

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Rates of Assessment Under the Apple Research and Development Program

I.D. No. AAM-34-11-00001-A

Filing No. 1019

Filing Date: 2011-10-24

Effective Date: 2011-11-09

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

Action taken: Amendment of section 204.9 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, section 294(2)

Subject: Rates of assessment under the Apple Research and Development Program.

Purpose: To increase the rates of assessment under the Program to increase the level of funding for apple research.

Text or summary was published in the August 24, 2011 issue of the Register, I.D. No. AAM-34-11-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Dan McCarthy, New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-8857, email: Dan.McCarthy@agmkt.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sets Forth the Procedures for the Use of Electronic Signatures and Records by the Retirement System

I.D. No. AAC-45-11-00010-P

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

Proposed Action: Addition of Part 379 to Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11, 74, 311, 374, 519 and 614

Subject: Sets forth the procedures for the use of electronic signatures and records by the Retirement System.

Purpose: To clarify the use of electronic signatures.

Text of proposed rule: PART 379. ELECTRONIC SIGNATURES AND FILING OF DOCUMENTS

(Statutory authority: Retirement and Social Security Law, § 807)

Part 379.1 - Background.

Article 3 of the State Technology Law, known as the Electronic Signatures and Records Act (ESRA), is intended to support and encourage electronic commerce and electronic government by allowing people to use electronic signatures and electronic records in lieu of handwritten signatures and paper documents. Administration of the State Technology Law is vested in the New York State Office of the Chief Information Officer and the New York State Office for Technology (CIO/OFT). CIO/OFT has promulgated regulations (9 NYCRR Subtitle N, Part 540) to establish rules governing the use of electronic signatures and records. CIO/OFT also issues policies, standards, and guidelines for technology usage.

Section 807 of the Retirement and Social Security Law, enacted pursuant to chapter 506 of the Laws of 2005, authorizes public retirement systems to promulgate rules and regulations to provide for alternate means of authentication in place of any requirement that a filing be duly executed and acknowledged and, consistent with the provisions of the state technology law, to provide for the electronic filing of documents. The State Comptroller as the administrative head of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System ("the Retirement System") has the exclusive authority pursuant to sections 11, 74, 311, 374, 519 and 614 of the Retirement and Social Security Law to adopt rules and regulations for the administration of the retirement system.

This part is promulgated to set forth the procedures for the use of electronic signatures and records by the Retirement System.

§ 379.2 - Statement of Intent.

1. ESRA and this Part are designed to, among other things, afford the Retirement System the greatest latitude to determine the most effective protocols for producing, receiving, accepting, acquiring, re-

cording, filing, transmitting, forwarding and storing electronic signatures and electronic records within the confines of existing statutory and regulatory requirements regarding privacy, confidentiality and records retention.

2. New technologies are frequently being introduced. The intent of this Part is to be flexible enough to embrace future technologies that comply with ESRA and all other applicable statutes and regulations.

§ 379.3 Electronic Signatures and Filing of Documents.

1. Meaning of terms. Unless specifically stated otherwise, the meaning of terms and words in this Part shall be the same as in the state technology law and the regulations of CIO/OFT.

a. The "retirement system" means the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.

b. An "electronic signature" or "digital signature" means the creation of an electronic identifier (i.e., an electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record) which the Comptroller determines is:

- i. unique to the signer;
- ii. capable of verification;
- iii. under the signer's control; and
- iv. linked to the record in such a manner that if the record is changed, the signature is invalidated.

2. Authorization. The Retirement System may provide for the electronic filing of forms and documents through its internet website and/or through the statewide network infrastructure (NYeNet).

3. Coordination. Administration of the internet website and use of NYeNet shall be coordinated by the Retirement System through the Chief Information Officer of the Office of the State Comptroller.

4. State technology law. The Retirement System shall conform to the internet security and privacy act, the electronic signatures and records act, and the regulations and other requirements of CIO/OFT.

5. Retirement System Electronic Signatures. The signature of those persons executing, and/or authenticating, any decision or determination or other document by or on behalf of the Comptroller, may do so digitally for documents prepared in an electronic format.

6. Use of electronic signatures. Unless specifically provided otherwise by law, an electronic signature may be used in lieu of a signature affixed by hand. The use of an electronic signature shall have the same validity and effect as the use of a signature affixed by hand. A verified electronic signature shall also be deemed to be acknowledged, when required by law.

7. Disclosure of Records. Electronic records shall be considered and treated as any other records for the purposes of disclosure of those records as set forth in Article 6-A of the Public Officers Law.

8. Freedom of Information Law. Electronic records shall be considered and treated as any other records for the purposes of the Freedom of Information Law as set forth in Article 6 of the Public Officers Law.

9. Use of electronic records. An electronic record shall have the same force and effect as those records not produced by electronic means.

10. Admissibility into evidence. Electronic records, electronically stored and reproduced copies of records, and electronic signatures, shall be admissible into evidence in Retirement System administrative proceedings under the same rules as those records and signatures not produced or stored and reproduced, by electronic means.

11. Use of electronic records and signatures to be voluntary. Nothing in this Part shall require any entity or person to use an electronic record or an electronic signature unless otherwise provided by law.

Text of proposed rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12203, (518) 473-4146, email: JElacqua@osc.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

Pursuant to the provisions of section 102 of the State Administrative Procedure Act, a rule may be filed as a consensus rule if no person is likely to object to its adoption, and the rule either (1) repeals regulatory provisions which are no longer applicable to any person, (2) implements nondiscretionary statutory standards or conforms a rule to these standards, or (3) makes technical changes or is otherwise noncontroversial.

Part 379 is added to Title 2 (Department of Audit and Control) of Chapter VI (New York State and Local Employees' Retirement System) of the NYCRR for the purpose of conforming with Article 3 of the State Technology Law, known as the Electronic Signatures and Records Act (ESRA), which is intended to support and encourage electronic commerce and electronic government by allowing people to use electronic signatures and electronic records in lieu of handwritten signatures and paper documents and regulations promulgated by the New York State Office of the Chief Information Officer and the New York State Office for Technology (CIO/OFT) (9 NYCRR Subtitle N, Part 540) establishing rules governing the use of such electronic signatures and records.

Rural Area Flexibility Analysis

A rural area flexibility analysis is 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.

Office of Children and Family Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Youth Development and Delinquency Prevention Program Fees

I.D. No. CFS-45-11-00005-P

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

Proposed Action: Amendment of section 165-1.2(b) of Title 9 NYCRR.

Statutory authority: Executive Law, section 419

Subject: Youth Development and Delinquency Prevention program fees.

Purpose: To allow Youth Development and Delinquency Prevention programs to charge a fee to participate in recreational services programs.

Text of proposed rule: 9 NYCRR Part 165-1.2(b)(1) and (2) is amended to read as follows:

Section 165-1.2(b)(1) Reimbursable and nonreimbursable expenditures. Expenditures connected with the establishment, operation or maintenance of a youth program are eligible for State aid reimbursement, provided they are listed in the approved project or amendment thereto. Such expenditures may include: administrative expenses; compensation for personal services; rental of land or buildings; purchase of equipment, supplies and materials; transportation; utilities; liability insurance; minor repairs; replacements or improvements; reasonable expenses incurred attending youth services-related conferences; and organizational memberships relating to youth services. *A youth program may charge a fee to participate in a recreational services program. However, the youth program shall accommodate any youth who is unable to pay such fee, by offering scholarships, a tiered fee schedule or waiving the fee.*

(2) State aid may not be granted for the following:

(i) purchase of land and buildings;

(ii) taxes from which municipalities are exempt;

(iii) capital improvements, which are defined to mean the erection of substantial structures which are capital in nature, or the valuable additions to or valuable modifications of real estate. This includes expenditures for hard surfacing, cement installations, substantial repairs to a building, basic heating, lighting or sanitary equipment and installation, permanent outdoor lighting systems, fencing (except for partial fencing justified as a safety device), swimming and wading pools or tennis courts;

(iv) prizes, other than inexpensive awards such as trophies, medals or ribbons;

- (v) items of clothing, other than inexpensive T-shirts, caps and individual protective devices;
- (vi) fire insurance or liability insurance on capital structures;
- (vii) salaries of personnel discharging law enforcement responsibilities, except juvenile aid officers as approved by the [Division for Youth] *Office of Children and Family Services*, or salaries of employees who lack the qualifications for the work, or who after a trial period are considered by the [division] *Office* unable to do satisfactory work;
- (viii) interest and penalty costs incurred by a municipality in program expenses;
- (ix) activities for which a fee is charged, *other than for a recreational services program in accordance with paragraph (1) of this subdivision*;
- (x) personal membership fees; and
- (xi) league franchise fees.

Text of proposed rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 473-7793

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

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

Regulatory Impact Statement

1. Statutory authority:

Article 19-A of the Executive Law (§§ 411 through 426) governs the provision of State aid for the prevention of delinquency and youth crime, and the advancement of the moral, physical, mental and social well-being of the youth of New York State. The Youth Development and Delinquency Prevention (YDDP) program provides state aid to counties and municipalities. A "youth program" is defined as a youth bureau, recreation project or youth service project. (See Executive Law § 412 (5))

Executive Law § 419 authorizes the Office of Children and Family Services (OCFS) to adopt, amend or rescind all rules and regulations necessary to carry out the provisions of Article 19-A.

2. Legislative objectives:

OCFS regulations at 9 NYCRR Subpart 165-1 govern the administration of state aid for YDDP programs and the establishment and operation of county/municipal youth bureaus.

The proposed regulation amends 9 NYCRR § 165-1.2(b), which sets forth the types of expenditures for youth programs that are eligible for state reimbursement and the types of expenditures that are ineligible. These eligibility standards are meant to direct state funds towards reimbursement of expenditures that more directly relate to the provision of youth programs. The amendment would allow state reimbursement for recreational services projects that charge fees. The exception is a result of OCFS' Executive Order #17 local government mandate relief internal agency review process.

3. Needs and benefits:

The proposed amendment to § 165-1.2(b) would no longer make a youth program ineligible for State funding, if it charges a fee to participate in a recreation project. If the youth program chooses to charge a fee, it must accommodate any youth who is unable to pay by offering scholarships, a tiered fee schedule or waiving the fee. The current regulation does not permit state reimbursement under the YDDP program for activities for which a fee is charged.

YDDP funding from the state covers only a portion of the cost of recreation projects for children and youth operated by or under the direction of municipalities (counties, towns, cities and villages). The current fiscal climate has caused YDDP funding to remain stagnant or decrease, and municipalities now pick up a greater share of the cost of these programs. The ability to charge a fee for participation in a recreation project without losing state reimbursement may help municipalities to serve more youth without an increase in funding or prevent cuts in programs. The amendment provides a safeguard requiring programs that charge a fee to offer scholarships, a tiered fee schedule or waivers of the fee so that no youth is foreclosed from participating in the program.

4. Costs:

The proposed amendment to allow youth programs to be eligible to receive State funding even if they charge fees for recreation projects may help municipalities to serve more youth without an increase in funding or prevent cuts in programs. There is no cost associated with this proposal to the Office or to the Youth Bureaus. The individual municipalities who decide to implement a fee for their youth recreational programs or activities will incur nominal costs in establishing the fee amount, collecting and accounting for such fees, and for documenting participation, including in the scholarship, tiered fee schedule or waiver policy instituted. OCFS anticipates that programs that choose to implement a fee will likely absorb any costs of administration into their existing programs.

5. Local government mandates:

The proposed amendment does not impose any local mandates. In fact, this proposal is the result of an internal Executive Order # 17 review of OCFS regulations. This amendment to OCFS regulation enables youth programs to be or continue to be eligible to receive State funding, even if they charge a fee for participation in a recreational program or activity.

6. Paperwork:

The proposed amendment requires no additional paperwork as the program change is voluntary. However, youth programs that choose to charge a fee must have an established process to set an appropriate fee amount, collect the fee, account for the funds collected, and offer scholarships, a tiered fee schedule or waivers of the fee, as necessary; and document this process to the Youth Bureau in its annual report. OCFS is in the process of streamlining its monitoring and reporting through the development of an on-line system, which will eventually increase the efficiency of the current reporting requirements.

7. Duplication:

None. There is no other relevant rule or legal requirement on this topic.

8. Alternatives:

OCFS consulted with representatives from the Association of New York State Youth Bureaus (ANYSYB) in proposing this amendment. ANYSYB's main concern was to have as much flexibility as possible to address the widely varying needs of the individual recreational programs affected by the rule. OCFS, in collaboration with the ANYSYB, will be locally responsive by providing ample guidance and technical assistance to youth programs that choose to charge fees.

OCFS considered allowing youth programs other than recreation projects to charge fees for YDDP programs and for Special Delinquency Prevention Programs (SDPP). Recreation projects are not targeted to at risk youth but are available to the general youth population. Therefore it was determined that charging a fee would have the least negative impact on recreation project participants. In addition, some SDPP programs receive 100% state funding, therefore it would be inappropriate for the SDPP program to also charge a fee.

OCFS considered specifying that the size of the fee must be "nominal" or "small". However, these terms are subjective and OCFS chose to allow the youth program to determine what fee would be fair and appropriate under the individual circumstances of the program. Ample guidance and technical assistance will be provided to youth programs through OCFS and the ANYSYB, and available on the OCFS website.

9. Federal standards:

There is no relevant federal standard on this topic.

10. Compliance schedule:

Since Youth programs are aware of this rulemaking, those that choose to charge a fee will be able to implement a process immediately upon the adoption of the amended regulation.

Regulatory Flexibility Analysis

The proposed regulation amends 9 NYCRR § 165-1.2(b), which sets forth the types of expenditures for Youth Development and Delinquency Prevention (YDDP) programs that are eligible for state reimbursement and the types of expenditures that are ineligible. The amendment no longer makes every youth program that charges a fee ineligible for State funds. This exception for recreational services projects to charge a fee provides that the program must accommodate any youth who is unable to pay the fee by offering a scholarship, waiving or reducing the fee. The current regulation does not permit state reimbursement for activities for which a fee is charged. The rule does not impose any adverse economic impact on local governments because the program is not mandated by the State. If the county or municipality chooses to apply for State funds, reporting recordkeeping and other compliance requirements are not hindered. The ability of these youth development programs to charge a fee may help alleviate some of the municipalities' fiscal constraints in offering recreational programs.

Rural Area Flexibility Analysis

The proposed amendment to 9 NYCRR § 165-1.2(b) no longer makes every youth program that charges a fee to participate in a recreational services project ineligible to receive Youth Development and Delinquency Prevention (YDDP) funds. The current regulation does not permit state reimbursement for activities for which a fee is charged.

All counties receive YDDP funding, including rural counties.

The rule does not impose any adverse economic effect on public or private entities in rural areas because the program is not mandated by the State. If the county or municipality chooses to apply for reimbursement, reporting, recordkeeping and other compliance requirements are not hindered. The ability for the youth programs to charge a fee may help alleviate some of the municipalities' fiscal constraints in offering recreational services.

The proposed amendment may help counties, including rural counties, to offset reductions in state funding. The proposed amendment does not

specify any fee amount. Youth who cannot pay the fee must be provided access to the program through sliding fee schedules, scholarships or waivers.

Job Impact Statement

A full job impact statement has not been prepared for the proposed amendment to 9 NYCRR § 165-1.2(b) to no longer make a youth program that charges a fee to participate in a recreation project ineligible for State funds. If such youth program chooses to charge a fee, it must accommodate any youth who is unable to pay the fee by offering scholarships, a tiered fee schedule or waiving the fee. The ability to charge a fee for participation in a recreation project without losing state reimbursement may help municipalities to offset reductions in state funding. The proposed amendment will not have a measurable impact on any jobs.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Qualifications for Personnel in Juvenile Detention Facilities

I.D. No. CFS-45-11-00006-P

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

Proposed Action: Amendment of section 180.8 of Title 9 NYCRR.

Statutory authority: Executive Law, section 501(3)

Subject: Qualifications for personnel in juvenile detention facilities.

Purpose: To streamline the juvenile detention personnel requirements and align them with the requirements for authorized agencies.

Text of proposed rule: Section 180.8 of 9 New York Code, Rules and Regulations, is amended to read as follows:

180.8 Personnel requirements. The following requirements shall be applicable to all detention facilities except for family boarding care facilities and agency-operated boarding care facilities.

(a) Staff and complementary services. As approved by the [division] of *office of children and family services*, each facility shall provide the staff and complementary services necessary [to assure] for the health and safety and the proper care and treatment of the children under care of the facility.

(b) Qualifications of staff. Personnel employed in a detention facility shall meet the qualifications required by this section. *Professional staff also shall meet all New York State licensing requirements for that profession.*

(c) Administrative staff. (1) Chief executive officer. The chief executive officer or supervisor of major detention programs shall be a college graduate with appropriate training and experience in the care or education of children.

(2) Supervisor of child care workers. The supervisor of child care workers shall [be] have a high school [graduate,] or *equivalency diploma* and be further qualified by appropriate training, and have experience with children in a group living facility.

(d) [Social work] *Case management* staff. (1) Personnel providing [casework] *case management* services shall be graduates of an accredited college and have two years' experience working with children.

(2) Personnel who supervise [casework] *case management* services shall meet the requirements for [New York State certified] a *licensed master social worker*.

(e) Recreation supervisor. A recreation supervisor [will] shall be a [college] graduate of an *accredited college* with [specialization and] experience in recreation or related fields.

(f) Medical staff. (1) Attending physician or medical director. An attending physician or medical director shall be licensed and currently registered to practice medicine in accordance with the laws of New York State.

(2) [Medical specialist. A medical specialist shall be a licensed physician, currently registered and qualified to provide specialized services by the appropriate national speciality board or designated by the county medical society as having an 'S' rating under the Workers' Compensation Law.

(3) Dentist. A dentist shall be currently licensed to practice dentistry.

(4) (3) Nurse. A nurse shall be either a registered professional or a practical nurse licensed in accordance with the laws of New York State.

(5) (4) Psychiatrist. A psychiatrist shall be qualified by training in psychiatry and licensed to practice medicine in accordance with the laws of New York State.

(6) Psychologist. A psychologist shall have a certificate as psychologist from New York State.]

(g) Education staff. [(1)] Teacher. A teacher shall be eligible for certification by the New York State Education Department.

[(2) educator. A educator shall be eligible for certification by the New York State Education Department.]

(h) Dietary staff. (1) Dietitian or dietary consultant. A dietitian or *dietary consultant* shall be a graduate of [a four-year course in home economics from] an accredited college with a major in [food] *dietetics* and nutrition [and/or institutional food management, shall have completed an approved dietetic internship] and shall [have had experience with institutional food service. A dietary consultant (part-time) shall have the same educational credentials and experience as a dietitian and/or shall have earned a master's degree in food and nutrition or institutional food service] be a *Certified Dietitian Nutritionist*.

(i) Personnel practices. (1) Each detention facility shall observe the following:

(i) Health examination. A physical examination, including a *tuberculin skin test with a chest [X ray] X-ray where such test is positive*, and serological tests as indicated, shall be required of all staff as a condition of employment.

(ii) Annual reexaminations, including a *tuberculin skin test with a chest [X rays] X-ray where such test is positive*, shall be required of all food handlers [.

(iii) Annual reexaminations, including a tuberculin skin test, and chest X rays if the skin test is positive, shall be required of] and other staff having frequent and regular contact with children.

[(iv)] (iii) A record of the results of examinations shall be kept on file at the facility.

(2) Time off with pay. All staff shall have adequate time off with pay.

(3) Staff development. A plan for staff orientation, integration with the total agency services, and education through in-service training shall be a permanent part of the institution's program.

(4) At the time of commencement of employment each staff member shall be apprised of *the institution's personnel practices and policies and shall thereafter be apprised of any changes made therein.*

Text of proposed rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12210, (518) 473-7793

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

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

Regulatory Impact Statement

1. Statutory authority:

Executive Law (ExL) § 502(3) defines detention as the temporary care and maintenance of a youth held away from his or her home as an alleged or adjudicated juvenile delinquent, juvenile offender or person in need of supervision pending certain court actions, administrative hearings or change in custody.

ExL § 503(1) requires the Office of Children and Family Services (OCFS) to establish regulations for the operation of secure and non-secure detention facilities in accordance with Article 19-G of the Executive Law and County Law § 218-a.

ExL § 503 also requires OCFS to oversee detention facilities, including visiting and inspecting detention facilities and reporting to the appropriate local authorities on the operation and adequacy of such facilities. A detention facility may not receive or care for detained children unless the facility is certified by OCFS. OCFS may suspend or revoke a facility's certification for good cause shown.

County Law § 218-a requires each county to have adequate and conveniently accessible secure and non-secure detention accommodations available when required. A county may meet this requirement by arranging for access to detention accommodations located in another county. Provision of detention is a local responsibility that is monitored and regulated by the state.

2. Legislative objectives:

OCFS is charged with providing uniform standards and procedures for the establishment and operation of secure and non-secure juvenile detention facilities. (see 9 NYCRR § 180.1) Section § 180.8 provides personnel requirements applicable to all detention facilities except family boarding care facilities and agency-operated boarding care facilities. Establishment of personnel standards is meant to assure the health and safety and proper care and treatment of youth in the detention facility.

3. Needs and benefits:

The proposed amendment to the personnel requirements in § 180.8 streamlines the existing regulations. In addition, where appropriate, the amendments conform the detention requirements more closely to personnel requirements in 18 NYCRR § 442.18 pertaining to authorized agencies operating institutional facilities for children. Many of the approximately 56 detention facilities in New York State are operated by authorized agencies.

The amendment requires detention professional staff to meet New York State licensing requirements for that profession. The supervisor of child care workers may have a high school equivalency diploma as an alterna-

tive to a high school diploma. The phrase “social work” is changed to “case management” to clarify that these child care personnel are not required to be licensed social workers. The current requirement for supervisory case management staff to be certified social workers is updated to require these staff to be licensed master social workers. The recreation supervisor must be a college graduate with experience in recreation or related fields, instead of a college graduate who specialized in recreation or related fields. The provision setting forth qualifications for a “medical specialist” is eliminated as the regulation does not require that a detention facility use the services of a medical specialist. The definition of “educator” is removed for the same reason. The qualifications for a psychologist are deleted as psychology is now a licensed profession. The qualifications for dietary staff are streamlined and simplified. Finally, the provisions on personnel practices in detention facilities, including health exam and reexamination requirements, are conformed to the requirements for authorized agencies that operate institutional facilities for foster children.

4. Costs:

None. The proposed amendment may result in savings. Excessively prescriptive qualifications for personnel affect the cost of juvenile detention for all counties using detention resulting in higher costs where detention providers must hire overly qualified staff.

The amendments do not require detention operators to replace current staff that have extra qualifications or prohibit detention operators from hiring staff who have more than the minimum qualifications.

5. Local government mandates:

The proposed amendment reduces local mandates.

6. Paperwork:

The proposed amendment requires no additional paperwork.

7. Duplication:

None. The amendment requires detention professional staff to meet New York State licensing requirements for that profession, instead of specifying the licensing requirements.

8. Alternatives:

OCFS did not consider any significant alternatives, such as eliminating personnel requirements, to be feasible.

9. Federal standards:

There is no relevant federal standard on this topic.

10. Compliance schedule:

Once the regulation is promulgated, the streamlined personnel requirements will apply when detention operators hire new staff or replace staff that leave.

Regulatory Flexibility Analysis

1. Effect of rule:

The current personnel requirements in 9 NYCRR § 180.8 for detention facilities, other than family boarding care facilities and agency-operated boarding care facilities, are overly prescriptive and/ or outdated in some instances. The proposed amendment streamlines the existing regulations by requiring detention employees to meet any licensing criteria for their profession, instead of including such criteria in the regulation. In addition, where appropriate, the amendments conform requirements for detention more closely to personnel requirements in 18 NYCRR § 442.18 for authorized agencies operating institutional facilities for foster children. Many of the approximately 56 detention facilities in New York State are operated by authorized agencies.

2. Compliance requirements:

Detention operators still must hire personnel with the qualifications required by § 180.8. However, the proposed amendment makes these qualifications more flexible. The amendment requires detention professional staff to meet New York State licensing requirements for that profession. The supervisor of child care workers may have a high school equivalency diploma as an alternative to a high school diploma. The phrase “social work” is changed to “case management” to clarify that these child care personnel are not required to be licensed master social workers. The current requirement for supervisory child care staff to be certified social workers is updated to require these staff to be licensed master social workers. The recreation supervisor must be a college graduate with experience in recreation or related fields, instead of a college graduate who specialized in recreation or related fields. The provision setting forth qualifications for a “medical specialist” is eliminated as the regulation does not require that a detention facility use the services of a medical specialist. The definition of “educator” is removed for the same reason. The qualifications for a psychologist are deleted as psychology is now a licensed profession. The qualifications for dietary staff are streamlined and simplified. The provision on personnel practices in detention facilities, including health exam and reexamination requirements, are conformed to the requirements for authorized agencies that operate institutional facilities for foster children.

3. Professional services:

No professional services are needed to implement the proposed amendment.

4. Compliance costs:

None. The proposed amendment may result in savings. Excessively prescriptive qualifications for personnel affect the cost of operating juvenile detention and affect all counties using detention. However, detention operators are not prohibited from hiring staff with more than the minimum qualifications for their position.

5. Economic and technological feasibility:

The proposed amendment is economically and technologically feasible.

6. Minimizing adverse impact:

No adverse impact on either local governments or small businesses is anticipated from this proposed amendment.

7. Small business and local government participation:

Amending 9 NYCRR § 180.8 to simplify and streamline personnel requirements was submitted as a mandate relief measure under Executive Order No. 17 and shared with OCFS stakeholders, including local governments and small businesses. OCFS received no negative comments from stakeholders regarding this measure.

Rural Area Flexibility Analysis

1. Types and estimate numbers of rural areas:

The proposed amendment updates and streamlines the personnel requirements for detention staff. In addition, where appropriate, the amendments conform requirements for detention more closely to personnel requirements in 18 NYCRR § 442.18 for authorized agencies operating institutional facilities for foster children.

Under County Law 218-a, each county is required to have adequate and conveniently accessible secure and non-secure detention accommodations available when needed. Since detention is a responsibility of every county, this proposal potentially affects all rural areas. However, some small counties in rural areas use little or no detention. All secure detention facilities and most non-secure facilities are located in urban areas. Where non-secure detention facilities are located in rural areas it may be helpful to provide more flexibility with respect to personnel requirements to mitigate difficulties in recruiting staff in rural areas.

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

The proposed amendment imposes no new reporting, recordkeeping or other compliance requirements. No professional services are needed to implement the proposed amendment.

3. Costs:

None. The proposed amendment may result in savings. Excessively prescriptive qualifications for personnel affect the cost of operating juvenile detention and affect all counties using detention. On the other hand, detention operators are not prohibited from hiring staff with more than the minimum qualifications for their position.

4. Minimizing adverse impact:

No adverse impact on rural areas is anticipated from this proposed amendment.

5. Rural area participation:

Amending 9 NYCRR § 180.8 to simplify and streamline personnel requirements was submitted as a mandate relief measure under Executive Order No. 17 and shared with OCFS stakeholders, including rural areas. OCFS received no negative comments from stakeholders regarding this measure.

Job Impact Statement

A full job impact statement has not been prepared for the proposed amendment to 9 NYCRR 180.8 which updates and streamlines personnel requirements for staff of detention facilities. These revisions will not result in the loss of any jobs.

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

Youth Bureau Executive Directors

I.D. No. CFS-45-11-00008-P

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

Proposed Action: Amendment of section 165-1.1(d)(1) of Title 9 NYCRR.

Statutory authority: Executive Law, section 419

Subject: Youth Bureau Executive Directors.

Purpose: To eliminate the existing requirement that the executive director be responsible to the municipality’s chief executive officer.

Text of proposed rule: 9 NYCRR section 165-1.1(d)(1) is amended to read:

(1) Youth bureau shall mean an agency created by a county or city, or town or village with total population of 20,000 or more, and

responsible [to the chief executive officer thereof] for the purpose of planning, coordinating and supplementing the activities of public, private or religious agencies devoted in whole or in part to the well-being and protection of youth.

(i) Executive director. Each youth bureau shall have a paid executive director[, appointed by and responsible] *with access* to the chief executive officer of the municipality *as is appropriate to focus attention on youth development issues*.

(ii) Each youth bureau shall have a youth board.

(iii) Exceptions. In counties of less than 15,000 youth population, a county youth board may assume the duties of a youth bureau for the purposes of county comprehensive planning. In counties with fewer than 25,000 youth population, a county youth bureau may function with a part-time executive director.

Text of proposed rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 473-7793

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

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

Regulatory Impact Statement

1. Statutory authority:

Article 19-A of the Executive Law (§§ 411 through 426) governs the provision of State aid for the prevention of delinquency and youth crime, and the advancement of the moral, physical, mental and social well-being of the youth of New York State through youth programs. A "municipality" is defined as a county, city, village or town and may include an Indian reservation. (See Executive Law § 412 (4)) A "youth program" is defined as a youth bureau, recreation project or youth service project. (See Executive Law § 412 (5))

Executive Law § 419 authorizes the Office of Children and Family Services (OCFS) to adopt, amend or rescind all rules and regulations necessary to carry out the provisions of Article 19-A.

2. Legislative objectives:

OCFS regulations at 9 NYCRR Subpart 165-1 govern the establishment and operation of youth bureaus and the administration of state aid for youth programs. 9 NYCRR § 165-1.1(d)(1) sets forth organizational requirements for youth bureaus, including that the executive director of the youth bureau be appointed by and responsible to the municipality's chief executive officer. This requirement was meant to help focus local attention on youth development issues by providing the youth bureau executive director with access to the municipality's chief executive officer.

Instead of prescribing how the executive director is appointed and to whom he or she reports, the amendment requires that the executive director have appropriate access to the chief executive officer. This provides municipalities with more flexibility to reorganize or merge the youth bureau, while retaining the intended local focus on youth development issues.

3. Needs and benefits:

The proposed amendment to 9 NYCRR § 165-1.1(d)(1) eliminates the requirement that the executive director of the youth bureau be appointed by and responsible to the municipality's chief executive officer. Instead, the youth bureau executive director must have appropriate access to the chief executive officer. The amendment offers municipalities the flexibility to reorganize or merge the youth bureau function with another local governmental subdivision so long as the youth bureau executive director has appropriate access to the chief executive officer. This proposal was a result of the OCFS internal agency review process for local government mandate relief under Executive Order # 6.

OCFS regularly receives proposals from municipalities to merge or reorganize the youth bureau function with other governmental subdivisions. The purpose of these mergers and reorganizations is to help municipalities save money by pooling resources and aligning services. To that end, OCFS developed reorganization guidelines that explain OCFS's review protocols, information required from the applicant municipality, and provide examples of previously approved

merger and reorganization models. OCFS works with interested municipalities to develop reorganization plans that preserve the integrity of the youth bureau function but offer flexibility to achieve administrative savings. However, accommodating the current regulation by making the youth bureau executive director "responsible to" the chief executive officer of the municipality can be complicated and limits possible reorganizations.

4. Costs:

None. The proposed amendment may result in savings to municipalities by providing more flexibility in structuring the local governmental unit that provides youth development and delinquency prevention services.

5. Local government mandates:

The proposed amendment does not impose any local mandates. In fact, this proposal provides localities with more flexibility and is the result of an internal Executive Order # 6 review of OCFS regulations.

6. Paperwork:

The proposed amendment requires no additional paperwork. A municipality would still apply to OCFS for approval of a proposed merger or reorganization.

7. Duplication:

None. There is no other relevant rule or legal requirement on this topic.

8. Alternatives:

OCFS considered making no changes to the regulation. However, OCFS feels the proposed amendment will provide some mandate relief to municipalities.

OCFS also considered proposing a more comprehensive measure to restructure how youth programs are funded and administered. However, this restructuring could not be accomplished solely through regulatory changes.

9. Federal standards:

There is no relevant federal standard on this topic.

10. Compliance schedule:

The amendment does not require municipalities to change their existing youth bureau structures. However, municipalities may propose a merger or reorganization immediately upon adoption of the amended regulation.

Regulatory Flexibility Analysis

The proposed regulation amends 9 NYCRR § 165-1.1(d)(1), which governs the establishment and operation of municipal youth bureaus. The amendment eliminates the requirement that the executive director of the youth bureau be appointed by, and responsible to, the chief executive officer. Instead, the executive director must have appropriate access to the chief executive officer of the municipality. The existing regulation unnecessarily limits the organizational structures that the municipality can use to provide youth programs.

The rule does not impose any adverse economic impact on local governments. The amendment offers municipalities greater flexibility in reorganizing or merging their youth bureau function with another appropriate local governmental subdivision. These reorganizations may enable municipalities to achieve administrative savings while maintaining services to children, youth and families.

Rural Area Flexibility Analysis

The proposed amendment to 9 NYCRR § 165-1.1(d)(1) eliminates the requirement that the executive director of the youth bureau be appointed by, and responsible to, the chief executive officer. Instead, the executive director must have appropriate access to the chief executive officer of the municipality. The existing regulation unnecessarily limits the organizational structures that the municipality can use to provide youth programs. The definition of "municipality" includes counties and all counties, including rural counties, have youth bureaus.

The rule does not impose any adverse economic effect or any new reporting, recordkeeping and other compliance requirements on public or private entities in rural areas because the program is not mandated by the State.

The amendment offers municipalities greater flexibility in reorga-

nizing or merging their youth bureau function with another appropriate local governmental subdivision. These reorganizations may enable municipalities to achieve administrative savings while maintaining services to children, youth and families.

Job Impact Statement

A full job impact statement has not been prepared for the proposed amendment to 9 NYCRR § 165-1.1(d)(1). The amendment eliminates the requirement that the executive director of the youth bureau be appointed by, and responsible to, the chief executive officer of the municipality. Instead, the executive director must have appropriate access to the chief executive officer. The existing regulation unnecessarily limits the organizational structures that the municipality can use to provide youth programs.

The proposed amendment will not have a measurable impact on any jobs. The amendment offers municipalities greater flexibility in reorganizing or merging their youth bureau function with another appropriate local governmental subdivision. These reorganizations may enable municipalities to achieve administrative savings while maintaining services to children, youth and families.

Department of Civil Service

NOTICE OF EXPIRATION

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

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-42-10-00018-P	October 20, 2010	October 20, 2011

Education Department

NOTICE OF ADOPTION

Customized Packaging of Prescription Drugs

I.D. No. EDU-22-11-00005-A
Filing No. 1038
Filing Date: 2011-10-25
Effective Date: 2011-11-09

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

Action taken: Amendment of section 29.7 of Title 8 NYCRR.
Statutory authority: Education Law, sections 207, 6504, 6506(1), 6508(1), 6509(9) and 6510(1)
Subject: Customized packaging of Prescription Drugs.
Purpose: Authorizes pharmacists to repackaging drugs in customized patient packaging provided that certain requirements are met.

Text or summary was published in the June 1, 2011 issue of the Register, I.D. No. EDU-22-11-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Flexibility in Teacher Certification

I.D. No. EDU-31-11-00002-A
Filing No. 1039
Filing Date: 2011-10-25
Effective Date: 2011-11-09

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

Action taken: Amendment of section 80-4.3 of Title 8 NYCRR.
Statutory authority: Education Law, sections 207, 3001 and 3004(1)
Subject: Flexibility in teacher certification.

Purpose: Provide teacher certification flexibility if it would provide for a more efficient operation of the school district or BOCES.

Text or summary was published in the August 3, 2011 issue of the Register, I.D. No. EDU-31-11-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Revised Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 3001 of the Education Law provides that no teacher shall be authorized to teach in the public schools of the State if they are not in possession of a teacher's certificate issued by the Department.

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statutes by providing flexibility from the current teacher certification requirements to allow employing entities (school districts, boards of cooperative educational services (BOCES), charter schools and other entities required by law to employ certified teachers) to reassign effective classroom teachers to teach students at different grade levels if it would provide for a more efficient operation of the employing entity.

3. NEEDS AND BENEFITS:

In 2010, the Board of Regents adopted an amendment to section 80-4.3 of the Commissioner's regulations to provide employing entities with flexibility in certification when there was a demonstrated immediate fiscal crisis and the certification flexibility would avoid a reduction in force. In 2010, the Regents created certification flexibility in the following areas:

Grades 7-12 Academic Area Certification Extended to Grades 5 and 6

The 2010 amendment allows an employing entity to reassign a teacher who is employed by the entity and certified in the classroom teaching service in a subject area in grades 7-12 to teach that same subject area in grades 5 or 6 through a limited extension to the teacher's existing certificate. The limited extension will be valid for two years and shall be valid with that employing entity only. A full extension may be issued to the candidate if the candidate meets the requirements within those two years.

Childhood Education Extended to Grades 7 and 8

The 2010 amendment also authorizes a certified and qualified elementary school teacher (grades 1-6) to be reassigned to a position teaching an academic subject in grades 7 and 8. The teacher would need to have appropriate education and experience for such teaching assignment as demonstrated by earning Highly Qualified status under NCLB in order to be granted a limited extension to their existing certificate title. Also, the teacher must agree to: 1) successfully complete the Content Specialty Test in that subject area, and 2) complete 6 semester hours of course work in Middle Childhood Education, within the next two years to qualify for the full certificate extension when their limited extension expires.

The Limited extensions certificates for teacher certification flexibility would not be renewable and would expire at the end of the two-year period. It is intended that these Limited Extensions would provide a two-year bridge to authorize teaching for an already experienced teacher who is seeking to complete any remaining requirements to qualify for the full certificate extension in the new teaching assignment.

Currently, employing entities may only use this certification flexibility if they can demonstrate an immediate fiscal crisis and that such certifica-

tion flexibility would avoid a reduction in force. The current regulation also sunsets in June 2013. The proposed amendment would create additional flexibility in the assignment of teachers to these grade levels. The proposed amendment eliminates the requirement that employing entities demonstrate an immediate fiscal crisis or a reduction in force. The employing entity would only need to demonstrate that the certification flexibility would provide for a more efficient operation of the employing entity. The proposed amendment also eliminates the sunset provision.

The proposed amendment addresses certification issues only. Hiring decisions or appointments to tenure areas continue to be governed by existing law and rules. For example, if, due to a previous reduction in force, a preferred eligibility list exists that covers the tenure area where the district seeks to fill a position, the school district must use the preferred eligibility list first before making any new appointments to that tenure area. Also, any reassignments to a new tenure area require the consent of the teacher and result in the teacher serving a probationary period in the new tenure area.

4. COSTS:

(a) Costs to State government: The proposed amendment will not impose any additional costs on State government, including the State Education Department.

(b) Costs to local governments: The proposed amendment will not impose any additional costs on local governments, including school districts and BOCES.

(c) Costs to private regulated parties: In general, the proposed amendment does not impose any additional compliance costs employing entities required by law to employ certified teachers. However, in order to obtain an extension under the proposed amendment, the cost of the certificate will be \$100 per candidate, which is the amount currently required for candidates seeking a certificate.

(d) Costs to regulating agency for implementing and continued administration of the rule: As stated above in "Costs to State Government," the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment applies to school districts and BOCES. Therefore, the mandates in Section 3 apply to school districts and BOCES.

6. PAPERWORK:

The proposed amendment requires the candidate to submit a written certification from the Chancellor, the superintendent or by the chief school officer containing certain information, when applying for an extension under the proposed amendment.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that establish certification requirements for teachers, except the No Child Left Behind Act. The proposed amendment is consistent with federal standards.

10. COMPLIANCE SCHEDULE:

The proposed amendment will become effective on its stated effective date. No additional time is needed to comply.

Revised Regulatory Flexibility Analysis

(a) Small Businesses:

The purpose of the proposed amendment is to provide teacher certification flexibility to provide for a more efficient operation of school districts, boards of cooperative educational services (BOCES), charter schools or other entities required by law to employ certified teachers by allowing them to reassign effective classroom teachers to teach students at different grade levels to avoid reductions in force. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

The proposed amendment relates to flexibility in teacher certification requirements for teachers across the State.

1. EFFECT OF RULE:

The purpose of the proposed amendment is to provide teacher certification flexibility to provide for a more efficient operation of employing entities (school districts, BOCES, charter schools or other entities required by law to employ certified teachers) by allowing them to reassign effective classroom teachers to teach students at different grade levels to avoid reductions in force.

2. COMPLIANCE REQUIREMENTS:

In 2010, the Board of Regents adopted an amendment to section 80-4.3 of the Commissioner's regulations to provide school districts and BOCES with flexibility in certification when there was a demonstrated immediate

fiscal crisis and the certification flexibility would avoid a reduction in force. In 2010, the Regents created certification flexibility in the following areas:

Grades 7-12 Academic Area Certification Extended to Grades 5 and 6

The 2010 amendment allows a district or BOCES to reassign a teacher who is employed by a school district and BOCES and certified in the classroom teaching service in a subject area in grades 7-12 to teach that same subject area in grades 5 or 6 through a limited extension to the teacher's existing certificate. The limited extension will be valid for two years and shall be valid with that employing entity only. A full extension may be issued to the candidate if the candidate meets the requirements within those two years.

Childhood Education Extended to Grades 7 and 8

The 2010 amendment also authorizes a certified and qualified elementary school teacher (grades 1-6) to be reassigned to a position teaching an academic subject in grades 7 and 8. The teacher would need to have appropriate education and experience for such teaching assignment as demonstrated by earning Highly Qualified status under NCLB in order to be granted a limited extension to their existing certificate title. Also, the teacher must agree to: 1) successfully complete the Content Specialty Test in that subject area, and 2) complete 6 semester hours of course work in Middle Childhood Education, within the next two years to qualify for the full certificate extension when their limited extension expires.

The Limited extensions certificates for teacher certification flexibility would not be renewable and would expire at the end of the two-year period. It is intended that these Limited Extensions would provide a two-year bridge to authorize teaching for an already experienced teacher who is seeking to complete any remaining requirements to qualify for the full certificate extension in the new teaching assignment.

Currently, employing entities may only use this certification flexibility if they can demonstrate an immediate fiscal crisis and that such certification flexibility would avoid a reduction in force. The current regulation also sunsets in June 2013. The proposed amendment would create additional flexibility in the assignment of teachers to these grade levels. The proposed amendment eliminates the requirement that employing entities demonstrate an immediate fiscal crisis or a reduction in force. The employing entity would only need to demonstrate that the certification flexibility would provide for a more efficient operation of the entity. The proposed amendment also eliminates the sunset provision.

The proposed amendment addresses certification issues only. Hiring decisions or appointments to tenure areas continue to be governed by existing law and rules. For example, if, due to a previous reduction in force, a preferred eligibility list exists that covers the tenure area where the district seeks to fill a position, the school district must use the preferred eligibility list first before making any new appointments to that tenure area. Also, any reassignments to a new tenure area require the consent of the teacher and result in the teacher serving a probationary period in the new tenure area.

3. PROFESSIONAL SERVICES:

The proposed amendment does not mandate that employing entities 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 candidates that wish to be reassigned to a new grade level. However, to obtain a limited extension, the cost of the extension will be \$100 per candidate, which is the amount currently required for candidates seeking an extension.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements. Economic feasibility is addressed under the Compliance Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment provides flexibility to employing entities across the State. The proposed amendment provides flexibility from the current teacher certification requirements to allow employing entities to reassign effective classroom teachers to teach students at different grade levels if it would provide for a more efficient operation of the entity.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES across the State.

Revised Rural Area Flexibility Analysis

1. TYPES AND ESTIMATE OF THE NUMBER OF RURAL AREAS:

The proposed amendment will affect teachers in employing entities (school districts, boards of cooperative services (BOCES), charter schools and other entities required by law to employ certified teachers) in all areas of New York State, including 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:

In 2010, the Board of Regents adopted an amendment to section 80-4.3 of the Commissioner's regulations to provide employing entities with flexibility in certification when there was a demonstrated immediate fiscal crisis and the certification flexibility would avoid a reduction in force. In 2010, the Regents created certification flexibility in the following areas:

Grades 7-12 Academic Area Certification Extended to Grades 5 and 6

The 2010 amendment allows an employing entity to reassign a teacher who is employed by the entity and certified in the classroom teaching service in a subject area in grades 7-12 to teach that same subject area in grades 5 or 6 through a limited extension to the teacher's existing certificate. The limited extension will be valid for two years and shall be valid with that employing entity only. A full extension may be issued to the candidate if the candidate meets the requirements within those two years.

Childhood Education Extended to Grades 7 and 8

The 2010 amendment also authorizes a certified and qualified elementary school teacher (grades 1-6) to be reassigned to a position teaching an academic subject in grades 7 and 8. The teacher would need to have appropriate education and experience for such teaching assignment as demonstrated by earning Highly Qualified status under NCLB in order to be granted a limited extension to their existing certificate title. Also, the teacher must agree to: 1) successfully complete the Content Specialty Test in that subject area, and 2) complete 6 semester hours of course work in Middle Childhood Education, within the next two years to qualify for the full certificate extension when their limited extension expires.

The Limited extensions certificates for teacher certification flexibility would not be renewable and would expire at the end of the two-year period. It is intended that these Limited Extensions would provide a two-year bridge to authorize teaching for an already experienced teacher who is seeking to complete any remaining requirements to qualify for the full certificate extension in the new teaching assignment.

Currently, employing entities may only use this certification flexibility if they can demonstrate an immediate fiscal crisis and that such certification flexibility would avoid a reduction in force. The current regulation also sunsets in June 2013. The proposed amendment would create additional flexibility in the assignment of teachers to these grade levels. The proposed amendment eliminates the requirement that employing entities demonstrate an immediate fiscal crisis or a reduction in force. The employing entity would only need to demonstrate that the certification flexibility would provide for a more efficient operation of the entity. The proposed amendment also eliminates the sunset provision.

The proposed amendment addresses certification issues only. Hiring decisions or appointments to tenure areas continue to be governed by existing law and rules. For example, if, due to a previous reduction in force, a preferred eligibility list exists that covers the tenure area where the district seeks to fill a position, the school district must use the preferred eligibility list first before making any new appointments to that tenure area. Also, any reassignments to a new tenure area require the consent of the teacher and result in the teacher serving a probationary period in the new tenure area.

3. COSTS:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to candidates that wish to be reassigned to a new grade level. However, to obtain a limited extension under the proposed amendment, the cost of the certificate will be \$100 per candidate, which is the amount currently required for candidates seeking an extension.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment provides flexibility to employing entities located across the State. The proposed amendment provides flexibility from the current teacher certification requirements to allow employing entities to reassign effective classroom teachers to teach students at different grade levels to provide for a more efficient operation of the employing entity.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES located in rural areas of New York State.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Appeals Process for Local Diploma

I.D. No. EDU-31-11-00010-A

Filing No. 1040

Filing Date: 2011-10-25

Effective Date: 2011-11-09

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

Action taken: Amendment of section 100.5(b)(7)(i) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 210 (not subdivided), 215 (not subdivided), 305(1) and (2) and 309 (not subdivided)

Subject: Appeals process for local diploma.

Purpose: Technical amendment to clarify award of local diploma pursuant to appeals process.

Text or summary was published in the August 3, 2011 issue of the Register, I.D. No. EDU-31-11-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-8296, email: legal@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Certified Public Accountants

I.D. No. EDU-45-11-00011-P

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

Proposed Action: Repeal of sections 29.10(h) and 70.7; addition of new sections 29.10(h) and 70.7; and amendment of section 70.8(a), (d)(2) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6506(1) and 6507(2)(a); and L. 2011, ch. 456

Subject: Certified Public Accountants.

Purpose: To implement chapter 456 of the Laws of 2011.

Text of proposed rule: 1. Subdivision (h) of section 29.10 of the Rules of the Board of Regents is repealed and a new subdivision (h) is added, effective February 1, 2012, to read as follow:

(h) *Practice privilege.*

(1) *Anyone practicing public accountancy under a practice privilege pursuant to subdivision 2 of section 7406 of the Education Law shall be subject to all applicable provisions of the Education Law and of this title relating to professional misconduct as if he or she is licensed to practice in New York.*

(2) *Unprofessional conduct in the practice of public accountancy shall include the failure to provide notice as required by paragraph (6) or paragraph (7) of subdivision (b) of section 70.7 of this title.*

2. Section 70.7 of the Regulations of the Commissioner of Education is repealed and a new section 70.7 is added, effective February 1, 2012, to read as follows:

§ 70.7 *Practice by certain out-of-state individuals and firms.*

(a) *Practice by certain out-of-state firms.*

(1) *A firm that holds a valid license, registration, or permit in another state shall register with the Department if the firm offers to engage or engages in the practice of public accountancy pursuant to subdivision 1 or 2 of section 7401 of the Education Law;*

(2) *A firm that holds a valid license, registration, or permit in another state that is not required to register with the Department pursuant to paragraph (1) of this subdivision, including those out-of-state firms that use the title "certified public accountant" or "certified public accountants" or the designation "CPA" or "CPAs," may practice in this state without a firm registration with the Department, if the firm's practice is limited to the practice of public accountancy pursuant to subdivision 3 of section 7401 of the Education Law, provided that if such a firm uses the title "certified public accountant" or "certified public accountants" or the designation "CPA" or "CPAs," it shall register in New York if it has an office in this state;*

(3) A firm may register and perform services pursuant to this subdivision only if:

(i) at least one partner of a partnership or limited liability partnership, member of a limited liability company or shareholder of a professional service corporation or the sole proprietor is licensed as a certified public accountant engaged within the United States in the practice of public accountancy and is in good standing as a certified public accountant of one or more of the states of the United States;

(ii) the firm complies with the Department's mandatory quality review program pursuant to section 7410 of the Education Law; and

(iii) the services are performed by an individual who is licensed and in good standing as a certified public accountant of one or more states of the United States.

(b) Practice by certain out-of-state individuals.

(1) An individual who holds a certificate or license as a certified public accountant issued by another state, who is in good standing in the state where certified or licensed, and whose principal place of business is not in this state may practice public accountancy in this state without obtaining a license pursuant to section 7404 of the Education Law, if:

(i) the Department has verified that the other state has education, examination, and experience requirements for certification or licensure that are substantially equivalent to or exceed the requirements for licensure in this state; or

(ii) the Department has verified that the individual possesses licensure qualifications that are substantially equivalent to or exceed the requirements for licensure in this state.

(2) Except as otherwise provided in paragraph (6) or (7) of this subdivision, an individual who meets the requirements of paragraph (1) of this subdivision and who offers or renders professional services in person or by mail, telephone, or electronic means may practice public accountancy in this state without notice to the Department. An individual who wishes to practice public accountancy in this state, but does not meet the requirements of paragraph (1) of this subdivision is subject to the full licensing and registration requirements of the education law and of this title.

(3) An individual licensee or individual practicing under this subdivision who signs or authorizes someone to sign the accountant's report on the financial statement on behalf of a firm shall meet the competency requirements set out in the professional standards for such services and as set out in paragraph (13) of subdivision (a) of section 29.10 of this title.

(4) An individual practicing under this section shall practice through a firm that is registered with the Department pursuant to section 7408 of the Education Law if the individual performs any attest or compilation service as defined in section 7401-a of the Education Law.

(5) Each certified public accountant who practices in this state pursuant to this section and each firm that employs such certified public accountant to provide services in New York consent to all of the following as a condition of the exercise of such practice privilege:

(i) to the personal and subject matter jurisdiction and disciplinary authority of the Board of Regents as if the practice privilege is a license and an individual with a practice privilege is a licensee;

(ii) to comply with Article 149 of the Education Law and the provisions of this Title relating to public accountancy; and

(iii) to the appointment of the Secretary of State or other public official acceptable to the Department, in the certified public accountant's state of licensure or the state in which the firm has its principal place of business, as the certified public accountant's or firm's agent upon whom process may be served in any action or proceeding by the Department against such certified public accountant or firm.

(6) In the event the license from the state of the certified public accountant's principal place of business is no longer valid or in good standing, or that the certified public accountant has had any final disciplinary action taken by the licensing or disciplinary authority of any other state concerning the practice of public accountancy that has resulted in any of the dispositions specified in subparagraphs (i) or (ii) of this paragraph, the certified public accountant shall so notify the Department, on a form prescribed by the Department, and shall immediately cease offering to perform or performing such services in this state individually and on behalf of his or her firm, until he or she has received from the Department written permission to do so:

(i) the suspension or revocation of his or her license; or

(ii) other disciplinary action against his or her license that arises from:

(a) gross negligence, recklessness or intentional wrongdoing relating to the practice of public accountancy; or

(b) fraud or misappropriation of funds relating to the practice of public accountancy; or

(c) preparation, publication, or dissemination of false, fraudulent, or materially incomplete or misleading financial statements, reports or information relating to the practice of public accountancy.

(7) Any certified public accountant who, within the seven years immediately preceding the date on which he or she wishes to practice in New York, has been subject to any of the actions specified in subparagraphs (i), (ii), (iii), or (iv) of this paragraph shall so notify the Department, on a form prescribed by the Department, and shall not practice public accountancy in this state pursuant to Education Law section 7406(2) and this section, until he or she has received from the Department written permission to do so. In determining whether the certified public accountant shall be allowed to practice in this state, the Department shall follow the procedure to determine whether an applicant for licensure is of good moral character. Anyone failing to provide the notice required by this paragraph shall be subject to the personal and subject matter jurisdiction and disciplinary authority of the Board of Regents as if the practice privilege is a license, and an individual with a practice privilege is a licensee, and may be deemed to be practicing in violation of Education Law section 6512:

(i) has been the subject of any final disciplinary action taken against him or her by the licensing or disciplinary authority of any other jurisdiction with respect to any professional license or has any charges of professional misconduct pending against him or her in any other jurisdiction; or

(ii) has had his or her license in another jurisdiction reinstated after a suspension or revocation of said license; or

(iii) has been denied issuance or renewal of a professional license or certificate in any other jurisdiction for any reason other than an inadvertent administrative error; or

(iv) has been convicted of a crime or is subject to pending criminal charges in any jurisdiction.

(8) Notwithstanding paragraph (1) of this subdivision or any other inconsistent law or rule to the contrary, a certified public accountant licensed by another state and in good standing, who otherwise meets the practice privilege requirements under this section and files an application for licensure under Education Law section 7404, may continue to practice under such privilege for a period coterminous with the period during which his or her application for licensure remains pending with the Department, including any period after the certified public accountant establishes a principal place of business in New York, while his or her application is pending.

3. Subdivision (a) of section 70.8 of the Regulations of the Commissioner of Education is amended, effective February 1, 2012, as follows:

(a) Pursuant to the provisions of Education Law section 7408, a firm shall register with the department if:

(1) ...

(2) except as otherwise provided in section 70.7(a)(2) of this Part, the firm uses the title "CPA" or "CPA firm" or the title "PA" or "PA firm."

4. Paragraph (2) of subdivision (d) of section 70.8 of the Regulations of the Commissioner of Education is amended, effective February 1, 2012, as follows:

(2) \$10 for the sole proprietor or each general partner of a partnership or partner of a limited liability partnership, member of a limited liability company or shareholder of a professional service corporation whose principal place of business is located in New York or who is otherwise authorized to practice in New York through a [temporary practice permit issued] practice privilege pursuant to section 70.7 of this Part and for each certified public accountant or public accountant licensed in New York State that signs or authorizes someone to sign an engagement on behalf of a New York State client but whose principal place of business is not located in New York State.

Text of proposed rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Office of the Professions, Office of the Deputy Commissioner, State Education Department, 89 Washington Avenue, 2M, Albany, NY 12234, (518) 474-1941, email: opdepcom@mail.nysed.gov

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

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Subdivision (1) of section 6506 of the Education Law authorizes the

Board of Regents to promulgate rules in the supervision of the practice of the professions.

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

Chapter 456 of the Laws of 2011 repealed section 7406-a and amended sections 7406 and 7408 of the Education Law.

Subdivision (2) of section 7406 of the Education Law provides that a certified public accountant, licensed by another state which the Board of Regents has determined to have substantially equivalent public accountant licensure requirements, or whose individual licensure qualifications are verified by the Department to be substantially equivalent to New York's requirements, and in good standing, may practice public accountancy in this state, if the certified public accountant holds a valid license to practice public accountancy in the other state and practices public accountancy in another state that is his or her principal place of business.

Section 7408 of the Education Law establishes a registration requirement for public accounting firms that perform attest and/or compilation services and professional services that are incident to attest and/or compilation services or that use the title CPA or CPA firm or the title PA or PA firm, and authorizes the Board of Regents to establish a registration process for public accounting firms. This section also restricts the use of certain titles and designations by non-licensed accountants and establishes reporting requirements for non-licensed accountants issuing financial statements.

2. LEGISLATIVE OBJECTIVES:

The proposed amendments to the Rules of the Board of Regents and to the Regulations of the Commissioner of Education are necessary to implement chapter 456 of the Laws of 2011, which becomes effective on February 1, 2012.

3. NEEDS AND BENEFITS:

The proposed amendments are needed to implement chapter 456 of the Laws of 2011. The new law repeals a statutory provision which enabled certain certified public accountants (CPAs) licensed in states other than New York to provide attest and compilation services in this state on a temporary and limited basis. It also repeals a provision which authorized certain out-of-state CPAs to provide non-attest services in New York. In lieu of these provisions, chapter 456 establishes a practice privilege provision to permit practice in New York by certain CPAs licensed in other states.

4. COSTS:

(a) Cost to State government: There are no additional costs beyond those imposed by the statute; however, there will be a reduction in the revenue that had been generated by the issuance of temporary practice permits of approximately \$25,000 per year.

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

(c) Cost to private regulated parties: There are no additional costs to private regulated parties beyond those imposed by the current regulation.

(d) Costs to the regulatory agency: As stated above in "Costs to State Government," the proposed amendments will not impose any additional costs on SED beyond those imposed by the statute; however, there will be a reduction in the revenue that had been generated by the issuance of temporary practice permits of approximately \$25,000 per year.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendments relate to establishing a practice privilege in public accountancy to permit practice in New York by certain CPAs licensed in other states. The amendments do not impose any programs, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The amendments will not impose any other paperwork requirement.

7. DUPLICATION:

The proposed amendments do not duplicate any other existing State or Federal requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendments and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards established in law for the subject matter of the proposed amendments.

10. COMPLIANCE SCHEDULE:

Regulated parties will be required to comply with the regulation as of November 15, 2011, the effective date of the new law.

Regulatory Flexibility Analysis

The purpose of the proposed amendments to the Rules of the Board of Regents and the Regulations of the Commissioner of Education are to implement chapter 456 of the Laws of 2011. The new law repeals a statutory provision which enabled certain certified public accountants (CPAs) licensed in states other than New York to provide attest and compilation services in this state on a temporary and limited basis. It also repeals a provision which authorized certain out-of-state CPAs to provide non-

attest services in New York. In lieu of these provisions, chapter 456 establishes a practice privilege provision to permit practice in New York by certain CPAs licensed in other states.

The amendments do not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or other compliance requirements on small business or local governments beyond those inherent in the statute, or have any adverse economic effect on them. Because it is evident from the nature of the proposed amendments that they do not affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendments will affect an estimated 2,743 certified public accountants and public accountants that are located in a rural county in New York State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The purpose of the proposed amendments to the Rules of the Board of Regents and the Regulations of the Commissioner of Education is to implement chapter 456 of the Laws of 2011. The new law repeals a statutory provision which enabled certain certified public accountants (CPAs) licensed in states other than New York to provide attest and compilation services in this state on a temporary and limited basis. It also repeals a provision which authorized certain out-of-state CPAs to provide non-attest services in New York. In lieu of these provisions, chapter 456 establishes a practice privilege provision to permit practice in New York by certain CPAs licensed in other states. The proposed amendment will not impose any compliance requirements beyond those inherent in chapter 456 and will not require regulated parties, including those that are located in rural areas of the State, to hire professional services to comply.

3. COSTS:

The amendments will not impose any additional costs on licensees, including those that are located in rural areas of the State.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendments implement chapter 456 of the Laws of 2011 and make no exception for licensees who live or work in rural areas. Because of the nature of the proposed amendments, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

The proposed amendments to the Rules of the Board of Regents and the Regulations of the Commissioner of Education implement chapter 456 of the Laws of 2011. During the legislative process, the State Education Department solicited comments from the State Board for Public Accountancy and the New York State Society of Certified Public Accountants, both of which include members located in all areas of New York State, including rural areas of the State.

Job Impact Statement

The purpose of the proposed amendments to the Rules of the Board of Regents and the Regulations of the Commissioner of Education is to implement chapter 456 of the Laws of 2011. The new law repeals a statutory provision which enabled certain certified public accountants (CPAs) licensed in states other than New York to provide attest and compilation services in this state on a temporary and limited basis. It also repeals a provision which authorized certain out-of-state CPAs to provide non-attest services in New York. In lieu of these provisions, chapter 456 establishes a practice privilege provision to permit practice in New York by certain CPAs licensed in other states. Because it is evident from the nature of the rule and regulation that they will have no impact on the number of jobs and number employment opportunities in public accounting or any other field beyond those inherent in chapter 456, 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.

Department of Financial Services

EMERGENCY RULE MAKING

Excess Line Placements Governing Standards

I.D. No. DFS-45-11-00001-E

Filing No. 1013

Filing Date: 2011-10-19

Effective Date: 2011-10-19

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

Action taken: Amendment of Part 27 (Regulation 41) of Title 11 NYCRR.

Statutory authority: Insurance Law, arts. 21 and 59, sections 301, 316, 1213, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 3103, 5907, 5909, 5911 and 9102; and Financial Services Law, sections 202 and 302; L. 1997, ch. 225; L. 2002, ch. 587; and L. 2011, ch. 61

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

Specific reasons underlying the finding of necessity: This regulation governs the placement of excess line insurance. Article 21 of the Insurance Law and Regulation 41 enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from unauthorized insurers (known as "excess line insurers") if the unauthorized insurers are "eligible," and an excess line broker places the insurance.

On July 21, 2010, President Obama signed into law the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRRA"), which prohibits any state, other than the insured's home state, from requiring a premium tax payment for nonadmitted insurance. The NRRRA also subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured's home state, and provides that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate nonadmitted insurance with respect to such insured. On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amended the New York Insurance Law to implement the provisions of the NRRRA.

The sections of Part I of Chapter 61 that amend the Insurance Law to bring New York into conformance with the NRRRA take effect on July 21, 2011, which is when the NRRRA takes effect. The regulation was previously promulgated on an emergency basis on July 22, 2011.

For the reasons stated above, emergency action is necessary for the general welfare.

Subject: Excess Line Placements Governing Standards.

Purpose: To implement chapter 61 of the Laws of 2011, conforming to the federal Nonadmitted and Reinsurance Reform Act of 2010.

Substance of emergency rule: On July 21, 2010, President Obama signed into law the federal Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), which contains the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRRA"). The NRRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for excess (or "surplus") line insurance. The NRRRA also subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state, and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured.

In addition, the NRRRA provides that an excess line broker seeking to procure or place excess line insurance in a state for an exempt commercial purchaser ("ECP") need not satisfy any state requirement to make a due diligence search to determine whether the full amount or type of insurance sought by the ECP may be obtained from admitted insurers if: (1) the broker procuring or placing the excess line insurance has disclosed to the ECP that the insurance may be available from the admitted market, which may provide greater protection with more regulatory oversight; and (2) the ECP has subsequently requested in writing that the broker procure the insurance from or place the insurance with an excess line insurer.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amends the New York Insurance Law to conform to the NRRRA.

Regulation 41 (11 NYCRR Part 27) consists of 24 sections and one appendix addressing the regulation of excess line insurance placements.

The Department amended Section 27.0 to discuss the NRRRA and Chapter 61 of the Laws of 2011.

The Department amended Section 27.1 to delete language in the definition of "eligible" and to add three new defined terms: "exempt commercial purchaser," "insured's home state," and "United States."

Section 27.2 is not amended.

The Department amended Section 27.3 to provide an exception for an ECP consistent with Insurance Law Section 2118(b)(3)(F) and to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.4 to clarify that the requirements set forth in this section when the insured's home state is New York.

The Department amended Section 27.5 to: (1) clarify that the requirements set forth in this section apply when the insured's home state is New York; (2) with regard to an ECP, require an excess line broker or the producing broker to affirm in part A or part C of the affidavit that the ECP was specifically advised in writing, prior to placement, that the insurance may or may not be available from the authorized market that may provide greater protection with more regulatory oversight; (3) require an excess line broker to identify the insured's home state in part A of the affidavit; and (4) clarify that the premium tax is to be allocated in accordance with Section 27.9 of Regulation 41 for insurance contracts that have an effective date prior to July 21, 2011.

The Department amended Section 27.6 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

Section 27.7 is not amended.

The Department amended Section 27.8 to: (1) require a licensed excess line broker to electronically file an annual premium tax statement, unless the Superintendent of Insurance (the "Superintendent") grants the broker an exemption pursuant to Section 27.23 of Regulation 41; (2) acknowledge that payment of the premium tax may be made electronically; and (3) change a reference to "Superintendent of Insurance" to "Superintendent of Financial Services."

The Department amended Section 27.9 to clarify how an excess line broker must calculate the taxable portion of the premium for: (1) insurance contracts that have an effective date prior to July 21, 2011; and (2) insurance contracts that have an effective date on or after July 21, 2011 and that cover property or risks located both inside and outside the United States.

The Department amended Sections 27.10, 27.11, and 27.12 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.13 to clarify that the requirements set forth in this section apply when the insured's home state is New York and to require an excess line broker to obtain, review, and retain certain trust fund information if the excess line insurer seeks an exemption from Insurance Law Section 1213. The Department also amended Section 27.13 to require an excess line insurer to file electronically with the Superintendent a current listing that sets forth certain individual policy details.

The Department amended Section 27.14 to state that in order to be exempt from Insurance Law Section 1213 pursuant to Section 27.16 of Regulation 41, an excess line insurer must establish and maintain a trust fund, and to permit an actuary who is a fellow of the Casualty Actuarial Society (FCAS) or a fellow in the Society of Actuaries (FSA) to make certain audits and certifications (in addition to a certified public accountant), with regard to the trust fund.

Section 27.15 is not amended.

The Department amended Section 27.16 to state that an excess line insurer will be subject to Insurance Law Section 1213 unless the contract of insurance is effectuated in accordance with Insurance Law Section 2105 and Regulation 41 and the insurer maintains a trust fund in accordance with Sections 27.14 and 27.15 of Regulation 41, in addition to other current requirements.

The Department amended Sections 27.17, 27.18, 27.19, 27.20, and 27.21 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

Section 27.22 is not amended.

The Department repealed current Section 27.23 and added a new Section 27.23 titled, "Exemptions from electronic filing and submission requirements."

Section 27.24 is not amended.

The Department amended the excess line premium tax allocation schedule set forth in appendix four to apply to insurance contracts that have an effective date prior to July 21, 2011.

The Department added a new appendix five, which sets forth an excess line premium tax allocation schedule to apply to insurance contracts that have an effective date on or after July 21, 2011 and that cover property and risks located both inside and outside the United States.

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 January 16, 2012.

Text of rule and any required statements and analyses may be obtained from: David Neustadt, New York State Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-5265, email: david.neustadt@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the promulgation of the Fourteenth Amendment to Regulation 41 (11 NYCRR Part 27) derives from Sections 301, 316, 1213, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 9102, and Article 21 of the Insurance Law, Sections 202 and 302 of the Financial Services Law, Chapter 225 of the Laws of 1997, Chapter 587 of the Laws of 2002, and Chapter 61 of the Laws of 2011.

The federal Nonadmitted and Reinsurance Reform Act of 2010 (the "NRRRA") significantly changes the paradigm for excess line insurance placements in the United States. Chapter 61 of the Laws of 2011 amends the New York Insurance Law and the New York Tax Law to conform to the NRRRA. The NRRRA and Chapter 61 will impact excess line placements effective on and after July 21, 2011.

Section 301 of the Insurance Law and Sections 202 and 302 of the Financial Services Law authorize the Superintendent of Insurance (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law. Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

Section 1213 provides the manner by which substituted service on an unauthorized insurer may be made in any proceeding against it on an insurance contract issued in New York. Substituted service may be made on the Superintendent in the manner prescribed in Section 1213.

Article 21 sets forth the duties and obligations of insurance brokers and excess line brokers. Section 2101 sets forth relevant definitions. Section 2104 governs the licensing of insurance brokers. Section 2105 sets forth licensing requirements for excess line brokers. Section 2110 provides grounds for the Superintendent to discipline licensees by revocation or suspension of licenses, or, pursuant to Section 2127, imposition of a monetary penalty in lieu of revocation or suspension. Section 2116 permits payment of commissions to brokers and prohibits compensation to unlicensed persons. Section 2117 prohibits the aiding of an unauthorized insurer, with exceptions. Section 2118 sets forth the duties of excess line brokers, with regard to the placement of insurance with eligible foreign and alien excess line insurers, including the responsibility to ascertain and verify the financial condition of an unauthorized insurer before placing business with that insurer. Section 2121 provides that brokers have an agency relationship with insurers for the collection of premiums. Section 2122 imposes limitations on advertising by producers. Section 2130 establishes the Excess Line Association of New York ("ELANY").

Section 9102 establishes rules regarding the allocation of direct premiums taxable in New York, where insurance covers risks located both in and out of New York.

2. Legislative objectives: Generally, unauthorized insurers may not do an insurance business in New York. In permitting a limited exception for licensed excess line brokers to procure insurance policies in New York from excess line insurers, the Legislature established statutory requirements to protect persons seeking insurance in New York. The NRRRA significantly changes the paradigm for excess (or "surplus") line insurance placements in the United States. The NRRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for excess line insurance. Further, the NRRRA subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state, and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured. In addition the NRRRA establishes uniform eligibility standards for excess line insurers. A state may not impose additional eligibility conditions.

Under the new NRRRA paradigm, an excess line broker now must ascertain an insured's home state before placing any property/casualty excess line business. Thus, if the insured's home state is not New York, even though the insured goes to the broker's office in New York, the excess line broker must be licensed in the insured's home state in order for the broker to procure the excess line coverage for that insured. Conversely, a person who is approached by an insured outside of New York must be licensed as an excess line broker in New York in order to procure excess line coverage for a New York home-stated insured.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amends the New York In-

surance Law to conform to the NRRRA. The NRRRA and Chapter 61 take effect on July 21, 2011 and will impact excess line placements effective on and after July 21, 2011.

3. Needs and benefits: Regulation 41 governs the placement of excess line insurance. The purpose of the excess line law is to enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from eligible excess line insurers. This regulation implements the provisions and purposes of Chapter 61 of the Laws of 2011, which amended the New York Insurance Law to conform to the NRRRA. The NRRRA and Chapter 61 take effect on July 21, 2011 and impacts excess line placements effective on and after July 21, 2011.

Section 27.14 of Regulation 41 currently prohibits an excess line broker from placing coverage with an excess line insurer unless the insurer has established and maintained a trust fund. However, the new NRRRA eligibility requirements do not include a trust fund with respect to foreign insurers (alien insurers, however, do have to maintain a trust fund that satisfies the International Insurers Department ("IID") of the National Association of Insurance Commissioners ("NAIC")). As such, New York is no longer requiring a trust fund of foreign insurers for eligibility.

Currently Insurance Law Section 1213(e) exempts excess line insurers writing excess line insurance in New York from the requirements of Section 1213, such as the requirement that the insurer deposit cash or securities with the clerk of the court before filing any pleading in any proceeding against it, so long as the excess line insurance contract designates the Superintendent for service of process. On review of the legislative history, it appears that the reason that the Legislature excluded excess line insurers from the requirements of Section 1213 was because they maintained trust funds in New York of a very sizable amount.

Although New York cannot require foreign insurers to maintain a trust fund to be eligible in New York, or a trust fund for alien insurers that deviate from the IID requirements, New York policyholders need to be protected when claims arise. As a result, the Department is amending Section 27.16 of Regulation 41 to provide that an excess line insurer will be subject to Insurance Law Section 1213's requirements unless the contract of insurance is effectuated in accordance with Insurance Law Section 2105 and the insurer maintains a trust fund in accordance with Sections 27.14 and 27.15 of Regulation 41 (in addition to other requirements currently set forth in Section 27.16). Further, the Department amended Section 27.14 of Regulation 41 to state that in order to be exempt from Insurance Law Section 1213 pursuant to Section 27.16 of Regulation 41, an excess line insurer must establish and maintain a trust fund.

Insurance Law Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

The Department amended Section 27.8(a) of Regulation 41 to require excess line brokers to file annual premium tax statements electronically, and amended Section 27.13 to require excess line brokers to file electronically a listing that sets forth certain individual policy details. In addition, the Department added a new Section 27.13 to Regulation 41 to allow excess line brokers to apply for a "hardship" exception to the electronic filing or submission requirement.

4. Costs: The rule is not expected to impose costs on excess line brokers, and it merely conforms the requirements regarding placement of coverage with excess line insurers to the requirements in Chapter 61 of the Laws of 2011, which amended the New York Insurance Law to conform to the NRRRA. Although the amended regulation will require excess line brokers to file annual premium tax statements and a listing that sets forth certain individual policy details electronically, most brokers already do business electronically. In fact ELANY already requires documents to be filed electronically. Moreover, the regulation also provides a method whereby excess line brokers may apply for an exemption from the electronic filing or submission requirement.

With regard to the trust fund amendment, on the one hand, excess line insurers may incur costs if they choose to establish and maintain a trust fund in order to be exempt from Insurance Law Section 1213. On the other hand, it should be significantly less expensive to establish and maintain a trust fund rather than comply with Insurance Law Section 1213. This is a business decision that each insurer will need to make. The trust fund, if established and maintained, will be for the purpose of protecting all United States policyholders.

Costs to the Insurance Department also should be minimal, as existing personnel are available to review any modified filings necessitated by the regulations. In fact, filing forms electronically may produce a cost savings for the Insurance Department. These rules impose no compliance costs on state or local governments.

5. Local government mandates: These rules do not impose any program, service, duty or responsibility upon a city, town, village, school district or fire district.

6. Paperwork: The regulation imposes no new reporting requirements on regulated parties.

7. Duplication: The regulation will not duplicate any existing state or federal rule, but rather implement and conform to the federal requirements.

8. Alternatives: The Department discussed the changes related to trust funds and Insurance Law Section 1213 with counsel at the NAIC and with ELANY.

9. Federal standards: This regulation will implement the provisions and purposes of Chapter 61 of the Laws of 2011, which amends the New York Insurance Law to conform to the NRRRA.

10. Compliance schedule: Pursuant to Chapter 61 of the Laws of 2011, this regulation will impact excess line insurance placements effective on and after July 21, 2011.

Regulatory Flexibility Analysis

This rule is directed at excess line brokers and excess line insurers.

Excess line brokers are considered to be small businesses as defined in section 102(8) of the State Administrative Procedure Act. The rule is not expected to have an adverse impact on these small businesses because it merely conforms the requirements regarding placement of coverage with excess line insurers to Chapter 61 of the Laws of 2011, which amended the New York Insurance Law to conform to the NRRRA.

The rule will require excess line brokers to file annual premium tax statements electronically, and to file electronically a listing that sets forth certain individual policy details. However, the excess line broker may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

Further, the Insurance Department has monitored Annual Statements of excess line insurers subject to this rule, and believes that none of them fall within the definition of “small business”, because there are none that are both independently owned and have fewer than one hundred employees.

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses.

The rule does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

The Insurance Department finds that this rule does not impose any additional burden on persons located in rural areas, and the Insurance Department finds that it will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

Job Impact Statement

The Insurance Department finds that this rule should have no impact on jobs and employment opportunities.

The rule conforms the requirements regarding placement of coverage with excess line insurers to Chapter 61 of the Laws of 2011, which amended the New York Insurance Law to conform to the NRRRA. The rule also makes an excess line insurer subject to Insurance Law Section 1213, unless it chooses to establish and maintain a trust fund in New York for the benefit of New York policyholders.

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. DFS-45-11-00003-E

Filing No. 1014

Filing Date: 2011-10-19

Effective Date: 2011-10-20

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

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

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: The legislature required the registration of mortgage loan servicers as part of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the

“Mortgage Lending Reform Law”) to help address the existing foreclosure crisis in the state. By registering servicers and requiring that servicers engage in the business of mortgage loan servicing in compliance with rules and regulations adopted by the Superintendent, the legislature intended to help ensure that servicers conduct their business in a manner acceptable to the Department. However, since the passage of the Mortgage Lending Reform Law, foreclosures continue to pose a significant threat to New York homeowners. The Department continues to receive complaints from homeowners and housing advocates that mortgage loan servicers’ response to delinquencies and their efforts at loss mitigation are inadequate. These rules are intended to provide clear guidance to mortgage loan servicers as to the procedures and standards they should follow with respect to loan delinquencies. The rules impose a duty of fair dealing on loan servicers in their communications, transactions and other dealings with borrowers. In addition, the rule sets standards with respect to the handling of loan delinquencies and loss mitigation. The rule further requires specific reporting on the status of delinquent loans with the Department so that it has the information necessary to assess loan servicers’ performance.

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

Subject: Business conduct of mortgage loan servicers.

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

Substance of emergency rule: Section 419.1 contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including “Servicer”, “Qualified Written Request” and “Loan Modification”.

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire January 16, 2012.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, NYS Department of Financial Services, 1 State Street, New York, NY 10004, (212) 709-1658, email: sam.abram@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

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

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

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

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

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

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

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

New Subdivision (2) of Section 595-b was added by the Mortgage

Lending Reform Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

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

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

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

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

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

2. Legislative Objectives.

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

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

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

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

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

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

3. Needs and Benefits.

Governor Paterson reported in early 2008 that there were more than 52,000 foreclosure filings in 2007, or approximately 1,000 per week. That number increased in 2008, averaging approximately 1,100 per week in the first quarter. While there was some drop in foreclosure filings in 2009 to just over 50,000, the crisis continues and the problems that have affected so many have been found to implicate not only the origination of residential mortgage loans, but also their servicing and foreclosure. The Mortgage Lending Reform Law adopted a multifaceted approach to the problem. It addressed a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

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

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

More than 2,000,000 loans on residential one-to-four family properties are being serviced in New York. Of these over 8% were seriously delinquent as of the fourth quarter of 2009. Despite various initiatives adopted at the state level and the creation federal programs such as Making Home Affordable to encourage loan modifications and help at risk homeowners, the number of loans modified have not kept pace with the number of foreclosures. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

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

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

Since the adoption of Part 418, 45 entities have pending applications or been approved for registration and nearly 180 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements.

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

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

4. Costs.

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

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

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC and OTS publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. The State Foreclosure Working Group, consisting of thirteen state Attorneys General and three state Banking regulators, including New York, collects and reports on similar data from the largest subprime mortgage servicers. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

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

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

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

5. Local Government Mandates.

None.

6. Paperwork.

Part 419 requires mortgage loan servicers to keep books and records related to its servicing for a period of three years and to produce quarterly reports and financial statements as well as annual and other

reports requested by the Superintendent. It is anticipated that the quarterly reporting relating to mortgage loan servicing will be done electronically and would therefore be virtually paperless. The other recordkeeping and reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

7. Duplication.

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

8. Alternatives.

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

9. Federal Standards.

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

10. Compliance Schedule.

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

The rule will not have any impact on local governments. The Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the “Mortgage Lending Reform Law”) requires all mortgage loan servicers, whether registered or exempt from registration under the law, to service mortgage loans in accordance with the rules and regulations promulgated by the Banking Board or Superintendent. Of the 45 entities which have pending applications or have been approved for registration to date and the nearly 180 entities which have indicated that they are exempt from the registration requirements, it is estimated that very few are small businesses.

2. Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers who are not a bank, mortgage banker, mortgage broker or other exempt organizations (the

“MLS Registration Regulations”), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the “Mortgage Loan Servicer Business Conduct Regulations”).

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

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

3. Professional Services:

None.

4. Compliance Costs:

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

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

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC and OTS publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. The State Foreclosure Working Group, consisting of thirteen state Attorneys General and three state Banking regulators, including New York, collects and reports on similar data from the largest subprime mortgage servicers. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

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

Compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage

delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impacts:

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

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Types and Estimated Numbers: Since the adoption of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), which required mortgage loan servicers to be registered with the Department unless exempted under the law, 45 entities have pending applications or have been approved for registration and nearly 180 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements. Only one of the non-exempt entities applying for registration is located in New York and operating in a rural area. Of the exempt organizations, all of which are required to comply with the conduct of business contained in Part 419, approximately 100 are located in New York, including several in rural areas. However, the overwhelming majority of exempt organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

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

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

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and in-

surance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices.

Costs: The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from federal or state laws, current federal loan modification programs, servicing guidelines utilized by Fannie Mae and Freddie Mac or servicers' own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Of the 45 entities that have pending applications or have been approved for registration, only one is located in a rural area of New York State. Of the few exempt organizations located in rural areas of New York, virtually all are banks or credit unions. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

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

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

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

Job Impact Statement

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

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mit-

igation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

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

Department of Health

NOTICE OF ADOPTION

Public Water Systems

I.D. No. HLT-46-10-00016-A

Filing No. 1018

Filing Date: 2011-10-21

Effective Date: 2011-11-09

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

Action taken: Amendment of Subpart 5-1 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201(1)(l) and 225(8)

Subject: Public Water Systems.

Purpose: To incorporate mandatory regulations (Federal Ground Water Rule) to increase protection against microbial pathogens in ground water.

Substance of final rule: These amendments are necessary due to the promulgation by the United States Environmental Protection Agency (EPA) of the Ground Water Rule (GWR) on October 11, 2006, in order to make New York's regulations of Public Water Systems (PWS) consistent with EPA requirements.

The GWR was promulgated to reduce the risk of exposure to fecal contamination that may be present in public water systems that use ground water sources. The GWR also specifies when corrective action (which may include disinfection) is required to protect consumers who receive water from ground water systems from bacteria and viruses.

The new requirements of the GWR include:

- new Maximum Contaminant Levels/Treatment Techniques for indicators of fecal contamination in ground water sources (wells);
- expanded requirements for conducting inspections of public water systems known as sanitary surveys;
- additional record-keeping requirements for public water systems and local and state health departments; and
- customer notification by public water systems when there is a significant deficiency in the facilities or operation of the public water system or if there is fecal contamination of the raw source water and the system does not provide at least 4-log (99.99%) removal or disinfection of viruses.

Water systems must correct significant deficiencies at facilities or in system operation which may allow contaminated water to reach consumers, when directed by the State or local health department. Customers must be notified and the system must correct this violation of the regulation, either immediately or after development of an approved correction plan.

The minimum required concentration of disinfectant entering the water distribution system (and for chemical disinfectants other than chlorine) is clarified. Systems using chlorine must maintain a minimum of 0.2 mg/l at the entry point, and must notify the State if the concentration falls below that level for four or more hours. Systems must take specific actions if the system fails to meet these require-

ments, and notify the public in case of failure to meet the specified requirements.

Monitoring plan requirements are expanded to require inclusion of all required sampling locations and frequencies. For simple ground water systems, these monitoring plans will be simple to prepare. While comprehensive monitoring plans are currently required in Department guidance, the current requirements apply only to plans for monitoring disinfection byproducts.

Consecutive PWS, who purchase or otherwise obtain water from PWS's using ground water sources (wholesalers), must describe in their monitoring plan the process by which they will notify their wholesaler in the event of a total-coliform positive sample (unless invalidated or determined to have originated in the distribution system). If the consecutive system, or the wholesaler, provides 4-log treatment that is confirmed, using process compliance monitoring, this additional notification and source water sampling is not required. Confirmation of treatment system performance through measurements and record keeping is known as process compliance monitoring.

Several tables summarizing violation determination or monitoring frequencies have been revised and or added. The affected tables and substantial changes include:

Table 6

- New treatment technique violations when fecal contamination is found at a system that does not provide 4-log microbial treatment.
- The required fecal indicator will remain E.coli. (If fecal contamination is observed in the untreated source water, corrective action must be taken.)

Table 11

- Enterococcus and bacteriophage are added as fecal contaminants, however no monitoring requirements are added.
- Systems with disinfection waivers will no longer be eligible for reduced microbiological monitoring, previously allowed at State discretion.

New Table 11B

- Lists actions required when microbial contamination is detected in routine or follow-up monitoring samples.

GWR Notifications are added to Table 13 of Required Notifications Tables 15 and 15A

- Revised to reflect changes to disinfection residual measurement as amended by the GWR

All PWS's must respond to notification of significant deficiencies observed at the PWS and indicate that failure to address any significant deficiencies is a treatment technique violation.

The requirements for completion of daily operation records are simplified to allow for the use of electronic or other forms. These records must include documentation of process compliance monitoring at ground water systems where 4-log treatment is required.

Reporting requirements for all PWS's specific to GWR violations and significant deficiencies have been expanded to ensure that consumers are informed of source contamination or threats to the quality of water provided by the water system.

The reporting responsibilities of consecutive systems are clarified, and include notification of the wholesaler from whom they purchase water as well as the health department, whenever microbiological contamination is observed.

Ground water systems must notify the State within 24 hours of a GWR violation. Failure to do so will result in the requirement for a Tier 1 notification for failure to notify as well as for the violation.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 5-1.1, 5-1.30, 5-1.51, 5-1.52, 5-1.70, 5-1.71, 5-1.72, 5-1.76, 5-1.78 and Appendix 5-C.

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

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

Changes made to the last published rule do not necessitate revision to the previously published RIS, RFA, RAFA and JIS.

Assessment of Public Comment

Public comments were submitted to the NYS Department of Health (DOH) in response to this regulation from the Long Island Water Conference and the Dutchess County Department of Health. These comments and the Department of Health's responses are summarized below:

1. COMMENT: Is the time of the next sanitary survey an appropriate time frame for determining whether a deficiency is significant?

RESPONSE: Because most significant deficiencies are based on observations made during sanitary surveys, any deficiency that is likely to pose a threat to system operation or management prior to the next sanitary survey visit should be cited as a significant deficiency. Guidance will be provided to assist in making these determinations.

2. COMMENT: The definition of significant deficiency may result in arbitrary enforcement actions.

RESPONSE: The existing rules for public water systems include, in subdivision 5-1.71(b), "The supplier of water and the person or persons operating a water treatment plant or distribution system shall exercise due care and diligence in the operation and maintenance of these facilities and their appurtenances to ensure continued compliance with the provisions of this Subpart." The introduction of the phrase 'significant deficiency' in new paragraph 5-1.1(bn) provides more specific criteria as does specifying the timing as 'before the next sanitary survey'. This does not change the overall requirement in Subpart 5-1, but does provide a better standard for determining when a significant deficiency occurs. No change was needed to address this comment.

3. COMMENT: The provision on correcting significant deficiencies in paragraph 5-1.12(a) will result in unintended consequences and inconsistent requirements.

RESPONSE: The Department acknowledges that the provisions about correcting significant deficiencies were not clear in 5-1.12(a). This provision has been removed from this paragraph and retained in paragraphs 5-1.71(c) and (d) for clarity. This did not change the requirements, only clarified them.

4. COMMENT: The wording in Subdivision 5-1.30(a) precluded acceptable ways to return system to compliance.

RESPONSE: Subdivision 5-1.30(a) has been revised to more clearly reflect the federal requirements for responding to fecal contamination and significant deficiencies.

5. COMMENT: The term 'required concentration' is not clear.

RESPONSE: The required concentration for water entering the distribution system will vary from one water system to another. The 0.2 mg/l is a required minimum concentration, but in some cases 0.2 mg/l will not be adequate to meet design requirements and a single numerical value will not suffice. No revision is needed to address this comment.

6. COMMENT: The term "unusual and unpredictable" in subdivision 5-1.30(c) is vague.

RESPONSE: This term, "unusual and unpredictable", is currently in subdivision 5-1.30(c) and is not proposed for revision. Revision to this subdivision will be considered in future amendments to this Subpart.

7. COMMENT: Paragraph 5-1.30(e) allows the State to grant disinfection waivers. Commenter is concerned that a waiver may be granted even if there is fecal contamination of the source.

RESPONSE: Paragraph 5-1.30(e) currently precludes the granting of a waiver if a source is contaminated. This subdivision was not proposed for change and protection will not be decreased if the paragraph remains unchanged.

8. COMMENT: Clarification is needed between monitoring plan and sample schedule.

RESPONSE: A sample schedule is part of a monitoring plan. The elements of the sampling plan are set forth in 5-1.51(c). This topic will be addressed more fully in guidance.

9. COMMENT: Monitoring plan lacks specificity, also concern that making the monitoring plan publicly available may pose a security threat.

RESPONSE: Minimum standards for monitoring plans are described generally in subdivision 5-1.51(c) and will be addressed in more detail in guidance. The plans may be prepared with security sensitive locational information kept confidential at the discretion of the water supplier.

10. COMMENT: Table 11 data presented in a confusing manner.

RESPONSE: Tables 11 and 11B were revised to clarify that monitoring may be required by the State but routine monitoring is not required for fecal indicators. These revisions clarified, but did not change, monitoring requirements.

Office for People with Developmental Disabilities

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Methodology to Determine the Allowable Costs of Continuing Lease Arrangements

I.D. No. PDD-45-11-00016-P

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

Proposed Action: Amendment of sections 635-6.3 and 635-99 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b) and 43.02

Subject: Methodology to determine the allowable costs of continuing lease arrangements.

Purpose: To modify the method of determining allowable costs of continuing lease arrangements.

Public hearings(s) will be held at: 10:30 a.m., Dec. 27, 2011 and Dec. 28, 2011 at Office for People with Developmental Disabilities, Counsel's Office Conference Rm., 3rd Fl., 44 Holland Ave., Albany, 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: Section 635-6.3 is amended as follows:

Section 635-6.3. Leases for real property.

(a) *This subdivision applies to allowability of costs for leases for real property except for continuing residential lease arrangements as specified in subdivision (b) of this section.*

(1) In order for lease costs to be considered for allowability, the provider or [consumer] *individual lessee* must submit the lease to [OMRDD] *OPWDD* for approval. In deciding whether to approve a lease, [OMRDD] *OPWDD* shall consider whether the lease is in the best interests of the programs and the persons it serves and whether the lease in any way violates public policy. In deciding whether to approve an amount for rent, [OMRDD] *OPWDD* shall consider whether the provider's rate, fee or price, as a whole, including the amount of rent to be approved, would result in payment which is consistent with efficiency and economy.

[(b)] (2) If an approved lease (see glossary, Subpart 635-99 of this Part) or approved proprietary lease (see glossary, Subpart 635-99 of this Part) is between the provider or [consumer] *individual lessee* and a party which is not a related party, allowable lease costs shall be the lesser of contract rent or fair market [rental] *rent*.

[(c)] (3) If an approved lease or approved proprietary lease is between the provider or [consumer] *individual lessee* and a related party, allowable lease costs shall be the least of:

[(1)] (i) contract rent (see glossary, Subpart 635-99 of this Part);

[(2)] (ii) fair market [rental] *rent* (see glossary, Subpart 635-99 of this Part); or

[(3)] (iii) the landlord's net cost (see glossary, Subpart 635-99 of this Part).

[(d)] (4) The commissioner may waive the limitations on allowable costs as stated in [subdivision (c)] *paragraph (3)* of this section upon a showing that such limitations would jeopardize the opening or continued

operation of the program or services and that the negotiations for the lease or proprietary lease were conducted as though the parties were not related.

[(e)] (5) The commissioner may, upon application from a provider, allow lease costs in an amount equal to contract rent and greater than fair market rent if the following conditions are met. The commissioner will allow such lease costs only for as long as it is necessary for the provider to relocate the program or services located on the lease property.

[(1)] (i) The lease is a renewal which is not pursuant to an option to renew.

[(2)] (ii) The lease is a renewal of a lease for an existing program or services.

[(3)] (iii) The provider has shown that:

[(i)] (a) the provider has made diligent efforts to negotiate a lease renewal for fair market rent or less;

[(ii)] (b) the provider has been unable to negotiate a lease renewal for less than the current rent;

[(iii)] (c) the parties to the lease renewal are not related; and

[(iv)] (d) allowance of lease costs in the amount of contract rent is necessary to ensure the continued operation of the program of services.

[(f)] [From the effective date of this regulation until January 1, 2001, allowable costs under leases between related parties in effect on September 1, 1984 shall be determined in accordance with the regulation in effect immediately preceding the effective date of this Subpart. On and after January 1, 2001, allowable costs under leases between related parties in effect on September 1, 1984 shall be determined in accordance with subdivision (c) of this section.]

[(g)] (6) Contract rent incurred pursuant to an approved lease or approved proprietary lease which is renewed pursuant to an option to renew is allowable.

[(h)] (7) Costs incurred pursuant to an approved lease or approved proprietary lease which is renewed other than pursuant to an option to renew (see glossary, Subpart 635-99 of this Part) shall be allowable as follows:

[(1)] (i) If the lease is between parties who are not related, allowable costs are determined in accordance with [subdivision (b)] *paragraph (2)* of this [section] *subdivision*.

[(2)] (ii) If the lease is between parties who are related, allowable costs are determined in accordance with [subdivision (c)] *paragraph (3)* of this [section] *subdivision*.

[(3)] (iii) [OMRDD] OPWDD shall decide whether to approve any such renewal at least 30 days before the last day the lease may be renewed, if the provider or [consumer] *individual lessee* has notified [OMRDD] OPWDD in accordance with [paragraph (4)] *subparagraph (iv)* of this [subdivision] *paragraph*.

[(4)] (iv) Whenever possible, the provider or [consumer] *individual lessee* shall submit to [OMRDD] OPWDD a request for approval of lease renewals at least 120 days prior to the last date for renewing the lease.

(b) *This subdivision governs the allowability of lease costs applicable to continuing residential lease arrangements after December 31, 2011 for which OPWDD has not approved lease costs for an entire calendar year. This subdivision applies to residential lease renewals which are not renewals pursuant to an option to renew.*

(1) *There shall be an allowable lease cost, exclusive of any ancillary costs, for an entire calendar year. The allowable lease cost, exclusive of any ancillary costs, for a calendar year shall be the base lease amount for such calendar year increased by the annual increase percentage for such calendar year.*

(2) *Base lease amount. The base lease amount for a calendar year shall be the allowable lease cost calculated in accordance with this section in effect on December 31 of the prior calendar year, exclusive of any ancillary costs (see paragraph (4) of this subdivision).*

(3) *Annual increase percentage. The annual increase percentage for 2012 is 1.97%.*

(4) *Ancillary costs. Ancillary costs are those charges identified in a lease in addition to monthly rent. These include but are not limited to: special assessments, taxes, co-op or condominium maintenance fees, utility payments assessed to the lessee by the lessor pursuant to the terms of the lease, and lessor-financed renovations billed as additional rent.*

(5) *For ancillary costs under the terms of the lease to be allowable the lessee must submit an application to OPWDD specifying the nature and amounts of the ancillary costs. OPWDD may approve or disapprove the request or adjust the amount to be reimbursed based on whether the ancillary costs are reasonable and necessary.*

New subdivision 635-99.1(h) is added as follows and the rest of the section is renumbered accordingly:

(h) *Ancillary costs. Ancillary costs are those charges identified in a lease in addition to monthly rent. These include but are not limited to: special assessments, taxes, co-op or condominium maintenance fees, utility payments assessed to the lessee by the lessor pursuant to the terms of the lease, and lessor-financed renovations billed as additional rent.*

New subdivision 635-99.1(as) is amended as follows:

(as) Fair market [rental] *rent*. The [rental] *rent* that the property would most probably command on the open market as indicated by [rentals] *rents* being paid and asked for comparable properties in the same geographic area as of the date of the appraisal.

Text of proposed rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, OPWDD, 44 Holland Avenue, Albany, New York 12229, (518) 474-1830, email: barbara.brundage@opwdd.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority:

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

b. OPWDD has the statutory responsibility for setting Medicaid rates and fees for other services in facilities licensed or operated by OPWDD, as stated in section 43.02 of the Mental Hygiene Law.

2. Legislative objectives: These proposed amendments further the legislative objectives embodied in sections 13.09(b) and 43.02 of the Mental Hygiene Law. The proposed amendments concern changes to the allowability of costs of continuing lease arrangements.

3. Needs and benefits: Historically, preliminary to OPWDD approving rent costs prescribed by a lease, it has conducted a site-specific rent study. This has been the procedure for new leases and for renewals. Although this process yields appropriate levels of reimbursement that take into account and accommodate the special needs of the individuals OPWDD serves, it is a labor-intensive process and consequently administratively both costly and burdensome. These amendments propose to revise this process and will apply to continuing lease arrangements after December 31, 2011 for which OPWDD has not approved lease costs for an entire calendar year. The amendments apply to residential lease renewals which are not renewals pursuant to an option to renew. The changes do not affect the approval process for new leases or other lease arrangements. For these continuing lease arrangements, OPWDD expects to discontinue its practice of conducting site-specific rent studies after the initial lease approval. Instead, it plans to implement an annual calendar year increase in the allowable lease costs. The increase will be determined by multiplying the base lease amount by a percentage increase established in the regulation. OPWDD intends to update this percentage increase annually in regulation based on the Rental of Primary Residence component of the Consumer Price Index. This will guarantee an independently derived, statistically sound and uniform means to adjust lease reimbursements fairly and expeditiously. This measure fulfills a streamlining objective that should produce administrative relief for providers and for the State.

4. Costs:

a. Costs to the Agency and to the State and its local governments: Because OPWDD expects that there will be a close correspondence between actual rent increases and the changes in the Consumer Price Index reflected in the percentage established in OPWDD regulation, it anticipates that this measure will be cost neutral. OPWDD expects to realize some administrative savings due to processing ease and time efficiency.

There will be no impact to local governments as a result of these specific amendments.

b. Costs to private regulated parties: There are neither initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the rule. There may be efficiencies that result in some administrative savings for providers. There may be differences in the reimbursement received for specific facilities between the current and revised methodologies, with some reimbursement higher and some lower. However, OPWDD expects that differences will be minor and that the overall reimbursement received by all providers will be about the same and that overall the result will be cost neutral.

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

6. Paperwork: The proposed amendments do not require any additional paperwork to be completed by providers. On the contrary, the requirement for periodic documentation of lease renewal costs will be relaxed so that documentation of lease renewal costs will only be necessary in the years when OPWDD conducts a review to reconcile lease costs to lease reimbursements. This will decrease the paperwork for providers and for OPWDD.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with developmental disabilities.

8. Alternatives: In developing this regulatory proposal, OPWDD consulted with representatives of provider associations and considered their suggestions in developing the methodology. OPWDD considered the inclusion of a specific reference to the Consumer Price Index (CPI) in lieu of publishing a specific number annually. However, OPWDD decided against the inclusion of specific references because of the difficulty of incorporation by reference related to the CPI in accordance with provisions of the State Administrative Procedure Act.

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

10. Compliance schedule: OPWDD expects to finalize the proposed amendments in January 2012. There are no additional compliance activities associated with these amendments.

Regulatory Flexibility Analysis

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

The regulations amend the methodology to determine the allowable costs of continuing lease arrangements (in specified circumstances). In lieu of site-specific documentation of lease renewal costs and rent studies, OPWDD plans to adjust the existing allowable lease costs for all sites each calendar year by a percentage established in regulation which corresponds to the annual increase in the Rental of Primary Residence component of the Consumer Price Index. OPWDD expects this measure to be cost-neutral because an examination of the specific index to be utilized demonstrated a close correlation to historical rent increases for properties already being reimbursed. Moreover, providers will be relieved of performing the procedures previously required to update rent reimbursements and therefore may experience some administrative efficiencies.

These amendments do not impose any requirements on local governments.

The amendments will consequently have no adverse impacts on small businesses or local governments.

Rural Area Flexibility Analysis

A rural area flexibility analysis for these amendments is not being submitted because the amendments will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. There will be no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the amendments.

The regulations amend the methodology for determining the allowable costs of continuing lease arrangements (in specified circumstances). In lieu of periodic documentation of lease renewal costs and rent studies, OPWDD plans to adjust the existing allowable lease costs for all sites each calendar year by a percentage established in regulation which corresponds to the annual increase in the Rental of Primary Residence component of the Consumer Price Index. OPWDD expects this measure to be cost-neutral because an examination of the specific index to be utilized demonstrated a close correlation to historical rent increases for properties already being reimbursed. Moreover, providers will be relieved of performing the procedures previously required to update rent reimbursements and therefore may experience some administrative efficiencies.

The amendments will consequently have no adverse impacts on public or private entities in rural areas.

Job Impact Statement

A job impact statement for these amendments is not being submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment.

The regulations amend the methodology to determine the allowable costs of continuing lease arrangements (in specified circumstances). In lieu of periodic documentation of lease renewal costs and rent studies, OPWDD plans to adjust the existing allowable lease costs for all sites each calendar year by a percentage established in regulation which corresponds to the annual increase in the Rental of Primary Residence component of the Consumer Price Index. OPWDD expects this measure to be cost-neutral because an examination of the specific index to be utilized demonstrated a close correlation to historical rent increases for properties already being reimbursed. Moreover, providers will be relieved of performing the procedures previously required to update rent reimbursements and therefore may experience some administrative efficiencies.

OPWDD does not, however, expect that the efficiencies experienced by providers would reduce workloads to the extent that it would result in any

job losses and therefore the amendments are expected to have a neutral overall impact on jobs and employment opportunities among providers. OPWDD will also experience efficiencies as the new procedures will result in a decrease in workload which is compatible with its current staffing patterns.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Requirements Pertaining to the Investigation and Review of Serious Reportable Incidents and Abuse Allegations

I.D. No. PDD-45-11-00015-P

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

Proposed Action: This is a consensus rule making to amend section 624.5(c)(1)(iii) of Title 14 NYCRR.

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

Subject: Requirements pertaining to the investigation and review of serious reportable incidents and abuse allegations.

Purpose: To clarify the effective date of recently promulgated regulations.

Text of proposed rule: Subparagraph 624.5(c)(1)(iii) is amended as follows:

(iii) For serious reportable incidents and allegations of abuse that occurred or were discovered on or after *November 1, 2011* [the date that this regulation becomes effective]:

Text of proposed rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, OPWDD, 44 Holland Avenue, Albany, New York 12229, (518) 474-1830, email: barbara.brundage@opwdd.ny.gov

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

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

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

Consensus Rule Making Determination

OPWDD recently promulgated regulations pertaining to the investigation and review of serious reportable incidents and abuse allegations. A provision within these regulations states that the regulations apply to serious reportable incidents and allegations of abuse that were discovered on or after “the date that this regulation becomes effective.” For the purpose of clarification, OPWDD is proposing to amend the regulations to replace the language in quotations with the actual effective date of the recently promulgated regulations, November 1, 2011.

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

Job Impact Statement

A Job Impact Statement for these proposed amendments is not being submitted because OPWDD does not anticipate a substantial adverse impact on jobs and employment opportunities. The amendments merely clarify the effective date of regulations that were recently promulgated concerning requirements for the investigation and review of serious reportable incidents and abuse allegations. Providers are already aware of the effective date of these regulations; however, OPWDD is proposing to insert it into regulations in order to prevent any future confusion among providers related to the applicability of the previously adopted regulations. It is therefore apparent that there will not be a substantial adverse impact on jobs and employment opportunities.

Public Service Commission

EMERGENCY RULE MAKING

Approval for NYSEG's Emergency Economic Development Programs to Provide Immediate Assistance to Qualifying Customers

I.D. No. PSC-45-11-00002-EA

Filing Date: 2011-10-19

Effective Date: 2011-10-19

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

Action taken: The PSC adopted an order approving, with modification, the request of New York State Electric and Gas Corporation for three new Emergency Economic Development Programs in order to provide immediate assistance to qualifying customers in its service area.

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

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

Specific reasons underlying the finding of necessity: This action is taken on an emergency basis pursuant to State Administrative Procedures Act (SAPA) § 202(6). These Emergency Programs are designed to provide customers and communities with quick and immediate access to all available resources for the repairs and rebuilding necessary after the devastating effect of Hurricane Irene and Tropical Storm Lee. The repair and reconstruction of the electric and gas infrastructure, as well as the supporting reconstruction activities, is essential to the public health and general welfare of the citizens of New York. Failure to implement these Programs now on an emergency basis could deny communities and businesses access to necessary additional funding sources.

Subject: Approval for NYSEG's Emergency Economic Development Programs to provide immediate assistance to qualifying customers.

Purpose: To approve NYSEG's Emergency Economic Development Programs to provide immediate assistance to qualifying customers.

Substance of final rule: The Public Service adopted an order approving, with modification, the request of New York State Electric and Gas Corporation (NYSEG) for three new Emergency Economic Development Programs in order to provide immediate assistance to qualifying customers in its service area recovering from the effects of Hurricane Irene and Tropical Storm Lee.

The agency adopted the provisions of this emergency rule as a permanent rule, pursuant to SAPA section 202(6)(c), because the purposes of the emergency measure would be frustrated if subsequent notice procedures were required.

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (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.

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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-E-0559EA1)

NOTICE OF ADOPTION

Amendment to PSC No. 2 — Water, to Increase Its Annual Revenue of \$16,550, or 43% to Become Effective 11/1/11

I.D. No. PSC-12-11-00009-A

Filing Date: 2011-10-19

Effective Date: 2011-10-19

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

Action taken: On 10/13/11, the PSC adopted an order approving Devon Farms Water Works, Inc's amendment to PSC No. 2 — Water, designed to produce an increase in annual revenue of \$16,550, or 43%, to become effective November 1, 2011.

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

Subject: Amendment to PSC No. 2 — Water, to increase its annual revenue of \$16,550, or 43% to become effective 11/1/11.

Purpose: To approve amendment to PSC No. 2 — Water, to increase its annual revenue of \$16,550, or 43% to become effective 11/1/11.

Substance of final rule: The Commission, on October 13, 2011 adopted an order approving Devon Farms Water Works, Inc's amendment to PSC No. 2 — Water, to increase annual revenue by \$16,550, or 43% to become effective November 1, 2011 and that the entire amount be obtained by increasing the company's service charge from \$120 to \$190 per quarter and that the company be authorized to bill its customers a quarterly surcharge of \$41.04 for a five year period to repay a loan that was used for system improvements, 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.

(11-W-0086SA1)

NOTICE OF ADOPTION

Amendment to PSC No. 2 — Water, to Increase Its Annual Revenue by \$9,989, or 22.8% to Become Effective 11/1/11

I.D. No. PSC-12-11-00010-A

Filing Date: 2011-10-19

Effective Date: 2011-10-19

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

Action taken: On 10/13/11, the PSC adopted an order approving Hopewell Service Corporation's amendment to PSC No. 2 — Water, to increase its tariff rates to provide additional annual revenues of \$9,989, or 22.8% and establish a quarterly surcharge to become effective 11/1/11.

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

Subject: Amendment to PSC No. 2 — Water, to increase its annual revenue by \$9,989, or 22.8% to become effective 11/1/11.

Purpose: To approve amendment to PSC No. 2 — Water, to increase its annual revenue by \$9,989, or 22.8% to become effective 11/1/11.

Substance of final rule: The Commission, on October 13, 2011 adopted an order approving Hopewell Service Corporation's amendment to PSC No. 2 — Water, to increase its tariff rates to provide additional annual revenues of \$9,989, or 22.8% to become effective November 1, 2011 and to establish a quarterly surcharge of \$26.50 per customer to repay a loan used for emergency expenses, repairs and capital improvements, 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.

(11-W-0087SA1)

NOTICE OF ADOPTION

NYSERDA Administered T&MD Programs

I.D. No. PSC-23-11-00013-A

Filing Date: 2011-10-24

Effective Date: 2011-10-24

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

Action taken: On 10/13/11, the PSC adopted an order approving the portfolio of Technology and Market Development (T&MD) programs proposed by New York State Energy Research and Development Authority (NYSERDA) for the five-year period from 1/1/12 through 12/31/16.

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

Subject: NYSEDA administered T&MD programs.

Purpose: To approve the continuation of the T&MD programs proposed by NYSEDA.

Substance of final rule: The Commission, on October 13, 2011 adopted an order approving the portfolio of Technology and Market Development (T&MD) programs proposed by New York State Energy Research and Development Authority (NYSERDA) for the five-year period from January 1, 2012 through December 31, 2016, 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-M-0457SA2)

NOTICE OF ADOPTION

Funding for NYSEDA's Combined Heat and Power Initiative

I.D. No. PSC-23-11-00016-A

Filing Date: 2011-10-24

Effective Date: 2011-10-24

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

Action taken: On 10/13/11, the PSC adopted an order approving System Benefits charge funding for New York State Energy Research & Development Authority's (NYSEDA) Combined Heat and Power Initiative.

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

Subject: Funding for NYSEDA's Combined Heat and Power Initiative.

Purpose: To approve funding for NYSEDA's Combined Heat and Power Initiative.

Substance of final rule: The Commission, on October 13, 2011 adopted an order approving System Benefits Charge (SBC) funding for a Combined Heat and Power (CHP) initiative to be administered by the New York State Energy Research and Development Authority (NYSEDA), 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-M-0457SA3)

NOTICE OF ADOPTION

Reauthorization of Existing EEPS Programs

I.D. No. PSC-27-11-00005-A

Filing Date: 2011-10-25

Effective Date: 2011-10-25

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

Action taken: On 10/13/11, the PSC adopted an order for the reauthorization of existing EEPS programs and related issues, including an increase in the allocation to low-income programs, and the incorporation of National Fuel's Programs.

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

Subject: Reauthorization of existing EEPS programs.

Purpose: To approve the reauthorization and inclusion of National Fuel's programs in existing EEPS programs.

Substance of final rule: The Commission, on October 13, 2011 adopted an order for the reauthorization of existing Energy Efficiency Portfolio Standard (EEPS) programs and related issues, including an increase in the allocation to low-income programs, and the incorporation of National Fuel Gas Corporation's programs into EEPS; proposed language regarding utility incentives; the disposition of cash balances and uncommitted surcharges; and several minor issues, 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.

(07-M-0548SA41)

NOTICE OF ADOPTION

Amendment to PSC No. 3 — Water, to Increase Its Annual Revenue

I.D. No. PSC-33-11-00005-A

Filing Date: 2011-10-19

Effective Date: 2011-10-19

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

Action taken: On 10/13/11, the PSC adopted an order approving Arrow Park, Inc.'s amendment to PSC No. 3 — Water, to increase its annual revenue by approximately \$10,052 or about 144% and restore a customer surcharge.

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

Subject: Amendment to PSC No. 3 — Water, to increase its annual revenue.

Purpose: To approve amendment to PSC No. 3 — Water, to increase its annual revenue.

Substance of final rule: The Commission, on October 13, 2011 adopted an order approving Arrow Park, Inc.'s amendment to PSC No. 3 — Water, to increase its annual revenue by approximately \$10,052 or about 144%, to establish a quarterly customer surcharge of \$46.60, and to change its restoration of service charge from \$10 at all times to \$50 during normal business hours, \$75 outside of normal business hours, and \$100 during weekends and holidays, 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. (11-W-0389SA1)

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

Performance Assurance Plan Waiver for Certain Service Quality Measures

I.D. No. PSC-45-11-00013-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 or modify, in whole or in part, Verizon New York Inc.'s (Verizon) waiver petition concerning certain August 2011 service quality results measured under the Performance Assurance Plan.

Statutory authority: Public Service Law, section 91(1)

Subject: Performance Assurance Plan waiver for certain service quality measures.

Purpose: The PSC is considering action upon Verizon's waiver petition concerning certain service quality results.

Substance of proposed rule: The Commission is considering whether to approve or modify, in whole or in part, Verizon New York Inc.'s waiver petition concerning certain August 2011 service quality results measured under the Performance Assurance Plan and it may also consider other related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.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.

(99-C-0949SP14)

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

Whether to Permit the Use of Schneider ION8650 Electric Meter

I.D. No. PSC-45-11-00014-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by Schneider Electric for the approval to use the Schneider ION8650 electric meter.

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

Subject: Whether to permit the use of Schneider ION8650 electric meter.

Purpose: Pursuant to 16 NYCRR Part 93, is necessary to permit electric utilities in New York State to use the Schneider ION8650.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Schneider Electric, to use the ION8650 electric meter in commercial and industrial applications.

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, Three Empire State Plaza, Albany, New York 10007, (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, Three Empire State Plaza, Albany, NY 10007, (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.

(11-E-0578SP1)

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

Completion of the Inergy/Thomas Corners Reliability Project

I.D. No. PSC-45-11-00017-P

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

Proposed Action: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a request filed by Corning Natural Gas Corporation to postpone the deadline for completion of the Inergy/Thomas Corners reliability project.

Statutory authority: Public Service Law, section 66

Subject: Completion of the Inergy/Thomas Corners reliability project.

Purpose: To postpone the deadline for completion of the Inergy/Thomas Corners reliability project.

Substance of proposed rule: Corning Natural Gas Corporation (Corning) proposes to postpone the deadline for completion of the Inergy/Thomas Corners reliability project. The Commission may approve or reject, in whole or in part, or modify Corning's request.

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.

(08-G-1137SP7)

Department of State

NOTICE OF WITHDRAWAL

Annual Reports Relating to Administration and Enforcement of the Uniform Code

I.D. No. DOS-34-11-00007-W

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

Action taken: Notice of proposed rule making, I.D. No. DOS-34-11-00007-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on August 24, 2011.

Action proposed: Amendment of section 1203.4 of Title 19 NYCRR.

Subject: Annual reports relating to administration and enforcement of the Uniform Code.

Reason(s) for withdrawal of the proposed rule: Comments have been received which object to adoption of the consensus rule.

Department of Transportation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Suspension and Revocation of Operating Authority Held by Motor Carriers of Passengers

I.D. No. TRN-45-11-00007-EP

Filing No. 1017

Filing Date: 2011-10-21

Effective Date: 2011-10-21

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

Proposed Action: Addition of section 20.32 to Title 17 NYCRR.

Statutory authority: Transportation Law, section 156(2)

Finding of necessity for emergency rule: Preservation of public safety.

Specific reasons underlying the finding of necessity: This emergency rule is being promulgated on October 20, 2011 to provide standards for the suspension or revocation of operating authority of motor carriers of passengers by motor vehicles (carriers). This rule will become effective on the same date.

Bus companies may operate within the state of New York only upon operating authority in permits and certificates issued by the United States Department of Transportation or issued by the Commissioner of Transportation pursuant to Article 7 of the Transportation Law. Passenger carriers must comply with safety regulations found at 17 NYCRR Part 720. A recent series of tragic accidents that resulted in deaths and personal injuries involving carriers has revealed that it is possible for a carrier to have multiple safety violations, or even have federal operating authority suspended or revoked, and yet continue to operate under authority issued by the Commissioner of Transportation within the state of New York.

The emergency rule provides that the state operating authority may be suspended in the event that a carrier has had a suspension or revocation of concurrent federal operating authority or because of safety violations that would suggest that the continued operation of such carrier poses a threat to public safety. In addition to requiring continued federal operating authority (where applicable), the new rule provides the basis for the suspension or revocation of state operating authority and prescribes procedures whereby such suspension and/or revocation of state operating authority and prescribes procedures whereby such suspension and/or revocation will be effected.

Subject: Suspension and revocation of operating authority held by motor carriers of passengers.

Purpose: The protection of public safety.

Text of emergency/proposed rule: § 720.32 *Suspension and revocation of operating authority.*

(a) *Notwithstanding any regulation of the department to the contrary, pursuant to section 156, subdivision 2 of the Transportation Law, the Commissioner may immediately suspend or revoke the authority for operation authorized by certificate or permit for any of the following safety violations:*

(1) *Out of service violations which are determined by the Commissioner to be conditions or activities which constitute a danger to the safety of the people and which are found to have occurred for such carrier in the preceding six-month period. The incidence of out of service violations triggering a suspension or revocation of authority shall be as follows:*

(i) *For a carrier with at least one, but no more than five buses at any time in the preceding six month period: three violations.*

(ii) *For a carrier with at least six, but no more than twenty buses at any time in the preceding six month period: four violations.*

(iii) *For a carrier with more than twenty-one buses at any time in the preceding six month period: five violations;*

(iv) *For a carrier with at least ten department semi-annual inspections performed between April 1, 2010 and March 31, 2011 that resulted in an out-of service rate greater than 25%.*

(2) *Driving a bus while intoxicated in violation of the vehicle and traffic law;*

(3) *Driving a bus while using or in possession of drugs in violation of the vehicle and traffic law;*

(4) *Driving a bus after such driver has been placed out of service in*

violation of the transportation law, vehicle and traffic law or regulations adopted thereunder;

(5) *Driving a bus that has been placed out of service in violation of the transportation law, vehicle and traffic law or regulations adopted thereunder; or*

(6) *Driving a bus without a required license in violation of the vehicle and traffic law.*

(b) *Notwithstanding any regulation of the department to the contrary, the Commissioner may immediately suspend or revoke the authority of any carrier operating pursuant to a certificate or permit issued by the Commissioner pursuant to Article 6 or Article 7 of the Transportation Law if such carrier operates concurrently under any authority issued by the United States Department of Transportation, Federal Motor Carrier Safety Administration, and such federal operating authority has been suspended or revoked.*

(c) *The suspension of operating authority as provided in sub-sections (a) or (b) shall be effective five business days after the date of issuance. Pending the effective date of such suspension, any carrier subject to this section may be heard to present proof as to why such suspension should not occur or should not have occurred. The Commissioner shall make a determination based upon a hearing of the proof whether such suspension shall become effective or continue and a hearing regarding permanent revocation shall be scheduled. In addition to or in lieu of any suspension or revocation, the Commissioner may, after a hearing, impose a civil penalty upon such carrier in accordance with the provisions of Article 6 of the Transportation Law.*

(d) *Whenever because of danger to public safety or the welfare of the people it appears prejudicial to the interests of the people of the state, the commissioner may serve the respondent with a notice or order requiring certain action or the cessation of certain activities immediately or within a specified period, and the commissioner shall provide an opportunity to be heard within a period specified in such notice or order.*

(e) *Service may be made personally or by certified mail, return receipt requested, and a hearing shall be conducted pursuant to the provisions of section 503.2 of this title, except for the notice provisions, provided however, that notice may be made pursuant to sub-section (d) or this sub-section.*

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire December 19, 2011.

Text of rule and any required statements and analyses may be obtained from: David E. Winans, Associate Counsel, New York State Department of Transportation, Div. of Legal Affairs, 50 Wolf Rd., Albany, NY 12232, (518) 457-5793, email: dwinans@dot.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.

Regulatory Impact Statement

1. Statutory authority:

Transportation Law section 138(2), Transportation Law Section 140, Transportation Law Section 145(1).

The commissioner of transportation is empowered to prescribe rules and regulations concerning the issuance of certificates and permits to motor carriers.

2. Legislative objectives:

To promote public safety by assuring that motor carriers engaging in intrastate transportation as common carriers of passengers by motor vehicle comply with the laws and regulations relating to vehicle and driver safety as required by transportation Law Section 140 as a condition of continued use of the permit or certificate required by Transportation Law Section 152.

3. Needs and benefits:

The emergency rule provides a mechanism for the suspension and revocation of intrastate operating authority for motor carriers of passengers with poor safety records. Bus companies may operate within the state of New York only upon operating authority issued by the United States Department of Transportation (for interstate transportation) or issued by the commissioner of transportation (for intrastate transportation). Operating authority from the commissioner of transportation is conditioned upon compliance with safety laws and regulations, including the regulations of the Federal Motor Carrier Safety Administration that are incorporated into the commissioner's safety regulations by 17 NYCRR Section 720(a).

A series of recent accidents involving bus companies has exposed the potential for a bus company to have multiple safety violations, or even have federal operating authority suspended or revoked, and yet continue to operate under authority issued by the commissioner of transportation within the state of New York. The commissioner has concluded that the continued operation of any such bus company that fails to meet the applicable laws and regulations relating to vehicle safety and/or driver

credentialing and/or hours-of-service requirements poses a threat to public safety.

The commissioner has determined that the continued access to state operating authority is contrary to the interests of public safety (1) where a motor carrier has a high incidence of being taken out-of-service as the result of roadside inspections, (2) where a motor carrier has a high rate of out-of-service violations found during the course of semi-annual vehicle inspections, (3) where a roadside inspection or other investigation reveals certain egregious violations of law, or (4) where a motor carrier's federal operating authority has been suspended or revoked.

The purpose of the emergency rule is to provide criterion and a framework for the suspension of state operating authority in the event that a bus company fails to meet objective requirements relating to safety. In the addition to requiring continued federal operating authority (where applicable), the rule articulates the basis for action and provides a framework for the suspension and revocation of operating authority.

4. Costs:

Regulated parties have an obligation under the existing laws and regulations to conform to safety requirements. The new rule imposes no additional safety requirements. There are no added costs associated with compliance. Noncompliance with laws and regulations related to safety presently carry costs in the form of civil penalties that may be imposed. The new rule expands the number of situations where civil penalties may be imposed under Transportation Law Section 145.

5. Local government mandates:

The rule imposes no government mandates.

6. Paperwork:

The rule includes no reporting requirements.

7. Duplication:

There are no rules that relate to the suspension or revocation of intra-state operating authority.

8. Alternatives:

Transportation Law Section 145 provides that the commissioner of transportation may suspend or revoke any permit or certificate after a hearing. However, there is no law or regulation prescribing the reasons that such action may be taken in the form of any objective criterion. It has been concluded that the adoption of a rule setting forth objective criterion that warrants suspension and revocation affords motor carriers with appropriate warning that action will be taken and affords equal application of criterion and due process to motor carriers.

9. Federal standards:

There are no federal standards relating to state operating authority.

10. Compliance schedule:

Compliance with existing laws and regulations has been and remains a requirement for all motor carriers. Compliance with the applicable laws and regulations obviates the necessity of any action under the new rule.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule applies exclusively to motor carriers of passengers by motor vehicles that possess a permit or certificate from the commissioner of transportation pursuant to articles 6 or 7 of the Transportation Law. There are approximately 2,600 such motor carriers that possess such operating authority. These motor carriers are primarily limousine and charter bus operators engaged in at least some intrastate transportation of passengers for hire.

2. Compliance requirements:

The requirements applicable to motor carriers are set forth in existing laws and regulations. The new rule imposes no additional recordkeeping or reporting requirements. The new rule provides only the criterion warranting the sanction of suspension or revocation of operating authority for a motor carrier's non-compliance with rules and a framework for the application of such sanctions.

3. Professional services:

Motor carriers are already required to comply with safety requirements. The new rule will mean action against non-compliant motor carriers. Motor carriers that trigger action under the new rule may seek professional services in an effort to retain operating authority.

4. Compliance costs:

No additional compliance costs are anticipated.

5. Economic and technological feasibility:

No additional requirements are imposed by the new rule. The rule simply sets forth the objective criterion of action to suspend or revoke operating authority and provides the framework by which action will be taken that affords motor carriers with due process.

6. Minimizing adverse impact:

The new rule is designed to help small business by establishing the objective criteria that will trigger action by the commissioner. The actions that would be taken by the commissioner under the new rule are based upon existing laws and regulations.

7. Small business and local government participation:

The laws and rules that are applicable to motor carriers are not changed by the rule. Non-compliance with the laws and regulations will trigger action to suspend or revoke operating authority. Small businesses seeking to avoid action to suspend or revoke their operating authority must comply with the existing laws and regulations.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule applies across the state.

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

The rule includes no reporting requirements. Motor carriers are already required to comply with safety requirements. The new rule will mean action against non-compliant motor carriers. Motor carriers that trigger action under the new rule may seek professional services in an effort to retain operating authority.

3. Costs:

There are no new regulatory requirements that would entail additional costs for compliance.

4. Minimizing adverse impact:

The rule has no impact upon motor carriers that comply with existing laws and regulations.

5. Rural area participation:

The laws and rules that are applicable to motor carriers are not changed by the rule. Non-compliance with the laws and regulations will trigger action to suspend or revoke operating authority. Small businesses seeking to avoid action to suspend or revoke their operating authority must comply with the existing laws and regulations.

Job Impact Statement

1. Nature of impact:

The rule will have no impact on jobs or employment opportunities in relation to motor carriers who comply with existing laws and regulations relating to motor carrier safety. It is possible that non-compliant motor carriers who are in violation of safety laws and regulations may experience a suspension or revocation of state operating authority as a result of their failure under the new rule and that this could result in a loss of employment opportunities for persons employed by or seeking employment with non-compliant motor carriers. It is equally possible that, being compelled to comply with the existing laws and regulations, motor carriers may be compelled to create new job opportunities for mechanics, drivers and compliance specialists.

2. Categories and numbers affected:

Motor carriers with state operating authority employ bus operators, clerical staff, and various maintenance employees including cleaners and mechanics. The number of employees required by a motor carrier is that number that is necessary to comply with the existing laws and regulations.

3. Regions of adverse impact:

No adverse impact on jobs in any region is anticipated. The impact on employment stems, not from the new rule, but from the existing laws and regulations.

4. Minimizing adverse impact:

The purpose of the rule is to compel compliance with existing laws and regulations that are designed to preserve public safety. The absence of such a mechanism for removing operating authority from unsafe motor carrier jeopardizes public safety. Compliant motor carriers will experience no impact on jobs or employment.

Urban Development Corporation

EMERGENCY RULE MAKING

Economic Development Fund Program ("EDF")

I.D. No. UDC-45-11-00004-E

Filing No. 1015

Filing Date: 2011-10-19

Effective Date: 2011-10-19

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

Action taken: Amendment of Part 4243 of Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, sections 9-c and 16-i; and L. 1968, ch. 174

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

Specific reasons underlying the finding of necessity: The modification to the rule facilitates the provision of Economic Development Fund emergency assistance to (i) retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York ("Agricultural Manufacturing Businesses") and adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York and adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

Subject: Economic Development Fund Program ("EDF").

Purpose: Provide the basis for administration of The Champlain Bridge and August-September 2011 Storm and Flood Recovery Fund within EDF.

Text of emergency rule: CHAMPLAIN BRIDGE AND AUGUST - SEPTEMBER 2011 STORM AND FLOOD, RECOVERY FUND

Section 4243.36 Generally

Champlain Bridge and August - September Storm and Flood Recovery Fund (the "Fund") provides General Development Financing assistance on an emergency basis (i) for retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, the Village of Port Henry, New York and agricultural and manufacturing businesses, located in Essex County, New York, ("Agricultural and Manufacturing Businesses") and adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York and adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

Section 4243.37 Champlain Bridge and August - September 2011 Storm and Flood Recovery Fund Assistance

(a) In order to provide General Development Financing assistance to Retail and Service Businesses and Agricultural and Manufacturing Businesses in Eligible Areas (as defined below), the following provisions of the rule are modified as follows solely for Fund assistance.

(i) "Eligible Area" shall mean: (a) for assistance with respect to the closure of the Bridge Closure, as defined below, (1) with respect to assistance for Retail and Service Businesses the Towns of Crown Point, Moriah, and Ticonderoga, New York, the Village of Port Henry, New York and (2) with respect to assistance for Agricultural and Manufacturing Businesses, Essex County, New York; and (b) for assistance with respect to damages and losses caused by or related to storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011, in Essex County, New York.

(ii) "Bridge Closure" shall mean the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge.

(iii) The term "Distressed Area" in subpart 4233.2(a)(7) shall also include the Eligible Areas.

(iv) The term "Eligible Applicant" in subpart 4233.2(a)(11) shall also include all Retail and Service Businesses and Agricultural and Manufacturing Businesses.

(v) The term "Eligible Business" in subpart 4233.2(a)(12) shall also include all Retail and Service Businesses and Agricultural and Manufacturing Businesses.

(vi) The term "Eligible Recipient" in subpart 4233.2(a)(13)(iii) shall also include all Retail and Service Businesses and Agricultural and Manufacturing Businesses.

(vii) The term "Ineligible Cost" in subpart 4233.2(a)(22) subpart (v) does not apply.

(viii) The term "Ineligible Recipient" in subpart 4233.2(a)(23) subparts (i), (ii), (iii) and (iv) does not apply.

(ix) Subpart 4243.7 regarding fees does not apply, there are no fees for Fund assistance.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires January 16, 2012.

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-i of the Act established the Economic Development Fund and authorizes the New York State Urban Development Corporation d/b/a Empire State Development Corporation (the "Corporation"), within available appropriations, to provide grants for the purpose of creating or retaining jobs or preventing, reducing or eliminating unemployment or underemployment. The proposed regulations modify Chapter L, Part 4243 of Title 21 NYCRR.

2. Legislative Objectives: Section 16-i of the Act sets forth the Legislative objective of authorizing the Corporation, within available appropriations, to provide grants and loans in order to promote the economic health of New York state by facilitating the creation or retention of jobs or would increase business activity within a municipality or region of the state. The adoption of 21 NYCRR Part 4243.36 and 4243.37 will further these goals by modifying 21 NYCRR Part 4243 in order to provides General Development Financing assistance on an emergency basis (i) retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York ("Agricultural Manufacturing Businesses") and adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York and adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011, in order to facilitate the retention of jobs and increase business activity within those municipalities and the affected region.

3. Needs and Benefits: The Governor declared a state of emergency in Essex County and surrounding areas due to the emergency closure of the unsafe Lake Champlain Bridge (which was subsequently demolished). For nearly eighty years, the bridge had been a major transportation rout between the Ticonderoga, Crown Point and Port Henry areas of the State and the Vergennes, Middlebury and Burlington areas of Vermont. The loss of the bridge resulted in a 100 mile detour until a new bridge could be designed and constructed. Even with an emergency ferry service to handle limited traffic, local businesses lost customers and incurred increase costs that would cause business closures, and require layoffs and firing. The Governor also declared a state of emergency in Essex County and surrounding areas due to the storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011 The modifications to the rule would allow affected businesses to receive economic assistance in order to retain jobs and mitigate layoffs and firings and increase business activity.

4. Costs: The Program is funded by a State appropriation for the Economic Development Fund and there are no other costs.

5. Paperwork / Reporting: There are no additional reporting or paperwork requirements as a result of this rule on businesses participating in the Program. Standard applications and loan and grant documents used for most other assistance by the Corporation 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: There are no alternatives to this regulation for providing emergency assistance for business affected by the storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011 and the closing of the Lake Champlain Bridge in order to retain jobs in the affected area.

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: The modification of the Rule pursuant to Parts 4243.36 and 4243.37 provide Economic Development Fund assistance (also referred to as Champlain Bridge and August - September 2011 Recovery Fund) in order to provide emergency Economic Development Fund General Development Financing assistance to (i) retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York ("Agricultural Manufacturing Businesses") and adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York and adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011 in order to preserve business activity and the jobs by these businesses that would otherwise be reduced or lost due to the loss of customers and increased costs arising from the unexpected permanent closing (and subsequent demolition) of the unsafe Lake Champlain Bridge and the August - September 2011 storms and floods.

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: The modification to the rule facilitates providing emergency assistance to all agricultural, manufacturing, retail, and service small businesses located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and Essex County, New York affected by the emergency closing and demolition of the Lake Champlain Bridge and the storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: (i) retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York ("Agricultural Manufacturing Businesses") and adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York and adversely affected by storms and flooding occurring from and includ-

ing August 27, 2011 and continuing through and including September 8, 2011 are eligible to apply for Economic Development Fund General Development Financing pursuant to the Champlain Bridge Recovery Fund (the "Program").

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The modification of the rule will not impose any new or additional reporting or recordkeeping requirements; no affirmative acts will be needed to comply; and, it is not anticipated that applicants will have to secure any professional services in order to comply with this rule.

3. Costs: There should be no costs to small businesses receiving assistance other than the minimal costs of preparing a simple application for program assistance.

4. Minimizing Adverse Impact: The purpose of the rule modification is to provide General Development Financing assistance from the Economic Development Fund on an emergency basis for (i) retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York ("Agricultural Manufacturing Businesses") and adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York and adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

5. Rural Area Participation: This rule provides emergency assistance to agricultural, manufacturing, retail and service business in rural Essex County, New York and the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York.

Job Impact Statement

This modification to Part 4243 of Title 21 NYCRR will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of New York, particularly by providing emergency Economic Development Fund assistance from the Economic Development Fund for (i) retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York ("Agricultural Manufacturing Businesses") and adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York and adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

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

EMERGENCY RULE MAKING

Small Business Revolving Fund

I.D. No. UDC-45-11-00009-E

Filing No. 1020

Filing Date: 2011-10-24

Effective Date: 2011-10-24

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, section 16-t

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

Specific reasons underlying the finding of necessity: The delay in the approval of the State budget and the current economic crisis, including high unemployment and the immediate lack of financing from traditional financial institutions for job generating small business, are the reasons for

the emergency adoption of this Rule which is required for the immediate implementation of the Small Business Revolving Loan Fund in order to promptly provide assistance to the State's small businesses in order to sustain and increase employment generated by these businesses.

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 business 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 twenty-five thousand dollars; and
2. a regular loan that shall have a principal amount not less 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.

b) 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 4250.9 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.

f) 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 4250.10 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 January 21, 2012.

Text of rule and any required statements and analyses may be obtained from: Antovk Pidedjian, Sr. Counsel, 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 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 of the 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 of 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 the 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 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 assistance by the Corporation 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. A number of CBLOs that engage in lending to rural and urban small businesses responded to a survey circulated by the Corporation regarding implementation of the Program. Their comments were considered in the rulemaking process.

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.