

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.

Adirondack Park Agency

NOTICE OF ADOPTION

Boathouse and Dock Definitions

I.D. No. APA-44-09-00020-A

Filing No. 870

Filing Date: 2010-08-20

Effective Date: 2010-09-21

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

Action taken: Amendment of section 570.3(c) and (j) of Title 9 NYCRR.

Statutory authority: Adirondack Park Agency Act, Executive Law, art. 27

Subject: Boathouse and Dock definitions.

Purpose: To provide clarity and better environmental protection.

Text of final rule: Subsection (c) of Section 570.3 is amended as follows:

Boathouse means a covered structure with direct access to a navigable body of water which:

- (1) is used only for the storage of boats and associated equipment;
- (2) does not contain bathroom facilities, sanitary plumbing, or sanitary drains of any kind;
- (3) does not contain kitchen facilities of any kind;
- (4) does not contain a heating system of any kind;
- (5) does not contain beds or sleeping quarters of any kind; [and]
- (6) does not exceed a single story[.] *in that the roofrafters rest on the top plate of the first floor wall, and all rigid roof surfaces have a minimum pitch of four on twelve, or, alternatively, one flat roof covers the entire structure; and*
- (7) *has a footprint of 1200 square feet or less measured at the exterior walls (or in the absence of exterior walls, at the perimeter of the roof), and a height of fifteen feet or less. For the purpose of this definition, the height*

of a boathouse shall be measured from the surface of the floor serving the boat berths to the highest point of the structure. The dimensional requirements specified herein shall not apply to a covered structure for berthing boats located within the Lake George Park, provided the structure is built or modified in accordance with a permit from the Lake George Park Commission and is located fully lakeward of the mean high-water mark of Lake George.

Subsection (j) of Section 570.3 is amended as follows:

Dock means a floating or fixed structure that:

(1) extends *horizontally (parallel with the water surface)* into or over a lake, pond or navigable river or stream from only that portion of the immediate shoreline or boathouse necessary to attach the floating or fixed structure to the shoreline or boathouse;

(2) is no more than eight feet in width, or in the case of interconnected structures intended to accommodate multiple watercraft or other authorized use, each element of which is no more than eight feet in width; and

(3) is built or used for the purposes of securing and/or loading or unloading water craft and/or for swimming or water recreation.

A permanent supporting structure located within the applicable setback area which is used to suspend a dock above water level for storage by means of a hoist or other mechanical device is limited to not more than one hundred square feet, measured in the aggregate if more than one such supporting structure is used. A dock must remain parallel with the water when suspended for storage, unless the size of the total structure does not exceed one hundred square feet. Mechanisms necessary to hoist or suspend the dock must be temporary and must be removed during the boating season.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 570.3(c) and (j).

Text of rule and any required statements and analyses may be obtained from: John S. Banta, Counsel, NYS Adirondack Park Agency, PO Box 99, Ray Brook, NY 12977, (518) 891-4050, email: aparule@gw.dec.state.ny.us

Revised Regulatory Impact Statement

A revised Regulatory Impact Statement is not required as the final rules do not contain substantial changes from the proposed rules. The same needs and benefits are addressed by the final rules. Any changes made to the final rules in response to public comment reduced the regulatory impact of the rules as compared to the proposed rules. They do not add any new costs or paperwork. The new boathouse definition reduces duplication of government regulation by allowing boathouses permitted by the Lake George Park Commission to qualify as “boathouses” exempt from variance requirements under the Adirondack Park Agency Act.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis is not required as the final rules do not contain substantial changes from the proposed rules. Any changes made to the final rules in response to public comment will provide increased flexibility and less economic impact as compared to the proposed rules. The changes will not impose any adverse economic impact or reporting, record-keeping or other requirements on small businesses or local governments.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis is not required as the final rules do not contain substantial changes from the proposed rules. Any changes made to the final rules in response to public comment will provide increased flexibility and less economic impact as compared to the proposed rules. The changes will not impose any adverse impact or reporting, record-keeping or other compliance requirements on public or private entities in rural areas.

Revised Job Impact Statement

A revised Job Impact Statement is not required as the final rules do not contain substantial changes from the proposed rules. Any changes made to

the final rules in response to public comment will provide increased flexibility and less economic impact as compared to the proposed rules. The changes will not impose any negative impact on jobs or employment opportunities.

Assessment of Public Comment

General Comments

Generally, people understood and supported the need for definitions for the terms "boathouse" and "dock," both of which are the only structures exempt from the shoreline setback requirements of Executive Law § 806. Public commentary acknowledged the general desire of landowners to have structures which provide recreational space unrelated to boating immediately on the shoreline.

Boathouse

1. Square feet size limit

There were numerous comments that suggested the proposed 900 square foot size limitation was too confining and that either no limit or a larger limit would be more appropriate. Specific letters suggested 1000, 1200 and 1500 square feet and supported imposition of a specific limit, though larger. Other letters simply opposed any size limit.

There was also substantial comment regarding the manner in which the Lake George Park Commission size limit for covered docks is calculated and imposed. It involves a limit on the square feet of dock surface area, generally 700 square feet absent extensive shoreline. Some or all of the dock space can be covered with a roof or deck, but there is a height limit of 16 feet above the mean high water (MHW) level. The Lake George Park Commission criteria equate to a boathouse which, at a maximum, can be approximately 1200-1500 square feet in size depending on the configuration of the dock.

Comment also suggested that small size limits lead to shoreline clutter (small paddle craft and other water recreation gear scattered on the shoreline or the proliferation of small shoreline racks or shoreline sheds). The argument is that this equipment would be better accommodated inside a boathouse structure.

The final rule increases the size limitation from 900 square feet (as originally proposed) to 1200 square feet. This small increase addresses public comments. It will avoid the need for variance proceedings for typical two and three stall boathouse structures, and provide more opportunity for inside storage space for boating accessories, the two most prevalent objections to the proposed 900 square foot limit.

It is essential to maintain a square foot limitation in the definition to avoid pressure to design for multi-use "attic" space. The area of the "attic" is a function of the square footage of the first floor and the allowable height. In the alternative, the height limit could be lowered to prevent any usable space with headroom above the first floor, but that would severely curtail architectural designs and reasonable roof pitch to shed snow load.

2. Height limit

There was relatively little comment on the proposed 15 foot height limit. It was noted that the measurement from the dock surface of the boat berth area was a practical method to measure the height, and it equates to 16-18 feet above the MHW depending on design and circumstances. Some of the comment on roof pitch also suggested that the height limit is both confining and may not be practical where a roof is intended to shed particularly heavy snow loads which are part of building specifications in some areas of the Park.

The height limit for the boathouse structure remains critical, along with structure size and roof pitch, to ensure that unlawful multi-use structures are not constructed in the shoreline setback area. No Agency definition of boathouse to date, even with limitations on the internal components of the structure, has prevented large multi-use structures on Adirondack shorelines contrary to the direction of Section 806. These structures, standing alone, are not allowed in the shoreline setback area unless a variance is granted. The Agency has found consistent implementation very difficult under any of the definitions for the term "boathouse" to date.

Adirondack snow load can be accommodated within a 15 foot height limit with the use of appropriately sized structural materials.

3. Roof pitch requirement

Some comments reiterated points raised in the 2002 rule making, that a specific roof pitch and height limit constrain design, both related to engineering for snow load and also to architectural interest. However, the roof pitch requirement does not preclude steeper roofs; it is a minimum pitch requirement.

Within the Lake George basin, comments in the hearing record were that different forms of flat roofs are the prevalent design for boathouses, due to the Lake George Park Commission regulations which impose limits on dock area and the height of any dock cover. Moreover, within the Lake George Park, other agencies such as the Department of Environmental Conservation, the Office of General Services and the Army Corps of Engineers, may also have jurisdiction over such structures. Public comments suggested that the many regulations cause confusion and significant complexity and delays.

The final rule responds to these public comments. It does not differ significantly from the Lake George Park Commission regulations, and automatically qualifies covered docks which are permitted by the Lake George Park Commission as "boathouses" in compliance with Section 806 of the APA Act.

Another common comment was that a flat roof has no more environmental impact than a pitched roof. With regard to impacts due to runoff, the Agency agrees. It was also argued that the ability to use the roof as a deck allows for the retention of shoreline vegetation that might otherwise be removed to create sun space on the shoreline. Since the preservation of shoreline vegetation is crucial to the protection of water quality and the natural character of the shoreline, the Agency concludes that it should not preclude flat roofs on a boathouse. However, the size limit for the square footage of the structure will moderate secondary impacts from use. Accordingly, while the final rule retains the roof pitch requirement, it allows a flat roof on a single-story boathouse in the situation where the entire roof of the structure is flat.

4. Economic impacts

There were many comments that alleged non-specific, adverse economic consequences from Agency regulations. At the Ray Brook hearing, more specific concerns were voiced by contractors and architects who said that the size and roof pitch restrictions would affect the resulting designs and innovation, and restrict their potential business. In the Lake George hearing and related comment letters, there were specific assertions that a prohibition of flat roof decks would affect property values. One business active in building docks and boathouses in Lake George indicated that roof pitch requirements prohibiting new flat roofs would make recent investments in models and marketing materials specific to the Lake George area worthless.

The final rule is narrowly circumscribed to address the issue of large structures designed to accommodate multi-use spaces. It does not prohibit boathouses or flat roofs on bathouses. It provides a 1200 square foot space for three large boat berths and significant storage area. It does not prohibit more than one boathouse (although some municipalities do so), and variances may be granted where appropriate. Hence, the Agency concludes that there will be no economic impact from the revised proposal. Moreover, the adjustments to the boathouse definition in 2002, which provided a significant definitional change, had no discernible impact on the number of boathouse construction and repair projects undertaken in the Park.

Comments from builders recounting recent experience with the current economic downturn did not indicate any specific correlation with the regulations proposed in this rule making.

The Agency's deference to permits issued by the Lake George Park Commission for boat berthing structures addresses the comments relating to Lake George.

5. Comments about specific towns, lakes or circumstances like water-access-only lots

a. Boat access lots have special needs.

Several comment letters made a point that the proposed rule was too confining when a camp is exclusively accessible by water, without specific alternatives suggested. The now-proposed larger size would accommodate additional dock and boathouse access for such situations.

b. Towns with approved local land use programs have an Agency-approved definition already.

Several responses suggested that the proposal is potentially inconsistent with existing definitions in approved local land use programs, particularly in the Lake George region and in Warren County. The Agency will work with approved local land use programs to conform to the updated standards where appropriate. Several of these programs are more restrictive than the current proposed rule.

c. The Lake George Park Commission provides a definition and a permit process for "dock" and covered boat storage ("boathouse") in State regulation for Lake George.

The Lake George Park Commission recommended incorporating a reference that would accept structures meeting its requirements for docks and covered docks as meeting the APA Act requirements, as an alternative to the structural specifications in the proposed revisions. The Agency has accepted this suggestion in its final rule.

d. "Great Camps" confer special character to Adirondack lakes with boathouses that, if built now, would be prohibited by the rule; the variance process is a punishing procedure for authorization of a non-compliant boathouse structure. These comments essentially disagree with the underlying and long-standing regulatory assumption that a boathouse should be exclusively for the storage of boats, pointing out the special character added by large multi-use boathouses on some Adirondack lakes. It is true that the enactment of the APA Act does foreclose the unfettered development options available before the Act.

Dock

All but one of the comments on the proposed dock definition revision were focused on the Lake George basin. The rule is intended to prohibit

“articulating” docks which can be winter-stored by angled suspension without any structure in the water to be affected by ice movement.

Many comments pointed out that the removal or suspension of docks above the water surface is the only practical mechanism for areas in Lake George where wind-driven ice destroys any in-lake structures during the winter. Moreover, in some cases, creation of an on-shore storage area would involve significant destruction of vegetation and environmental manipulation. Other Lake George comments suggested that the inability to remove or suspend structures above the water encourages use of bubblers that have other environmental impacts and safety consequences for winter recreation on the ice. These comments expressed a preference for the suspension system in certain circumstances.

One comment also pointed out that the definition appears to prohibit canoe/kayak launch ramps sloping down, not horizontal to the water, and otherwise meeting Agency “dock” criteria. These are a common component of a boathouse, providing direct access for small watercraft. They would be an acceptable independent component of a dock if less than 100 square feet in size.

The final rule retains the prohibition of new structures which are suspended in an angled position over the water, which is important to minimize the environmental impacts of such structures. However, in response to public comment the final definition allows the suspension of dock structures, as long as they remain horizontal with the water. The final rule also clarifies that the in-ground structures necessary for suspension are not part of the dock, cannot exceed 100 square feet, and that multiple structures will be aggregated. This is necessary to minimize the impermeable surfaces within the shoreline setback area, an important component for shoreline protection and water quality.

The final rule will have few impacts on prospective activities and no impact on existing dock structures.

Office for the Aging

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Provide a New Part 6650 of the Agency’s Regulations for Public Access to Records of the New York State Office for the Aging

I.D. No. AGE-36-10-00008-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 Part 6650 and add a new Part 6650 to Title 9 NYCRR.

Statutory authority: Elder Law, section 201(3); and Public Officers Law, section 87

Subject: Provide a new Part 6650 of the Agency’s Regulations for Public Access to Records of the New York State Office for the Aging.

Purpose: This Rule will update Agency Freedom of Information Act regulations to reflect Statutory changes since adoption of current regulations.

Substance of proposed rule: The purpose of the proposed rule is only to update the current Freedom of Information Regulations of the State Office for the Aging to reflect the numerous changes that have been made in statute and in the regulations of the Committee on Access to Information since the current State office for the Aging regulations were last amended. The State Office for the Aging is also updating our contact information in the regulations. All proposed changes are intended to follow these two purposes. In fact, the proposed changes closely follow the “Model regulations” that have been published by the “Committee on Access to Information”.

Text of proposed rule and any required statements and analyses may be obtained from: John T. Phelan, New York State Office for the Aging, Two Empire State Plaza, Albany, NY 12223-1251, (518) 473-6293, email: J__Phelan@ofa.state.ny.us

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

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

Consensus Rule Making Determination

The New York State Office for the Aging has determined that this proposed rule is eligible for publication as a consensus rule because it simply conforms our agency regulations with statutory changes in the

Freedom of Information Law and updates our current address and contact information.

Job Impact Statement

The New York State Office for the Aging has determined that this proposed rule will not have a substantial adverse impact on jobs. This proposed rule simply updates the Agency’s regulations that implement the State Freedom of Information Law to reflect changes that have been made in the statute. The proposed regulations will also update obsolete address references. No impact on jobs is anticipated.

Department of Agriculture and Markets

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Definitions and Standards of Identity Relating to Milk and Milk Products

I.D. No. AAM-36-10-00004-P

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

Proposed Action: This is a consensus rule making to amend sections 2.2(a), (gg)(1), (2), 17.12, 17.18, 17.19 and 17.20 of Title 1 NYCRR.

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

Subject: Definitions and Standards of Identity relating to milk and milk products.

Purpose: To update the incorporations by reference contained in sections 2.2(a), 2.2(gg)(1) and (2), 17.12, 17.18, 17.19 and 17.20.

Text of proposed rule: Subdivision (a) of section 2.2 of 1 NYCRR is amended to read as follows:

(a) Aseptically processed, when modifying the term milk, lowfat milk, skim milk, milk products, goat milk, goat milk products, sheep milk, sheep milk products, melloreum or frozen desserts, means that the food has been subjected to sufficient processing to maintain the commercial sterility of the product under normal non-refrigerated conditions and has been packaged in a hermetically sealed container, in conformance with part 113 of title 21 of the Code of Federal Regulations (revised as of [April 1, 1993] *April 1, 2010*; U.S. Government Printing Office, Washington, DC 20402) and with Appendix L and Item 16p(c) of the Pasteurized Milk Ordinance. A copy of title 21 of the Code of Federal Regulations and of the Pasteurized Milk Ordinance are available for public inspection at the Division of Milk Control, Department of Agriculture and Markets, [One Winners Circle] 10B Airline Drive, Albany, NY 12235.

Paragraphs (1) and (2) of subdivision (gg) of section 2.2 of 1 NYCRR is amended to read as follows:

(gg) Non-storable milk product means:

(1) flavored dairy drink, and dairy shake, as defined in sections 17.2 and 17.6 of this Title, respectively, as well as acidified milk, cultured milk, lowfat dry milk, nonfat dry milk, nonfat dry milk fortified with vitamins A and D, acidified lowfat milk, cultured low fat milk, acidified skim milk, cultured skim milk, dry whole milk, dry cream, heavy cream, light cream, light whipping cream, sour cream, acidified sour cream, eggnog, half-and-half, sour half-and-half, yogurt, lowfat yogurt, nonfat yogurt, cottage cheese, dry curd cottage cheese and lowfat cottage cheese, as defined in sections 131.111, 131.112, 131.123, 131.125, 131.127, 131.136, 131.138, 131.144, 131.146, 131.147, 131.149, 131.150, 131.155, 131.157, 131.160, 131.162, 131.170, 131.180, 131.185, 131.187, 131.200, 131.203, 131.206, 133.128, 133.129 and 133.131 of Title 21 of the Code of Federal Regulations (revised as of [April 1, 1994] *April 1, 2010*), which standards of identity are incorporated by reference in section 17.18 of this Title. A copy of 21 CFR is available for public inspection at the Division of Milk Control, New York State Department of Agriculture and Markets, [One Winners Circle] 10B Airline Drive, Albany, NY 12235;

(2) a food that would meet a standard of identity for a food listed in paragraph (1) of this subdivision except that the food does not comply with the applicable standard of identity because of a deviation that is described by an expressed nutrient content claim, in accord with the sections of 21 CFR (revised as of [April 1, 1994] *April 1, 2010*) incorporated by reference in section 17.20 of this Title;

Subdivision (a) of section 17.12 of 1 NYCRR is amended to read as follows:

(a) Freezer-made milk shake means a pure, clean, wholesome, semiviscous drink prepared by stirring, while freezing, in a dispensing freezer, a pasteurized mix consisting of the ingredients prescribed for ice milk in section 135.120 of Title 21 of the Code of Federal Regulations (revised as of [April 1, 1994] *April 1, 2010*), a copy of which is available for public inspection at the Division of Milk Control, Department of Agriculture and Markets, [One Winners Circle] 10B Airline Drive, Albany, New York 12235, except that:

(1) it shall contain not less than 31/4 percent and not more than six percent milk fat; and

(2) its content of milk solids not fat shall not be less than 10 percent. Freezer-made milk shake may only be sold or served from a dispensing freezer and may not be sold hard frozen.

Subdivisions (a) and (b) of section 17.18 of 1 NYCRR are amended to read as follows:

(a) The standards of identity for butter, whipped cream, milk, acidified milk, cultured milk, concentrated milk, sweetened condensed milk, sweetened condensed skimmed milk, lowfat dry milk, nonfat dry milk, nonfat dry milk fortified with vitamins A and D, evaporated milk, evaporated skimmed milk, lowfat milk, acidified lowfat milk, cultured lowfat milk, skim milk, acidified skim milk, cultured skim milk, dry whole milk, dry cream, heavy cream, light cream, light whipping cream, sour cream, acidified sour cream, eggnog, half- and-half, sour half-and-half, acidified sour half-and-half, yogurt, lowfat yogurt, and nonfat yogurt, as set forth in section 58.2621 of Title 7 of the Code of Federal Regulations (revised as of [January 1, 1994] *January 1, 2010*) and in sections 131.110; 131.111; 131.112; 131.115; 131.120; 131.122; 131.123; 131.125; 131.127; 131.130; 131.132; 131.135; 131.136; 131.138; 131.143; 131.144; 131.146; 131.147; 131.149; 131.150; 131.155; 131.157; 131.160; 131.162; 131.170; 131.180; 131.185; 131.187; 131.200; 131.203; and 131.206, respectively, of Title 21 of the Code of Federal Regulations (revised as of [April 1, 1994] *April 1, 2010*), are adopted and incorporated by reference herein. Copies of 7 CFR and 21 CFR are available for public inspection at the Division of Milk Control, Department of Agriculture and Markets, [One Winners Circle] 10B Airline Drive, Albany, New York 12235.

(b) The standards of identity for asiago fresh and asiago soft cheese, asiago medium cheese, asiago old cheese, blue cheese, brick cheese, brick cheese for manufacturing, caciocavallo siciliano cheese, cheddar cheese, cheddar cheese for manufacturing, low sodium cheddar cheese, colby cheese, colby cheese for manufacturing, low sodium colby cheese; cold-pack and club cheese; cold-pack cheese food; cold-pack cheese food with fruits, vegetables, or meats; cook cheese, koch kaese; cottage cheese; dry curd cottage cheese; lowfat cottage cheese; cream cheese; cream cheese with other foods; washed curd and soaked curd cheese; cream cheese for manufacturing; edam cheese; gammelost cheese; gorgonzola cheese; gouda cheese; granular and stirred curd cheese; granular cheese for manufacturing; grated cheese; grated American cheese food; hard grating cheeses; gruyere cheese; hard cheeses; limburg cheese; monterey cheese and monterey jack cheese; high moisture jack cheese; mozzarella cheese and scamorza cheese; low-moisture mozzarella and scamorza cheese; part-skim mozzarella and scamorza cheese; low-moisture part-skim mozzarella and scamorza cheese; muenster and munster cheese; muenster and munster cheese for manufacturing; neufchatel cheese; nuworld cheese; parmesan and reggiano cheese; pasteurized blended cheese; pasteurized blended cheese with fruits, vegetables, or meats; pasteurized process cheese; pasteurized process cheese with fruits, vegetables or meat; pasteurized process pimento cheese; pasteurized process cheese food; pasteurized process cheese food with fruits, vegetables or meats; pasteurized cheese spread; pasteurized cheese spread with fruits, vegetables, or meats; pasteurized neufchatel cheese spread with other foods; pasteurized process cheese spread; pasteurized process cheese spread with fruits, vegetables, or meats; provolone cheese; soft ripened cheeses; romano cheese; roquefort cheese, sheep's milk, blue-mold and blue-mold cheese from sheep's milk; samsoe cheese; sap sago cheese; semisoft cheeses; semisoft part-skim cheeses; skim milk cheese for manufacturing; spiced cheeses; part-skim spiced cheeses; spiced, flavored, standardized cheeses; Swiss and emmentaler cheese; and Swiss cheese for manufacturing as set forth in sections 133.102, 133.103, 133.104, 133.106, 133.108, 133.109, 133.111, 133.113, 133.114, 133.116, 133.118, 133.119, 133.121, 133.123, 133.124, 133.125, 133.127, 133.128, 133.129, 133.131, 133.133, 133.134, 133.136, 133.137, 133.138, 133.140, 133.141, 133.142, 133.144, 133.145, 133.146, 133.147, 133.148, 133.149, 133.150, 133.152, 133.153, 133.154, 133.155, 133.156, 133.157, 133.158, 133.160, 133.161, 133.162, 133.164, 133.165, 133.167, 133.168, 133.169, 133.170, 133.171, 133.173, 133.174, 133.175, 133.176, 133.178, 133.179, 133.180, 133.181, 133.182, 133.183, 133.184, 133.185, 133.186, 133.187, 133.188, 133.189, 133.190, 133.191, 133.193, 133.195, and 133.196 respectively, of 21 CFR (revised as of [April 1, 1994] *April 1, 2010*), are adopted and incorporated

by reference herein. Copies 21 CFR are available for public inspection at the Division of Milk Control, Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235.

Section 17.19 of 1 NYCRR is amended to read as follows:

The standards of identity for ice cream and frozen custard, goat's milk ice cream, ice milk, goat's milk ice milk, mellorine, sherbet, and water ices as set forth in sections 135.110, 135.115, 135.120, 135.125, 135.130, 135.140 and 135.160, respectively, of Title 21 of the Code of Federal Regulations (revised as of [April 1, 1994] *April 1, 2010*) are adopted and incorporated by reference herein. A copy 21 CFR is available for public inspection at the Division of Milk Control, Department of Agriculture and Markets, [One Winners Circle] 10B Airline Drive, Albany, New York 12235.

Paragraph (b) of subdivision (a) of section 17.20 of NYCRR is amended to read as follows:

(b) Each package containing milk, a milk product or a frozen dessert shall be labeled in accordance and in compliance with the applicable provisions of sections 101.1, 101.2, 101.3, 101.4, 101.5, 101.8, [101.09] 101.9, 101.12, 101.13, 101.14, 101.15, 101.17, 101.18, 101.22, 101.25, 101.71, 101.72, 101.73, 101.74, 101.75, 101.76, 101.77, 101.78, 101.100, 101.105, 105.62, 105.66, 105.67, 105.69, 130.3, 130.8, 130.10 and 130.11 of Title 21 of the Code of Federal Regulations (revised as of [April 1, 1994] *April 1, 2010*), a copy of which is available for public inspection at the Division of Milk Control, Department of Agriculture and Markets, [One Winners Circle] 10B Airline Drive, Albany, New York 12235, notwithstanding any provision of this Part to the contrary.

Text of proposed rule and any required statements and analyses may be obtained from: Casey McCue, Assistant Director, Division of Milk Control, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-1772

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

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

Consensus Rule Making Determination

The Department has considered the proposed amendments to sections 2.2(a), 2.2(gg)(1) and (2), 17.12, 17.18, 17.19 and 17.20 of 1 NYCRR and has determined that this rule is a consensus rule within the meaning of section 102(11) of the State Administrative Procedure Act (SAPA).

Section 102(11) of SAPA defines consensus rule to be a rule proposed by an agency for adoption on an expedited basis pursuant to the expectation that no person is likely to object to its adoption because it merely (a) repeals regulatory provisions which are no longer applicable to any person, (b) implements or conforms to non-discretionary statutory provisions, or (c) makes technical changes or is otherwise non-controversial.

The proposed amendments to sections 2.2(a), 2.2(gg)(1) and (2), 17.12, 17.18, 17.19 and 17.20 of 1 NYCRR would update the incorporations by reference contained in these sections with current Federal regulations, relating to definitions and standards of identity for various milk and milk products.

The proposed amendments would also make technical corrections, by updating the addresses for the Department of Agriculture and Markets.

The milk industry and consumers will benefit by the proposed amendments. Since State standards and requirements are substantially the same as the current Federal standards and requirements, the milk industry will benefit by not having to change the ingredients or the processes in the manufacturing of the products. The milk industry will also benefit, in that honest competition will be promoted by the existence and enforcement of standards of identity and labeling requirements which are uniform throughout the country. Consumers will benefit, in that they will continue to be able to purchase food products which are made with the appropriate ingredients in the appropriate manner. Consumers will also continue to be able to rely on the labeling information, sufficient to enable them to make informed decisions in the market place.

Accordingly, since the proposed amendments will benefit regulated parties and the general public alike, will update the incorporations by reference to current Federal regulations and make corrections to State agency addresses, no person is likely to object to the rule as written since it makes technical changes or is otherwise non-controversial (SAPA section 101(11)(c)).

Job Impact Statement

It is anticipated that the proposed amendments will have no adverse effect on job or job opportunities in the State, due to the fact that the milk industry will benefit by the proposed amendments. Since State standards and requirements are substantially the same as the current Federal standards and requirements, the milk industry will benefit by not having to change the ingredients or the processes in the manufacturing of the products. Additionally, the milk industry will benefit by the promotion of honest competition, made possible by the existence and enforcement of

standards of identity and labeling requirements which are uniform throughout the country.

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

Definitions, Standards of Identity and Enrichment and Requirements for Labeling and Packaging of Food

I.D. No. AAM-36-10-00005-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 amend Parts 250, 252, 259; and sections 261.8, 262.1, 265.1, 266.1, 267.1, 271-4.7, 271-5.3(h), (j), 271-5.4(g), 272-2.1, 277.1, 279.1 and 280.1 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16(1), 18(2), (6), 214-b and 215-a

Subject: Definitions, Standards of Identity and Enrichment and requirements for labeling and packaging of food.

Purpose: To update the incorporations by reference with current Federal regulations.

Substance of proposed rule: The proposed amendments to Parts 250, 252 and 259 of 1 NYCRR would conform the incorporations by reference contained in these Parts to current Federal regulations relating to definitions and standards for food and food additives and requirements for the packaging and labeling of food.

Part 250 would be amended to adopt standards of identity and/or standards of quality, and tolerances for food and food products as published in Title 21 of the Code of Federal Regulations (21 CFR), revised as of April 1, 2010. These Federal regulations establish definitions and standards for the following foods: canned fruits; canned fruit juices; fruit butters; jellies; preserves and related products; fruit pies; canned vegetables; vegetable juices; frozen vegetables; eggs and egg products; fish and shellfish; cacao products; tree nut and peanut products; nonalcoholic beverages; margarine; sweeteners and table syrups; and food dressings and flavorings. Part 250 would also be amended to adopt dietary food labeling requirements and requirements for the labeling of fresh produce treated with post-harvest wax or resin as published in 21 CFR, revised as of April 1, 2010.

Part 252 would be amended to adopt current Federal regulations in the area of food ingredients, as published in 21 CFR, revised as of April 1, 2010. These Federal regulations include the following categories of ingredients: Prior-Sanctioned Food Ingredients; Substances Generally Recognized as Safe; Direct Food Substances Affirmed as Generally Recognized as Safe; Indirect Food Substances Affirmed as Generally Recognized as Safe; and Substances Prohibited from Use in Human Food.

Part 259 would be amended to adopt current Federal regulations in the area of food packaging and labeling, as published in 21 CFR, revised as of April 1, 2010. These Federal regulations include definitions and standards for food packaging and labeling.

Section 261.8 would be amended to adopt current Federal regulations in the area of acidified foods, as published in 21 CFR, revised as of April 1, 2010.

Section 262.1 would be amended to adopt current Federal regulations in the area of processed fish, as published in 21 CFR, revised as of April 1, 2010.

Sections 265.1, 266.1 and 267.1 would be amended to adopt definitions and standards of identity for specific categories of food, as published in 21 CFR, revised as of April 1, 2010. Section 265.1 sets forth definitions and standards of identity for wheat flour, corn flour and rice, as well as for products related thereto. Section 266.1 sets forth definitions and standards of identity for macaroni and noodle products, including enriched macaroni and noodle products. Section 267.1 sets forth definitions and standards of identity for bakery products, specifically, bread, white bread, rolls, white rolls, buns and white buns, as well as enriched bread, enriched rolls and enriched buns.

Section 271-4.7 would be amended to adopt current Federal regulations, as published in 21 CFR, revised as of April 1, 2010, in the area of lubricants not made of safe materials to prevent such lubricants from leaking or dripping on food-contact surfaces of equipment requiring such lubrication.

Section 271-5.3(h) would be amended to adopt current Federal regulations, as published in 21 CFR, revised as of April 1, 2010, in the area of chemical sanitizing solutions.

Section 271-5.3(j) would be amended to adopt current Federal regulations, as published in 21 CFR, revised as of April 1, 2010, governing chemical sanitizers which exceed prescribed concentrations.

Section 271-5.4 would be amended to adopt current Federal regula-

tions, as published in 21 CFR, revised as of April 1, 2010, requiring that chemical sanitizers shall meet the requirements of the Federal regulations.

Section 272-2.1 would be amended to require that a counter card, sign or other appropriate device bearing the names of the ingredients in the food or food product include a declaration of artificial color, flavor or chemical preservative, as set forth in 21 CFR, revised as of April 1, 2010.

Section 277.1 would be amended to adopt current Federal regulations, as published in 21 CFR, revised as of April 1, 2010, in the area of thermally processed low acid foods packaged in hermetically sealed containers.

Section 279.1 would be amended to adopt current Federal regulations, as published in 21 CFR, revised as of April 1, 2010, in the area of fish and fishery products.

Section 280.1 would be amended to adopt current Federal regulations, as published in 21 CFR, revised as of April 1, 2010, in the area of labeling and processing juices.

Text of proposed rule and any required statements and analyses may be obtained from: Stephen D. Stich, Dir., Div. of Food Safety and Inspection, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-4492

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

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

Consensus Rule Making Determination

The Department has considered the proposed amendments to Parts 250, 252 and 259; sections 261.8, 262.1, 265.1, 266.1, 267.1, 271-4.7, 271-5.3(h), 271-5.3(j), 271-5.4(g), 272-2.1, 277.1, 279.1 and 280.1 of 1 NYCRR and has determined that this rule is a consensus rule within the meaning of section 102(11) of the State Administrative Procedure Act (SAPA).

Section 102(11) of SAPA defines consensus rule to be a rule proposed by an agency for adoption on an expedited basis pursuant to the expectation that no person is likely to object to its adoption because it merely (a) repeals regulatory provisions which are no longer applicable to any person, (b) implements or conforms to non-discretionary statutory provisions, or (c) makes technical changes or is otherwise non-controversial.

The proposed amendments to Parts 250, 252 and 259 of 1 NYCRR would update the incorporations by reference contained in these Parts with current Federal regulations, relating to definitions and standards for food and food additives and requirements for the packaging and labeling of food.

Section 261.8 would be amended to adopt current Federal regulations in the area of acidified foods.

Section 262.1 would be amended to adopt current Federal regulations in the area of processed fish.

Sections 265.1, 266.1 and 267.1 would be amended to adopt definitions and standards of identity for specific categories of food, as published in Federal regulations. Section 265.1 sets forth definitions and standards of identity for wheat flour, corn flour and rice, as well as for products related thereto. Section 266.1 sets forth definitions and standards of identity for macaroni and noodle products, including enriched macaroni and noodle products. Section 267.1 sets forth definitions and standards of identity for bakery products, specifically, bread, white bread, rolls, white rolls, buns and white buns, as well as enriched bread, enriched rolls and enriched buns.

Section 271-4.7 would be amended to adopt current Federal regulations in the area of lubricants not made of safe materials to prevent such lubricants from leaking or dripping on food-contact surfaces of equipment requiring such lubrication.

Section 271-5.3(h) would be amended to adopt current Federal regulations in the area of chemical sanitizing solutions. Section 271-5.3(j) would be amended to adopt current Federal regulations governing chemical sanitizers which exceed prescribed concentrations. Section 271-5.4 would be amended to adopt current Federal regulations, requiring that chemical sanitizers shall meet the requirements of the Federal regulations.

Section 272-2.1 would be amended to require that a counter card, sign or other appropriate device bearing the names of the ingredients in the food or food product include a declaration of artificial color, flavor or chemical preservative, as set forth in Federal regulations.

Section 277.1 would be amended to adopt current Federal regulations, as published in Federal regulations, in the area of thermally processed low acid foods packaged in hermetically sealed containers.

Section 279.1 would be amended to adopt current Federal regulations, in the area of fish and fishery products.

Section 280.1 would be amended to adopt current Federal regulations, in the area of labeling and processing juices.

Additionally, the proposed amendments make technical corrections, by updating the addresses for the Department of Agriculture and Markets and the Department of State.

The food industry and consumers will benefit by the proposed

amendments. Since State standards and requirements are substantially the same as the current Federal Standards and requirements, the food industry will benefit by not having to change the ingredients or the processes in the manufacturing of the products. The food industry will also benefit, in that honest competition will be promoted by the existence and enforcement of standards of identity and labeling requirements which are uniform throughout the country. Consumers will benefit, in that they will continue to be able to purchase food products which are made with the appropriate ingredients in the appropriate manner. Consumers will also continue to be able to rely on the labeling information, sufficient to enable them to make informed decisions in the market place.

Accordingly, since the proposed amendments will benefit regulated parties and the general public alike, will update the incorporations by reference to current Federal regulations and make corrections to State agency addresses, no person is likely to object to the rule as written since it makes technical changes or is otherwise non-controversial (SAPA section 101(11)(c)).

Job Impact Statement

It is anticipated that the proposed amendments will have no adverse effect on job or job opportunities in the State, due to the fact that the food industry will benefit by the proposed amendments. Since State standards and requirements are substantially the same as the current Federal standards and requirements, the food industry will benefit by not having to change the ingredients or the processes in the manufacturing of the products. Additionally, the food industry will benefit by the promotion of honest competition, made possible by the existence and enforcement of standards of identity and labeling requirements which are uniform throughout the country.

Office of Alcoholism and Substance Abuse Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Credentialing of Addictions Professionals

I.D. No. ASA-36-10-00009-P

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

Proposed Action: Amendment of Part 853 and repeal of Part 855 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07, 19.09, 19.21, 32.01 and 32.02

Subject: Credentialing of Addictions Professionals.

Purpose: To consolidate and update the Credentialing requirements.

Substance of proposed rule (Full text is posted at the following State website: www.oasas.state.ny.us): All credentialing regulations – counseling, prevention and gambling will be consolidated into a single Part 853 – Credentialing of Addictions Professionals. The Credentialing process will be uniform for each credential; eligibility standards will be unique and articulated in the credential-specific sections.

The existing Credentialed Alcoholism and Substance Abuse (CASAC) and Credentialed Prevention Professional/Credentialed Prevention Specialist (CPP/CPS) Credentials Boards (15 members each) will be consolidated into one 19-member Credentials Board. It is proposed that each of the three credentials (counseling, prevention and gambling) have equal representation on the new Board. The Board would also have one seat designated for a qualified health professional other than an OASAS credentialed professional; and three for consumers or members of the general public.

The definition of “approved work setting” is broadened to include non-OASAS certified settings, allowing applicants to claim a portion of the work experience gained in non-certified settings, providing they can document that work performed included activities/tasks that are associated with one or more of the performance domains of that credential. The regulation removed the ten-year limitation on acceptable education/training and work experience, and allowed a two-year (Associates) degree substitution (in an approved human services field) for six months of qualifying work experience.

The regulation has revised the scope of practice for CASACs to align with the new practice dimensions contained in SAMHSA’s Technical Assistance Publication (TAP 21) Addiction Counseling Competencies.

The regulation requires disclosure of all felony convictions and certain misdemeanors (i.e., violent crimes; crimes against children; offenses involving physical injury; sexual misconduct and intimidation), and for applicants who are in (or recently completed) chemical dependence treatment, enforce an 18-month post-treatment waiting period or require a formal assessment by a physician resulting in a minimum Global Assessment of Function (GAF) score of 81.

The regulation will also require one time training in child abuse mandated reporting, and tobacco cessation, and eliminates the Case Presentation Method oral examination. CASAC and CPP/CPS candidates are now permitted to take the written exam before fulfilling the work experience requirements, and the renewal cycle is extended from a two-year to a three-year cycle. Credentialed professionals are permitted to renew (or reinstate) their credentials anytime after expiration without a waiver.

The regulation shall establish a Credentialed Problem Gambling Counselor, who must have a minimum of a Bachelors degree and three years of qualifying work experience, at least one year of work experience must have been supervised by a Qualified Problem Gambling Professional (equivalent to QHP in chemical dependence services) with three years of qualifying gambling work experience and one year of supervisory experience. Education and training – 240 hours (60 clock hour core curriculum; 150 clock hours related to gambling addiction counseling/clinical skills; and 30 clock hours focused on professional and ethical responsibilities). There will be no examination associated with the gambling credential.

Text of proposed rule and any required statements and analyses may be obtained from: Patricia Flaherty, Deputy Counsel, OASAS, 1450 Western Avenue, Albany, New York 12203, (518) 485-2317, email: patriciaflaherty@oasas.state.ny.us

Data, views or arguments may be submitted to: Patricia Flaherty, OASAS, 1450 Western Avenue, Albany, New York 12203, (518) 485-2317, email: patriciaflaherty@oasas.state.ny.us

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

Regulatory Impact Statement

1. Statutory Authority: Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services (the Commissioner) to adopt standards including necessary rules and regulations pertaining to chemical dependency services.

Section 19.07(d)(1) & (3) of the Mental Hygiene Law grants the Commissioner the authority to establish best practices and minimum criteria for the establishment of credentials for CASAC (credentialed alcoholism and substance abuse counselors), prevention professionals and gambling addiction counselors.

Section 19.07(d) of the Mental Hygiene Law directs the office to foster programs for the training and development of persons capable of providing alcoholism and/or substance abuse services, including the issuance of credentials to persons who meet minimum qualifications set by the office; to establish minimum qualifications for credentialed alcoholism and substance abuse counselors; to issue credentials to persons who meet such qualifications; and to suspend or revoke such credentials for good cause.

Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

Section 19.21(d) of the Mental Hygiene Law requires the Commissioner to promulgate regulations which establish criteria to assess alcoholism, substance abuse and chemical dependence treatment effectiveness and to establish a procedure for reviewing and evaluating the performance of providers of services in a consistent and objective manner.

Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

Section 32.02 of the Mental Hygiene Law states the Commissioner of the Office of Alcoholism and Substance Abuse Services (OASAS) may adopt regulations necessary to ensure quality services to those suffering from problem gambling.

2. Legislative Objectives: Chapter 558 of the Laws of 1999 requires the promulgation of rules and regulations to regulate and assure the consistent high quality of services provided within the state to persons suffering from chemical abuse or dependence, their families and significant others, as well as those who are at risk of becoming chemical abusers. The legislature enacted section 19 enabling the Commissioner to establish best practices for treating chemical dependency. Additionally section 19.07 and 32.02 directs OASAS to issue credentials to persons whom have been trained to provide services and meet certain minimum requirements as addiction professionals. The objective of the legislature was to establish and regulate the kind of training, education and experience necessary to be effective in treating the many New Yorkers suffering from an addiction. This regulation places all credentials within the jurisdiction of the Commissioner and authorized by the Mental Hygiene Law in the same section. It creates a central location for all information about each credential. The intent of the legislation creating a credential for the training, education and standards for addiction professionals is to ensure proper delivery of services to those who suffer from addiction. To that end, this regulation provides minimum standards and sets out the requirements for attaining, and maintaining, the various credentials contained therein.

3. Needs and Benefits: The purpose of this proposed amendment and consolidation is to bring the credentialing process up to date and in line with changes within the field of addiction counseling, such as the addition of mandated child abuse reporter training, and revising the scope of practice to align with the new practice dimensions contained in the Substance Abuse and Mental Health Service Administrations (SAMSHA) Technical Assistance Publication. Specifically, the proposal:

- Consolidates the three existing credential categories (CASAC, credentialed prevention professional (CPP) and credentialed prevention specialist (CPS)) into one place within OASAS regulations (Part 853) making it easier for the public to access and compare credentialing requirements.
- Changes some of the credentialing requirements that have become obsolete or unduly burdensome over the years by broadening the definition of an approved work setting, and removing the ten year limit on education, training and work experience.
- Creates a Problem Gambling Counselor credential to ensure a standard of competency to meet the particular needs of this addicted population.
- Updates prevention terminology and outdated practices, and changes the staff supervision qualification in the Prevention Credentialing standards to ensure continued services and quality care to recipients.

The overall benefit of these changes to the field and thereby, its clients, is that we will have a workforce that is up to date on nationally recognized competencies. Addiction professionals will not be unduly burdened by outdated requirements thereby making it easier to obtain the credential without compromising any skill sets necessary to perform the functions of the credential. Revising the scope of practice to align with the Federal standards of practice as articulated in Substance Abuse and Mental Health Service Administration technical assistance publication (TAP 21) Addiction Counseling Competencies will standardize the practice in an evidenced based tested modality. Mandating training in new key areas will have a positive impact on the field. Training for mandating reporting of child abuse and tobacco cessation is available online through several sources including the OASAS website, free of charge, thereby allowing professionals to satisfy the requirements with little or no economic impact.

Allowing applicants to claim non OASAS certified work settings as a portion of their eligible work experience broadens the availability of training sites. Persons who work in a setting such as a homeless shelter, where they are providing some chemical dependency services may claim this experience towards the credential requirements. These persons are still responsible for knowing the core competencies neces-

sary to enable them to pass the examination required for a credential. Therefore there is no negative impact on patient care as a result of this change. Additionally, the removal of the ten year limitation on education and training as well as work experience shall enable persons returning to the work force after raising families, or other reasons, to use their well earned degree's or invaluable experience to help those suffering from addiction. Patient care is not compromised because of the competency-based examination requirement and the continuing education requirements. Finally, the office currently requires, upon application, disclosure of felony convictions. However, this proposal requires disclosure of all felony and certain misdemeanor convictions such as sex crimes and crimes against children to ensure the safety of our clients.

The proposed regulation also consolidates the existing CASAC and CPP/CPS Credentials Boards into one 19-member Credentials Board that has advisory/oversight authority over all three credentials. This will reduce the administrative and travel costs associated with quarterly meetings of multiple Boards and will also promote uniformity in decisions rendered and consistency across all OASAS credentials.

Also, the existing CASAC Appeals Board, would be eliminated with this amended regulation. The current role of the Appeals Board is to review the recommendations of the CASAC Credentials Board in response to complaints about credentialed alcoholism and substance abuse counselors. As the Appeals Board meets only twice per year, a final determination is unduly delayed. Elimination of the Appeals Board provides a counselor the opportunity for a more timely resolution of their complaint. Resulting in:

- Administrative savings;
 - A more streamlined appeals process in that appeals will now be handled by an independent hearing officer rather than by a Board of peers that meets twice per year; and
 - Removal of a vestige of the past in which the Appeals Board, at one time, served as the final arbiter in regard to action taken against credentialed professionals. Since this is no longer the case (credentialed professionals may request a hearing), the role of the Appeals Board has been subsumed by a more formal hearing process.
4. Costs: This proposal does not change the existing fee structure and does not create additional fees. The administration of the credentialing process shall not change, and therefore there is no additional cost to the State.
- a. Costs to regulated parties: The fee structure shall remain the same. There is no increased fee associated with this regulation. The fees associated with the new Problem Gambling Credential consists of the following: Initial Application, \$100.00, Renewal Application \$150.00, Late Renewal \$25.00 (per six month period up to one year), and a Reinstatement Fee \$100.00 (applied after credential has been expired for 1 or more years.

b. Costs to the agency, state and local governments: There will be no additional costs to counties, cities, towns or local districts.

5. Local Government Mandates: There are no new mandates or administrative requirements placed on local governments.

6. Paperwork: There are no new paperwork requirements.

7. Duplications: There is no duplication of other state or federal requirements.

8. Alternatives: OASAS considered each proposed change as the need to alter existing regulations presented itself through issues that arose within the agency and outside of the agency. For example, there has been an issue with a decreased workforce and new CASAC's are needed to fill positions left by attrition. The workforce informed the agency that the requirements for our Credential could be changed to include educational experiences that pre date 10 years, as was our previous rule. Eliminating this barrier to getting a Credential allows persons looking for a second career to use their well earned degrees towards the requirements. OASAS considered other time frames, allowing only certain education, and decided to eliminate the 10 year rule altogether.

Each proposed change and any alternatives were discussed on an intra-agency basis within a group of subject matter experts from vari-

ous bureaus within the office. Additionally, these changes were discussed with providers at various workgroups. The proposed changes are welcomed by the provider community. The proposed changes were discussed with the Board Members and the Provider Associations representing service providers, the OASAS Executive Team and the Advisory Counsel. Alternatives were discussed and the current proposed regulation is a result of all of the questions, comments and concerns that were raised during that process.

9. Federal Standards: There are no specific federal standards or regulations that apply to this Part.

10. Compliance Schedule: It is expected that full implementation of Part 853 will be completed within nine months of the adoption of the regulation.

Regulatory Flexibility Analysis

Effect of the Rule:

All of our approximately 1,500 providers shall be affected by this rule in that they will be able to use a broader scope of applicants for staffing patterns thereby enabling them to hire persons from a larger pool of applicants. The changes to the credentialing regulations shall have a positive impact of providers. The establishment of the gambling counselor credential shall not have a real effect on the provider community because the parameters and requirements set in this rule have already been in place through contractual agreements with providers.

Compliance Requirements:

The rule shall first and foremost affect individual applicants for the credential; it does not have any reporting, recordkeeping or other affirmative act requirements for small businesses or local governments. Except, to the extent that they have to provide proof of employment of those persons applying for the credential, however this is not a change. This requirement already exists.

Professional Services:

Additional professional services are not expected.

Compliance Costs:

There are no additional compliance costs to small businesses or local governments associated with this regulation.

Economic and Technological Feasibility:

No economic or technological changes are proposed as a subject of this rule. The fees for the credentials, with the exception of the new problem gambling credential, have remained the same, and these fees are for the individual applicant and should not affect small businesses or local governments.

Small Business and Local Government Participation:

The proposed regulations were shared with New York's treatment provider community including Alcoholism and Substance Abuse Providers of NYS, Inc., Greater New York Hospital Association, Healthcare Association of New York, the Council of Local Mental Hygiene Directors and the New York State Advisory Council on Alcoholism and Substance Abuse Services, various other substance abuse providers and a statewide representative coalition from problem gambling and prevention provider networks.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Applicants that will be impacted by the amendments to Part 853 are located in rural as well as suburban and metropolitan areas of the State.

2. Reporting: There are no new reporting requirements, except that the application will now ask for certain misdemeanor crime convictions in addition to felony.

3. Costs: There is no change in costs.

4. Minimizing adverse impact: It is not expected that there will be any adverse impact to rural areas.

5. Rural area participation: These amendments were shared with New York's treatment provider community and included a cross-section of upstate and downstate, as well as urban and rural programs.

Job Impact Statement

The amendments to Part 853, as well as the addition of the problem gambling credential and the merging of the regulations for the prevention credentials into one Part, should not have any negative impact on jobs.

Anyone who already has one of these credentials is minimally affected by the changes, and persons who do not have the credential will find that OASAS has in fact expanded their ability to gain a credential, thereby making their ability to gain employment more likely.

Education Department

EMERGENCY RULE MAKING

Relates to the Establishment of a Clinically Rich Graduate Level Principal Preparation Program

I.D. No. EDU-23-10-00002-E

Filing No. 872

Filing Date: 2010-08-20

Effective Date: 2010-08-21

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

Action taken: Amendment of sections 52.1, 52.21 and 80-3.10 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 210, 305(1), (2), 3001(2), 3004(1) and 3007(2)

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

Specific reasons underlying the finding of necessity: The proposed amendment is designed to 1) address immediate personnel shortages of effective school building leaders in New York's high need schools and school districts; and 2) promote student growth and achievement through strong educational leadership.

Research studies show that school leaders are critical to helping improve student performance and preparation programs grounded in intensive clinical experiences prepare effective school leaders (Educational Leadership Policy Standards, 2008). To maximize student growth and achievement in high need schools, the Department will select program providers for graduate level clinically rich principal preparation pilot programs through a Request for Proposal (RFP) process.

In order to ensure that any program selected to offer a clinically rich principal preparation program is of high quality, the Board of Regents will establish a Blue Ribbon Commission to evaluate all applications. This Blue Ribbon Commission will be comprised of highly renowned school leader educators. The Blue Ribbon Commission will make recommendations to the Board of Regents for those programs that should be authorized to establish clinically rich principal preparation programs, both from collegiate and non-collegiate providers or in combination. The goal is to create a process that will ensure a rigorous programmatic review and to select only the highest quality providers to assist in the preparation of principals for our high need schools.

To participate in the clinically rich principal preparation program, program providers will be required to meet certain eligibility requirements, including written collaboration agreements with high need schools, faculty, curriculum, mentoring and training requirements.

In order to fill the personnel shortages for effective school building leaders in high need schools in the 2011-2012 school year, an emergency action is necessary for the preservation of the general welfare in order to timely implement the provisions of the proposed amendment to provide school districts and BOCES with timely notice of the eligibility requirements and the program registration requirements for the pilot program and to complete the competitive bidding process for the selection of program providers before the 2011-2012 school year.

Emergency action is also necessary at the July 2010 Board of Regents meeting in order to ensure that the regulations remain continuously in effect until the regulation becomes effective on October 6, 2010. The emergency rule adopted at the May Regents meeting is only effective for 90 days and will expire on August 22, 2010. To avoid the adverse effects of a lapse in the emergency rule, another

emergency action is necessary at the July Regents meeting to readopt the rule, effective August 21, 2010 so that it may remain continuously in effect until it can be adopted and made effective as a permanent rule.

Subject: Relates to the establishment of a clinically rich graduate level principal preparation program.

Purpose: Establishes the program registration standards for the clinically rich principal preparation program.

Text of emergency rule: 1. Paragraph (6) of subdivision (a) of section 52.1 of the Regulations of the Commissioner of Education is added, effective August 21, 2010, as follows:

(6) every curriculum leading to certification as a school building leader in a clinically rich graduate level principal preparation pilot program as prescribed under section 52.21(c)(7) of the Regulations of the Commissioner of Education.

2. A new paragraph (7) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education is added, effective August 21, 2010, as follows:

(7) Clinically rich graduate level principal preparation pilot program for high need schools.

(i) *Purpose.* The purpose of this paragraph is to establish a clinically rich graduate level principal preparation pilot program to increase the supply of highly effective principals in high need schools. This pilot program will include an intensive clinical component, grounded in the standards of the Interstate School Leaders Licensure Consortium (ISLLC) and centered on the practice of research-based school leadership skills and best practices that lead to strong educational leadership and increased student achievement.

(ii) *Limitations.* The clinically rich graduate level principal preparation pilot program shall end on June 30, 2016.

(iii) *Definitions.* For purposes of this paragraph:

(a) *High need school* shall mean a school designated by the Commissioner of Education as a high need school. A high need school shall include, but not be limited to, schools under registration review, low performing schools, and other high need schools approved by the Board of Regents for purposes of this program.

(b) *Institution* shall mean an institution of higher education as defined in section 50.1 of this Title, an education corporation as defined in Education Law section 216-a, or a corporation having an educational purpose that is formed under the Not-for-Profit Corporation Law or the Business Corporation Law with the consent of the Commissioner pursuant to Education Law section 216, or a Limited Liability Company having an educational purpose that is formed under the Limited Liability Company Law with the consent of the Commissioner under Education Law section 216, and such institution must be selected by the Board of Regents for participation in these pilot programs pursuant to a request for proposal ("RFP") process. Such proposals shall meet the criteria outlined by the Board of Regents in the RFP and be in a format, and submitted pursuant to a timeline, as prescribed by the Board of Regents.

(c) *Principal-mentor* shall mean an experienced and highly effective principal who holds a certificate as a school building leader and is selected through collaboration between the program provider and the school district and is assigned to provide mentoring and support to a candidate in this pilot program.

(iv) *General requirements for the clinically rich graduate level pilot program.* The general registration requirements set forth in sections 52.1 and 52.2 of this Part, the general requirements for registration of programs leading to certification in the educational leadership service as set forth in sections 52.21(c)(1)(ii), (iii) and (iv) of this Part and the institutional accountability requirements set forth in section 52.21(c)(6) of this Part shall apply. The requirements set forth in section 52.21(c)(2) of this Part shall not be applicable, except as otherwise provided in this paragraph.

(v) *Specific requirements for the clinically rich graduate level principal preparation pilot programs.* The following requirements shall be met:

(a) *Collaboration.* Any institution that participates in this program shall execute a written agreement with each partnering high need school which shall include the following:

(1) the specific roles of the institution and the high need school in the recruitment, preparation, and mentoring of candidates, as well as their roles in sustaining this pilot program in the long term;

(2) the selection and evaluation criteria and the recruitment process for principal-mentors;

(3) a commitment to actively recruit and select candidates who demonstrate excellence in teaching, experience working as advocates for children and families in high need schools, leadership capability, and a sincere intent to serve as instructional leaders;

(4) the various types of assessments that will be used to evaluate candidates throughout the program, and how such assessments will be utilized to prescribe study and authentic, real-world experiences that will enable candidates to develop the knowledge, understanding, and skills necessary to successfully meet the requirements of this program, provide effective leadership in high need schools and to obtain certification upon completion of the program.

(b) *Admission requirements.* In addition to the selection criteria established by institutions for candidates to participate in this program, the pilot program shall meet the following admission requirements:

(1) The program shall require candidates to hold a baccalaureate or graduate degree from a regionally accredited higher education institution or an equivalently approved higher education institution as determined by the department. Candidates shall have achieved at least a 3.0 cumulative grade point average, or its equivalent, in the program leading to the baccalaureate or graduate degree, or shall have been found by an officer designated by the registered program to have the necessary knowledge and skills to successfully complete the program, which finding shall be in writing and include the basis for that finding.

(2) Candidates shall possess a permanent or professional certificate in the classroom teaching service or pupil personnel service, or to demonstrate the potential for instructional leadership based on prior experiences that are evaluated using criteria established by the program and uniformly applied. Institutions shall inform applicants in writing prior to admission that the State Education Department requires for the initial certificate as a school building leader that the candidate shall have successfully completed three years of classroom teaching service and/or pupil personnel service experience in public or non-public schools N-12.

(3) Institutions shall require candidates to demonstrate the potential to become education leaders possessing the characteristics of effective leaders as a result of their prior experiences, including experiences as a teacher, administrator, or pupil personnel service provider.

(4) Only those candidates who provide a written commitment to be a school building leader for at least four years in a high need school upon graduation shall be admitted into the program.

(c) *Instruction.* Any instruction provided within the program shall reflect a deep understanding of adult learning principles, make appropriate use of technology, demonstrate effective instructional practices, be individualized based on the candidate's needs, and demonstrate the development of higher order cognitive processes.

(d) *Curriculum and the clinical experience component.* Completion of the curriculum and the clinical experience component of the program shall prepare the candidate with the education required for an initial certificate in the school building leader certificate title (principal, housemaster, supervisor, department chair, assistant principal, coordinator, unit head, and any other person serving more than 10 periods per week of the assignment in an administrative or supervisory position, except school district leader or school district business leader).

(1) *Faculty.* All faculty members who teach within a curriculum in this pilot program shall possess earned doctorates or other terminal degrees in the field in which they are teaching or shall have demonstrated, in other widely recognized ways, their special competence in the field in which they instruct graduate students.

(2) *Curriculum.*

(i) The curriculum of the pilot program shall include

research-based skills and best practices aligned with the following six standards of the Educational Leadership Policy Standards: ISLLC 2008 to prepare candidates to be effective school building leaders in high need schools and promote the success of all students by:

(A) facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community;

(B) advocating, nurturing and sustaining a school culture and instructional program conducive to student learning and staff professional growth;

(C) ensuring management of the organization, operations and resources for a safe, efficient, and effective learning environment;

(D) collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(E) acting with integrity, fairness, and in an ethical manner; and

(F) understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

(ii) In addition, the curriculum of the program shall meet the following requirements:

(A) The curriculum shall be offered by qualified faculty who engage in regular professional development experiences to strengthen their own knowledge and skills, demonstrate recent highly effective leadership experience and an understanding of high needs schools and possess a commitment and dedication to the mission and guiding principles of this pilot program.

(B) The curriculum shall effectively integrate technology, be intellectually challenging, reflect research on effective leadership and school improvement, and focus on improving the conditions that impact student learning and achievement.

(C) The content requirements for the program shall include, but need not be limited to graduate level study designed to permit the candidate to obtain the content requirements for programs leading to an initial certificate as a school building leader, as prescribed in section 52.21(c)(2)(v) of this Part.

(3) Clinically rich experience component. The clinical experience component of the program shall meet the following requirements:

(i) The clinical experience shall be designed by the institution in collaboration with a high need school to provide a rich variety of school leadership experiences for its candidates to ensure that program graduates will be effective principals in high need schools.

(ii) The clinical experience shall be woven throughout the pilot program and serve as the anchor, be developmental in nature, with increasing responsibilities progressing to independent leadership responsibilities and feature active authentic leadership experiences.

(iii) The candidate shall complete the clinical experience component of this program under the mentorship of the assigned principal-mentor in a high need school.

(iv) Prior to assigning the candidate to a school, the institution shall enter into a written agreement with the high need school wherein the high need school shall agree to establish a plan for at least one continuous school year of mentored clinical experience by the assigned principal-mentor for the candidate and support by a team comprised of program faculty, teachers and administrators at the high need school and the superintendent.

(v) The program shall ensure its candidates receive mentoring support during the entire period they are assigned to the school and enrolled in the program, which shall be at least one continuous school year.

(vi) Program faculty shall supervise the candidate and promote the linking of theory and practice by observing and advising the candidate at least twice each month during the clinical experience, except as otherwise provided in this paragraph.

(vii) Program faculty shall work in collaboration with the assigned principal-mentor to evaluate candidates and provide feedback.

(viii) During the clinical experience, the program shall provide courses and seminars that are designed to link educational theory with clinical experiences, which shall include, but need not be limited to, the curricula described in subclause (v)(d)(2) of this paragraph.

(e) Certification. A designated officer of the institution offering the pilot program shall be required to recommend the candidate for an initial certificate, upon completion of the program and after consultation with the principal-mentor.

(f) Support commitment for pilot program graduates. An institution shall have a formal written agreement with partnering schools or districts to provide continued mentoring support for graduates of the pilot program during their first year in a school leadership position, which shall include, but not be limited to, setting selection criteria, and the recruitment and training processes for mentors; and developing plans to provide professional development programs based on research and best practices for mentors and school leaders.

3. A new subclause (3) of clause (a) of subparagraph (ii) of paragraph (1) of subdivision (a) shall be added to Section 80-3.10 of the Regulations of the Commissioner of Education, effective August 21, 2010, as follows:

(3) The candidate shall hold a baccalaureate or graduate degree from a regionally accredited higher education institution or an equivalently approved higher education institution as determined by the department and have successfully completed the clinically rich principal preparation pilot program leading to the initial certificate as a school building leader in the educational leadership service registered pursuant to section 52.21(c)(7) of this Title.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-23-10-00002-EP, Issue of June 9, 2010. The emergency rule will expire October 18, 2010.

Text of rule and any required statements and analyses may be obtained from: Christine Moore, NYS Education Department, 89 Washington Avenue, Room 148, Albany, NY 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law grants to the Regents the authority to register domestic and foreign institutions in terms of New York standards.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and authorizes the Commissioner to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the State's public schools.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in the State's public schools.

Subdivision (2) of section 3007 of the Education Law authorizes the Commissioner of Education to endorse a certificate issued by another state.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes by modifying the requirements in the Regulations of the Commissioner of Education for principal preparation programs, by establishing a clinically rich pilot program.

3. NEEDS AND BENEFITS:

The purpose of creating the clinically rich pilot program is to address the retention issue in high need schools and improve student growth and achievement in high need schools. Research studies show that school leaders are critical to helping improve student performance and preparation programs that are grounded in intensive clinical experiences prepare effective school leaders. To maximize student growth and achievement in high need schools, the Department will select program providers for the clinically rich principal preparation pilot program through a Request for Proposal (RFP) process.

In order to ensure that any program selected to offer a clinically rich principal preparation program is of high quality, the Board of Regents will establish a Blue Ribbon Commission to evaluate all applications. This Blue Ribbon Commission will be comprised of highly renowned teacher educators. The Blue Ribbon Commission will make recommendations to the Board of Regents for those programs that should be authorized to establish clinically rich principal preparation programs, from collegiate and non-collegiate providers or in partnerships. The goal is to create a process that will ensure a rigorous programmatic review and to select only the highest quality providers to assist in the preparation of principals for our high need schools. In addition, non-collegiate programs will be required to seek accreditation from an education preparation program accrediting body approved by the Board of Regents.

The proposed amendment would authorize institutions, other than institutions of higher education, to offer the graduate level clinically rich pilot program. Such institutions shall include, but not be limited to, cultural institutions, libraries, research centers, and other organizations with an educational mission that are selected by the Commissioner for participation through the RFP process.

To prepare effective principals for high need schools, the graduate level clinically rich pilot program shall include at least one continuous school year of mentored clinical experience, centered on practicing research-based educational leadership skills. Pedagogical study linking theory and practice will be embedded in the clinical experience.

4. COSTS:

(a) Cost to State government: The amendment will not impose any additional cost on State government, including the State Education Department. The State Education Department will use existing staff and resources to select program providers for the pilot programs through a Request for Proposal (RFP) process.

(b) Cost to local government: The proposed amendment is permissive in nature and only affects high need schools and school districts that wish to participate in a clinically rich pilot program. The proposed amendment requires such school districts to provide mentoring for the candidates in the pilot program. The State Education Department estimates that, on average, it will cost a school district about \$6,200 for each candidate per year to provide the mentoring, while they are in the clinically rich pilot program.

(c) Cost to private regulated parties: The proposed amendment is permissive in nature. The Department anticipates that institutions who elect to participate in this program will incur the same costs for the development and implementation of this program as they would for a traditional principal preparation program.

(d) Costs to the regulatory agency: As stated above in Costs to State Government, the amendment does not impose any additional costs on the State Education Department. The Department anticipates that it will be able to use existing faculty and resources to approve these programs and for the selection of participating institutions.

5. LOCAL GOVERNMENT MANDATES:

Any institution that participates in this pilot program shall execute a written agreement with each partnering high need school which shall include the following: (1) the specific roles of the institution and the high need school in the recruitment, preparation, and mentoring of candidates, as well as their roles in sustaining this pilot program in the long term; (2) the selection and evaluation criteria and the recruitment process for principal-mentors; (3) a commitment to actively recruit and select candidates who demonstrate excellence in teaching, experience working as advocates for children and families in high need schools, leadership capability, and a sincere intent to serve as instructional leaders; (4) the various types of assessments that will be

used to evaluate candidates throughout the program, and how such assessments will be utilized to prescribe study and experiences that will enable candidates to develop the knowledge, understanding, and skills necessary to successfully meet the requirements of this program and to obtain certification upon completion of the program.

These institutions will also be required to enter into a written agreement with the high need school, prior to assigning the candidate to a classroom in such high need school, wherein the high need school must agree to establish a plan for at least one continuous school year of mentored clinical experience by an assigned principal-mentor and provide support by a team of program faculty, teachers and administrators at the high need school and the superintendent. Program faculty will also be required to supervise the candidate and promote the linking of theory and practice by observing and advising the candidate at least twice each month during the clinical experience and shall work in collaboration with the assigned principal-mentor to evaluate candidates and provide feedback. During the clinical experience component of the program, the institution shall also provide courses and seminars that are designed to link educational theory with clinical experiences.

An institution that elects to participate in this program will also be required to have a formal written agreement with partnering schools or districts to provide continued mentoring support for graduates of the pilot program during their first year in a school leadership position, which shall include, but not be limited to, setting selection criteria, and the recruitment and training processes for mentors; and developing plans to provide research-based professional development programs for mentors and school leaders.

6. PAPERWORK:

See paperwork requirements listed in Section 5 above entitled "Local Government Mandates".

7. DUPLICATION:

The amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There were no significant alternative proposals considered.

9. FEDERAL STANDARDS:

There are no Federal standards that address program registration requirements for principal preparation programs, qualifying individuals to be employed as a school building leader in the New York State public schools, the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

If adopted as an emergency measure at the may Regents meeting, the proposed amendment will become effective on May 25, 2010. A second emergency adoption will be necessary at the July Regents meeting to ensure that the regulations remain continuously in effect until the regulation becomes effective on October 6, 2010. It is unnecessary to delay implementation of the proposed amendment because of its permissive nature.

Regulatory Flexibility Analysis

a) Small Businesses:

1. Effect of rule:

The purpose of the proposed amendment is to establish program registration standards for a clinically rich pilot program and to authorize institutions, other than institutions of higher education, with an education mission and that are selected by the Board of Regents, to offer principal preparation programs under this pilot program. Some of these institutions may be small businesses.

2. Compliance requirements:

Any institution that participates in this pilot program shall execute a written agreement with each partnering high need school which shall include the following: (1) the specific roles of the institution and the high need school in the recruitment, preparation, and mentoring of candidates, as well as their roles in sustaining this pilot program in the long term; (2) the selection and evaluation criteria and the recruitment process for principal-mentors; (3) a commitment to actively recruit and select candidates who demonstrate excellence in teaching, experience working as advocates for children and families in high need

schools, leadership capability, and a sincere intent to serve as instructional leaders; (4) the various types of assessments that will be used to evaluate candidates throughout the program, and how such assessments will be utilized to prescribe study and experiences that will enable candidates to develop the knowledge, understanding, and skills necessary to successfully meet the requirements of this program and to obtain certification upon completion of the program.

These institutions will also be required to enter into a written agreement with the high need school, prior to assigning the candidate to a classroom in such high need school, wherein the high need school must agree to establish a plan for at least one continuous school year of mentored clinical experience by an assigned principal-mentor and provide support by a team of program faculty, teachers and administrators at the high need school and the superintendent. Program faculty will also be required to supervise the candidate and promote the linking of theory and practice by observing and advising the candidate at least twice each month during the clinical experience and shall work in collaboration with the assigned principal-mentor to evaluate candidates and provide feedback. During the clinical experience component of the program, the institution shall also provide courses and seminars that are designed to link educational theory with clinical experiences.

An institution that elects to participate in this program will also be required to have a formal written agreement with partnering schools or districts to provide continued mentoring support for graduates of the pilot program during their first year in a school leadership position, which shall include, but not be limited to, setting selection criteria, and the recruitment and training processes for mentors; and developing plans to provide research-based professional development programs for mentors and school leaders.

3. Professional services:

The proposed amendment does not require small businesses to contract for additional professional services to comply.

4. Compliance costs:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to institutions and high need schools that elect to participate in the pilot program. However, for each candidate in the pilot program, the State Education Department estimates that it will cost a high need school or school district that elects to participate in the program approximately \$6,200 per year to provide mentoring. The Department also anticipates that for any institution that elects to participate in the pilot program, it will incur the same costs for the development and implementation of this program as they would for a traditional principal preparation program and that such institutions could use existing faculty to meet supervision requirements of the proposed amendment.

5. Economic and technological feasibility:

See above response to compliance costs. The proposed amendment would not require schools or school districts to secure special technology to comply.

6. Minimizing adverse impact:

As stated above, the proposed amendment is permissive in nature. It only applies to institutions that wish to participate in a graduate level clinically rich pilot program. Because of the nature of the proposed amendment, it is unnecessary to minimize adverse impacts on small businesses.

7. Small business participation:

The Department has shared the proposed amendment and sought input from the School Administrators Association of New York State, the New York State Federation of School Administrators, the Collegiate Association for Developing Educational Administrators, the Metropolitan Council for Educational Administration and the New York State Council of School Superintendents. These organizations have representatives from school districts across the State.

b) Local Governments:

1. Effect of rule:

The purpose of the proposed amendment is to establish program registration standards for a clinically rich graduate level pilot program

and to authorize institutions, other than institutions of higher education, that are selected by the Board of Regents, to offer teacher preparation programs under this pilot program. High need schools and school districts may opt to participate and collaborate with institutions that are selected by the Board of Regents to participate in this program.

2. Compliance requirements:

Any institution that participates in this pilot program shall execute a written agreement with each partnering high need school which shall include the following: (1) the specific roles of the institution and the high need school in the recruitment, preparation, and mentoring of candidates, as well as their roles in sustaining this pilot program in the long term; (2) the selection and evaluation criteria and the recruitment process for principal-mentors; (3) a commitment to actively recruit and select candidates who demonstrate excellence in teaching, experience working as advocates for children and families in high need schools, leadership capability, and a sincere intent to serve as instructional leaders; (4) the various types of assessments that will be used to evaluate candidates throughout the program, and how such assessments will be utilized to prescribe study and experiences that will enable candidates to develop the knowledge, understanding, and skills necessary to successfully meet the requirements of this program and to obtain certification upon completion of the program.

These institutions will also be required to enter into a written agreement with the high need school, prior to assigning the candidate to a classroom in such high need school, wherein the high need school must agree to establish a plan for at least one continuous school year of mentored clinical experience by an assigned principal-mentor and provide support by a team of program faculty, teacher and administrators at the high need school and the superintendent. Program faculty will also be required to supervise the candidate and promote the linking of theory and practice by observing and advising the candidate at least twice each month during the clinical experience and shall work in collaboration with the assigned principal-mentor to evaluate candidates and provide feedback. During the clinical experience component of the program, the institution shall also provide courses and seminars that are designed to link educational theory with clinical experiences.

An institution that elects to participate in this program will also be required to have a formal written agreement with partnering schools or districts to provide continued mentoring support for graduates of the pilot program during their first year in a school leadership position, which shall include, but not be limited to, setting selection criteria, and the recruitment and training processes for mentors; and developing plans to provide research-based professional development programs for mentors and school leaders.

3. Professional services:

The proposed amendment does not require schools or school districts to contract for additional professional services to comply.

4. Compliance costs:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to institutions and high need schools that elect to participate in the pilot program. However, for each teacher certification candidate in the pilot program, the State Education Department estimates that it will cost a high need school or school district that elects to participate in the program approximately \$6,200 per year to provide mentoring. The Department also anticipates that for any institution that elects to participate in the pilot program, it will incur the same costs for the development and implementation of this program as they would for a traditional principal preparation program and that such institutions could use existing faculty to meet the supervision requirements of the proposed amendment.

5. Economic and technological feasibility:

See above response to compliance costs. The proposed amendment would not require schools or school districts to secure special technology to comply.

6. Minimizing adverse impact:

The proposed amendment is expected to have a positive impact on high need schools and school districts by increasing the supply of

highly effective teachers in high need subjects in high need schools. As stated above, the proposed amendment is permissive in nature. It only applies to high need schools and school districts that wish to participate in a clinically rich pilot program. Because of the nature of the proposed amendment, it is unnecessary to minimize adverse impacts on school districts.

7. Local government participation:

The Department has shared the proposed amendment and sought input from the School Administrators Association of New York State (SAANYS, the New York State Federation of School Administrators, the Collegiate Association for Developing Educational Administrators, the Metropolitan Council for Educational Administration and the New York State Council of School Superintendents (NYSCOSS). These organizations have representatives from school districts across the State.

Rural Area Flexibility Analysis

1. Types and estimate of number of rural areas:

The proposed amendment will impact institutions that elect to offer a clinically rich principal preparation program, which may include colleges and universities and institutions other than institutions of higher education that are selected by the Board of Regents to participate in this program. Such institutions may include cultural institutions, libraries, research centers, and other organizations with an educational mission. The proposed amendment will also impact high need schools and school districts in New York State that elect to participate in this program. These high need schools and institutions may be located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Any institution that participates in this pilot program shall execute a written agreement with each partnering high need school which shall include the following: (1) the specific roles of the institution and the high need school in the recruitment, preparation, and mentoring of candidates, as well as their roles in sustaining this pilot program in the long term; (2) the selection and evaluation criteria and the recruitment process for principal-mentors; (3) a commitment to actively recruit and select candidates who demonstrate excellence in teaching, experience working as advocates for children and families in high need schools, leadership capability, and a sincere intent to serve as instructional leaders; (4) the various types of assessments that will be used to evaluate candidates throughout the program, and how such assessments will be utilized to prescribe study and experiences that will enable candidates to develop the knowledge, understanding, and skills necessary to successfully meet the requirements of this program and to obtain certification upon completion of the program.

These institutions will also be required to enter into a written agreement with the high need school, prior to assigning the candidate to a classroom in such high need school, wherein the high need school must agree to establish a plan for at least one continuous school year of mentored clinical experience by an assigned principal-mentor and provide support by a team of program faculty, teacher and administrators at the high need school and the superintendent. Program faculty will also be required to supervise the candidate and promote the linking of theory and practice by observing and advising the candidate at least twice each month during the clinical experience and shall work in collaboration with the assigned principal-mentor to evaluate candidates and provide feedback. During the clinical experience component of the program, the institution shall also provide courses and seminars that are designed to link educational theory with clinical experiences.

An institution that elects to participate in this program will also be required to have a formal written agreement with partnering schools or districts to provide continued mentoring support for graduates of the pilot program during their first year in a school leadership position, which shall include, but not be limited to, setting selection criteria, and the recruitment and training processes for mentors; and developing plans to provide research-based professional development programs for mentors and school leaders.

3. Costs:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to institutions and high need schools that elect to participate in the pilot program. However, for each candidate in the pilot program, the State Education Department estimates that it will cost a high need school or school district that elects to participate in the program approximately \$6,200 per year to provide mentoring. The Department also anticipates that for any institution that elects to participate in the pilot program, it will incur the same costs for the development and implementation of this program as they would for a traditional principal preparation program and that such institutions could use existing faculty to meet supervision requirements of the proposed amendment.

4. Minimizing adverse impact:

Implementation of the proposed rule will not have a negative impact on entities or individuals located in rural communities. The proposed amendment is permissive in nature. Only program providers that wish to offer a clinically rich principal preparation pilot program are required to meet the new requirements for such programs. High need schools and school districts that elect to participate in the pilot program will benefit by having access to a larger pool of principal candidates, although they will have the expense of providing mentoring support.

The proposed amendment relates to requirements for teaching certification to qualify for service in the State's public schools. The State Education Department does not believe that establishing a different standard for teachers who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

5. Rural area participation:

The Department has shared the proposed amendment and sought input from the School Administrators Association of New York State, the New York State Federation of School Administrators, the Collegiate Association for Developing Educational Administrators, the Metropolitan Council for Educational Administration and the New York State Council of School Superintendents. These organizations have representatives from school districts across the State.

Job Impact Statement

The purpose of the proposed amendment is to create a clinically rich principal preparation pilot program to address the retention issues in high need schools and improve student growth and achievement. The purpose of the proposed amendment is to establish program registration standards for the pilot program and to authorize institutions, other than institutions of higher education, that are selected by the Board of Regents to offer teacher preparation programs under this pilot program. Such institutions may include, but not be limited to, cultural institutions, libraries, research centers, and other organizations with an educational mission that are selected by the Board of Regents to participate in the program.

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on June 9, 2010, the State Education Department has received comments relating to the proposed amendments on graduate level clinically rich principal preparation pilot programs. The following is a summary of the concerns and suggestions and the responses of the Education Department.

COMMENT: Several commentors supported the following aspects of the pilot program: emphasis on preparing effective leaders for high need schools; alignment with Interstate School Leaders Licensure Consortium Standards; the clinical experience component; research-based curriculum linking theory and practice; strong partnerships between programs and other organizations; and gathering data on effectiveness of the pilot programs before expanding the programs. In addition, one commentor was supportive of the fact that the pilot programs only admit those candidates who demonstrate excellence in

teaching, experience working as advocates for children and family in high need schools, leadership capability and a sincere intent to serve as instructional leaders.

DEPARTMENT RESPONSE: The Department agrees with these comments.

COMMENT: Commentors expressed concern about the capacity of non-collegiate institutions to offer this pilot program.

DEPARTMENT RESPONSE: The Department will select program providers for graduate level clinically rich principal preparation pilot programs through a Request for Proposal (RFP) process. Rigorous selection criteria and program approval criteria, including the institution's capacity to offer the pilot programs, will be specified in the RFP. Institutions of Higher Education (IHEs) and non-collegiate institutions, will be held to the same standards. Non-collegiate programs will also be required to seek accreditation from an accrediting body approved by the Board of Regents and must demonstrate a proven history of having a positive impact on student achievement and student growth for all students, including students with disabilities, English language learners, and students living in poverty.

In addition, to ensure that any program selected to offer the pilot programs is of high quality, the Board of Regents will establish a Blue Ribbon Commission, comprised of highly renowned school leader educators, to evaluate all applications. The Blue Ribbon Commission will make recommendations to the Board of Regents for those programs that should be authorized to establish clinically rich principal preparation programs. The goal is to create a process that will ensure a rigorous programmatic review and to select only the highest quality providers to assist in the preparation of principals for our high need schools.

COMMENT: A couple commentors expressed concern about the mentor pool and high quality mentoring, given the requirement that the mentoring has to take place in a high need school.

DEPARTMENT RESPONSE: The proposed amendment defines a principal-mentor as "an experienced and highly effective principal who holds a certificate as a school building leader and is selected through collaboration between the program provider and the school district and is assigned to provide mentoring and support to a candidate in this pilot program." Mentors can come from outside districts and should be recruited and interviewed jointly by the district which is providing the clinical experience along with the program provider. This will ensure close alignment between these two parties. Mentors can be recently retired principals, or hold other district-level leadership positions (as long as they have had successful experience as a principal or have worked effectively with principals as district-level leaders). This should deepen the pool of candidates from which mentors are selected. The Department is also contemplating including a training requirement for mentors (also part of the RFP) to further ensure the quality of mentoring in this program.

COMMENT: One commentor expressed concern about the lack of dialogue with faculties of New York State's IHEs in the process of developing the emergency regulations on clinically rich principal preparation programs and in the process of developing the examination framework for teachers and school leaders.

DEPARTMENT RESPONSE: The Department disagrees with this comment. The work of the Wallace state wide committees helped inform this initiative. Those committees included college professors, program directors and state wide practitioner organizations. The Department has also engaged the public through a 45-day public comment period for the pilot programs. The Department has received and reviewed comments on the regulations from IHEs. The Commissioner has also reached out to, and met with Deans from City University of New York (CUNY), State University of New York (CUNY), and independent colleges, as well as P-12 Educators. The Department will continue to have ongoing discussions with stakeholders to explore ideas for improving education in high need schools and shortage areas throughout the State.

Moreover, experts from IHEs and P-12 schools serve on each of the committees for certification examinations. Therefore, IHEs are involved in the process of developing the examination framework for teachers and school leaders.

COMMENT: One commentor was concerned that there is little evidence demonstrating that program graduates of clinically rich preparation programs are effective in promoting school improvement and student learning.

DEPARTMENT RESPONSE: This pilot program is based on the best available research (Boyd et al 2009) and best practices (e.g., The Boston Residency model). In addition, a 2007 study commissioned by the Wallace Foundation, "Preparing School Leaders for a Changing World: Lessons from Exemplary Leadership Development Programs" identified several features of programs that produced graduates with "... knowledge and skills necessary to undertake instructional improvement, organizationally sophisticated leadership practice, and a stronger commitment to a career in school leadership." These features were used to develop the RFP including the emphasis on clinically rich experiences for candidates. In addition, program providers must demonstrate their capacity to incorporate the Educational Leadership Policy Standards: ISLLC 2008 into their programs. ISLLC Standards were developed after a tremendous amount of research conducted by a National Research Panel.

However, the Department agrees that more studies need to be conducted to prove the effectiveness of the clinically rich preparation model. The RFP will require program providers to submit a detailed evaluation plan to assess program effectiveness in bringing about student learning. In addition, the pilot programs will be required to participate in a comprehensive annual evaluation of the program conducted by an external party authorized by the Department and the Board of Regents.

COMMENT: One commentor indicated that the clinically rich preparation model is not a panacea to solve the problems of high need schools.

DEPARTMENT RESPONSE: The Department agrees with this comment and has been engaging in other important initiatives (i.e., STEM initiatives, induction programs, career ladders, supplemental compensation for effective teachers and leaders, etc.) to maximize student achievement and growth in high need schools.

COMMENT: One commentor commented on the admission requirement that candidates must have three years of classroom teaching experience. The respondent was concerned that three years of experience is too short a duration to become an instructional leader.

DEPARTMENT RESPONSE: The proposed amendment requires candidates to have at least three years experience and the Department welcomes candidates with more experience. Moreover, in addition to at least three years of teaching experience, candidates must demonstrate excellence in teaching, experience working as advocates for children and families in high need schools, leadership capability, and a sincere intent to serve as instructional leaders to be admitted into the pilot program.

COMMENT: One commentor expressed concern about the short duration of the pilot programs, since the programs shall end on June 30, 2016.

DEPARTMENT RESPONSE: As indicated previously, more studies need to be conducted to prove the effectiveness of the clinically rich preparation model. For this reason, the pilot program will expire in six years. If the pilot program is successful, the Department may extend the duration of the program.

COMMENT: One commentor expressed concern that to be eligible for the program, institutions must "have had a positive impact on student achievement and student growth for all students...." The commentor cautioned the Department to interpret data about student achievement with sensitivity because it may take many years for systemic reform to occur.

DEPARTMENT RESPONSE: The Department agrees with this comment. Any measure of student growth that will be utilized for this program will be analyzed carefully and thoughtfully and the Department will take into consideration the instructional environment of the organization and other factors when interpreting data on student achievement for purposes of this program.

COMMENT: Two commentors suggested designing a sound evaluation system to measure the effectiveness of the pilot programs.

DEPARTMENT RESPONSE: The Department accepts this suggestion. The RFP will require program providers to submit a detailed evaluation plan to assess program effectiveness in bringing about student learning. In addition, the pilot programs will be required to participate in a comprehensive annual evaluation conducted by an external party authorized by the Department and the Board of Regents.

COMMENT: One commentor suggested establishing carefully designed approval criteria for the pilot programs.

DEPARTMENT RESPONSE: The Department agrees with this suggestion. As indicated previously, the Department will select program providers for the pilot programs through a RFP process. Selection criteria and program approval criteria will be specified in the RFP.

COMMENT: One commentor suggested that the Department should monitor the pilot programs to ensure that they meet the general regulation standards, achieve accreditation, and maintain an 80 percent pass rate on the appropriate certification examinations.

DEPARTMENT RESPONSE: The Department accepts this suggestion and will closely monitor the pilot program. Moreover, the pilot programs must meet all of the same accountability requirements of other school leader preparation programs.

COMMENT: One commentor suggested that all providers meet national accreditation requirements.

DEPARTMENT RESPONSE: The Department requires accreditation for all program providers.

COMMENT: One commentor suggested that we stress quality content such as what was used in the NYSED Educational Leadership Program Enhancement Project 2009-2012 guidelines. The commentor also asked that we emphasize more content and longer preparation for the pilot programs.

DEPARTMENT RESPONSE: As mentioned previously, the pilot program providers will be selected through a rigorous RFP process. The RFP will require that specific content and will require providers to use up to date research to inform the instruction in the program. The Blue Ribbon Committee will also ensure that only the highest quality providers who offer high quality content and clinical experience to establish clinically rich principal preparation programs.

COMMENT: One respondent suggested that the Department should not constrain the program design to one form of mentoring, limit candidates to only their school site, or limit internship experiences to one site.

DEPARTMENT RESPONSE: The Department accepts this suggestion. The intent of the regulation is to prepare highly qualified principals for high need schools through a clinical setting. An applicant could present varying models for this to occur which could include clinical residencies in both a high need school and a high performance school. The Blue Ribbon Commission and the Board of Regents will select those approaches that, in their judgment, best meet the intent of the program.

COMMENT: One respondent suggested that the pilot programs should partner with districts, not just specific schools.

DEPARTMENT RESPONSE: The pilot programs involve not only the school, but the district. The proposed amendment requires candidates in the pilot program to be supported by a team comprised of program faculty, teachers and administrators at the high need school and the superintendent. By including the superintendent in the support team, the programs are partnering with the district. Moreover, the RFP will encourage partnerships of all types, including district partnerships.

COMMENT: One commentor suggested that rather than creating new programs, allocate the funds to existing educational leadership programs.

DEPARTMENT RESPONSE: The Department welcomes the existing educational leadership programs to submit an application to participate in the program through the RFP process.

COMMENT: One commentor suggested that we require formative and summative program evaluation.

RESPONSE: The Department accepts this suggestion. Formative and summative evaluations of graduate effectiveness will be included as a requirement in the RFP.

COMMENT: One commentor suggested developing a new path for education leaders, requiring a master's degree in instructional leadership as a prerequisite to educational leadership programs.

DEPARTMENT RESPONSE: Instructional leadership is an important component of the pilot programs. However, the Department encourages other innovative designs of educational leadership programs, including the one mentioned above.

Department of Environmental Conservation

NOTICE OF ADOPTION

Deer Management Assistance Permits, and the Use of "Pelt Seals" for Beaver

I.D. No. ENV-24-10-00002-A

Filing No. 868

Filing Date: 2010-08-18

Effective Date: 2010-09-08

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

Action taken: Amendment of sections 1.30 and 6.3 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1.30 and 6.3

Subject: Deer management assistance permits, and the use of "pelt seals" for beaver.

Purpose: To reduce costs associated with Deer Management Assistance Permits and measuring beaver harvest.

Text or summary was published in the June 16, 2010 issue of the Register, I.D. No. ENV-24-10-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Gordon R. Batcheller, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8885, email: wildliferegs@gw.dec.state.ny.us

Additional matter required by statute: A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

Assessment of Public Comment

The department received a strong letter of support for the proposed change to the beaver reporting regulations. No other public comments were received.

Office of General Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Partnering with Preferred Sources

I.D. No. GNS-36-10-00002-P

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

Proposed Action: This is a consensus rule making to repeal section 250.18(c) of Title 9 NYCRR.

Statutory authority: Executive Law, section 200; and L. 2002, ch. 350, section 12

Subject: Partnering with Preferred Sources.

Purpose: To repeal the outdated and obsolete regulatory provision.

Text of proposed rule: 9 NYCRR § 250.18(c) is hereby repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Paula B. Hanlon, Esq., New York State Office of General Services, 41st Fl., Corning Tower, The Governor Nelson A. Rockefeller

ESP, Albany, NY 12242, (518) 473-0571, email: paula.hanlon@ogs.state.ny.us

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

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

Consensus Rule Making Determination

This rule is being proposed as a consensus rule because, in accordance with State Administrative Procedure Act § 102(11)(b), it merely repeals regulatory provisions which are no longer applicable to any person. 9 NYCRR 250.18(c) was adopted in response to the enactment of Labor Law § 349 and State Finance Law §§ 162(7) and (8). On September 1, 2008, the statutory section requiring the adoption of 9 NYCRR 250.18(c) was repealed; therefore it is now obsolete and proper for repeal.

Job Impact Statement

The Office of General Services projects there will be no substantial adverse impact on jobs or employment opportunities in the State of New York as a result of repealing 9 NYCRR 250.21. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Vendor Responsibility

I.D. No. GNS-36-10-00003-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 250.21 of Title 9 NYCRR.

Statutory authority: Executive Law, section 200

Subject: Vendor Responsibility.

Purpose: To repeal the regulatory standards.

Text of proposed rule: 9 NYCRR § 250.21 is hereby repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Paula B. Hanlon, Esq., New York State Office of General Services, 41st Fl., Corning Tower, The Governor Nelson A. Rockefeller ESP, Albany, NY 12242, (518) 473-0571, email: paula.hanlon@ogs.state.ny.us

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

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

Consensus Rule Making Determination

This rule is being proposed by the Office of General Services (OGS) as a consensus rule because, in accordance with State Administrative Procedure Act § 102(11)(b), no person is likely to object to its adoption because it repeals regulatory provisions that have been superseded. Recently, the NYS Council of Contracting Agencies (CCA) and the New York State Procurement Council (SPC) voted to participate in the VendRep system designed by the Office of the State Comptroller (OSC). On September 22, 2009, the CCA passed a resolution whereby it agreed that CCA Council members would utilize the For-Profit Construction Questionnaire on the OSC VendRep system to collect information to make vendor responsibility determinations. Likewise, on March 18, 2010, the SPC voted and passed a motion to participate in the OSC VendRep system and use the For-Profit Business Entity Questionnaire. In connection with both the CCA and SPC actions, OGS and OSC set forth their respective understandings related to OGS' participation in the OSC VendRep system. In light of these developments, repeal of 9 NYCRR 250.21 is appropriate at this time.

Job Impact Statement

The Office of General Services projects there will be no substantial adverse impact on jobs or employment opportunities in the State of New York as a result of repealing 9 NYCRR 250.21. Accordingly, a job impact statement is not required and one has not been prepared.

Office of Mental Health

NOTICE OF ADOPTION

Prior Approval Review for Quality and Appropriateness

I.D. No. OMH-24-10-00011-A

Filing No. 869

Filing Date: 2010-08-18

Effective Date: 2010-09-08

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

Action taken: Amendment of Part 551 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.04, 31.05 and 31.23

Subject: Prior Approval Review for Quality and Appropriateness.

Purpose: To make minor technical corrections and clarify the intent of the regulation.

Text or summary was published in the June 16, 2010 issue of the Register, I.D. No. OMH-24-10-00011-P.

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

Text of rule and any required statements and analyses may be obtained from: Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: cocbjdd@omh.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Provision of Electric Service by the Village of Frankfort

I.D. No. PSC-16-09-00018-A

Filing Date: 2010-08-20

Effective Date: 2010-08-20

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

Action taken: On 8/19/10, the PSC adopted an order approving, with conditions, the Village of Frankfort's petition for a Certificate of Public Convenience and Necessity to exercise the electric franchise awarded to it by the Town of Frankfort by resolution of 11/6/08.

Statutory authority: Public Service Law, sections 4(1), 66(10), 68 and 70

Subject: Provision of electric service by the Village of Frankfort.

Purpose: To approve, with conditions the petition to provide electric service beyond its existing franchise area.

Substance of final rule: The Commission, on August 19, 2010, adopted an order approving, with conditions, the Village of Frankfort's petition for a Certificate of Public Convenience and Necessity to exercise the electric franchise awarded to it by the Town of Frankfort by resolution dated November 6, 2008 and to construct the electric facilities necessary to render electric service. The certificate is subject to the conditions that the Village of Frankfort's municipal-electric utility, Frankfort Power & Light, will not add to its rate base any of the capital improvements made to extend service to the area, known as the Pumpkin Patch, an area that is currently vacant and has no customers, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(09-E-0299SA1)

NOTICE OF ADOPTION

Authorizing Amendment of Certificate of Incorporation

I.D. No. PSC-42-09-00006-A**Filing Date:** 2010-08-23**Effective Date:** 2010-08-23

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

Action taken: On 8/19/10, the PSC adopted an order, with conditions, authorizing Champlain Telephone Company, Inc. to amend its Certificate of Incorporation with the New York Department of State.

Statutory authority: Public Service Law, section 108(1)

Subject: Authorizing amendment of Certificate of Incorporation.

Purpose: To approve authorization for amendment of Certificate of Incorporation.

Substance of final rule: The Commission, on August 19, 2010, adopted an order, authorizing Champlain Telephone Company, Inc. to amend its Certificate of Incorporation to provide for the elimination of the pre-emptive rights of shareholders, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(09-C-0595SA1)

NOTICE OF ADOPTION

Gas Adjustment Tariff Provisions

I.D. No. PSC-17-10-00012-A**Filing Date:** 2010-08-19**Effective Date:** 2010-08-19

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

Action taken: On 8/19/10, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 219, Gas, to revise its gas adjustment provisions.

Statutory authority: Public Service Law, section 66(12)

Subject: Gas adjustment tariff provisions.

Purpose: To approve Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 219, Gas.

Substance of final rule: The Commission, on August 19, 2010, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 219, Gas, effective July 15, 2010, postponed to August 24, 2010, to revise its gas adjustment provisions to file monthly gas adjustment on less than three day's notice, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-G-0159SA1)

NOTICE OF ADOPTION

Limited Waiver of Requirements of 16 NYCRR, Section 720-6.5(b), Gas Adjustment Clauses

I.D. No. PSC-19-10-00019-A**Filing Date:** 2010-08-19**Effective Date:** 2010-08-19

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

Action taken: On 8/19/10, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's petition for a limited waiver to permit the company to file Gas Adjustment Clause Statement less than three day's notice.

Statutory authority: Public Service Law, section 66(12)

Subject: Limited waiver of requirements of 16 NYCRR, Section 720-6.5(b), Gas Adjustment Clauses.

Purpose: To approve a limited waiver of requirements of 16 NYCRR, Section 720-6.5(b), Gas Adjustment Clauses.

Substance of final rule: The Commission, on August 19, 2010, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's petition for a limited waiver of requirements of 16 NYCRR, Section 720-6.5(b) to permit the company to file Gas Adjustment Clause Statement on less than three day's notice, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-G-0161SA1)

NOTICE OF ADOPTION

Gas Adjustment Tariff Provisions

I.D. No. PSC-21-10-00014-A**Filing Date:** 2010-08-19**Effective Date:** 2010-08-19

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

Action taken: On 8/19/10, the PSC adopted an order approving The Brooklyn Union Gas Company d/b/a National Grid of NY's amendments to PSC No. 12, Gas, to revise its gas adjustment provisions.

Statutory authority: Public Service Law, section 66(12)

Subject: Gas adjustment tariff provisions.

Purpose: To approve The Brooklyn Union Gas Company d/b/a National Grid of NY's amendments to PSC No. 12, Gas.

Substance of final rule: The Commission, on August 19, 2010, adopted an order approving The Brooklyn Union Gas Company d/b/a National Grid of NY's amendments to PSC No. 12, Gas, effective July 20, 2010 and postponed to August 24, 2010, to revise its gas adjustment provisions to file monthly gas adjustment on less than three day's notice, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-G-0208SA1)

NOTICE OF ADOPTION

Gas Adjustment Tariff Provisions

I.D. No. PSC-21-10-00017-A

Filing Date: 2010-08-19

Effective Date: 2010-08-19

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

Action taken: On 8/19/10, the PSC adopted an order approving KeySpan Gas East Corporation d/b/a National Grid's amendments to PSC No. 1, Gas, to revise its gas adjustment provisions.

Statutory authority: Public Service Law, section 66(12)

Subject: Gas adjustment tariff provisions.

Purpose: To approve KeySpan Gas East Corporation d/b/a National Grid's amendments to PSC No. 1, Gas.

Substance of final rule: The Commission, on August 19, 2010, adopted an order approving KeySpan Gas East Corporation d/b/a National Grid's amendments to PSC No. 1, Gas, effective July 20, 2010 and postponed to August 24, 2010, to revise its gas adjustment provisions to file monthly gas adjustment on less than three day's notice, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-G-0209SA1)

NOTICE OF ADOPTION

Reconnection and Insufficient Funds Check Charges

I.D. No. PSC-23-10-00008-A

Filing Date: 2010-08-19

Effective Date: 2010-08-19

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

Action taken: On 8/19/10, the PSC allowed Green Island Power Authority's amendment to PSC No. 1 - Electricity, to update its after-hours reconnection charge and its returned check charge to go into effect on September 1, 2010.

Statutory authority: Public Service Law, section 67(1)

Subject: Reconnection and insufficient funds check charges.

Purpose: To allow amendment to after-hours reconnection charge and returned check charge to go into effect.

Substance of final rule: The Commission, on August 19, 2010, allowed Green Island Power Authority's amendment to PSC No. 1 - Electricity, to update its after-hours reconnection charge and its returned check charge due to insufficient funds to go into effect on September 1, 2010.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-E-0252SA1)

NOTICE OF ADOPTION

Transfer of Franchises or Stocks

I.D. No. PSC-23-10-00009-A

Filing Date: 2010-08-20

Effective Date: 2010-08-20

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

Action taken: On 8/19/10, the PSC adopted an order denying Corning Natural Gas Corporation's request for declaratory relief and granting alternative relief.

Statutory authority: Public Service Law, section 70

Subject: Transfer of franchises or stocks.

Purpose: To deny Corning Natural Gas Corporation's request for declaratory relief and grant alternative relief.

Substance of final rule: The Commission, on August 19, 2010, adopted an order denying Corning Natural Gas Corporation's request for declaratory relief, but granted alternative relief regarding certain stock transactions, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-G-0224SA1)

NOTICE OF ADOPTION

Open Access Transmission Tariff

I.D. No. PSC-24-10-00010-A

Filing Date: 2010-08-20

Effective Date: 2010-08-20

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

Action taken: On 8/19/10, the PSC adopted an order approving Central Hudson Electric & Gas Corporation's amendment to PSC No. 15 - Electricity, effective September 1, 2010 to reflect the elimination of its Open Access Transmission Tariff and update Power for Jobs.

Statutory authority: Public Service Law, section 66(12)

Subject: Open Access Transmission Tariff.

Purpose: To approve the elimination of its Open Access Transmission Tariff and to update the Power for Jobs rates.

Substance of final rule: The Commission, on August 19, 2010, adopted an order approving Central Hudson Electric & Gas Corporation's (company) amendment to PSC No. 15 - Electricity, effective September 1, 2010 to reflect the elimination of its Open Access Transmission Tariff (OATT) and to update the demand rate charges applicable to Power for Jobs (PFJ) eligible customers to include the portion of the demand charge that was previously recovered under the company's OATT.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-E-0255SA1)

NOTICE OF ADOPTION

Service Classification (SC) No. 4

I.D. No. PSC-25-10-00013-A

Filing Date: 2010-08-19

Effective Date: 2010-08-19

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

Action taken: On 8/19/10, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220 - Electricity, effective September 1, 2010 to improve the organization and completeness of Service Classification No. 4.

Statutory authority: Public Service Law, section 66(12)

Subject: Service Classification (SC) No. 4.

Purpose: To allow the Company to improve the organization and completeness of Service Classification No. 4.

Substance of final rule: The Commission, on August 19, 2010, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220 - Electricity, effective September 1, 2010 to improve the organization and completeness of Service Classification No. 4 – untransformed service to customers taking power from projects of the New York Power Authority, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-E-0258SA1)

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

Central Hudson's Procedures, Terms and Conditions for an Economic Development Plan

I.D. No. PSC-36-10-00010-P

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

Proposed Action: The Commission is considering a petition from Central Hudson Gas & Electric Corporation (Central Hudson) detailing its procedures, terms and conditions for an economic development plan.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10), (12) and (12-b)

Subject: Central Hudson's procedures, terms and conditions for an economic development plan.

Purpose: Consideration of Central Hudson's procedures, terms and conditions for an economic development plan.

Substance of proposed rule: The Commission is considering a filing dated August 11, 2010 from Central Hudson Gas & Electric Corporation detailing its procedures, terms and conditions for an economic development plan. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.state.ny.us

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.

(10-M-0388SP1)

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

The Implementation of Hourly Pricing for Customers of Central Hudson Gas & Electric's Electricity Service

I.D. No. PSC-36-10-00011-P

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

Proposed Action: The Commission is considering whether to approve, deny or modify, in whole or in part, a "Plan for Implementation of Expansion of Hourly Pricing Provision" filed by Central Hudson Gas & Electric Corporation.

Statutory authority: Public Service Law, sections 2, 5, 65 and 66

Subject: The implementation of hourly pricing for customers of Central Hudson Gas & Electric's electricity service.

Purpose: Allows Central Hudson Gas & Electric to implement a plan to initiate hourly pricing for the company's electricity customers.

Substance of proposed rule: The Commission is considering whether to approve, deny or modify, in whole or in part, a plan by Central Hudson Gas & Electric Corporation for the implementation of an expansion of Hourly Pricing Provision to customers with demand exceeding 300 kW.

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.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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.

(09-E-0588SP3)

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

EEPS Programs and the Associated Utility Financial Incentive Mechanism

I.D. No. PSC-36-10-00012-P

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

Proposed Action: In response to various petitions, the Commission is considering all aspects of the financial incentive mechanism associated with utility-administered Energy Efficiency Portfolio Standard (EEPS) programs, including funding allocations between programs.

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

Subject: EEPS programs and the associated utility financial incentive mechanism.

Purpose: To encourage cost effective gas and electric energy conservation in the State.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, potential modifications to the Energy Efficiency Portfolio Standard (EEPS) program related to the application, consideration and calculation of utility financial incentives designed to promote more effective electric and gas energy efficiency programs. As part of its consideration, the Commission is considering the following petitions: (a) the July 26, 2010 joint petition of Consolidated

Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York, KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island and Niagara Mohawk Power Corporation seeking clarification of a Commission order issued June 24, 2010; (b) the July 26, 2010 joint petition of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation seeking similar clarification of a Commission order issued June 24, 2010; and (c) the July 28, 2010 petition of Central Hudson Gas & Electric Corporation seeking suspension of the EEPS utility incentive mechanism.

The options to be considered by the Commission include, but are not limited to:

(1) Whether the EEPS utility incentive mechanism should be continued, suspended or eliminated;

(2) Whether the amount of the financial incentive should be continued at current levels, increased or decreased;

(3) Whether the already combined 2008-2010 energy savings targets should be further combined with the 2011 energy savings targets to create a single 2011 target;

(4) Whether, in applying incentives and assessing portfolio performance, the following factors should be taken into consideration:

(a) the number, nature and magnitude of changes to proposed programs that were adopted;

(b) the length of the approval process for energy efficiency programs;

(c) the economic situation existing during 2009 and 2010;

(d) the effect of moderate energy costs on energy efficiency demand; and

(e) the lack of participation by potential implementation contractors in the RFP (request for proposals) process;

(5) How, in the calculation of energy savings achieved, the utilities should treat:

(a) changes in the Commission-approved Technical Manuals for measuring energy savings;

(b) the use of savings models that vary from the Technical Manuals;

(c) programs that achieved their targeted total savings much more quickly than anticipated;

(d) the potential aggregation of program performance into portfolio performance; and

(e) the need to provide "supporting documentation" that the utilities would be expected to present in support of incentive requests;

(6) Whether a utility should address shareholder incentives for non-EEPS efficiency programs when the applicable utility rate plan is silent on the issue;

(7) Whether the Commission should expressly clarify that the negative incentive mechanism is intended to address "poor performance" only, so as to provide utilities with sufficient assurance to enable them to avoid recording negative adjustments, pending a Commission determination, if the utilities reasonably conclude that the program results through year-end 2010 reflect results that were due to circumstances that the utilities were not able to overcome with reasonable effort as opposed to "poor performance";

(8) Whether utility program administrators should be given more discretion to reallocate funds between programs and adjust program targets to de-emphasize under-performing programs and give greater emphasis to performing or over-performing programs; and

(9) Whether other changes regarding the application, consideration and calculation of utility financial incentives designed to promote more effective electric and gas energy efficiency programs should be made.

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.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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.

(07-M-0548SP27)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of 16 NYCRR Sections 894.1 Through 894.4(b)(2)

I.D. No. PSC-36-10-00013-P

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

Proposed Action: The PSC is considering whether to approve, in whole or in part, a petition by the Town of Brandon (Franklin County) for a waiver of 16 NYCRR sections 894.1 through 894.4(b)(2) pertaining to the franchise process.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR sections 894.1 through 894.4(b)(2).

Purpose: To allow the Town of Brandon to waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Town of Brandon (Franklin County) for a waiver of 16 NYCRR sections 894.1 through 894.4(b)(2) pertaining to the franchising process.

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.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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.

(10-V-0401SP1)

State University of New York

EMERGENCY RULE MAKING

State University of New York Tuition and Fees Schedule

I.D. No. SUN-36-10-00006-E

Filing No. 873

Filing Date: 2010-08-20

Effective Date: 2010-08-20

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

Action taken: Amendment of section 302.5 of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

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

Specific reasons underlying the finding of necessity: Amendment of these regulations needs to proceed on an emergency basis because tuition increases are intended to be effective for the Fall 2010 semester. Billing for these new tuition rates occurs during the summer of 2010, therefore, notice of the new rates needs to occur as soon as possible.

Subject: State University of New York Tuition and Fees Schedule.

Purpose: To amend the Tuition and Fees Schedule and establish a special tuition rate for certain nonresident students at Maritime College.

Text of emergency rule: Amendments to section 302.5 of Title 8 NYCRR. Tuition charge for nonresident students at Maritime College.

(a) The chancellor hereby is authorized to execute in the name and under the seal of the State University on behalf of the Maritime College thereof, an agreement with the United States of America, acting through the Maritime Administration of the Department of Transportation, under the Maritime Academy Act of 1958 (Public Law 85-672) and applicable regulations, for annual payments in support of the Maritime College, including agreement to admit students resident in other states, and for subsidy payments with respect to students attending the Maritime College and further including agreements with other states to participate in a regional maritime academy whereby students from participating states are charged [the tuition rate for State residents] a special tuition rate of 150% of the tuition [rate] for State residents; provided, however, that students from participating states who have matriculated during or prior to the State University's 2009-10 fiscal year shall be charged a special tuition rate of 125% of the tuition rate for State students, in accordance with Federal requirements.

(b) The increased annual payment in support of the Maritime College upon condition of admitting students residents in other states shall be received in discharge of such amount of the established nonresident tuition charge rate as shall reduce it to the special rate described in paragraph (a) above [rate charged State residents] in the case of such students admitted under Federal requirements.

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 November 17, 2010.

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, 353 Broadway, S-325, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Regulatory Impact Statement

1. Statutory Authority: Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to make and amend rules and regulations for the governance of the State University and institutions therein. Section 355(2)(h) authorizes the State University Trustees to regulate the admission of students, tuition charges and other fees and charges, curricula and all other matters pertaining to the operation and administration of each State-operated institution of the University. Education Law, Section 352 (3), includes the Maritime College as part of the State University. Since 1997, Maritime College has been recognized by the federal government as a Regional Maritime Academy. See 46 USC, Chapter 515, et seq.

2. Legislative Objectives: The present measure will provide essential financial support for the operations of the State University of New York, in furtherance of its statutorily defined mission as set forth in Article 8 of the Education Law.

3. Needs and Benefits: The present measure will allow Maritime College flexibility in setting tuition rates for nonresident students from States in its region. SUNY Maritime's region is comprised of thirteen states and the District of Columbia. The proposal will allow the president of the College, with the approval of the Chancellor, to adjust the tuition rate for "in-region" students to a rate that is greater than the in-state tuition rate and less than the out-of-state tuition rate for the Fall 2010 semester and later.

The amendment to the regional tuition rate will impact an estimated 270 returning students, who will be charged 125% of SUNY's current in-State tuition and 90 new students who will be charged 150% of the current tuition rate.

The increase in tuition is needed to help cover reductions in both State funding and the federal stipend from the U.S. Maritime Administration (MARAD). Funding for State-operated colleges has been reduced by \$170 million for 2010-2011. State support for SUNY Maritime College was \$11,529,600 in 2008-09; and \$10,702,400 in 2009-10 (a reduction of \$827,200). In return for agreeing to be a regional maritime college, the College receives a stipend or Direct Payment from MARAD. The amount of the stipend has varied in recent years from \$200,000 to \$400,000. The amount in the proposed federal budget for Fiscal Year 2011 is \$333,333, a reduction of \$66,667 from the previous year. Despite the Direct Payments, the "lost" tuition opportunity, based upon the 359 regional students currently enrolled, is \$2,506,111.

4. Costs: The "in-region" tuition rate will be adjusted to a rate that is greater than the in-state tuition rate and less than the out-of-state tuition rate. The in-region rate for current students will be 125 percent of the in-state rate (\$6,210). The in-region rate for students enrolling Fall 2010 or later will be 150 percent of the in-state rate (\$7,460). The new rates will be

effective for the Fall 2010 semester and thereafter. Despite the increase, the students continue to benefit from tuition rates that are lower than tuition for most other maritime colleges as well as other state university schools within the maritime region and other peer level engineering schools.

The tuition at other Maritime Colleges is as follows:

Maritime College	In-State Tuition	In-Region Tuition	Out-of-State Tuition
Massachusetts	\$1,342.00 (plus \$5,267 in other mandatory fees)	\$2,348.00	\$14,992.00
California	\$4,026.00	N/A	\$15,186.00
New York	\$4,970.00	\$6,210.00 (current students) \$7,460.00 (students enrolling in Fall 2010 or later)	\$12,870.00
Texas	\$5,248.20	N/A	\$13,558.20
Maine	\$8,280.00	\$12,420.00	\$17,000.00
Great Lakes	\$8,290.00 \$8,736.00	N/A	\$8,649.00 \$9,116.00

The in-state/out-of-state tuition at other Engineering Colleges varies as follows:

College	In-State Tuition	In-Region Tuition	Out-of-State Tuition
CCNY	\$4,600	N/A	\$9,960
SUNY Maritime	\$4,970	\$6,210 (current students) \$7,460 (students enrolling in Fall 2010 or later)	\$12,870
Purdue	\$8,638	N/A	\$25,118
Rutgers	\$9,546	N/A	\$20,178
Penn State	\$14,416	N/A	\$25,946

The in-state/out-of-state tuition rates for State University Systems that are included within Maritime's region are shown below:

State University System	In-State Tuition	Out-of-State Tuition
Louisiana	\$1,996	\$6,282
North Carolina	\$2,813	\$11,757
Connecticut	\$3,789	\$8,635
Florida	\$4,340	\$11,700
SUNY Maritime	\$4,970	\$12,870
District of Columbia	\$5,370	\$12,300
Mississippi	\$5,700	\$16,518
Alabama	\$6,468	\$12,084
Maryland	\$7,056	\$15,072
Delaware	\$8,540	\$22,240
South Carolina	\$9,517	\$19,007
Rhode Island	\$9,528	\$26,026
New Jersey	\$9,546	\$20,456
Virginia	\$9,870	\$31,870
Pennsylvania	\$12,708	\$18,674

5. Local Government Mandates: There are no local government mandates. The amendment does not affect students enrolled in the community colleges operating under the program of the State University of New York.

6. Paperwork: No parties will experience any new reporting responsibilities. State University of New York publications and documents containing notices regarding costs of attendance will need to be revised to reflect these changes.

7. Duplication: None.

8. Alternatives: The alternative of reducing resources available to the campus by the amount that would accrue by an increase in tuition rates

was considered. However, given the reductions in State support imposed on the campus by deficit reduction actions an increase in the tuition rate for “in-region” students is the better alternative. A “town meeting” regarding proposed increases in tuition and fees was held at the College. Members of the Student Government Association, undergraduate and graduate students, and members of the regiment and regular students were present and voiced support for the increases. The new tuition rate for 2010-2011 is on the College’s website.

9. Federal Standards: SUNY Maritime is a regional maritime academy pursuant to 46 USCA Chapter 515, section 51503 (Pub. L 109-304, section 8(b)). This federal law does not require states with regional academies to set any specific tuition levels for in-region students. The requisite agreement between New York State and the participating states in the Maritime region required the designation in writing of the state which was to conduct the affairs of the regional academy and an agreement to admit students from other states to the extent of at least ten percent (10%). The tuition charged to region member states was not specified in the federal law or regulations. This proposal conforms to the federal standards and interstate agreement.

10. Compliance Schedule: Compliance with the amendment will go into effect for the Fall 2010 semester. Bills reflecting the increases will be sent out to affected students by the campus and payment of these bills will be due in accordance with State University policy.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs tuition charges for State University of New York and will not have any adverse impact on the number of jobs or employment.

EMERGENCY RULE MAKING

State University of New York Tuition and Fees Schedule

I.D. No. SUN-36-10-00007-E

Filing No. 874

Filing Date: 2010-08-20

Effective Date: 2010-08-20

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

Action taken: Amendment of section 302.1 of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

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

Specific reasons underlying the finding of necessity: Amendment of these regulations needs to proceed on an emergency basis because tuition increases are intended to be effective for the Fall 2010 semester. Billing for these new tuition rates occurs during the summer of 2010, therefore, notice of the new rates needs to occur as soon as possible.

Subject: State University of New York Tuition and Fees Schedule.

Purpose: To amend the Tuition and Fees Schedule to increase tuition for students in all programs in the State University of New York.

Text of emergency rule: Amendments to section 302.1 of Title 8 NYCRR. Section 302.1. Tuition and fees at State-operated units of State University.

The payment of tuition and fees in the State-operated units of the State University shall be governed by the following definitions, regulations, and schedule of rates to be charged.

(a) Definitions. For the purpose of establishing rental schedules, tuition fees and other charges, the following definitions shall apply:

(1) Semester. A period of attendance in which the school year is cus-

tomarily divided in two equal sessions. In some cases an optional third semester is available.

(2) [Quarter. A period of attendance in which the school year is customarily divided in three equal sessions. In some cases a fourth optional quarter is available.

(3)]Student.

[(i)] A student at a college operating on a semester basis is any person registered for 12 or more semester hours of work in a regular program whether on campus or at another location.

[(ii)] A student at a college operating on a quarter basis is any person registered for 12 or more quarter hours.]

[(4)]3 Special student.

(i) A special student at a college operating on a semester basis is any person registered for fewer than 12 semester hours of work.

(ii) [A special student at a college operating on a quarter basis is any person registered for fewer than 12 quarter hours.

(iii)]A student attending a summer session, which is not a regular [quarter or]semester, is a special student for the purpose of this definition.

[(5)]4 Change of status. A person who registers and commences classes initially as a student but whose program is later curtailed for academic reasons, does not change status during that [quarter or]semester to that of special student.

[(6)]5 Residence. A person whose domicile has been in the State of New York for a period of at least one year immediately preceding the time of registration for any period of attendance shall be a New York resident for the purpose of determining the tuition rate payable for such period. All other persons shall be presumed to be out-of-state residents for such purpose, unless domiciliary status is demonstrated in accordance with guidelines adopted by the Chancellor or designee.

(b) [(1) Students enrolled in degree-granting undergraduate programs leading to an associate degree and nondegree granting programs of at least one regular academic term in duration which have been approved as eligible for tuition assistance program awards.

Tuition

(i) Students, New York State residents: \$2,485 per semester or \$1,657 per quarter.

(ii) Students, out-of-state residents: \$6,435 per semester or \$4,290 per quarter.

(iii) Special students, New York State residents: \$207 per semester credit hour or \$138 per quarter credit hour.

(iv) Special students, out-of-state residents: \$536 per semester credit hour or \$358 per quarter credit hour.

(v) The president of a college of technology or a college of agriculture and technology may establish differing rates of tuition for the college for students enrolled in degree- granting programs leading to an associate degree and non-degree granting programs, with the approval of the chancellor or designee, based on considerations which may include but are not limited to time, location, cost, services provided, enrollment management and access, so long as such tuition rates do not exceed the tuition rates specified in this subdivision.

(2) Students enrolled in degree-granting undergraduate programs leading to a baccalaureate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for tuition assistance program awards.

Tuition

(i) Students, New York State residents: \$2,485 per semester or \$1,657 per quarter.

(ii) Students, out-of-state residents: \$6,435 per semester or \$4,290 per quarter.

(iii) Special students, New York State residents: \$207 per semester credit hour or \$138 per quarter credit hour.

(iv) Special students, out-of-state residents: \$536 per semester credit hour or \$358 per quarter credit hour except that for non-matriculated students (as defined in section 145-2.4 of this Title), the president of a State-operated institution may establish a differing tuition rate(s), with the approval of the chancellor or designee, in accordance with guidelines to be issued by the chancellor, provided that such tuition rate(s) does not exceed the rate specified in this paragraph and is not lower than 15 percent above the rate in subparagraph (iii) of this paragraph. Tuition and fees charged to such non-matriculated students shall be set to cover total direct instructional costs for such students.

(c) (1) Students enrolled in graduate programs leading to a master’s, doctor’s or equivalent degree with the exception of those degrees set forth in paragraph (2) of this subdivision.

Tuition

(i) Students, New York State residents: \$4,185 per semester or \$2,790 per quarter.

(ii) Students, out-of-state residents: \$6,625 per semester or \$4,417 per quarter.

(iii) Special students, New York State residents: \$349 per semester credit hour or \$233 per quarter credit hour.

(iv) Special students, out-of-state residents: \$552 per semester credit hour or \$368 per quarter credit hour.

(2) Students enrolled in graduate programs leading to a master of business administration degree (M.B.A.).

Tuition

(i) Students, New York State residents: \$4,305 per semester or \$2,870 per quarter.

(ii) Students, out-of-state residents: \$6,880 per semester or \$4,587 per quarter.

(iii) Special students, New York State residents: \$359 per semester credit hour or \$239 per quarter credit hour.

(iv) Special students, out-of-state residents: \$573 per semester credit hour or \$382 per quarter credit hour.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(d) Students enrolled in the professional program of pharmacy.

Tuition

(1) Students, New York State residents: \$8,310 per semester or \$5,540 per quarter.

(2) Students, out-of-state residents: \$14,375 per semester or \$9,583 per quarter.

(3) Special students, New York State residents: \$693 per semester credit hour or \$462 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$1,198 per semester credit hour or \$799 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(e) Students enrolled in the professional program of law (J.D. and LL.M).

Tuition

(1) Students, New York State residents: \$8,005 per semester or \$5,337 per quarter.

(2) Students, out-of-state residents: \$12,130 per semester or \$8,087 per quarter.

(3) Special students, New York State residents: \$667 per semester credit hour or \$445 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$1,011 per semester credit hour or \$674 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(f) Students enrolled in medicine programs.

Tuition

(1) Students, New York State residents: \$11,400 per semester or \$7,600 per quarter.

(2) Students, out-of-state residents: \$20,320 per semester or \$13,547 per quarter.

(3) Special students, New York State residents: \$950 per semester credit hour or \$633 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$1,693 per semester credit hour or \$1,129 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(g) Students enrolled in dentistry programs.

Tuition

(1) Students, New York State residents: \$9,825 per semester or \$6,550 per quarter.

(2) Students, out-of-state residents: \$19,710 per semester or \$13,140 per quarter.

(3) Special students, New York State residents: \$819 per semester credit hour or \$546 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$1,643 per semester credit hour or \$1,095 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(h) Students enrolled in the professional program of physical therapy and students enrolled in the doctor of nursing practice degree program.

Tuition

(1) Students, New York State residents: \$6,925 per semester or \$4,617 per quarter.

(2) Students, out-of-state residents: \$11,095 per semester or \$7,397 per quarter.

(3) Special students, New York State residents: \$577 per semester credit hour or \$385 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$925 per semester credit hour or \$616 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(i) Students enrolled in optometry programs.

Tuition

(1) Students, New York State residents: \$8,260 per semester or \$5,507 per quarter.

(2) Students, out-of-state residents: \$15,860 per semester or \$10,573 per quarter.

(3) Special students, New York State residents: \$688 per semester credit hour or \$459 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$1,322 per semester credit hour or \$881 per quarter credit hour or equivalent.

The Chancellor shall determine the equivalent of a credit hour.]

Tuition charges as listed in the following table for categories of students, terms and programs, and as modified, amplified or explained in footnotes 1 and 2 are effective with the 2010 Fall term and thereafter.

	Charge per Semester		Charge per Semester credit hour ¹	
	New York State residents	Out-of-State residents	New York State residents	Out-of-State residents
I. Students enrolled in degree-granting undergraduate programs leading to an associate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	\$2,485	\$6,690 \$4,550 ²	\$207 \$175 ³	\$558 \$379 ² \$175 ³
II. Students enrolled in degree-granting undergraduate programs leading to a baccalaureate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	\$2,485	\$6,690	\$207	\$558

III.	Students enrolled in graduate programs (other than Masters of Business Administration) leading to a Master's, Doctor's or equivalent degree	\$4,185	\$6,890	\$349	\$574
IV.	Students enrolled in a graduate program leading to a Masters of Business Administration (MBA)	\$4,690	\$7,570	\$391	\$631
V.	Students enrolled in the professional program of pharmacy	\$9,060	\$17,250	\$755	\$1,438
VI.	Students enrolled in the professional program of law	\$8,725	\$14,555	\$727	\$1,213
VII.	Students enrolled in the professional program of medicine	\$12,425	\$24,385	\$1,035	\$2,032
VIII.	Students enrolled in the professional program of dentistry	\$10,710	\$23,650	\$893	\$1,971
IX.	Students enrolled in the professional program of physical therapy and doctor of nursing practice	\$7,550	\$13,315	\$629	\$1,110
X.	Students enrolled in the professional program of optometry	\$8,690	\$16,685	\$724	\$1,390

¹ The Chancellor shall determine the equivalent of a credit hour.
² In accordance with chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge this lower rate for out-of-state students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree.
³ In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge this lower rate for special students (part-time) enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs, and taking classes at off-campus locations or during the summer or winter intercessions. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree.

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 November 17, 2010.

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, 353 Broadway, S-325, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Regulatory Impact Statement

1. Statutory Authority: Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to

make and amend rules and regulations for the governance of the State University and institutions therein. Section 355(2)(h) authorizes the State University Trustees to regulate the admission of students, tuition charges and other fees and charges, curricula and all other matters pertaining to the operation and administration of each State-operated institution of the University.

2. Legislative Objectives: The present measure will provide essential financial support for the operations of the State University of New York, in furtherance of its statutorily defined mission as set forth in Article 8 of the Education Law.

3. Needs and Benefits: The present measure establishes a series of tuition increases in the degree programs of the State University of New York as necessitated by budget cuts that have been imposed on the University as a result of the dire economic conditions in this State.

The tuition changes authorized by this measure affect out-of-state students in associate, baccalaureate and graduate programs, including the Master of Business Administration, and both resident and out-of-state students in the professional schools within the State University of New York including the Schools of Law and Pharmacy at the State University of New York at Buffalo, the four medical schools of the State University, the Schools of Dental Medicine, the Professional Programs in Physical Therapy and Nursing Practice at State University of New York at Buffalo and Stony Brook, and the College of Optometry.

This measure is needed in order to provide essential financial support for the State-operated campuses of the State University of New York. The present amendment will increase tuition for out-of-state residents enrolled in associate's degree programs to \$9,100 per year; for out-of-state resident baccalaureate degree students to \$13,380 per year; and for out-of-state resident master's and doctoral degree students to \$13,780. For out-of-state resident students enrolled in Master of Business Administration degree programs, a tuition rate of \$14,310 per year is established.

Tuition increases at the professional schools within the State University of New York are also affected by this amendment. Tuition for New York State residents at the School of Law will increase to \$17,450 per year (\$29,110 out-of-state residents), and at the Pharmacy School to \$18,120 per year (\$34,500 out-of-state residents).

The measure also increases tuition by \$2,050 per year to \$24,850 for New York State residents and by \$8,130 to \$48,770 for out-of-state residents enrolled in the four medical schools of the State University of New York.

The amendment also increases tuition for students in the professional dental program (D.D.S.) at the Universities at Buffalo and Stony Brook. Under this measure, tuition will increase \$1,770 per year to \$21,420 for New York State residents and \$7,880 per year to \$47,300 for out-of-state residents. Tuition for students enrolled in the Professional Program of Optometry at the College of Optometry is increased by \$860 to \$17,380 for residents and by \$1,650 to \$33,370 for out-of-state residents.

Finally, the amendment increases tuition for students pursuing the terminal Professional Degree in Physical Therapy and the Doctorate in Nursing Practice. The new annual rate is \$15,100 for New York State residents and \$26,630 for out-of-state residents.

4. Costs: Students enrolled in these programs of the State University of New York will be required to pay additional tuition ranging from \$350 per year for out-of-state resident associate degrees to \$8,130 for out-of-state resident students at the Schools of Medicine. In setting the new tuition schedule, the State University has examined its appropriation levels, the prevailing tuition rates charged by other public universities and the status of various State and Federal student financial aid programs.

5. Local Government Mandates: There are no local government mandates. The amendment does not affect students enrolled in the community colleges operating under the program of the State University of New York.

6. Paperwork: No parties will experience any new reporting responsibilities. State University of New York publications and documents containing notices regarding costs of attendance will need to be revised to reflect these changes.

7. Duplication: None.

8. Alternatives: Delays in tuition increases as well as higher increases were considered, however, there is no acceptable alternative to the proposed increases. The revenue from these tuition increases is necessary in order for the University to maintain quality of instruction and essential services to students, especially for the high cost professional programs.

9. Federal Standards: None.

10. Compliance Schedule: Compliance with the amendment will go into effect for the Fall 2010 semester. Bills reflecting the increases will be sent out to registered students by the campuses and payment of these bills is due in accordance with State University policy.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and

local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs tuition charges for State University of New York and will not have any adverse impact on the number of jobs or employment.

Triborough Bridge and Tunnel Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

A Proposal to Establish a New Crossing Charge Schedule for Use of Bridges and Tunnels Operated by TBTA

I.D. No. TBA-36-10-00014-P

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

Proposed Action: Repeal section 1021.1 of Title 21 of NYCRR and add a new section 1021.1 to establish a new crossing charge schedule for use of bridges and tunnels operated by the Triborough Bridge and Tunnel Authority.

Statutory authority: Public Authorities Law, section 553(5)

Subject: A proposal to establish a new crossing charge schedule for use of bridges and tunnels operated by TBTA.

Purpose: A proposal to raise additional revenue.

Public hearing(s) will be held at: 6:00 p.m., Sept. 13, 2010 at The Cooper Union, Seven E. 7th St., New York, NY; 6:00 p.m., Sept. 13, 2010 at Hilton G. Inn, 15 Crossroads Inn, Newburgh, NY; 6:00 p.m., Sept. 15, 2010 at Hostos Community College, 450 Grand Concourse, Bronx, NY; 6:00 p.m., Sept. 16, 2010 at St. George Theatre, 35 Hyatt, Staten Island, NY; 6:00 p.m., Sept. 16, 2010 at The Garden City Hotel, 45 Seventh St., Garden City, NY; 6:00 p.m., Sept. 20, 2010 at Sheraton LaGuardia East Hotel, 135-20 39th Ave., Flushing, NY; 6:00 p.m., Sept. 20, 2010 at Suffolk County Legislature, 725 Veterans Memorial Hwy., Smithtown, NY; 6:00 p.m., Sept. 21, 2010 at White Plains Performing Arts Center, 11 City Place, 3rd Fl., White Plains, NY; 6:00 p.m., Sept. 21, 2010 at Brooklyn Museum, Cantor Auditorium, 200 Eastern Pkwy., Brooklyn, NY.

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

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

Text of proposed rule: See Appendix in the back of this issue.

Text of proposed rule and any required statements and analyses may be obtained from: M. Margaret Terry, Esq., Triborough Bridge and Tunnel Authority, 2 Broadway, 24th Floor, New York, NY 10004, (646) 252-7619, email: mterry@mtabt.org

Data, views or arguments may be submitted to: Judie Glave, Triborough Bridge and Tunnel Authority, 2 Broadway, 22nd Floor, New York, NY 10004, (646) 252-7276, email: jglave@mtabt.org

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.

Urban Development Corporation

EMERGENCY RULE MAKING

Small Business Revolving Fund

I.D. No. UDC-36-10-00001-E

Filing No. 871

Filing Date: 2010-08-20

Effective Date: 2010-08-20

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

Action taken: Addition of Part 4250 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); L. 1968, ch. 174; and L. 2010, ch. 59

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

Specific reasons underlying the finding of necessity: Effective provision of economic development assistance in accordance with the enabling legislation requires the creation of the Rule. Program assistance will address the dangers to public health, safety and welfare by providing financial, project development, or other assistance for the purposes of supporting investment in distressed communities in the downstate region, and in support of such projects that focus on: encouraging business, community and technology-based development and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

Subject: Small Business Revolving Fund.

Purpose: Provide the basis for administration of Small Business Revolving Loan Fund including evaluation criteria and application process.

Text of emergency rule: SMALL BUSINESS REVOLVING LOAN FUND Section 4250.1 Purpose.

The purpose of these regulations is to set forth and codify administration by the New York State Urban Development Corporation (the "Corporation") of the Small Business Revolving Loan Fund (the "Program") authorized by Section 16-t of the New York State Urban Development Corporation Act (the "Act"). The Corporation is authorized, within available appropriations, to provide low interest loans to community development financial institutions, in order to provide funding for those lending organizations' loans to small businesses, located within New York State, that generate economic growth and job creation within New York State but that are unable to obtain adequate credit or adequate terms for such credit. If the use of a community development financial institution is not practicable based upon an assessment of geographic and administrative capacity and other factors as determined by the Corporation, then the Corporation is authorized, within available appropriations, to provide low interest loans to the following other local community based lending organizations: small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks.

Section 4250.2 Definitions.

a) "Administrative Costs" shall mean expenses incurred by a Community Based Lending Organization in its administration of a Program Loan from the Corporation.

b) "Administrative Income" shall mean income from (i) fees charged by a Community Based Lending Organization, including application fees, commitment fees and loan guarantee fees related to the Business Loans made to borrowers by the Community Based Lending Organization and (ii) interest income earned on the portion of the Program funds held by the Community Based Lending Organization (whether such funds are undisbursed Program funds or are repayment proceeds of Business Loans made by the Community Based Lending Organization).

c) "Business Loan" shall mean a loan made by a Community Based Lending Organization to an Eligible Business for an Eligible Project that is either a Micro-Loan or a Regular Loan.

d) "Community Based Lending Organizations" shall mean community development financial institutions, small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small

Business Administration loan providers, credit unions and community banks.

e) "Community Development Financial Institution" or "CDFI" shall mean a community based organization that provides financial services and products to communities, businesses and people underserved by traditional financial institutions.

f) "Corporation" shall mean the New York State Urban Development Corporation d/b/a Empire State Development Corporation, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York created by Chapter one hundred seventy-four of the Laws of nineteen hundred sixty-eight, as amended.

g) "Eligible Businesses" shall have the meaning given in Section 4250.3 below.

h) "Eligible Project" shall have the meaning given in Section 4250.3 below.

i) "Eligible Uses" shall have the meaning given in Section 4250.4 below.

j) "Ineligible Businesses" shall mean newspapers, broadcasting, or other news media; medical facilities, libraries, community or civic centers. It also means any business relocating from one municipality with the State to another, except when the business is relocating within a municipality with a population of at least one million and the governing body of the municipality approves or each municipality from which such business operation will be relocated agrees to such relocation.

k) "Ineligible Projects" shall mean any project that is not an Eligible Project, including, without limiting the foregoing, public infrastructure improvements and funding for providing payment or distribution as a loan to owners, members and partners or shareholders of the applicant business or their family members.

l) "Loan Fund" shall mean the Small Business Revolving Loan Fund created by the Small Business Revolving Loan Fund Legislation.

m) "Loan Fund Account" shall mean each and every account established by the Community Based Lending Organization for the purpose of depositing Program funds.

n) "Loan Fund Legislation" shall mean Section 16-t of the Act.

o) "Loan Fund Proceeds" shall mean any and all monies made available to the Corporation for deposit to the Loan Fund, including monies appropriated by the State and any income earned by, or incremental to, the amount due to the investment of the same, or any repayment of monies advanced from the Loan Fund.

p) "Micro-Loan" shall mean a Small Business loan that has a principal amount that is less than or equal to twenty-five thousand dollars.

q) "Minority Business Enterprise" shall mean a business enterprise which is at least fifty-one percent owned, or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned, by one or more minority persons and such ownership must have and exercise the authority to independently control the day to day business decisions of the entity. Minority persons shall mean persons who are:

1. Black;

2. Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent or either Indian or Hispanic origin, regardless of race;

3. Asian and Pacific Islander persons having origins in the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or

4. American Indian or Alaskan Native persons having origins in any of the original people of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

r) "Program Loan Fund Agreement" shall mean the agreement between the Corporation and the Community Based Lending Organization pursuant to which the Program funds will be disbursed to and used by the Community Based Lending Organization.

s) "Program Loan" shall mean a loan made by the Corporation to a Community Based Lending Organization.

t) "Regular Loan" shall mean a Small Business loan that has a principal amount greater than twenty-five thousand dollars.

u) "Service Delivery Area" shall mean one or more contiguous counties or municipalities to be served by the Community Based Lending Organization and described in the Program Loan Fund Agreement between the Corporation, as lender, and the Community Based Lending Organization, as borrower.

v) "Small Business" shall mean a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis.

w) "State" shall mean the State of New York.

x) "Women Business Enterprise" shall mean a business enterprise that is at least fifty one percent owned, or in the case of a publicly-owned busi-

ness at least fifty one percent of the common stock or other voting interests of which is owned, by United States citizens or permanent resident aliens, one or more who are women, regardless of race or ethnicity, and such ownership interest is real, substantial and continuing and such woman or women have and exercise the authority to independently control the day to day business decisions of the enterprise.

y) "Working Capital Loans" shall mean short and medium term loans for working capital, revolving lines of credit and seasonal inventory loans made by Community Based Lending Organizations to Eligible Businesses for Eligible Projects.

Section 4250.3 Eligible Business, Eligible Projects and Ineligible Projects.

Business Loans shall be offered by Community Based Lending Organizations on the terms and conditions that are in accordance with and subject to the Act and the provisions of this Part. Business Loans shall be provided by the Community Based Lending Organization only to Eligible Businesses for Eligible Projects and shall not be used for Ineligible Projects. The terms "Eligible Business", "Eligible Projects" and "Ineligible Projects" are defined as follows.

An "Eligible Business" is a:

1. business enterprise that is resident in and authorized to do business in New York State,

2. independently owned and operated,

3. not dominant in its field, and

4. employs one hundred or fewer persons.

An "Eligible Project" is a Business Loan from a Community Based Lending Organization to an Eligible Business in the Service Delivery Area for an Eligible Use, whereby the Community Based Lending Organization has reviewed every Business Loan application to determine the feasibility of the proposed Eligible Use(s) of the financing requested by the small business applicant, the likelihood of repayment, and the potential that the loan will generate economic development and jobs within the State. An "Eligible Project" cannot be an "Ineligible Project" as defined below.

An "Ineligible Project" shall mean: (i) a project or use that would result in the relocation of any business operation from one municipality within the state to another, except under one of the following conditions, (A) When a business is relocating within a municipality with a population of at least one million where the governing body of such municipality approves such relocation, or (B) each municipality from which such business operation will be relocated has consented to such relocation; (ii) projects with respect to newspapers, broadcasting or other news media, medical facilities, libraries, community or civic centers, and public infrastructure improvements; (iii) providing funds, directly or indirectly, for payments, distribution or as a loan (except in the case of a loan to a sole proprietor for business use), to owners, members, partners or shareholders of the applicant business, except as ordinary income for services rendered; (iv) any project that results in a Business Loan to a person who is a member of the board or other governing body, officer, employee, or member of a loan committee, or a family member of the Community Based Lending Organization or who shall participate in any decision on the use of Program funds if such person is a party to or has a financial or personal interest in such loan.

Section 4250.4 Eligible Uses.

Eligible Uses of Program funds by a Small Business borrower of the Community Based Lending Organization are:

1. working capital;

2. acquisition and/or improvement of real property;

3. acquisition of machinery and equipment; and

4. refinancing of debt obligations provided that:

a. it does not refinance a loan already in the portfolio of the Community Based Lending Organization;

b. the refinanced loan will provide a tangible benefit to the business borrower as determined by the Corporation in writing; and

c. the aggregate of the principal of all borrower refinancing loan amounts in the Community Based Lending Organization's Program loan portfolio is not greater than twenty-five percent (25%) of the principal amount of the Corporation's Program loan to the Community Based Lending Organization.

Section 4250.5 Fees.

A Community Based Lending Organization may charge application, commitment and loan guarantee fees pursuant to a schedule of fees adopted by the institution and approved in writing by the Corporation.

Section 4250.6 Niagara, St. Lawrence, Erie, and Jefferson Counties.

Notwithstanding anything to the contrary in this rule, the Corporation shall provide at least five hundred thousand dollars in Program funds to Community Based Lending Organizations for the purpose of making loans to small businesses located in each of the following counties: Niagara, St. Lawrence, Erie and Jefferson.

Section 4250.7 Business Loan Types and Limits.

a) There shall be two categories of Business Loans to Eligible Businesses:

1. a microloan that shall have a principal amount that is less than or equal to twenty-five thousand dollars; and

2. a regular loan that shall have a principal amount greater than twenty-five thousand dollars.

b) The Program funds amount used by the Community Based Lending Organization to fund a Business Loan shall not be more than fifty percent of the principal amount of such loan and shall not be greater than one hundred and twenty-five thousand dollars.

c) No less than ten percent (10%) of the aggregate Program funds shall be allocated by the Corporation for Microloans.

Section 4250.8 General Evaluation Criteria.

a) In addition to such criteria as may be set forth by the Corporation from time to time in solicitations for applications from Community Based Lending Organizations, the Corporation shall evaluate the Program assistance application of a Community Based Lending Organization in conformance with the Act and in accordance with the criteria set forth in this Part, including as applicable:

1. The ability of the Community Based Lending Organization to analyze small business applications for Business Loans, to evaluate the credit worthiness of small businesses, and to monitor and service Business Loans.

2. The ability of the Community Based Lending Organization to review every Business Loan application in order to determine, among other things, the feasibility of the proposed Eligible Use(s) of the financing requested by the small business applicant, the likelihood of repayment, and the potential that the loan will generate economic development and jobs within the State.

3. The ability of the Community Based Lending Organization to target and market to Minority and Women-Owned Enterprises and other small businesses that are having difficulty accessing traditional credit markets.

Section 4250.9 General Requirements.

a) Program funds shall be disbursed to a Community Based Lending Organization by the Corporation in the form of a Program Loan.

1. The term of the Program Loan shall commence upon closing of the Program Loan Fund Agreement between the Corporation and the Community Based Lending Organization.

2. The Program Loan shall carry a low interest rate determined by the Corporation based on then prevailing interest rates and the circumstances of the Community Based Lending Organization.

b) Notwithstanding the performance of the Business Loans made by the Community Based Lending Organization using Program funds, the Community Based Lending Organization shall remain liable to the Corporation with respect to any unpaid amounts due from the Community Based Lending Organization pursuant to the terms of the Corporation's Program Loan to the Community Based Lending Organization.

c) At the discretion of the Corporation, a portion of Program loan funds may be disbursed to the Community Based Lending Organization in the form of a grant or forgivable loan provided that those funds are used by the Community Based Lending Organization for administrative expenses associated with Business Loans to Eligible Borrowers for Eligible Projects, loan-loss reserves, or other eligible expenses as may be approved in writing by the Corporation.

d) Notwithstanding any provision of law to the contrary, the Corporation may establish a Program fund for Program use and pay into such fund any funds available to the Corporation from any source that are eligible for Program use, including moneys appropriated by the State.

e) Interest received by the Corporation from Program Loans to Community Based Lending Organizations may be used at the discretion of the Corporation for Program Loans and the management, marketing, and administration of the Program.

Section 4250.10 Loan Fund Accounts.

Each Community Based Lending Organization shall deposit Program funds awarded by the Corporation, repayments, and interest earned into a bank account in a State or Federal chartered banking institution.

Section 4250.11 Application and Approval Process.

The Corporation shall identify eligible Community Based Lending Organizations through one or more competitive statewide or local solicitations.

Section 4250.12 Auditing, Compliance and Reporting.

a) The Community Based Lending Organization shall submit to the Corporation annual reports and additional reports as requested at the discretion of the Corporation stating:

1. The number of Business Loans made;
2. The amount of each Business Loan;
3. The amount of Program Loan proceeds used to fund each Business Loan;

4. The use of Business Loan proceeds by the borrower;
5. The number of jobs created or retained;
6. A description of the economic development generated;
7. The status of each outstanding Business Loan; and

8. Such other information as the Corporation may require.

b) The Corporation may conduct audits of the Community Based Lending Organization in order to ensure compliance with the provisions of this section, any regulations promulgated with respect thereto and agreements between the Community Based Lending Organization and the Corporation of all aspects of the use of Program funds and Business Loan transactions.

c) In the event that the Corporation finds substantive noncompliance, the Corporation may terminate the Community Base Lending Organization's participation in the Program.

d) Upon termination of a Community Based Lending Organization's participation in the Program, the Community Based Lending Organization shall return to the Corporation, promptly after its demand thereof, all Program fund proceeds held by the Community Based Lending Organization; and provide to the Corporation, promptly after its demand thereof, an accounting of all Program funds received by the Community Based Lending Organization, including all currently outstanding Business Loans that were made using Program funds. Notwithstanding such termination, the Community Based Lending Organization shall remain liable to the Corporation with respect to any unpaid amounts due from the Community Based Lending Organization pursuant to the terms of the Corporation's loans to the Community Based Lending Organization.

e) In the event that a Community Based Lending Organization's participation in the Program is terminated, the Corporation, in its discretion, can reassign all or part of the award made to such Community Based Lending Organization to one or more Community Based Lending Organizations that are already administering the Program and that serve the same Service Area or portions thereof without an additional solicitation.

Section 4250.13 Confidentiality.

a) To the extent permitted by law, all information regarding the financial condition, marketing plans, manufacturing processes, production costs, customer lists, or other trade secrets and proprietary information of a person or entity requesting assistance from the Loan Fund administered through the selected Community Based Lending Organizations by the Corporation, shall be confidential and exempt from public disclosures.

b) To the extent permitted by law, no full time employee of the State of New York or any agency, department, authority or public benefit corporation thereof shall be eligible to receive assistance under this Program.

Section 4250.14 Non-Discrimination and Affirmative Action.

The Corporation's affirmative action and non-discrimination policies and programs are grounded in both public policy and applicable law, including but not limited to, Section 2879 of the Public Authorities Law, Article 15-A of the Executive Law and Section 6254(11) of the Unconsolidated Laws. These laws mandate the Corporation to take affirmative action in implementing programs. The Corporation has charged the affirmative action department with overall responsibility to ensure that the spirit of these mandates is incorporated into the Corporation's policies and projects. Where applicable, the affirmative action department will work with applicants in developing an appropriate Affirmative Action Program for business and employment opportunities generated by the Corporation's participation of the Program.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires November 16, 2010.

Text of rule and any required statements and analyses may be obtained from: Antovk Pidedjian, New York State Urban Development Corporation, 633 Third Avenue, 37th Floor, New York, NY 10017, (212) 803-3792, email: apidedjian@empire.state.ny.us

Regulatory Impact Statement

1. Statutory Authority: Section 9-c of the New York State Urban Development Corporation Act Chapter 174 of the Laws of 1968, as amended (the "Act"), provides, in part, that the Corporation shall, assisted by the Commissioner of Economic Development and in consultation with the Department of Economic Development, promulgate rules and regulations in accordance with the State Administrative Procedure Act.

Section 16-t of the Act provides for the creation of the Small Business Revolving Loan Fund (the "Program") and authorizes the New York State Urban Development Corporation d/b/a Empire State Development Corporation (the "Corporation"), within available appropriations, to provide low interest loans to Community Development Financial Institutions and other Community Based Lending Organizations, in order to provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit.

2. Legislative Objectives: Section 16-t of the Act sets forth the legislative objective of authorizing the Corporation, within available appropriations, to provide low interest loans to community development financial institutions and other community based lending organizations, in order to

provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit. The adoption of 21 NYCRR Part 4250 will further these goals by setting forth the types of available assistance, evaluation criteria, the application process and related matters for the Program.

3. Needs and Benefits: The State has allocated \$25 million to provide low interest loans to community development financial institutions and other community based lending organizations, in order to provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit. Small businesses have been determined to be a major source of employment throughout the State. Small businesses have historically had a difficulties obtaining financing or refinancing in order to remain competitive and grow their operations, and the current economic difficulties have exacerbated this problem. Providing loans to small businesses should sustain and potentially increase the employment provided by such businesses, especially during this period of historically high unemployment and underemployment. The Program (i) allows the Corporation to evaluate the effectiveness of community based lending organizations with respect to their ability to make loans to credit worthy small businesses, (ii) decentralizes to community based lending organizations the evaluation credit and operations of small businesses within the respective communities served by such organizations, and (iii) enhances the ability of community based lending organizations to make loans to small businesses in the communities served by such organizations. The rule facilitates these aspects of the Program by providing for a competitive process to select community based financial institutions for Program Loans and defining eligible and ineligible small businesses and eligible uses the proceeds of loans to small businesses and other criteria to be applied by the community development financial institutions in making loans to small businesses.

4. Costs: The Program is funded by a State appropriation in the amount of twenty-five million dollars. Pursuant to the rule, community based lending organizations must provide not less than fifty percent of the principal amount of each small business loan funded with Program funds. The costs to a community based lending organization involved in the Program would depend on the extent to which they participate in Program and their effectiveness and efficiency in making small business loans. The rule also provides for approval by the Corporation of fees charged by a community based lending institutions in connection with loans to small businesses that use Program funds.

5. Paperwork/Reporting: There are no additional reporting or paperwork requirements as a result of this rule on community based lending organizations participating in the Program except those required by to the statute creating the Program such as an annual report on the organization's lending activity and providing information in connection with an audit by the Corporation with respect to the organization's use of Program funds. Standard applications and loan documents used for most other Corporation assistance will be employed in keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients.

6. Local Government Mandates: The Program imposes no mandates – program, service, duty, or responsibility – upon any city, county, town, village, school district or other special district.

7. Duplication: The regulations do not duplicate any existing state or federal rule.

8. Alternatives: While larger financial institutions can potentially provide small business financing and the community based lending organizations already provide small business financing, the State has established the Program in order to enhance the access of small businesses to such financing, and the proposed rule provides the regulatory basis for providing low interest loans to community based lending organizations for lending to small businesses in accordance with the statutory requirements of the Program.

9. Federal Standards: There are no minimum federal standards related to this regulation. The regulation is not inconsistent with any federal standards or requirements.

10. Compliance Schedule: The regulation shall take effect immediately upon adoption.

Regulatory Flexibility Analysis

1. Effects of Rule: In the rule: "Small business" is defined as a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis; "Community Development Financial Institution" is defined as community based organization that provides financial services and products to communities, businesses and people underserved by traditional financial institutions; and "Community Based Lending Organizations" is defined as Community Development Financial Institutions, small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks. The

rule will facilitate the statutory Program's purpose of having New York State Urban Development Corporation d/b/a Empire State Development Corporation (the "Corporation") make low interest loans to community based lending organizations in order to provide funding for those lending organizations' loans (including microloans in principal amounts equal to or less than twenty-five thousand dollars) to small businesses, located within the State, that are unable to obtain adequate credit or credit terms for such credit.

2. Compliance Requirements: There are no compliance requirements for small businesses and local governments in these regulations.

3. Professional Services: Applicants do not need to obtain professional services to comply with these regulations.

4. Compliance Costs: There are no compliance costs for small businesses and local governments in these regulations.

5. Economic and Technological Feasibility: There are no compliance costs for small businesses and local governments in these regulations so there is no basis for determining the economic and technological feasible for compliance with the rule by small businesses and local governments.

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide low interest loans to community based lending organizations in order to enhance the ability of such organizations to fund loans to small businesses.

7. Small Business and Local Government Participation: A number of community based lending organizations that engage in lending to small businesses responded to a survey circulated by the Corporation regarding implementation of the program as reflected in the rule.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: Community development financial institutions and other community based lending organizations serving all of the 44 counties defined as rural by the Executive Law § 481(7), are eligible to apply for the Small Business Revolving Loan Fund (the "Program") assistance pursuant to a State-wide request for proposals.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The rule will not impose any new or additional reporting or recordkeeping requirements other than those that would be required of any community based lending organization receiving a similar loan regarding such matters as financial condition, required matching funds, and utilization of Program funds, and the statutorily required annual report on the use of Program funds; no affirmative acts will be needed to comply other than the said reporting requirements and the making of loans to small businesses in the normal course of the business for any community based lending organization that receives Program assistance; and, it is not anticipated that applicants will have to secure any professional services in order to comply with this rule.

3. Costs: The costs to community based lending organizations that participate in the Program would depend on the extent to which they choose to participate in the Program, including the amount of required matching funds for their Program loans to small businesses and the administrative costs in connection with such small business loans and the fees, if any, charged to small businesses in connection with loans to such businesses that include Program funds.

4. Minimizing Adverse Impact: The purpose of the Program is to provide loans to community based lending organizations in order to enhance the ability of these entities to make loans to small businesses, especially those small businesses that may not be able to borrow funds at acceptable rates from larger financial institutions. This rule provides a basis for cooperation between the State and CBLOs, including CBLO that serve rural areas of the State, in order to maximize the Program's effectiveness and minimize any negative impacts for such CBLO and the small businesses, including small businesses located in rural areas of the State, that such CBLOs serve.

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those located only in urban areas or only in rural areas. The [National Federation of Independent Business, New York Farm Bureau, and the New York Conference of Mayors], have been or will be, consulted during this rulemaking and comments requested. In addition, rural organizations, cooperatives, and agricultural groups and local government associations were also asked for their review and comment.

Job Impact Statement

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of New York by providing greater access to capital for main street everyday small businesses. The Program is targeted to minorities, women and other New Yorkers who have difficulty accessing regular credit markets.

There will be no adverse impact on job opportunities in the state.