund (collectively, "issuers"). The State Insurance Fund is neither a small business nor a local government; it is part of the state government. Although most insurers are not small businesses, industry has asserted previously that certain issuers, in particular co-op insurers and mutual insurers, subject to the rule are small businesses but has not provided the Department with specific insurers or the number of such entities. The rule also applies, in part, to self-funded employers of family leave benefits coverage although generally, small employers do not self-fund disability benefits under the Workers' Compensation Law. However, some local governments may opt to provide the coverage to their employees and to

self-fund the coverage. At present, there is no way to know how many, if any, local governments will do so.

2. Compliance requirements: Any issuer that is a small business affected by this rule will be subject to reporting, recordkeeping, or other compliance requirements as the issuer will be required to submit data to the Superintendent, and submit payments to the Superintendent if required by the applicable risk adjustment program. However, no issuer is required to offer the disability and family leave benefits coverage to which the rule applies. Issuers must also file policy forms and rates with the Superintendent of Financial Services (“Superintendent”); these requirements, however, already exist under the Insurance Law and are not imposed by this regulation.

No local government or small business will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the rule unless it chooses to self-fund family leave benefits coverage because the rule only applies to issuers and self-funded employers offering family leave benefits coverage. If a local government or small business chooses to self-fund the family leave benefits, then the local government or small business must report data electronically to the Superintendent.

3. Professional services: It is not anticipated that any issuer or self-funded employer that is a small business or local government that chooses to provide family leave benefits coverage will need to retain professional services, such as lawyers or auditors, to comply with this rule.

4. Compliance costs: This rule may impose compliance costs on local governments that elect to provide family leave benefits coverage for their employees. Local governments, however, are not required to make the benefit available to their employees.

For local governments or small businesses that obtain family leave benefits coverage from an issuer, any compliance costs are a consequence of Part SS of Chapter 54 of the Laws of 2016, and not this rule. Local governments or small businesses that choose to self-fund family leave benefits coverage will be required to administer the coverage and submit data electronically to the Superintendent. However, any additional costs incurred by a local government or small business choosing to self-fund the family leave benefits coverage is voluntarily undertaken as an alternative to purchasing coverage through an issuer. The Department has no current basis to estimate such additional costs but expects that any additional costs will be minimal.

Issuers that are small businesses that choose to offer the family leave benefits coverage will incur costs to file their rate and policy forms and submit data electronically to the Superintendent. However, the rate and form filing requirements are provided under the Insurance Law and not imposed by this rule. Issuers also may incur costs if they are subject to a risk adjustment mechanism. The Department has no current basis to estimate such additional costs but expects that any additional costs will be minimal.

5. Economic and technological feasibility: No issuer or self-funded employer that is a small business or local government affected by this rule should experience any economic or technological impact as a result of the rule. Although the rule requires issuers and self-funded employers that are small businesses and local governments that provide family leave benefits coverage to submit certain data electronically to the Superintendent, the rule allows an issuer and self-funded employer, including a local government, to request an exemption from submitting the data electronically based upon undue hardship, impracticability, or good cause.

6. Minimizing adverse impact: The rule uniformly affects all issuers and self-funded employers, including small businesses and local governments that are subject to the rule. It is necessary that all issuers be treated alike in order to implement community rating, which promotes a fair and efficient market for family leave benefits coverage. Community rating ensures that all employees are charged a rate based upon the same principles and are not subject to cost variations based upon age, gender, geographic location or any other demographic factor. Community rating ensures that all employees are similarly treated. The Department also opted to include a risk adjustment mechanism in the rule. The risk adjustment mechanism was deemed necessary to prevent issuers from experiencing disproportionate losses due to high utilization of benefits and also to eliminate any disincentives that the statewide community rate would have on the issuance of policies to employers with high utilization of benefits. If certain issuers were treated differently, it would defeat these goals.

It is further critical that self-funded employers that are small businesses and local governments report the same information to the Superintendent as all other self-funded employers and issuers in order to effectuate a fair and efficient market for family leave benefits. Without that information, the Superintendent would be unable to establish a uniform and fair rate across the state.

7. Small business and local government participation: The Department will comply with SAPA § 202-b(6) by publishing the proposed rule in the State Register and posting the proposed rule on the Department’s website.

Rural Area Flexibility Analysis

The Department of Financial Services finds that this regulation, which sets forth the minimum standards for the form and rating of family leave

benefits coverage, does not impose any additional burden on persons located in rural areas, and will not have an adverse impact on rural areas. Employees covered by the family leave benefits program (including employees located in rural areas) will be required to pay for the family leave benefits coverage. It is Part SS of Chapter 54 of the Laws of 2016, rather than the regulation, that requires that employers collect the employee contribution to fund the family leave benefits coverage. The regulation cannot vary a requirement imposed by law. This regulation applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State. This amendment will not impose any additional costs on rural areas.

Job Impact Statement

The Department of Financial Services finds that this rule should have little or no negative impact on jobs or employment opportunities in this state. The rule implements the requirements of Part SS of Chapter 54 and applies uniformly to employers across the state, authorized insurers that choose to write family leave benefits coverage, and the State Insurance Fund (“SIF”). The requirements that family leave benefits coverage be offered to employees and that the employees (and not the employers) pay for the coverage are imposed by Part SS of Chapter 54 and not by this rule.

The rule applies directly to insurers authorized to do business in New York State and allows insurers and SIF to issue family leave benefit coverage, a new type of accident & health insurance, in the state by implementing Part SS of Chapter 54 of the Laws of 2016. This should result in a positive impact for insurers entering the family leave benefits market that may hire additional employees to administer the coverage.

The rule also applies, in part, to employers that self-fund family leave benefits coverage, including local governments that choose to provide the coverage to their employees. The rule should have no negative impact on self-funded employers as an employer that chooses to self-fund the family leave benefits coverage undertakes the self-funding voluntarily as an alternative to purchasing coverage through an insurer or SIF.

Higher Education Services Corporation

EMERGENCY RULE MAKING

New York State Masters-in-Education Teacher Incentive Scholarship Program

I.D. No. ESC-08-17-00001-E

Filing No. 109

Filing Date: 2017-02-02

Effective Date: 2017-02-02

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

Action taken: Addition of section 2201.17 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 669-f

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s (“HESC”) Emergency Rule Making seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2016 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students attending a New York State public institution of higher education who pursue a graduate program of study in an education program leading to a career as a teacher in public elementary or secondary education. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of the program as provided in the regulation be effective immediately so that students can make informed choices and in order for HESC to process scholarship applications in a timely manner. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the

program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Masters-in-Education Teacher Incentive Scholarship Program.

Purpose: To implement the New York State Masters-in-Education Teacher Incentive Scholarship Program.

Text of emergency rule: New section 2201.17 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.17 New York State Masters-in-Education Teacher Incentive Scholarship Program.

(a) *Definitions.* As used in section 669-f of the Education Law and this section, the following terms shall have the following meanings:

(1) *Academic excellence* shall mean the attainment of a cumulative grade point average of 3.5 or higher upon completion of an undergraduate program of study from a college or university located within New York State.

(2) *Approved master's degree in education program* shall mean a program registered at a New York State public institution of higher education pursuant to Part 52 of the Regulations of the Commissioner of Education.

(3) *Award* shall mean a New York State Masters-in-Education Teacher Incentive Scholarship Program award pursuant to section 669-f of the New York State education law.

(4) *Classroom instruction* shall mean elementary and secondary education instruction, as required by the New York State Education Department, including enrichment and supplemental instruction that may be offered to a subset of students. Classroom instruction shall not include support services, such as counseling, speech therapy or occupational therapy services.

(5) *Elementary and secondary education* shall mean pre-kindergarten through grade 12 in a public school recognized by the board of regents or the university of the state of New York, including charter schools authorized pursuant to article fifty-six of the education law.

(6) *Full-time study* shall mean the number of credits required by the institution in each term of the approved master's degree in education program. A recipient may complete fewer credits than required for full-time study if he or she is in their last term and fewer credit hours are necessary to complete their degree program. In this case, the award amount shall be based on the tuition reported by the institution.

(7) *Initial certification* shall mean any certification issued pursuant to part 80 of this title which allows the recipient to teach in a classroom setting on a full-time basis.

(8) *Interruption in graduate study or employment* shall mean an allowable temporary period of leave for a definitive length of time due to circumstances approved by the corporation, including, but not limited to, maternity/paternity leave, death of a family member, or military duty.

(9) *Program* shall mean the New York State Masters-in-Education Teacher Incentive Scholarship Program codified in section 669-f of the education law.

(10) *Public institution of higher education* shall mean the state university of New York, as defined in subdivision 3 of section 352 of the education law, or the city university of New York as defined in subdivision 2 of section 6202 of the education law.

(11) *Rank* shall mean an applicant's position, relative to all other applicants, based on cumulative grade point average upon completion of an undergraduate program of study from a college or university located within New York State.

(12) *School year* shall mean the period commencing on the first day of July in each year and ending on the thirtieth day of June next following.

(13) *Successful completion of a term* shall mean that at the end of any academic term, the recipient: (i) met the eligibility requirements for the award pursuant to sections 661 and 669-f of the Education Law; (ii) maintained full-time status as defined in this section; and (iii) possessed a cumulative grade point average of 3.5 or higher as of the date of the certification by the institution.

(14) *Teach in a classroom setting on a full-time basis* shall mean continuous employment providing classroom instruction in a public elementary or secondary school, including charter schools, Boards of Co-operative Educational Services (BOCES) and public pre-kindergarten programs, located within New York State, for at least 10 continuous months, each school year, for a number of hours to be determined by the labor contract between the teacher and employer, or if none of the above apply, the chief administrator of the school.

(b) *Eligibility.* An applicant must satisfy the eligibility requirements contained in both sections 669-f and 661 of the education law, provided however that an applicant for this Program must meet the good academic standing requirements contained in section 669-f of the education law.

(c) *Priorities.* If there are more applicants than available funds, the following provisions shall apply:

(1) *First priority* shall be given to applicants who have received payment of an award pursuant to section 669-f of the education law for the academic year immediately preceding the academic year for which payment is sought and have successfully completed the academic term for which payment is sought. First priority shall include applicants who received payment of an award pursuant to section 669-f of the education law, were subsequently granted an interruption in graduate study by the corporation for the academic year immediately preceding the academic year for which payment is sought and have successfully completed the academic term for which payment is sought. If there are more applicants than available funds, recipients shall be chosen by lottery.

(2) *Second priority* shall be given to up to five hundred new applicants, within the remaining funds available for the Program, if any. If there are more applicants than available funds, recipients shall be chosen by rank, starting at the applicant with the highest cumulative grade point average beginning in the 2016-17 academic year. In the event of a tie, distribution of any remaining funds shall be done by lottery.

(d) *Administration.*

(1) Applicants for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.

(2) Recipients of an award shall:

(i) execute a service contract prescribed by the corporation;

(ii) request payment at such times, on forms and in a manner specified by the corporation;

(iii) receive such awards for not more than four academic terms, or its equivalent, of full-time graduate study leading to certification as a public elementary or secondary classroom teacher, including charter schools, excluding any allowable interruption of study;

(iv) facilitate the submission of information from their employer attesting to the recipient's job title, the full-time work status of the recipient, and any other information necessary for the corporation to determine compliance with the program's employment requirements on forms and in a manner prescribed by the corporation; and

(v) provide any other information necessary for the corporation to determine compliance with the program's requirements.

(e) *Amounts.*

(1) The amount of the award shall be determined in accordance with section 669-f of the education law.

(2) Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time upon successful completion of the term subject to the verification and certification by the institution of the recipient's grade point average and other eligibility requirements.

(3) Awards shall be reduced by the value of other educational grants and scholarships limited to tuition, as authorized by section 669-f of the education law.

(f) *Failure to comply.*

(1) All award monies received shall be converted to a 10-year student loan plus interest for recipients who fail to meet the statutory, regulatory, contractual, administrative or other requirement of this program.

(2) The interest rate for the life of the loan shall be fixed and equal to that published annually by the U.S. Department of Education for undergraduate unsubsidized Stafford loans at the time the recipient signed the service contract with the corporation.

(3) Interest shall begin to accrue on the day each award payment is disbursed to the institution.

(4) Interest shall be capitalized on the day the award recipient violates any term of the service contract or the date the corporation deems the recipient was no longer able or willing to perform the terms of the service contract. Interest on this capitalized amount shall continue to accrue and be calculated using simple interest until the amount is paid in full.

(5) Where a recipient has demonstrated extreme hardship as a result of a disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, prorate the amount owed commensurate with service completed, discharge the amount owed, or take such other appropriate action.

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 May 2, 2017.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's

("HESC") statutory authority to promulgate regulations and administer the New York State Masters-in-Education Teacher Incentive Scholarship Program ("Program") is codified within Article 14 of the Education Law. In particular, Subpart A of Chapter 56 of the Laws of 2015 created the Program by adding a new section 669-f to the Education Law. Subdivision 6 of section 669-f of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objectives and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 669-f to create the "New York State Masters-in-Education Teacher Incentive Scholarship Program" (Program). The objective of this Program is to incent New York's highest-achieving undergraduate students to pursue teaching as a profession.

Needs and benefits:

According to a recent Wall Street Journal article, many experts call teacher quality the most important school-based factor affecting learning. Studies underscore the impact of highly effective teachers and the need to put them in classrooms with struggling students to help them catch up. To improve teacher quality, New York State has significantly raised the bar by modifying the three required exams and adding the Educative Teacher Performance Assessment, known as edTPA, as part of the licensing requirement for all teachers. To supplement this effort, this Program aims to incentivize top undergraduate students to pursue their master's degree in New York State and teach in public elementary and secondary schools (including charter schools) across the State.

The Program provides for annual tuition awards to students enrolled full-time, at a New York State public institution of higher education, in a master's degree in education program leading to a career as a classroom teacher in elementary or secondary education. Eligible recipients may receive annual awards for not more than two academic years of full-time graduate study. The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending a graduate program full-time at the State University of New York (SUNY). Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic term.

Students receiving a New York State Masters-in-Education Teacher Incentive Scholarship Program award must sign a service agreement and agree to teach in the classroom at a New York State public elementary or secondary school, which includes charter schools, for five years following completion of their master's degree. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

Costs:

a. There are no application fees, processing fees, or other costs to the applicants of this Program.

b. It is anticipated that there will be no costs to the agency for the implementation of, or continuing compliance with this rule.

c. The maximum cost of the Program to the State is \$1.5 million in the first year, based upon budget estimates.

d. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

e. The source of the cost data in (c) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application,

together with supporting documentation, for eligibility. Each year recipients will file an electronic request for payment together with supporting documentation for up to two years of award payments. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to the State Education Department, the State University of New York and the City University of New York with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 679-g of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal undergraduate unsubsidized Stafford loan rate in the event that the award is converted to a student loan.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

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 Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

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

Student Eligibility Criteria for the Tuition Assistance Program (TAP)

I.D. No. ESC-08-17-00003-P

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

Proposed Action: Amendment of section 2407.1 of Title 8 NYCRR.

Statutory authority: Education Law, sections 655(4) and 661(4)(b-1)

Subject: Student eligibility criteria for the Tuition Assistance Program (TAP).

Purpose: To clarify the graduation requirement for the Tuition Assistance Program (TAP).

Text of proposed rule: Paragraph (7) of subdivision (a) of section 2407.1 is amended to read as follows:

(7) have a certificate or diploma of graduation from a school providing secondary education within the United States satisfactory to the president, or the equivalent of such certificate or diploma as recognized by the secretary, or have received a passing score on a federally approved ability-to-benefit test pursuant to section 2408.18 of this Chapter. *To be satisfactory to the President, a certificate of graduation or high school diploma must be from a secondary school that is recognized, authorized or approved: (i) by the state educational entity having jurisdiction, or (ii) by an established national association of nonpublic schools, as approved by the corporation, which has a school academic review process as part of its recognition protocol for member schools. Such recognition, authorization or approval must have been in effect or deemed to have been in effect as of the date the certificate of graduation or high school diploma was issued. A student shall not be held liable for any disallowed funds awarded on his or her behalf as a result of the educational institution's improper certification of the student's eligibility; and*

Text of proposed rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1315, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority:

Education Law § 652(2) includes in the New York State Higher Education Services Corporation's (HESC or the Corporation) statutory purposes the improvement of the post-secondary educational opportunities of eligible students through the centralized administration and coordination of New York State's financial aid programs and those of other levels of government.

Education Law § 653(9) further empowers the Corporation's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the Corporation, including the promulgation of regulations.

Education Law § 655(4) authorizes the President of the Corporation (President) to propose regulations, subject to approval by the Board of Trustees, governing the application for, and the granting and administration of, student aid and loan programs, the repayment of loans or the guarantee of loans made by the Corporation, and administrative functions in support of New York State student aid programs. Under Education Law § 655(9), the Corporation's President is also authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out the President's powers, duties and functions. Finally, Education Law § 655(12) provides the President with the authority to perform such other acts as may be necessary or appropriate to effectively carry out the general objects and purposes of the Corporation.

Pursuant to Part II of Article 14 of the Education Law, HESC is authorized to administer the provisions of the Tuition Assistance Program (TAP), in which the Corporation grants awards to qualified students attending eligible institutions. Part Z of Chapter 58 of the Laws of 2011 amended section 661(4) of the Education Law to authorize the Corporation to make TAP awards available to full-time resident undergraduate students previously ineligible for such awards and to adopt rules and regulations accordingly.

2. Legislative objectives:

The Legislature enacted the Tuition Assistance Program to help students pay for college. The above-referenced statutory amendment increases participation in TAP thereby increasing access to a college education. This rule will ensure effective and consistent administration of this program.

3. Needs and benefits:

It is in the public interest to enable all New York students who wish to receive higher education to be able to do so. New York has a Tuition Assistance Program (TAP) that helps eligible New York residents pay tuition at approved schools in New York State. Each year, TAP helps many thousands of New Yorkers who meet the income qualifications to be able to afford to attend the educational institution of their choice. However, prior to the above-referenced amendment some income-eligible students attending bona fide, non-profit institutions of higher education were ineligible to receive TAP solely because their program of study was ineligible for registration under the State Education Department's (SED) regulations. Regulations were adopted on January 4, 2012 to correct this inequity by enabling those students to apply for TAP.

The proposed amendment provides the necessary specificity currently lacking in the existing regulation. The current regulation requires students to have a certificate or diploma of graduation from a secondary school, which is satisfactory to the president. The proposed amendment establishes the requirements for this standard. Providing clear standards, as contained in the proposed amendment, will ensure the effective and consistent administration of the program.

4. Costs:

There is no anticipated cost to the regulated parties, other state agencies, or local governments for the implementation of, or continuing compliance with, this rule.

5. Local government mandates:

No program, service, duty, or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork:

This rule will not result in any additional paperwork on students, colleges, or the Corporation.

7. Duplication:

This rule incorporates, and will supersede, a guidance document HESC issued to colleges. Otherwise, no relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

8. Alternatives:

The 'no action' alternative was not a viable option for consideration since it is consistent with current guidance, which resulted from HESC's outreach efforts to the regulated parties.

9. Federal standards:

This proposal does not exceed any minimum standards of the federal government.

10. Compliance schedule:

The Corporation, students, colleges and any other parties impacted by this proposal will be able to comply with this rule immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Notice of Proposed Rule Making, seeking to amend section 2407.1 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending post-secondary institutions located within New York State. This rule clarifies the high school graduation requirement for students applying for a Tuition Assistance Program (TAP) award pursuant to section 661(4)(b-1) of the Education Law. As such, HESC finds that this rule will not impose any reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Notice of Proposed Rule Making, seeking to amend section 2407.1 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending post-secondary institutions located within New York State. This rule clarifies the high school graduation requirement for students applying for a Tuition Assistance Program (TAP) award pursuant to section 661(4)(b-1) of the Education Law. As such,

HESC finds that this rule will not impose any reporting, record keeping or other compliance requirements on small businesses or local governments.

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 Higher Education Services Corporation's ("HESC") Notice of Proposed Rule Making, seeking to amend section 2407.1 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending post-secondary institutions located within New York State, which enables the State to retain an educated workforce for existing and incoming employers. This rule clarifies the high school graduation requirement for students applying for a Tuition Assistance Program (TAP) award pursuant to section 661(4)(b-1) of the Education Law. Since HESC has determined that this rule will not have an adverse impact on any private or public sector job or employment opportunities, a full Job Impact Statement is unnecessary.

Department of Labor

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Employees Occupational Safety and Health Standards

I.D. No. LAB-08-17-00005-P

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

Proposed Action: This is a consensus rule making to repeal section 800.3 and add a new section 800.3 to Title 12 NYCRR.

Statutory authority: Labor Law, section 27-a(4)(a)

Subject: Public Employees Occupational Safety and Health Standards.

Purpose: To incorporate by reference updates to OSHA standards into the State Public Employee Occupational Safety and Health Standards.

Text of proposed rule: Section 800.3 of 12 NYCRR is repealed and a new section 800.3 is added to read as follows:

§ 800.3 Adoption of standards

The Commissioner of Labor adopts, as the occupational safety and health standards for the protection of the safety and health of public employees, all of the standards in the below-listed parts of Title 29 of the Code of Federal Regulations:

Part 1910--General Industry Standards; June 1, 2016 edition, with the exception of Section 1910.1000--Air Contaminants, which is addressed by Section 800.5 of this Part.

Part 1915--Shipyard Employment Standards; June 1, 2016 edition

Part 1917--Marine Terminals Standards; June 1, 2016 edition

Part 1918--Longshoring Standards; June 1, 2016 edition

Part 1926--Construction Standards; June 1, 2016 edition

Part 1928--Agricultural Standards; June 1, 2016 edition

Text of proposed rule and any required statements and analyses may be obtained from: Michael Paglialonga, Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: regulations@labor.ny.gov

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

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

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

Consensus Rule Making Determination

This amendment is necessary because Section 27-a(4)(a) of the Labor Law directs the Commissioner to adopt by rule, for the protection of the safety and health of public employees, all safety and health standards promulgated under the U.S. Occupational Safety and Health Act of 1970, and to promulgate and repeal such rules and regulations as may be necessary to conform to the standards established pursuant to that Act. This ensures that public employees will be afforded the same safeguards in their workplaces as are granted to employees in the private sector.

Job Impact Statement

As the proposed action does not affect jobs and employment opportunities but simply affords workplace safety and health guidelines to improve job performance and safety, a job impact statement is not submitted.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Enforcement of Motor Vehicle Liability Insurance Laws

I.D. No. MTV-08-17-00002-P

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

Proposed Action: This is a consensus rule making to amend sections 35.2, 35.3, 35.4, 35.5, 35.8, 35.9, 35.10 and 35.11 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 312, 313, 318 and 319

Subject: Enforcement of Motor Vehicle Liability Insurance Laws.

Purpose: Makes minor technical and non-controversial amendments to update and clarify regulatory language.

Substance of proposed rule (Full text is posted at the following State website:www.dmv.ny.gov): The amendments to Part 35 of the Commissioner's Regulations make various minor technical and non-controversial amendments to update and clarify the regulatory language.

Makes changes to eliminate the adjective "paper" with respect to insurance identification cards to conform to Part 32 which was previously amended to provide that electronic insurance ID cards may be issued by an insurance company if the insurance company chooses to issue electronic insurance ID cards, and are acceptable as proof of insurance in the same manner as paper insurance ID cards.

Eliminates the reference to the old \$25 suspension termination fee for insurance lapse suspension which was increased in 2009 to \$50, and also eliminates the dollar amount regarding the \$750 civil penalty (and prior \$500 and \$300 civil penalties) for operating an uninsured motor vehicle and for uninsured accidents (to avoid the need to amend the regulations in the event of future increases).

Removes the current prohibition against accepting personal checks for payment of civil penalties, and also against issuing partial refunds of insurance lapse civil penalty payments.

Eliminates the obsolete reference to the former Interstate Commerce Commission and updates the reference to the agency formerly known as the NYS Insurance Department to the Department of Financial Services.

Expressly sets forth the long-standing rule that although government motor vehicles that are registered in the State or Political Subdivision registration classes are excluded from DMV's Insurance Information & Enforcement System (IIES), the IIES exclusion does not include volunteer fire company and volunteer ambulance vehicles registered in the name of the volunteer organization.

The full text of this proposed regulation can be found on DMV's website at www.nysdmv.gov.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Data, views or arguments may be submitted to: Dinah Crossway, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

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

Consensus Rule Making Determination

The proposed amendment is necessary to update the provisions of Part 35, which pertains to the enforcement of motor vehicle liability insurance laws. A number of minor, miscellaneous non-controversial updates are proposed, including the following amendments:

DMV amended Part 32 of its regulations to provide for electronic insurance identification cards, but Part 35 only refers to paper cards.

The suspension termination fee associated with insurance lapse suspensions was increased in 2009 from \$25 to \$50, but Part 35 still refers to the \$25 fee. The proposed amendment deletes the reference to a specific dollar amount, which will avoid the need for further changes in the event the suspension fee is subsequently revised.

The reference to the \$750 civil penalty for operating an uninsured motor vehicle is deleted to avoid the need for future amendments in the event of a statutory change to the amount of the civil penalty.

Removes a reference to the former federal Interstate Commerce Commission (ICC), which was abolished in 1995, and updates the name of the former Department of Insurance to the Department of Financial Services.

Removes the provision that prohibited payment of insurance lapse civil penalties by personal check, and that prohibited DMV's issuance of partial refunds of civil penalties in most situations.

Removes the obsolete requirement that a registrant surrender his/her driver's license to DMV in the event of an insurance lapse.

Clarifies that although government motor vehicles that are registered in the State or Political Subdivision registration classes are excluded from DMV's Insurance Information & Enforcement System (IES), the exclusion does not include volunteer fire company and volunteer ambulance vehicles registered in the name of the volunteer organization.

Certain other non-substantive revisions are proposed to make the regulatory language more up to date and clearer. Since these are minor conforming amendments, a consensus rule is appropriate.

Job Impact Statement

A Job Impact Statement is not submitted with this proposed rule because it would not have an adverse impact on job development in New York State.

Office for People with Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

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

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

Proposed Action: Addition of Part 619; and amendment of Parts 633, 635, 671, 679, 681, 686 and 690 of Title 14 NYCRR.

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

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

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

Text of proposed rule: A new Part 619 is added to 14 NYCRR as follows:

Part 619. Certification of Facilities and Home and Community Based Services (HCBS)

Section 619.1 Applicability

This Part applies to all facilities and HCBS waiver services certified by OPWDD.

Section 619.2 Classes of Operating Certificates

(a) This Part supersedes the regulations on classes of operating certificates in Part 70 of this Title.

(b) For the purposes of this Part, a class means a category of facilities or services subject to issuance of an operating certificate and distinguished by the needs of individuals served, services provided, staffing, and, for facilities, the premises of the facility.

(c) For the purposes of this Part, an operating certificate means a document pertinent to the appropriate class of facility or HCBS waiver service that conveys authorization by OPWDD of a provider of services to operate specific facilities or HCBS waiver services identified on or as an attachment to such document.

(d) Classes of operating certificates issued by OPWDD:

(1) Community residence. An OPWDD certified community residence is a residential facility that provides health and habilitation services and supervision for individuals with intellectual or developmental disabilities. Community residences include three basic types of facilities: Supervised and Supportive Community Residences (CRs) and Individualized Residential Alternatives (IRAs). (IRAs are further categorized by capacity and conversion status.)

(2) Individualized Residential Alternative/Free Standing Respite (IRA/FSR). An OPWDD certified IRA/FSR is a residential facility that provides respite services, including health care and supervision, for

individuals with intellectual or developmental disabilities. An IRA/FSR is certified to house and provide services to a certain number of individuals on a time-limited basis.

(3) Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID). An ICF/IID is a residential facility that provides comprehensive care, supervision, habilitation, and treatment for individuals with intellectual and developmental disabilities, that must be operated in compliance with federal ICF/IID regulations in 42 CFR 483 and applicable regulations of this Title. (Note: Certain ICFs/IID are certified by the State Department of Health (DOH); this Part does not apply to those ICFs/IID that are certified by DOH.)

(4) Private school. An OPWDD certified private school is a residential facility that provides health care, supervision, and training and/or education services for individuals with intellectual or developmental disabilities. Private schools include Residential Schools and Integrated Residential Communities.

(5) Family Care Home (FCH). An OPWDD certified family care home is a private home that provides health and habilitation services to individuals with intellectual or developmental disabilities.

(6) Specialty hospital. An OPWDD certified Specialty Hospital is a facility that provides residential care and services by or under the direction of a physician to individuals with intellectual or developmental disabilities who require specialized services to address significant health care needs.

(7) Outpatient/Non-residential facility. An OPWDD certified outpatient/non-residential facility may provide outpatient or non-residential examination, diagnosis, care, treatment, habilitation, or training services for individuals with intellectual or developmental disabilities. Outpatient/Non-residential facilities include:

(i) Day services facilities, including but not limited to, facilities certified to provide Day Habilitation, Day Treatment, Day Training (including Sheltered Workshops), and Site-based Prevocational Services; and

(ii) Article 16 Clinics.

(8) Diagnostic and research clinic. An OPWDD certified Diagnostic and Research Clinic is a facility that provides comprehensive behavioral and medically-related assessment and diagnostic services to individuals with intellectual or developmental disabilities, or individuals suspected of having intellectual or developmental disabilities.

(9) Home and Community Based Services (HCBS). OPWDD certified HCBS waiver services include an array of supports and services, including habilitation services that enable individuals with intellectual or developmental disabilities to live and receive services in community settings as an alternative ICF placement. HCBS waiver services may be provided in certified and non-certified settings, but the HCBS waiver services and the certified facilities have separate operating certificates.

(i) HCBS waiver services provided in certified facilities include but are not limited to:

- (a) Residential Habilitation services;*
- (b) Day Habilitation services;*
- (c) Site-based Prevocational services; and*
- (d) Respite services.*

(ii) HCBS waiver services provided in non-certified settings include but are not limited to:

(a) Day Habilitation (other than facility based day habilita-

tion);

- (b) Community Habilitation Services*
- (c) Pathway to Employment;*
- (d) Community Prevocational Services;*
- (e) Supported Employment; and*
- (f) Respite (other than facility based respite).*

(iii) HCBS waiver, other services and supports, include but are not limited to:

(a) Plan of Care Support Services (a form of service coordina-

tion);

- (b) Adaptive Technology;*
- (c) Environmental Modification;*
- (d) Fiscal Intermediary (FI) Services.*

FI services are necessary for administering self-directed services, including but not limited to the following other HCBS services and supports:

- (1) Support Brokerage;*
- (2) Community Transition Services;*
- (3) Individual Directed Goods and Services; and*
- (4) Live-in Caregiver.*

Section 619.3 General Provisions

(a) An agency must apply for an operating certificate in the form and format specified by OPWDD.

(b) All operating certificate holders must comply with applicable regulations in this Title.

(c) The issuance of the initial operating certificate and subsequent recertification for all classes of operating certificates will be based on a certification process conducted by OPWDD in the form and format specified by OPWDD. This process supersedes the certification process identified in subdivisions 633.2(c); 633.99(bx) and (cp); 635-1.2(g); 635-99(bo) and (cb); 671.1(d); 671.99(g) and (h); 679.1(d); 681.99(d) and (f); 686.2(e); 686.99(ad) and (ah); and 690.1(e) of this Title.

(d) The initial certification and amendments to operating certificates must be in accordance with certification of need and terms of approval requirements in Part 620 of this title.

(e) An operating certificate may be issued for a period of up to three years; however, OPWDD reserves the right to issue an operating certificate for a shorter period of time.

(f) One operating certificate may be issued for two or more facilities in the same program class.

(g) The certification or recertification of facilities and/or HCBS waiver services may be contingent on receipt of an acceptable plan of corrective action in a form and format specified by OPWDD.

(h) An operating certificate may be revoked, suspended, or limited upon OPWDD's determination that the holder of the certificate has failed to comply with the terms of its operating certificate. The operating certificate holder may appeal such determination pursuant to section 16.17 of the Mental Hygiene Law.

Section 619.4 Administration

(a) The agency must provide OPWDD with a list of the names and addresses of members of the agency's Board of Directors on at least an annual basis and as changes occur.

(b) The agency must establish and maintain up to date policies and procedures in compliance with applicable regulations in this Title.

(c) The agency must maintain financial records in compliance with applicable regulations in this Title and must submit financial reports to OPWDD in accordance with Subpart 635-4 of this Part.

Existing subdivision 602.99(k) is amended as follows:

(l) Operating certificate—an operating certificate as defined in [section 70.3(b)] subdivision 619.2(c) of this Title."

A new subdivision 633.2(d) is added as follows:

(d) The OPWDD certification process defined in subdivision 633.2(c) of this section is superseded by requirements in Part 619 of this Title, Certification of Facilities and Home and Community Based Services (HCBS), effective on the effective date of these regulations.

A new subdivision 633.2(e) is added as follows:

(e) OPWDD expects ongoing compliance with both principles of compliance and standards of certification included in this Part. Therefore, such compliance is the responsibility of the agency and is necessary for continued participation as a certified facility or funding as an approved program or service.

Existing subdivision 635-1.2(d) is amended as follows:

(d) OPWDD expects ongoing compliance with both principles of compliance [(see glossary)] and standards of certification included in this Part [(see glossary)]. Therefore, such compliance shall be the responsibility of the agency/[facility] and shall be necessary for continued participation as a certified facility or funding as an approved program or service.

Existing subdivision 635-1.2(e) is deleted and a new subdivision 635-1.2(e) is added as follows:

(e) The OPWDD certification process defined in subdivision 635-1.2(g) of this section is superseded by requirements in Part 619 of this Title, Certification of Facilities and Home and Community Based Services (HCBS), effective on the effective date of these regulations.

Existing subdivision 671.1(h) is amended as follows:

(h) The OPWDD certification process described below is superseded by requirements in Part 619 of this Title, Certification of Facilities and Home and Community Based Services (HCBS), effective on the effective date of these regulations.

This Part (with the exception of sections 671.1, 671.2, 671.3, 671.7 and 671.99 of this Part) is organized in a format consisting of principles of compliance and standards of certification. ...

A new subdivision 671.1(n) is added as follows:

(n) OPWDD expects ongoing compliance with both principles of compliance and standards of certification included in this Part. Therefore, such compliance is the responsibility of the agency and is necessary for continued participation as a certified facility or funding as an approved program or service.

A new subdivision 679.1(e) is added as follows, and existing subdivision 679.1(e) is re-lettered to be 679.1(g):

(e) The OPWDD certification process defined in subdivision 679.1(d) of this section is superseded by requirements in Part 619 of this Title, Certification of Facilities and Home and Community Based Services (HCBS), effective on the effective date of these regulations.

A new subdivision 679.1(f) is added as follows:

(f) OPWDD expects ongoing compliance with both principles of compli-

ance and standards of certification included in this Part. Therefore, such compliance is the responsibility of the agency and is necessary for continued participation as a certified facility or funding as an approved program or service.

Existing subdivision 686.2(d) is deleted and a new subdivision 686.2(d) is added as follows:

(d) The OPWDD certification process defined in subdivision 686.2(e) of this section is superseded by requirements in Part 619 of this Title, Certification of Facilities and Home and Community Based Services (HCBS), effective on the effective date of these regulations.

A new subdivision 690.1(f) is added as follows; existing subdivision 690.1(f) is re-lettered to be 690.1(h); and existing subdivisions 690.1(g) and (h) are deleted:

(f) The OPWDD certification process defined in subdivision 690.1 (e) of this section is superseded by requirements in Part 619 of this Title, Certification of Facilities and Home and Community Based Services (HCBS), effective on the effective date of these regulations.

A new subdivision 690.1(g) is added as follows:

(g) OPWDD expects ongoing compliance with both principles of compliance and standards of certification included in this Part. Therefore, such compliance shall be the responsibility of the agency and shall be necessary for continued participation as a certified facility or funding as an approved program or service.

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

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

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

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

Regulatory Impact Statement

1. Statutory Authority:

a. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs, supports, and services in the areas of care, treatment, habilitation, rehabilitation, and other education and training of persons with developmental disabilities, as stated in the New York State (NYS) Mental Hygiene Law Section 13.07.

b. OPWDD has the authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the NYS Mental Hygiene Law Section 13.09(b).

c. OPWDD has the statutory authority to adopt regulations concerned with the operation of programs and the provision of services, as stated in the NYS Mental Hygiene Law Section 16.00.

d. OPWDD has the authority to prescribe the terms and conditions for issuance of an operating certificate, as stated in the NYS Mental Hygiene Law Section 16.05.

2. Legislative Objectives: The proposed regulations further the legislative objectives embodied in sections 13.07, 13.09(b), 16.00 and 16.05 of the Mental Hygiene Law. The regulations update, reorganize, and relocate existing requirements for certification of programs and services in OPWDD's system, into a new Part in OPWDD regulations.

3. Needs and Benefits: The proposed regulations supersede, update, and reorganize existing Department of Mental Hygiene regulations in 14 NYCRR Part 70 on classes of operating certificates and relocate the regulations into a new part, Part 619.

The proposed regulations in Part 619 add Home and Community Based Services (HCBS) as a new class of operating certificate in accordance with 2014 and 2015 amendments to section 16.03 of the Mental Hygiene Law.

The proposed regulations in Part 619 include general provisions on the certification and recertification of facilities and HCBS waiver services, and on the suspension, revocation, and placement of limitations on operating certificates. Also included, are three provisions on agency administration. The general and agency administration provisions are not new requirements, and serve to consolidate OPWDD certification requirements into one location to give providers easy access.

In addition, the proposed regulations supersede existing regulations on the discontinued survey process formerly used by OPWDD to certify state and non-state operated facilities in the OPWDD system. The proposed regulations authorize OPWDD to conduct surveys in the form and format specified by OPWDD, bringing requirements in line with current practice.

4. Costs:

a. Costs to the Agency and to the State and its local governments:

There is no anticipated impact on Medicaid expenditures as a result of the proposed regulations. The regulations merely reorganize and consoli-

date existing statutory and regulatory requirements of the certification of programs and services in the OPWDD system. Consequently, there are no anticipated costs for the State in its role of paying for Medicaid costs.

These regulations will not have any fiscal impact on local governments, as the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

There are no anticipated costs to OPWDD in its role as a provider of services to comply with the new requirements. The amendments merely reorganize and consolidate existing statutory and regulatory requirements on the certification of facilities, and HCBS Waiver services in OPWDD's system.

b. Costs to private regulated parties: There are no anticipated costs to regulated providers to comply with the proposed regulations. The amendments merely reorganize and consolidate existing statutory and regulatory requirements on the certification of facilities, and HCBS Waiver services in the OPWDD system.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: Providers will not experience an increase in paperwork as a result of the proposed regulations because the regulations do not impose any new requirements on providers.

7. Duplication: The proposed regulations do not duplicate any existing State or Federal requirements on this topic.

8. Alternatives: OPWDD did not consider any other alternatives to the proposed regulations. The regulations are necessary to reorganize and consolidate existing requirements to give providers easy access.

9. Federal Standards: The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: OPWDD is planning to adopt the proposed amendments as soon as possible within the timeframes mandated by the State Administrative Procedure Act. The proposed regulations were discussed with and reviewed by representatives of providers in advance of this proposal. Additionally, OPWDD will be mailing a notice of the proposed amendments to providers approximately three months in advance of the effective date. OPWDD expects that providers are already in compliance with the proposed regulations as the regulations merely reorganize and consolidate existing statutory and regulatory requirements.

Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses and local governments is not submitted because these amendments will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses. There are no professional services, capital, or other compliance costs imposed on small businesses as a result of these amendments.

The proposed regulations reorganize and consolidate requirements found in existing Department of Mental Hygiene regulations, and in Mental Hygiene Law, into a new Part in OPWDD regulations. The amendments also supersede an outdated certification process formerly used by OPWDD to certify facilities in the OPWDD system. The amendments will not result in costs or new compliance requirements for regulated parties and consequently, the amendments will not have any adverse effects on providers of small business and local governments.

Rural Area Flexibility Analysis

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 amendments.

The proposed regulations update, reorganize, and relocate existing requirements for certification of programs and services in OPWDD's system, into a new Part in OPWDD regulations. The amendments also supersede existing regulations on the discontinued survey process formerly used by OPWDD to certify state and non-state operated facilities in the OPWDD system. OPWDD expects that providers are already in compliance with the proposed amendments. The amendments will not result in costs or new compliance requirements for regulated parties and consequently, the amendments will not have any adverse effects on providers in rural areas and local governments.

Job Impact Statement

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

The proposed regulations update, reorganize, and relocate existing

requirements for certification of programs and services in OPWDD's system, into a new Part in OPWDD regulations. The amendments also supersede existing regulations on the discontinued survey process formerly used by OPWDD to certify state and non-state operated facilities in the OPWDD system. OPWDD expects that providers are already in compliance with the proposed amendments. The amendments will not result in costs, including staffing costs, or new compliance requirements for providers and consequently, the amendments will not have a substantial impact on jobs or employment opportunities in New York State.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-08-17-00007-P

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

Proposed Action: The Public Service Commission is considering a Notice of Intent, filed by 327 Central Park West Condominium, to submeter electricity at 327 Central Park West, 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 327 Central Park West, New York, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by 327 Central Park West Condominium on December 8, 2016, to submeter electricity at 327 Central Park West, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The full text of the petition and 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-E-0695SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-08-17-00008-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by 45 East 22nd Street Property LLC, to submeter electricity at 45 East 22nd 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 45 East 22nd Street, New York, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by 45 East 22nd Street Property LLC on September 9, 2016, to submeter electricity at 45 East 22nd Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The full text of the petition and 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-E-0506SP1)

Workers' Compensation Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Paid Family Leave

I.D. No. WCB-08-17-00010-P

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

Proposed Action: Addition of section 355.9 and Part 380; amendment of sections 355.4, 355.8 and Parts 360, 361 and 376 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117, 221, 226 and 205

Subject: Paid Family Leave.

Purpose: Identify requirements and process for implementation of paid family leave program.

Substance of proposed rule (Full text is posted at the following State website: wcb.ny.gov): Sections 355.4 and 355.8 are amended to include standards for benefits at least as favorable in plans providing for paid family leave.

A new section 355.9 has been added to include paid family leave definitions.

A new subpart 380-1 clarifies applicability.

Subpart 380-2 has been added to describe eligibility for paid family leave and the types of qualifying events necessary to take paid family leave. Qualifying events for paid family leave include leave to care for a child after birth or placement for adoption or foster care within the first 12 months after the birth or placement; for a qualifying exigency arising from the service of a family member in the armed forces of the United States; or to care for a family member with a serious health condition as defined in section 355.9.

Section 380-2.5 provides that full-time employees become eligible after 26 consecutive weeks of work, and part-time workers become eligible on the 175th day of work, and describes the rate of paid family leave for part-time workers, as well as establishing 26 weeks as the maximum amount of disability and paid family leave benefits that may be taken in a year.

Section 380-2.6 provides for a waiver for an employee whose regular work schedule never achieves the 26 weeks or 175 days in a 52 consecutive week period required to become eligible for paid family leave.

Subpart 380-3 has been added to explain the notice requirements for taking paid family leave. If the leave is foreseeable, the employee is required to give the employer at least 30 days advance notice – if they fail to do so, the self-insured employer or carrier may file a partial denial of the family leave claim for up to 30 days. If notice is not practicable, the employee must notify the employer as soon as it is practicable.

A new subpart 380-4 describes the notice of claim and certification

requirements for a paid family leave claim, including medical certification and HIPAA authorization. For leave taken to care for a family member with a serious health condition, the employee must obtain medical certification from the health provider with information about the patient's health condition, and the estimation of frequency and duration of leave necessary, among other information. For a qualifying exigency, the employee must provide a copy of the military member's active duty orders and/or other documentation supporting the leave.

For leave to bond with a child, the birth mother must provide a birth certificate or documentation of pregnancy or birth from a health care provider including the mother's name and birth or due date. A second parent must provide a birth certificate, documentation from a health care provider, voluntary acknowledgment of paternity or court order of filiation. An adoptive parent must submit documentation showing an adoption is in process, or documentation illustrating the leave is to further the adoption. A foster parent must submit a letter from the county or city department of social services or local volunteer agency.

A new subpart 380-5 provides information about filing a claim, as well as the payment and denial process of a paid family leave claim, including uninsured employers. The employee must complete the Request for Paid Family Leave on the form designated by the carrier, and, if the carrier allows it, may file the claim in advance if the leave is foreseeable. The carrier will provide the employee with contact information and any missing information, and within 18 days will pay or deny a completed claim. Section 380-5.5 also provides that when the employer is uninsured, such claims will be paid from the Special Fund for Disability Benefits. Parts 380-5.6 through 5.11 provide a framework for method of payment of claims.

Subpart 380-6 has been added to explain the benefit rate and use of accruals by an employee in conjunction with paid family leave.

Subpart 380-7 has been added to detail employer obligations under paid family leave, including collecting contributions, continuing health insurance (as long as the employee continues contributing to the cost as before paid family leave), and maintaining paid family leave insurance coverage as an individual business owner. Employers may deduct contributions before paid family leave becomes effective, and must post a notice concerning paid family leave.

Subpart 380-7 also provides information about penalties for violating a section of paid family leave, as well as the penalty appeal process for employers and carriers. Employers who fail to provide coverage for paid family leave shall be liable for a fine up to one half of a per centum of weekly payroll during the lapse, and an additional sum of not more than 500 dollars. When the employer fails to provide coverage and an employee takes family leave, the employer is liable for the payment of the benefits and waives the contribution amount for that time. If the employer fails to continue health insurance, he or she will be liable for the employee's medical costs during the time of paid family leave.

When the carrier fails to timely pay the family leave benefits, the carrier will be fined not in excess of 25% of the amount the carrier failed to pay, to be paid into the Special Fund for Disability Benefits. The carrier will also pay the employee 10 dollars for every week benefits are not timely paid.

A new subpart 380-8 provides for reinstatement of the employee to the same or a comparable job upon returning from paid family leave, as well as a process for discrimination or retaliation claims if reinstatement is denied after being formally requested by the employee. The Board will schedule hearings to determine a discrimination case.

Subpart 380-9 has been added to provide a process for disputes related to paid family leave. Any claim-related dispute arising under the paid family leave statute will be eligible for, and subject to, arbitration. This Subpart outlines the arbitration process and fee structure, including requiring a \$25 filing fee by the initiating party which is refundable by the carrier should the employee prevail. It also provides that all disputes shall be resolved by desk arbitration unless the arbitrator finds further development of the record necessary.

Subpart 380-10 has been added to provide for public employers that opt-in for voluntary coverage for paid family leave. A public employer may opt-in for paid family leave only. It outlines a process for providing coverage for public employees who are or are not represented by an employee organization as described in section 212-b. Subpart 380-10 also provides that if the public employer already offers disability leave benefits and wishes to provide paid family leave benefits, both must be offered under a single insurance policy.

Subpart 361 is amended to provide that Article 9 benefits (both disability and paid family leave) to employees will meet the requirements of the Superintendent of Financial Services.

Part 361.1 has been amended to provide for including paid family leave in the self-insurance regulations, including the option for self-insurers under section 204 to also self-insure for paid family leave or purchase a paid family leave policy from an insurance carrier.

Part 361.2 has been amended to make clear that self-insurers are responsible for covering the cost of paid family leave if it exceeds the statutory maximum contribution which may be collected from employees.

Part 361.3 has been amended to indicate that the security deposit for a self-insurer for both paid family leave and disability benefits will be combined, and outlines the process for the surety bond.

Part 361.4 has been amended to include clarifying information about self-insurer reports to be submitted to the Department of Financial Services, and outlines what information will be required in those reports.

Part 361.5 has been amended to restrict the use of third-party administrators to those licensed by the Workers' Compensation Board.

Parts 361.6 and 361.7 have been amended to fix capitalization and numeration.

Part 376 has been amended to change chairman to Chair, and to reflect the minimum amount of deposit for disability benefits only.

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

Data, views or arguments may be submitted to: For public comments: https://www.surveymonkey.com/r/PFL_Reg

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

Regulatory Impact Statement

1. Statutory Authority:

The Chair of the Workers' Compensation Board (Board) is authorized to adopt a new Section 355.9 and Part 380 of Title 12 of the New York Codes Rules and Regulations (NYCRR), and amend Sections 355.4, 355.8, Subpart 360 and Part 361 of Title 12 of NYCRR. Workers' Compensation Law (WCL) § 117(1) authorizes the Chair to make reasonable regulations consistent with and supplemental to the provisions of the WCL and the Labor Law.

Article 9 of the WCL also contains statutory authority for the paid family leave law. WCL § 221 expressly authorizes the Chair to adopt rules and regulations to carry out the provisions of this article. Such authority includes, but is not limited to: the resolution of contested claims and requests for review thereof, and payment of costs for resolution of disputed claims by carriers.

WCL § 221 authorizes the Chair to provide for alternative dispute resolution procedures for claims arising under family leave, including but not limited to, referral and submission of disputed claims to a neutral arbitrator under the auspices of an alternative dispute resolution association. Further, § 226(7) allows that the Chair may require by regulation that every policy of family leave insurance contain a provision requiring that all disputes be resolved by a designated alternative dispute resolution process in accordance with those regulations.

WCL § 205(2) details when employees are not entitled to family leave benefits under this article, and § 205(2)(b) authorizes the Chair to prescribe medical certification and notice required for family leave.

2. Legislative Objectives:

The purpose of the Paid Family Leave Act in Chapter 54 of the Laws of 2016, effective April 1, 2016, was to provide financial stability while caring for a family member. The federal Family Medical Leave Act provides leave without pay, but many employees cannot afford to leave work to care for their family member without pay. New York's paid family leave, on the other hand, allows employees to care for family members while receiving a portion of their pay, which will greatly enhance the quality of life for New York employees. This leave allows an employee to be able to provide physical or psychological care to a family member for a variety of reasons, including a serious health condition, the birth of a child, the placement of a child for adoption or foster care with the employee, or when the employee's family member is called up for active duty in the armed forces.

Paid family leave represents an important initiative for Governor Cuomo, with the ultimate goal of greatly enhancing the quality of life for New Yorkers across the state. Providing a measure of financial stability to employees in New York as they care for a sick or injured family member allows employees to both care for their families and return to their job when the leave is over. Adopting regulations to implement the paid family leave benefit as a complement to the disability benefits law will contribute to a smoother and more efficient start to providing family leave benefits to employees in New York. Paid family leave also aims to increase job satisfaction, and in turn contribute to greater employee retention in New York State. When employees can take care of their family members without unpaid leave, and afterward return to their job, that security means a great deal.

3. Needs and Benefits:

Prior to the adoption of Chapter 54 of the Laws of 2016, the federal Family Medical Leave Act provided leave to some employees to take care of a family member or themselves. This leave only applies to employers

with more than 50 employees – excluding a large number of employees in New York. Additionally, the leave is unpaid, which, for many employees in New York and elsewhere, means that they cannot afford to take advantage of the benefit, as they rely on each paycheck to make ends meet.

Chapter 54 of the Laws of 2016 added paid family leave benefits to the disability benefits article of the WCL. These benefits apply to any employer with employees, not just those with at least 50. The leave is also paid, unlike the federal leave, and allows an employee in New York to care for a family member, including a new child (through birth, adoption, or foster care), while receiving a portion of their pay. It also protects the employee's return to their job upon the expiration of leave without fear of being fired for taking available leave. The proposed part 380 creates a framework within which to execute the paid family leave statute, which removes uncertainty and doubt, and provides guidance on eligibility and the process of taking paid family leave to ensure that the transition works well.

The paid family leave benefit is available for a maximum of 12 weeks, and has specific eligibility requirements for what the leave may be used for, including caring for a family member with a serious health condition, bonding with a new child (as a result of birth or placement of a child from adoption or foster care), and for a qualifying exigency arising out of the fact that a spouse, domestic partner, child, or parent of the employee has been called to active duty in the armed forces of the United States.

This leave provides a valuable tool for employees in New York to balance their work lives with important obligations to family members, and does so for a limited period of time in order to provide financial security to those who need to take time away from work to care for a family member without abandoning the needs of the employer.

Paid family leave provides widespread benefits across New York State. Employees in New York will be able to take leave and receive a portion of their pay. With the federal Family Medical Leave Act, only employees with enough money to be able to afford to take unpaid leave could do so to care for themselves or other family members in need. With the passage of New York's paid family leave in the disability benefits law, a whole new base of employees will be able to afford to take leave to care for family members, because they will be receiving money while on leave and can return to work after the leave is over.

Paid family leave will benefit both employers and employees and their family members across New York. As stated above, employees who could not afford to take unpaid leave to care for a family member will now be able to take leave to care for their family members in need as a result of the paid family leave statute. This provides a benefit not only to the employee who can now afford to take such leave, but also to the family member for whom the leave is being taken.

Family members with serious health conditions meeting the eligibility requirements of paid family leave are unable to work, attend school, perform regular daily activities, or are otherwise incapacitated due to illness, injury, impairment, or physical or mental conditions. This is not a situation where the family member is feeling under the weather – it is a serious health condition, defined in 355.9, and situations where the employee's care is necessary. Paid family leave allows the employee to provide that care without risking their job security and financial stability, which provides a benefit to the family member with a serious health condition in that the employee can afford to take leave to care for them.

Employees are also eligible for paid family leave to bond with a new child when he or she is born, during the first 12 months of the child's life. This provides a benefit to both the parent and the child. The employee can create a stronger bond with the child at home, for up to the 12 weeks of the benefit. The child also receives a substantial benefit, having his or her emotional and physical needs met continuously for the period of the family leave benefit, without the cloud of financial instability hanging over the employee.

Providing paid family leave to employees with a family member called to active duty in the armed forces serves an important benefit to the employee, employee's family member, as well as a general benefit across the state.

There is an anticipated benefit to employers in New York, as well. Because paid family leave offers the ability to take care of family members, employees will be able to do so without fear of losing their job. The statute and regulations prohibit an employer from refusing to reinstate an employee simply for taking paid family leave. This increase in job security and financial stability should lead to greater employee job satisfaction, and in turn, increased employee retention for employers. Satisfied employees tend to be more productive, which obviously benefits the employer. Satisfied employees are also more likely to stay at their jobs, which also benefits employers in the form of employee retention – less turnover allows the employer's business to be more efficient and productive if the employer is not constantly interviewing and training new employees.

4. Costs:

The proposed Part 380 should not impose significant costs on employers in New York, employees in New York, and insurance carriers in New York. First and foremost, Part 380 provides guidance and a plan for smooth implementation of the paid family leave statute that became effective on April 1, 2016 in New York. The proposed rules work to implement the statute while avoiding any costs above what the law requires. The maximum employee contribution, to be set by the Superintendent of Financial Services, should be a modest deduction from each employee's paycheck. The cost of the premium for the addition of paid family leave to an employer's disability benefits policy will be covered in total by the employee's contribution.

Insurance carriers are not required to offer paid family leave coverage. Accordingly, it is believed that they will not offer this benefit unless it makes financial sense for them to do so. Because paid family leave is a new benefit enacted by statute in New York, employers, employees, and insurance carriers will all need to make administrative adjustments to implement the new regulations. There will be a cost to implement paid family leave into the policies which currently offer disability benefits. However, the process to actually take the leave is similar to the federal Family Medical Leave Act model that employers with over 50 employees are already familiar with, and similar to the disability benefits process. Moreover, the paid family leave benefit is a limited benefit for a relatively short period of time, eight weeks in the first year up to a maximum of 12 weeks. In the event of unintended cost implications, the Superintendent of Financial Services may decline to increase benefit levels in any given year.

It is assumed that any costs associated with providing for employment coverage while the employee is taking family leave will be offset by greater employee job satisfaction and retention rate. This has been the experience reported in other states that have implemented paid family leave. By providing the option to take family leave, employees are more likely to be satisfied with their jobs – and thus more productive while at work. Section 380-2.5 also provides that the employee may only receive 26 total weeks of both disability and family leave benefits, and the employer may designate paid family leave as concurrent to leave pursuant to the Family and Medical Leave Act. The relatively stringent eligibility requirements also limit the cost to employers of having an employee out on paid family leave.

Employees will be required to make modest contributions to paid family leave as a payroll deduction. While an employee eligible for paid family leave is required to contribute through payroll deductions, the cost is nominal compared to the benefit they would be receiving should they use the paid family leave. Any employee who uses even a portion of the paid family leave benefit offsets the cost of contributions to the insurance policy. Additionally, there are employees, such as those who work less than 26 weeks or 175 days in a 52-consecutive week period, who are not eligible for paid family leave and could obtain a waiver.

There are administrative costs to the insurance carriers, as well. Under section 380-7.8, every carrier that provides short-term Disability Benefits insurance policies must also offer paid family leave coverage. The insurance carrier must create and carry the policies, and pay out benefits to the employees who take paid family leave. Presumably, the carriers will be able to recover these administrative costs through the premium charged for paid family leave.

In the event of a denial to an employee's entitlement to paid family leave benefits, section 380-9.4 requires a filing fee in the amount of 25 dollars by the initiating party, refundable to the employee by the carrier or self-insured employer if the employee prevails. In addition, section 380-9.10 requires the carrier to pay a fee not to exceed 350 dollars for a desk arbitration or a fee not to exceed 450 dollars for an oral hearing. The vast majority of resolution of denials of paid family leave will be desk arbitrations without a hearing, and the carrier should not incur the expenses of a lengthy hearing process, and proper claims examination should result in fewer erroneous denials.

5. Local Government Mandates:

While public employers may opt-in to paid family leave benefits, there is no mandate on local government to offer the program or provide any administrative oversight.

6. Paperwork:

Part 380 requires an employee to make a request for paid family leave to the insurance carrier or self-insured employer and supply copies of supporting documentation (e.g. a birth certificate or medical certification) that supplies the details surrounding the family leave requested. While the Board will promulgate a form that meets the requirements of the statute and the regulations, the carrier or self-insured employer may accept the filing of this request in another format such as by phone or electronic portal.

In addition, all employers are required to print a notice with information about paid family leave as well as how to file a complaint. If many of the employer's employees do not read and write in English, the notice

must also be printed in a language in which the employees can read and write – and employers must also follow all federal and state laws for notices provided to sensory-impaired individuals.

7. Duplication:

Part 380 and paid family leave is a new part to implement the paid family leave statute effective April 1, 2016. Because it is a paid benefit, it does not duplicate the federal Family Medical Leave Act.

8. Alternatives:

An alternative to the regulations executing paid family leave would be to keep only the disability regulations in place and not add paid family leave regulations. However, without regulations in place to flesh out the claims process and obligations of employers and carriers, as well as employees, paid family leave would be extremely difficult to implement. The proposed regulations seek to provide for smooth implementation of the paid family leave statute that became effective on April 1, 2016. At this time alternatives to the regulations proposed have not been discussed.

9. Federal Standards:

The federal Family Medical Leave Act requires employers with more than 50 employees to provide unpaid leave for employees to take care of either themselves or a family member. The New York paid family leave initiative is narrower than the Family Medical Leave Act - leave may be taken only to care for family members, not the employee.

10. Compliance Schedule:

Employees in New York will be able to take paid family leave beginning January 1, 2018, and payroll deductions for contributions to paid family leave may begin July 1, 2017.

Regulatory Flexibility Analysis

1. Effect of rule

Under the paid family leave statute, every covered employer in New York State, meaning an employer with one or more employees on each of at least 30 days plus four weeks in a calendar year, is subject to the proposed regulations and they must provide paid family leave benefits to their employees. This will be a change for small employers as they do not have to comply with Family Medical Leave Act, which only applies to employers with 50 or more employees. Local government and public employers do not have to provide paid family leave benefits to their employees, but may opt in to provide paid family leave.

2. Compliance requirements

The paid family leave statute requires covered employers to offer paid family leave coverage to their employees. It is an employee-funded insurance product, and contributions will be deducted directly from the employee's paycheck. The employer, in turn, will use the contributions from the employees to pay the premiums for the paid family leave policy. Coverage may be obtained by the State Insurance Fund, a licensed New York State insurance carrier, or, if certain requirements are met and the Board approves, the employer may self-insure for paid family leave benefits. The employer must also offer written guidance on paid family leave to their employees, as well as post a printed notice about PFL, the form of which will be prescribed by the Chair. As long as the employee using paid family leave continues to pay premiums, the employer must also continue health insurance coverage for the employee during paid family leave. Upon returning from paid family leave, the proposed regulations entitle the employee to reinstatement to the same or comparable job, as well.

If the employer fails to comply with providing coverage for family leave benefits, they may be fined up to one-half of a per centum of the employer's weekly payroll for the period of the failure to comply, and an additional sum not more than \$500, which will be paid into the Special Fund for Disability Benefits. If a covered employer does not collect contributions from its employees and fails to cover by purchasing an insurance policy or self-insuring, the employer is fully and directly liable to each of the employees for payment of family leave benefits. The employer also waives the employees' contributions for the period(s) where no family leave coverage was provided.

3. Professional services

It is believed that no professional services will be needed by small businesses or local governments to comply with the proposed regulations.

4. Compliance costs

Compliance with the proposed regulations should not impose significant compliance costs on small businesses or local governments. The paid family leave statute provides that paid family leave benefits are employee-funded, so the employer may collect the contributions from employees. Minimal costs to update the employee handbooks or provide written guidance about paid family leave to employees may be incurred, but beyond that the compliance costs to small businesses or local governments should be negligible, especially for those employers who already offer disability benefits in compliance with New York State law.

5. Economic and technological feasibility

Compliance with the proposed regulations is technologically and economically feasible for small business and local governments. Employers are already familiar with providing workers' compensation and dis-

ability benefits to their employees, as well as health insurance, so this is simply another insurance product to add to the list for employee contributions. Family leave benefits serve as a complement to the disability benefits law, which many employers are also familiar with. No additional technology will be required to comply with the proposed regulations – small businesses and local governments already deal with insurance products and how to provide them to their employees.

6. Minimizing adverse impact

The proposed regulations were written to provide a framework to implement paid family leave according to the statute, as well as to avoid adverse impact on all employers, employees, and insurance carriers. The paid family leave benefits themselves are to be paid from employee contributions, easing any burden on the employers. Allowing leave to be taken to care for a family member also allows leave to be taken while ensuring the employee can return to his or her job afterward, and is expected to increase job satisfaction and employee retention as a result of the financial security and stability offered by paid family leave.

To further minimize any adverse impact on small businesses and any local governments that opt in to paid family leave, the proposed regulations will be phased in over the course of a few years instead of all at once. The maximum benefit rate, as well as maximum benefit time, will range from 50 to 67% of average weekly wage and eight to 12 weeks from 2018 to 2021.

7. Small business and local government participation

The Business Council of New York State and the AFL-CIO provided input on the proposed regulations.

8. Cure period

This rulemaking will neither establish nor modify a violation created by statute, nor will it require a provision for a period of time to afford small businesses or local governments a period of time to come into compliance with the rule before it is enforced.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas

The proposed regulations apply to all covered employers, including those in rural areas. Regardless of geographical area of New York State, if the employer has one or more employees on each of at least 30 days plus four weeks in any calendar year, the paid family leave statute requires that they must offer paid family leave coverage.

2. Reporting, recordkeeping and other compliance requirements; and professional services

The same compliance requirements apply to rural employers, employees and carriers as in metropolitan areas. Covered employers must provide paid family leave coverage to their employees. This is done through the New York State Insurance Fund, a licensed New York State insurance carrier, or through self-insurance if certain requirements are met and the Board approves. Other than purchasing a paid family leave insurance policy from a licensed New York State insurance carrier, no special professional services should be required by rural or any other areas. The covered employers must also provide either an update to employee handbooks or provide written guidance regarding paid family leave benefits to their employees. Paid family leave is funded by employees through a modest deduction from each employee's paycheck. Employees who take paid family leave are also entitled to reinstatement to their same or comparable job upon returning to work under the proposed regulations.

Failure by the employer to provide paid family leave benefits to its employees renders them fully and directly liable to their employees for the benefits, and may subject the employer to a fine of up to one-half of a percentum of weekly payroll for the period the employer was without coverage, and an additional sum of not more than 500 dollars.

3. Costs

The costs to carriers, employers and employees across the state will be minimal, and the proposed regulations do not impose additional costs beyond what is set forth in the paid family leave statute that became effective on April 1, 2016. Additionally, paid family leave is an employee funded insurance product, so the employer may collect contributions from all its employees to pay the premiums for the insurance product. The cost is shared among employees, so the contribution is a modest deduction from each employee's paycheck.

Insurance carriers will incur administrative costs associated with creating and carrying paid family leave insurance policies, as every carrier who offers short-term Disability Benefits is also required to offer paid family leave coverage. However, it is expected that the insurance carriers should recover those costs through the premiums charged for the coverage and paid by the employee contributions. There will be administrative costs associated with arbitration – the filing party will be responsible for a 25 dollar filing fee (the employee can be reimbursed if they prevail on the claim) and the carrier responsible for the arbitration fee for disputes: up to 350 dollars for desk arbitrations, which are the majority of arbitrations, or 450 if an oral arbitration is deemed necessary.

4. Minimizing adverse impact

The proposed regulations aim to minimize adverse impact for businesses and employees alike, by providing leave that allows employees to balance work and life. Employees pay for the insurance product through payroll deductions, but that cost is shared by all eligible employees, thus minimizing the burden on employees. In turn, employers do not have to pay for the benefit. Paid family leave provides an opportunity for financial security for employees while taking care of a family member in need, and also is expected to promote greater job satisfaction and thus employee retention when it becomes clear that they do not need to sacrifice their job in order to take care of important family obligations outside of the workplace. Overall, these benefits are expected to offset the compliance costs and any adverse impact on rural areas.

To further minimize any adverse impact on rural and other areas, the proposed regulations will be phased in over the course of a few years instead of all at once. The maximum benefit rate, as well as maximum benefit time, will range from 50 to 67% of average weekly wage and eight to 12 weeks from 2018 to 2021.

5. Rural area participation

Comments were received from the Business Council of New York State and the AFL-CIO regarding the impact on all of their constituents including those in rural areas.

Job Impact Statement

1. Nature of Impact

The Paid Family Leave Act and proposed Part 380 of Title 12 of the NYCRR is not expected to have a negative impact on jobs in New York State. It is expected that job satisfaction will increase and employers will reap the benefits of that increase. Employees will be able to take family leave to care for a family member without the fear of losing their job. As has been the experience in other states that have adopted a paid family leave benefit, providing employees the flexibility of this benefit results in better employee retention and increased job satisfaction. The proposed regulations were drafted to minimize adverse impact on jobs in New York State and provide for a smooth implementation of the paid family leave statute.

2. Categories and Numbers Affected

Virtually every New York State private employer will be affected by the Paid Family Leave Act and the supporting regulations. However, by allowing employees to take this leave without fear of losing their jobs, it is anticipated that this will actually be a benefit to the employer. Employees in New York are also affected by the paid family leave regulations. Instead of possibly having to choose between taking leave to care for a family member and maintaining employment, the proposed regulations will allow a better balance of work and life responsibilities, leading to greater job satisfaction and job retention.

3. Regions of Adverse Impact

The Paid Family Leave Act and its supporting regulations will be implemented state-wide. Paid Family Leave is provided in an insurance product, and does not create a burden on employers or jobs in general. Accordingly, there are no specific regions of adverse impact. One possible adverse impact is that the employee taking leave will be absent from their job for a period of time. However, the benefit of being able to take paid family leave to care for family members, and the security of being able to return to work after leave, is expected to offset this impact and lead to greater job satisfaction and thus increased employee retention. This has been the experience reported by employers in other states that have adopted a paid family leave program.

4. Minimizing Adverse Impact

The statute provides, and the regulations support, a gradual phase-in of the family leave benefit. The maximum benefit duration is limited to 12 weeks when fully implemented, but to further minimize any adverse impact, the first year the benefit duration will be limited to eight weeks, then 10, then fully phased in at 12 in 2021. Similarly, the maximum benefit amount will be phased in at 50% of the average weekly wage in stages up to the full amount of 67% in 2021.

Also minimizing this possible adverse impact of having employees out on leave is the expected enhancement of life for New York State employees (and in turn, New York State employers) – when work and life balance can be met, and family members can be taken care of by employees without fear of losing employment, it is assumed that greater job satisfaction will result, and employees will be satisfied and stay at their current employment. This benefit has been reported by employers in other states that have adopted paid family leave.