

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; or 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.

Banking Department

NOTICE OF ADOPTION

Pledge of Assets by Foreign Banking Corporations

I.D. No. BNK-44-06-00010-A

Filing No. 25

Filing date: Jan. 3, 2007

Effective date: Jan. 24, 2007

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

Action taken: Amendment of Part 322 of Title 3 NYCRR.

Statutory authority: Banking Law, section 202-b(1)

Subject: Pledging of assets in New York (“asset pledge”) by foreign banking corporations operating a branch or agency in New York.

Purpose: To relieve foreign banks from current assets pledge requirement set at one percent of total third-party liabilities with a cap of \$400 million for “well-rated” foreign branches and agencies. The proposal would lower the cap to \$100 million, introduce a sliding scale reducing the requirement for most “well rated” branches and agencies with liabilities subject to pledge of over \$1 billion and allows all institutions wider variety of assets eligible for up to ½ of the pledge.

Text or summary was published in the notice of proposed rule making, I.D. No. BNK-44-06-00010-P, Issue of November 1, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

Assessment of Public Comment

Two comments were received, one from a foreign banking corporation licensed to operate a branch in New York and one from an association of international banking institutions. Both commenters supported the proposal. Accordingly, no changes in the proposed amendments have been made.

The foreign banking corporation indicated that the amendments would reduce the cost of compliance with the Department’s asset pledge requirement and expressed a desire for further discussions with the Department on reducing the maximum amount required to be pledged under the regulation.

The industry association urged the Superintendent to be flexible in making her determination as to whether an institution qualifies as a “well rated foreign banking corporation” as defined in Section 322.7 of the Superintendent’s Regulations, and therefore whether it is an institution which may calculate its asset pledge requirement using the sliding scale and maximum amount limitation in accordance with amended Section 322.1.

The association believes that an institution which is a “financial holding company” (FHC) under the federal Bank Holding Company Act of 1956, as amended, should also be deemed “well rated” under Section 322.7., and that the Superintendent could also deem an institution “well rated” which is not an FHC.

The association also expressed a desire for further discussion of the asset pledge requirement once the Department and the affected institutions gain experience with the amended regulation.

Office of Children and Family Services

NOTICE OF ADOPTION

Caseworker Contacts with Foster Children, Their Relatives and Caregivers

I.D. No. CFS-45-06-00002-A

Filing No. 28

Filing date: Jan. 8, 2007

Effective date: Jan. 24, 2007

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

Action taken: Amendment of sections 441.21 and 443.4 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 398(6)(a)

Subject: Caseworker contacts with foster children, their relatives and caregivers.

Purpose: To revise the casework contacts requirements for foster children, their relatives and caretakers to better promote the health, safety and welfare of foster children.

Text or summary was published in the notice of proposed rule making, I.D. No. CFS-45-06-00002-P, Issue of November 8, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Child Protective Investigations

I.D. No. CFS-46-06-00002-A

Filing No. 29

Filing date: Jan. 8, 2007

Effective date: Jan. 24, 2007

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

Action taken: Amendment of section 432.2 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 421(3)

Subject: Child protective investigations.

Purpose: To clarify the procedures for cases where a child or home cannot be accessed by child protective service staff to conduct a safety assessment and to clarify the possible collateral contacts who may provide information relevant to a child protective investigation.

Text or summary was published in the notice of proposed rule making, I.D. No. CFS-46-06-00002-P, Issue of November 15, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

Proposed action: Addition of Part 170 to Title 5 NYCRR.

Statutory authority: L. 2004, ch. 60

Subject: Empire State Film Production Tax Credit Program.

Purpose: To establish regs to create procedures for the allocation of the film tax credits and to describe the application process.

Substance of proposed rule (Full text is posted at the following State website: www.nylovesfilm.com/tax.asp): The empire state film production tax credit program generally provides film production companies with a tax credit equal to ten percent of qualified production costs incurred within New York State. Under the program an applicant may be eligible for a full benefit or partial benefit. If an applicant has 75% or more of their total production costs occur at a qualified New York facility and the production spends at least \$3 million during production, then the production qualifies for the full benefit which is a 10% tax credit on all qualified production expenditures. If 75% or more of total production costs occur at a qualified New York facility but the production spends less than \$3 million at the qualified facility, it must then shoot 75% or more of its location days in New York to qualify for the full 10% tax credit.

If 75% or more of a production total facility expenditures occur at a qualified facility but the production spends less than \$3 million and less than 75% of its total location shooting days are in New York, then the production qualifies for the 10% tax credit for expenditures at the qualified facility only.

This rule implements Chapter 60 of the laws of 2004. Part 170 of Title 5 NYCRR is hereby created and is summarized as follows:

First, the rule makes clear that the Governor's Office for Motion Picture and Television development shall administer the empire state film production tax credit program. This proposed rule does not govern the New York city film production tax credit program – eligibility in either the state or city program does not guarantee eligibility or receipt of a credit in the other.

Second, eligibility in the program is established through the definition of authorized applicant. In order to be eligible to apply for the program, a business must be a qualified film production company or sole proprietor thereof that is scheduled to begin principal photography on a qualified film within 180 days after submitting its initial application to the Office and it must intend to shoot a portion of that photography on a stage at a qualified film production facility on a set or sets.

Third, a two part application process is created. An authorized applicant must complete an initial application, a document created by the Office which asks the applicant to project/estimate various expenditures at qualified film production facilities and shooting days in and outside of New York. The applicant must also meet with the Office to discuss the details of the application. The Office then reviews the initial application based on criteria set out in the proposed rule, including, the completeness of the application, whether or not it is premature (i.e. incapable of photography starting within 180 days of the date of the application), and whether or not it meets the statutory requirements for qualification, including whether its projected qualified productions costs equal or exceed 75% of its total productions costs.

If the initial application is approved, the applicant (now referred to as an approved applicant) receives a certificate of conditional eligibility. This certificate assures the applicant that, pending successful completion of a final application, they are in line (though not guaranteed) to receive a tax credit. The certificate also contains the applicants' priority number, a number used by the Office to place the applicant in line for allocation of the tax credit purposes. Priority number is based on the applicant's effective date. Effective date is defined in the rule to mean the date the certification of conditional eligibility becomes effective. It is derived from the date the initial application is received by the Office. In the event an applicant does not begin principal and ongoing photography within 180 days of the submission of their initial application, effective date may be recalculated to correspond to the date one hundred eighty days prior to the date the approved applicant submits a notification of commencement of principal and ongoing photography to the Office. If the application is disapproved, the applicant receives notice of its rejection from the program and may reapply at a later date.

Fourth, the rule requires the approved applicant notify the Office on the date principal and ongoing photography begins on their production and supply a sign-off budget at this point. This additional budget data helps the Office get a better sense of the production expenses the applicant has and ultimately helps the Office estimate the potential credit the applicant may later be entitled to.

Fifth, within 60 days after the completion of production of their qualified film, the approved applicant must submit a final application to the

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.

Reimbursement of the Current Monthly Medicare Part B Base Premium

I.D. No.	Proposed	Expiration Date
CVS-01-06-00007-P	January 4, 2006	January 4, 2007

Department of Economic Development

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

Empire State Film Production Tax Credit Program

I.D. No. EDV-04-07-00001-P

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

Office. The final application is similar to the initial application, though it now contains actual expenditure data as opposed to expenditure projections. The Office then considers certain criteria in its review to determine whether the final application should be approved. Much like the criteria used for the initial application, this includes analysis of whether the application is complete, whether applicant actually shot principal photography on stage at a qualified film production facility on a set or sets, whether a qualified film was completed, and whether the actual qualified production costs equal or exceed 75% of the actual production costs on the film, etc. The proposed rule allows the Office to request additional documentation, including receipts of qualified production costs, to help the Office determine if the applicant meets the criteria. At this point, the applicant is either approved and issued a certificate of tax credit (stating the amount of tax credit they will be receiving) or provided a notice of disapproval.

Sixth, the proposed rule addresses the issue of the allocation of the empire state film production tax credits. The allocation is made in the order of priority based on the applicant's effective date. If an approved applicant's tax credit exceeds the amount of credits allowed in a given year, their credit will be allocated on a priority basis in the immediately succeeding calendar year. Also, the proposed rule makes explicit the fact that allocation and receipt of the tax credit are subject to availability of state funds for the program.

Seventh, the proposed rule requires applicants to maintain records of qualified production costs used to calculate their potential or actual benefit under the program for a period of 3 years. Such records may be requested by the Office upon reasonable notice.

Finally, the proposed rule creates an appeal process. Applicants who have had their initial or final applications disapproved, or who have a disagreement over the dollar amount of their tax credit have the right to appeal.

Text of proposed rule and any required statements and analyses may be obtained from: Thomas P. Regan, Department of Economic Development, 30 S. Pearl St., Albany, NY 12245, (518) 292-5123, e-mail: tregan@empire.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

STATUTORY AUTHORITY:

Section (7)(c) of Part P of Chapter 60 of the laws of 2004 requires the Commissioner of Economic Development to promulgate rules and regulations by October 31, 2004 to establish procedures for the allocation of the empire state film production tax credit, including provisions describing the application process, the due dates for such applications, the standards used to evaluate the applications, and the documentation provided to taxpayers to substantiate to the State Department of Taxation and Finance the amount of the tax credit for the program itself. Such legislation provides that, notwithstanding any other provisions to the contrary in the State Administrative Procedure Act, the rules and regulations may be adopted on an emergency basis.

LEGISLATIVE OBJECTIVES:

The emergency rule is in accord with the public policy objectives the Legislature sought to advance by creating a tax credit program for the film industry. This program is an attempt to create an incentive for film industry to bring productions to New York State as opposed to other competitive markets, such as Toronto. It is the public policy of the State to offer a tax credit that will help provide incentive for the film industry to bring productions to the State. The proposed rule helps to further such objectives by establishing an application process for the program, clarifying portions of the Program through the creation of various definitions and describing the credit allocation process itself.

NEEDS AND BENEFITS:

The emergency rule is required to be promulgated by October 31, 2004 (see section 7(c) of Chapter 60 of the laws of 2004). It is necessary to properly administer the tax credit program. The statute itself does not set out the specifics of the program; rather, it deals primarily with its creation and calculation of the actual tax credit. There are several administrative benefits that would be derived from this emergency rulemaking. First, the emergency rule establishes a clear and precise application process, complete with due process as there is an opportunity for applicants to appeal from denials of applications or a disagreement regarding the actual amount of the tax credit. Second, the emergency rule describes in detail the standards to be used to evaluate the initial and final applications created under this program. Third, it describes the documentation that will be provided to taxpayers to substantiate to the State Tax and Finance Department the

amount of the tax credits allocation. Finally, it clarifies some existing definitions and creates several new definitions in order to help facilitate an effective and efficient administration of the program.

COSTS:

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

II. Costs to the regulating agency for the implementation and continued administration of the rule: There could be additional costs to the Department of Economic Development associated with the proposed rule making as the Office may need an additional employee to help with the program's new created administrative process. Such costs are estimated to be \$40,000 to \$50,000 in annual salary for an employee's with a background in production accounting.

III. Costs to the State government: The program shall not allocate more than \$60 million in any calendar year. The program sunsets on December 31, 2011 so the overall cost to the State is \$300 million.

IV. Costs to local governments: None. The proposed regulation will not impose any additional costs to local government.

LOCAL GOVERNMENT MANDATES:

None.

PAPERWORK:

The emergency rule creates an application process for eligible applicants, including the creation of an initial and final application, certain tax certificates and forms relating to film expenditures.

DUPLICATION:

The proposed rule will not duplicate or exceed any other existing Federal or State statute or regulation.

ALTERNATIVES:

No alternatives were considered in regard to creating a new regulation in response to the statutory requirement. The Department of Economic Development, through its Governor's Office for Motion Picture and Television Development, did an extraordinary amount of outreach to various interested parties before submitting this emergency rule. For example, the Department met with seven representatives from episodic television, seven representatives from the independent film industry and seven representatives from large studio films to seek industry input. In addition, the Department met with three film industry accountants, five industry tax attorneys and approximately seven studio representatives to solicit their comments. Furthermore, the Department was in close contact with representatives from the State Tax and Finance Department and the New York City Office for Motion Pictures to coordinate the details of the emergency rule.

FEDERAL STANDARDS:

There are no federal standards in regard to the empire state film production tax credit program; it is purely a state program that offers a state tax credit to eligible applicants. Therefore, the proposed rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The effected State agencies (Economic Development) and the business applicants will be able to achieve compliance with the emergency regulation as soon as it is implemented. In terms of compliance schedule, the statute (Chapter 60 of the laws of 12004) was signed into law on August 20, 2004. It was amended by Chapter 60 of the laws of 2006. All film production expenditures that date back to this date will be eligible for inclusion in the tax credit calculation. The statute gave the Department until October 31, 2004 to promulgate regulations to implement the program. The program applies to taxable years beginning on or after January 1, 2004 and expires on December 31, 2011.

Regulatory Flexibility Analysis

Participation in the empire state film production tax credit program is entirely at the discretion of qualified film production companies. Neither Chapter 60 of the laws of 2004 nor the proposed regulations impose any obligation on any local government or business entity to participate in the program. The proposed regulation does not impose any adverse economic impact or their compliance requirements on small businesses or local governments. In fact, the proposed regulation may have a positive economic impact on small businesses due to the possibility that these businesses may enjoy a film production tax credit if they qualify for the program's tax credit.

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

Rural Area Flexibility Analysis

This program is open to participation from all qualified film production companies, which is defined by statute to include a corporation, partnership or sole proprietorship making and controlling a qualified film in New York. The location of the companies is irrelevant, so long as they meet the necessary qualifications of the definition. This program may impose responsibility on statewide businesses that are qualified film production companies, in that they must undertake an application process to receive the empire state film production tax credit. However, the proposed regulation will not have a substantial adverse economic impact on rural areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed regulation creates the application process for the empire state film production tax credit program. As a tax credit program, it is designed to positively impact the film industry doing business in New York State and have a positive impact on job creation. The proposed regulation will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rulemaking that it will have either no impact, or a positive impact, on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Higher Education Services Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York State Flight 587 Memorial Scholarship

I.D. No. ESC-04-07-00005-P

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

Proposed action: Addition of section 2201.7 to Title 8 NYCRR.**Statutory authority:** Education Law, sections 653, 655 and 668-f**Subject:** New York State Flight 587 Memorial Scholarship.**Purpose:** To implement the scholarship.**Text of proposed rule:** New section 2201.7 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:*Section 2201.7 American Airlines Flight 587 Memorial Scholarship*

(a) *Authority:* The provisions contained within this regulation are made pursuant to authority granted to the New York State Higher Education Services Corporation in sections 653, 655 and 668-f of the Education Law.

(b) *Definitions:* As used in sections 604 and 668-f of the Education Law:

(1) *The term "American Airlines Flight 587 Memorial Scholarship" (hereinafter "scholarship") may also be known as the New York State Flight 587 Memorial Scholarship.*

(2) *the term "children" shall be that found in section 601 of the Education Law.*

(3) *the term "spouse" shall mean the legal spouse.*

(4) *the term "financial dependent" shall mean a person who is dependent for his or her support upon an individual who has died as a direct result of the crash of American Airlines Flight 587 in Rockaway, Queens on November 12, 2001, upon a showing of unilateral dependence or mutual interdependence upon such individual which may be evidenced by a nexus of factors, including, but not limited to, common ownership of property, common house-holding, shared budgeting, and the length of the relationship between the financial dependent and such individual.*

(5) *the term "persons who died as a direct result of the crash" shall include the 260 persons aboard the aircraft as well as the 6 persons on the ground at the crash site when the crash occurred who died as a result thereof.*

(c) *Eligibility:*

(1) *Eligible recipients under section 668-f (1) of the Education Law may be residents or non-residents of New York State and shall attend institutions of higher education within New York State.*

(2) *New York State residents attending out of state institutions of higher education may be eligible to receive scholarships in accordance with sections 604 and 668-f of the Education Law if on August second, two thousand five, they were matriculated and in attendance at an institution meeting the eligibility requirements of Title IV of the Higher Education Act of 1965, as amended, and were New York State residents at the time.*

(d) *Burden of Proof*

(1) *It shall be the responsibility of the applicant or his or her agent to provide documentation establishing eligibility for the scholarship.*

(2) *Documentation may include death and birth certificates, marriage and driver's licenses, joint bank statements or other financial statements, federal or state tax filings, social security cards, court documents, utility bills, or such other documentation as may be required by the corporation.*

(3) *Determinations will be based on a totality of the documentation provided.*

(4) *Failure to provide requested documentation or other information may lead to ineligibility.*

(5) *Determination of an applicant's ineligibility will be final on the date the notice of ineligibility is received by the applicant; however, an ineligible applicant may be reconsidered if additional information is provided that so warrants.*

Text of proposed rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, Associate Attorney, Higher Education Services Corporation, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 473-1581, e-mail: CFisher@HESC.com

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

Statutory authority:

New York State Higher Education Services Corporation's (HESC) statutory authority to promulgate regulations and administer the New York State Flight 587 Memorial Scholarship Program is codified in sections 653, 655 and 668-f of the Education Law.

The scholarship was introduced in the legislature as a multi-sponsored bill, numbered S1259/A4007, in early 2005. On 6/21/05, it was substituted by Governor's Program Bill #51 - a virtually identical bill numbered A7150 - and signed into law on 8/2/05.

Legislative objectives:

The legislature established the New York State Flight 587 Memorial Scholarship to provide college educations to the children and spouses of those who died as a result of the crash of American Airlines Flight 587 in Rockaway, Queens, New York, on November 12, 2001.

The recipients will obtain scholarship amounts in the same manner as the World Trade Center Memorial Scholarships which is the cost of attendance at the State University of New York, City University of New York, or a commensurate amount at a private college or university. Awards are granted for not more than four years of undergraduate study or for five years if the program normally requires it.

The statute requires HESC to administer the program.

Needs and benefits:

On November 12, 2001, American Airlines Flight 587, out of JFK airport and bound for the Dominican Republic, crashed in Far Rockaway, Queens, killing 260 passengers and crew as well as six people on the ground. Surviving spouses now shoulder the heavy burden of supporting children who have lost the support of a parent to obtain a college degree and begin a self-supporting life. This program fills a humanitarian need to provide an education to the children and spouses of those who died as a result of the crash of Flight 587 who might not otherwise have that opportunity.

Inasmuch as the program is tied to the World Trade Center Memorial Scholarship both statutorily and by the fact it occurred a month and a day after the 9/11 disaster, attempts were made to standardize this program with that one. Thus, the proposal adopts the definitions of "children" and "spouse" from that program, and it reconciles the definition of "financial dependent" used in the World Trade Center Scholarship by eliminating the inapplicable terms and restating the useful ones. By the same token, the proposal borrows a provision from the Trade Center program relating to Title IV eligibility and New York residents that attended school out of state.

The proposal addresses the administrative concerns of time management and efficiency by alerting the applicants to the types of documentation they need to obtain an award.

Costs:

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

b. The cost of the program to the State shall not exceed \$2,400,000.00. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

c. The source of the cost data in (b) above is derived from the sponsor's bill justification memo estimating an initial cost of \$400,000, and continuing costs for approximately 150 children and spouses of \$100,000.000 annually over the next 20 years.

Local government mandates:

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

Paperwork:

This proposal will require potential recipients of the New York State Flight 587 Memorial Scholarship to submit an annual application and supporting documentation to establish their eligibility for this program. No additional paperwork will be required.

Duplication:

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

Alternatives:

Inasmuch as this program is statutorily tied to the World Trade Center Memorial Scholarship, using the provisions of that program should provide administrative efficiencies and timely processing of applications. Thus, as shown above, two definitions were adopted from that program and a third was altered to fit this program.

More eligibility requirements were considered but they are not needed because the program is not competitive.

Enumerating the types of documents that an applicant will need to obtain an award should speed processing. Many other types of documents were considered but the list was boiled-down to prevent confusion.

The proposal attempts to address an as yet unrealized controversy concerning the name of the American Airlines Flight 587 Memorial Scholarship. The scholarship is not a corporate scholarship. It is not funded by American Airlines, but rather, it is funded solely by State appropriations. Moreover, there is no evidence that American Airlines desires its name to be used in this capacity. Therefore, the proposal makes the term New York State Flight 587 Memorial Scholarship synonymous with the American Airlines Flight 587 Scholarship and envisions that this scholarship will be referred to in normal everyday use by this term.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government, and efforts were made to align it with similar federal subject areas as evidenced by the citation to Title IV of the Higher Education Act in the subdivision concerning out of state students.

Compliance schedule:

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

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making, seeking to add a new section 2201.7 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. This agency finds that this rule will not impose any compliance requirements or adverse economic impact on small businesses or local governments because it implements a statutory student scholarship program intended to provide a college education for spouses and children of those who died as a result of the crash of American Airlines Flight 587 in Rockaway, Queens, New York, on November 12, 2001.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making, seeking to add a new section 2201.7 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

The rule implements a statutory student scholarship program intended to provide a college education to children and spouses of those who died as a result of the crash of American Airlines Flight 587 in Rockaway, Queens, New York on November 12, 2001. Inasmuch as the recipients may attend school anywhere within New York State, successful implementation of this proposal could have a positive effect on all areas within the State, including any rural areas that the recipients choose to attend school in and/or subsequently work in.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making seeking to add a new section 2201.7 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. The proposal implements a statutory student scholarship program enacted for children and spouses of those who died as a result of the crash of American Airlines Flight 587 in Rockaway, Queens, New York, on November 12, 2001. The successful implementation of this program could have a positive job effect by helping those effected by the crash obtain a college education in New York State and enter the job market therein.

Office of Homeland Security

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Security Guard Training Tax Credit

I.D. No. HLS-04-07-00002-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 1000 to Title 9 NYCRR.

Statutory authority: Executive Law, section 709(2)(n); and Tax Law, section 26(e)

Subject: Security guard training tax credit.

Purpose: To provide for a process by which applicants can apply for the tax credit.

Text of proposed rule: Pursuant to the authority contained in subdivision (e) of Section 26 of the New York State Tax Law and subdivision (n) of subsection (2) of Section 709 of the Executive Law, the Director of the Office of Homeland Security hereby proposes to make and adopt the following amendments, as published in Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, by adding the following:

§ 1000.1 Purpose and general description.

These rules and regulations set forth the application process for the New York State Office of Homeland Security 'Security Officer Training Tax Credit Program' as set forth in subsection (e) of Tax Law Section 26 as added by Chapter 537 of the Laws of 2005. A taxpayer, which is subject to tax under article 9, 9-A, 22, 32 or 33 of the Tax Law and is a qualified building owner, shall be allowed a tax credit in the amount of \$3,000 for each full-time qualified security officer who has been trained according to the Office of Homeland Security Certified Training Program. The Director of the Office of Homeland Security has the authority to promulgate regulations to establish procedures for the application and allocation of such credits and any other provisions necessary and appropriate to implement this program per Tax Law subdivision (e) of Section 26 and paragraph (n) of subdivision (2) of Section 709 of the Executive Law.

§ 1000.2. Definitions.

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

(a) "Qualified Building Owner" means a building owner whose building entrances, exits and common areas are protected by security officers,

registered under article 7-A of the General Business Law, whether or not such security officers are employed directly by the building owner or indirectly through a contractor.

(b) "Building" means any commercial building under ownership of a qualified building owner that contains at least 500,000 square feet whose entrances, exits and common areas are protected by security officers licensed under article 7-A of the General Business Law.

(c) "Security Officer" means a security guard registered and subject to Article 7-A of the General Business Law.

(d) "Qualified Security Officers" means security officers who: (i) are employed in positions which are under a legally binding written agreement, including a service contract between qualified building owners and security contractors, enforceable by employees, that provides for a minimum hourly wage rate of at least nine dollars fifty cents for the calendar year two thousand five; nine dollars eighty-five cents for the calendar year two thousand six; and ten dollars eighty-five cents for the calendar year two thousand seven and thereafter; and (ii) have completed the Office of Homeland Security certified security training program as set forth in this section.

(e) "Qualified Security Training Program" means a program certified by the New York State Office of Homeland Security for residential and commercial building security officers, which is designed to: improve observation, detection and reporting skills; improve coordination with local police, fire and emergency services; provide and improve skills and working knowledge of advanced security technology including surveillance systems and access control procedures; require at least 40 hours of training, including 3 hours of training devoted to terrorism awareness.

(f) "Application" means a document issued by the Office of Homeland Security and submitted by a qualified building owner that contains information concerning the Homeland Security, Security Officer Training Tax Credit. Such application shall include, but is not limited to, the following information: the New York State Department of State issued unique identification number of each qualified security officer applied for which the tax credit is being sought and the employment status; the specific work locations; the address and square footage of each eligible building secured by the same qualified security officers; a certification that the employment records remain on file and readily available upon request by the Office of Homeland Security; and any other information necessary to properly evaluate the application.

(g) "Complete Application" means a properly completed and executed application where all questions on the application itself were fully answered by the qualified building owner and that all supporting documents or information required in the application were fully furnished to the Office of Homeland Security to review and approve the application.

(h) "Method of Transmittal" means that all applications containing original forms and supporting documentation must be mailed to the New York State Office of Homeland Security located at 1220 Washington Avenue, Building 7A, 7th Floor, Albany New York 12242, via a mail carrier service that provides proof of date of mailing.

(i) "Filing Period" means April 2nd and ending on April 27th following the calendar year for which the tax credit is being sought.

(j) "Application Filing Date" means date which the application was postmarked by the mail carrier used by applicant regardless of the date the application is received by the Office of Homeland Security, provided that the date is within the filing period specified above.

(k) "Untimely Application" means an application that has been post-marked either before or after the filing period specified.

(l) "Certificate of Tax Credit" means a certificate issued by the Office of Homeland Security that states the amount of the Security Officer Tax Credit that the building owner has qualified for, based on the office's receipt of the complete application and subject to the process set forth in these rules and regulations. The certificate shall include, but not be limited to the following information and any information necessary: name and address of qualified building owner; certificate serial number; amount of tax credit approved; and the calendar year in which such credit was awarded; and any other information as deemed necessary by the Office of Homeland Security.

§ 1000.3. Application Process

In the event that subtraction of the credit allocations of all the eligible applications received on a given day would result in a zero or negative balance of the legislative cap, the tax credits shall be allocated among such qualified building owners for that day on a pro rata basis. Each qualified building owner's request shall be allowed at a reduced rate equivalent to the percentage created by dividing the unallocated tax cred-

its by the aggregate tax credits requested on such date. Untimely applications will not be considered for the tax credit.

(a) Application. A qualified building owner shall file a complete application according to the specified method of transmittal to the Office of Homeland Security within the filing period. The qualified building owner shall file with application such information, deemed necessary for the application process, as requested by the Director of the Office of Homeland Security, which includes, but is not limited to, affirmation by the qualified building owner that the certified training has been provided to each security officer; dates and places of training; hours worked by each qualified security officer for which the taxpayer is applying; and verification that all information has been provided to the best of the qualified building owner's knowledge. The Office of Homeland Security may request additional supporting documentation, as necessary.

All applications postmarked on the first day of the filing period by the required method of transmittal shall be treated as having been filed on the first day of the application period and shall be given priority with all other applications filed on the same day in the awarding of tax credits over all applications postmarked on subsequent days. Applications postmarked on subsequent days shall be given priority based on the date of the postmark.

(b) Criteria for Review of Application. A committee appointed by the Director shall evaluate all applications received by the Office of Homeland Security in accordance with paragraph (a) above. The Office of Homeland Security shall use the following criteria to determine the eligibility of a qualified building owner to receive a certificate of tax credit:

(1) the application is a complete application;

(2) the application is submitted within the filing period and is not untimely;

(3) the applicant is a qualified building owner; and

(4) the qualified building owner certifies and offers proof that the qualified security officers have, in fact, been trained according to an OHS Qualified Security Officer Training Program.

The Director of the Office of Homeland Security shall approve or disapprove the applications based upon criteria set forth by the Office of Homeland Security in order of priority based upon the application filing date of a complete application for allocation of Security Officer Training Tax Credit.

(c) Notification of Determination. If the Office of Homeland Security determines that a qualified building owner is eligible for the Security Officer Training Tax Credit, the Director of the Office of Homeland Security shall issue a certificate of tax credit to the qualified building owner after verification of the information submitted by the qualified building owner. If the application is disapproved, the Office of Homeland Security shall provide the qualified building owner with a notice of disapproval. Any security officer determined not to be a qualified security officer, shall be rejected for the purpose of calculating the qualified building owner's tax credits and any such reduction in tax credit shall be reallocated in conformity with the process specified in these regulations.

Upon a successful verification of eligible and timely applications, the Office of Homeland Security shall, within 45 days of the end of the filing period, issue certificates of tax credit and/or letters of disapproval, as appropriate.

(d) Eligibility in Subsequent Years. Any qualified building owner who is allocated a credit in the first calendar year and who applies for credit in the second calendar year shall, upon successful application, have priority over their percentage amount awarded in the previous year over all other taxpayers who file a complete application in the succeeding calendar year.

(e) Unallocated Tax Credits. If at the end of the calendar year, the aggregate amount of Security Officer Training Tax Credits applied for is less than the calendar year's allocation, then the amount permitted with respect to subsequent taxable years shall be augmented by the amount of such excess.

(f) Audit of Information. The qualified building owners who receive Security Officer Training Tax Credits in any given year shall, upon request by the Director of the Office of Homeland Security, immediately provide or make available any information necessary, including copies of supporting documentation to verify the information submitted in applications for such credit, including verification of training of security guards, the existence of a required contract, the payment of the mandatory wage provision as set forth in paragraph (4) of subdivision (b) of Section 26 of the Tax Law, and any other information deemed necessary by the Director of the Office of Homeland Security.

Text of proposed rule and any required statements and analyses may be obtained from: Linda Shkreli, Counsel, Office of Homeland Security,

633 3rd, Ave., 32nd Fl., New York, NY 10017, (212) 867-7060, e-mail: Linda.shkreli@security.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

Statutory Authority

Subdivision (n) of subsection (2) of section 709 of the New York State Executive Law - State Office of Homeland Security; Appointment of the director; powers and duties, grants the authority to adopt, promulgate, amend and rescind rules and regulations to effectuate the provisions and purposes of this article and the powers and duties of the office in connection therewith.

Subsection (e) of section 26 of the New York State Tax Law was added by Chapter 537 of the Laws of 2005. It mandates that the Director of the Office of Homeland Security, in consultation with the Commissioner of Taxation and Finance, shall promulgate rules and regulations necessary to implement this program.

Legislative Objectives

Subsection (e) of section 26 of the New York State Tax Law requires that the Director of the Office of Homeland Security promulgate regulations which set forth the process for application and receipt of tax credits under the Security Guard Tax Credit Program and create a process by which qualified building owners can apply for a Security Guard Training Tax Credit. The objectives of the legislature in creating the Security Guard Training Tax Credit included the enhancement of the security guard industry to be better equipped to deal with the emerging terrorism threats not currently accounted for in the standardized training that existed prior to the new legislation.

Needs and Benefits

An application process is mandated by subsection (e) of Section 26 of the New York State Tax Law to be promulgated by the Director of the Office of Homeland Security to provide all eligible taxpayers a necessary framework through which such applicants can apply for the tax credit. Such a structure will benefit building owners and the public because a sound tax credit process will be in place to help guard against misuse of the credits. Security guards will benefit from the additional training received, which is mandatory for the building owners to apply for and receive the tax credit.

Alternatives

The tax credit application process could have taken many forms, such as a submission of copies of all paperwork relating to the training and employment of security guards by the taxpayer. A thorough analysis was conducted by the Office of Homeland Security's Legal, Administrative and Training Divisions, as well as with the Department of Taxation and Finance. Taking into consideration public comment and an informal efficiency analysis, it was determined that the application the Office of Homeland Security drafted was the least burdensome. The application form will consolidate information that would otherwise necessitate the copying of an abundance of paperwork. The information provided on the application may be audited in select cases upon awarding of the tax credit.

Further, for the period of two (2) weeks, the draft of the regulations remained on the Office of Homeland Security's website for comment by the public prior to this submission. There were no comments to directly alter the draft regulations, except in one case whereupon a submitter recommended the addition of language referring to audit of information. The Office of Homeland Security included such language. The other submission included questions relating to the legislation, which were answered by the Office of Homeland Security approach.

Compliance Schedule

The amendment will take effect when the Notice of Adoption is published in the *State Register*.

Costs to State Government

The costs to the State include administrative and legal functions relating to the implementation of the tax credit program, including development and receipt of applications, as well as determinations on recipients. Additionally, two new positions have been created within the Office of Homeland Security for the purpose of administering the tax credit program.

Costs to Local Government

There are no costs to local government.

Cost to Regulated Parties

Any costs are limited to those qualified building owners who seek to apply for the voluntary tax credit. The proposed rules do not pose a cost to any businesses, local governments or individuals in New York State,

except for those qualified taxpayers who wish to apply for the voluntary Security Guard Training Tax Credit in accordance with Section 26 of the New York State Tax Law.

The costs related to this tax credit includes about \$400 to \$500, estimated from the current cost of security guard training multiplied by 5 days, for the training of the guards in the 40 hour Office of Homeland Security certified training. The cost of backfill is expected to be an estimated \$450 to \$500 for the position of the guard who will sit in training for the period of one week. These costs are not insignificant, but will be offset by the anticipated \$3,000 per full time security guard tax credit. Additionally, the necessary increases in hourly wages, as mandated to qualify for the credit under the law is an indefinite cost, which is naturally commensurate with the additionally training received by the guard. Finally, the administrative costs of preparing the tax credit application, which is unknown at this time, will depend on the individual resources of the taxpayer are anticipated. The Office of Homeland Security developed the application and reporting requirements in such a way as to minimize the applicants' burden and time involved in preparing the application. They are, however, expected to be nominal in comparison to the actual credit.

Local Government Mandates

The proposed regulation does not impose a new program duty or responsibility to any county, city, town, village, school district, fire district or special district.

Paperwork

The paperwork requirement imposed by the rule includes any application and supporting documentation for application of the voluntary tax credit for qualified building owners. As required by subsection (d) of Section 26 of the Tax Law Section, taxpayers seeking to take the credit will need to apply to the State Office of Homeland Security to obtain a credit certification. The taxpayers will need to provide the information necessary to prorate the credit for security officers employed for less than a full year.

Duplication

This regulation does not duplicate any existing local, state or federal regulation relating to the Office of Homeland Security.

Federal Standard

No federal law or regulation is applicable.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Government

The proposed rule will have no negative impact upon small businesses or local government, but rather provides a tax credit to eligible taxpayers.

Compliance Requirements

The proposed rule does not impose compliance requirements on small businesses or local government, except for those qualified taxpayers who wish to apply for the voluntary Security Guard Training Tax Credit in accordance with Section 26 of the New York State Tax Law.

Professional Services

No additional professional services will be required by small businesses or local governments.

Costs

The proposed rule does not pose a cost to small businesses or local government, except for those qualified taxpayers who wish to apply for the voluntary Security Guard Training Tax Credit in accordance with Section 26 of the New York State Tax Law.

The costs related to this tax credit includes about \$400 to \$500, estimated from the current cost of security guard training multiplied by 5 days, for the training of the guards in the 40 hour Office of Homeland Security certified training. This cost is substantially less than the anticipated \$3,000 per full time security guard credit. Additionally, the necessary increases in hourly wages, as mandated to qualify for the credit under the law is an indefinite cost, which is naturally commensurate with the additionally training received by the guard. Finally, the administrative costs of preparing the tax credit application, which is unknown at this time, will depend on the individual resources of the taxpayer are anticipated. The Office of Homeland Security developed the reporting system, so that among other things, would minimize the applicants' burden and time involved in preparing the application. They are, however, expected to be nominal in comparison to the actual credit.

Economic and Technological Feasibility

There is no economic cost associated with the proposed rule and technological feasibility is not a factor in promulgating the proposed rule.

Minimizing Adverse Economic Impact

The proposed rule does not impose compliance mandates on small businesses or local governments, except for those qualified taxpayers who wish to apply for the voluntary Security Guard Training Tax Credit in accordance with Section 26 of the New York State Tax Law.

Small Business Participation

There has been no participation by small business or local government in the proposed rule, except in the case of suggestions and comments offered on the Office of Homeland Security upon posting of the draft for the period of two (2) weeks. There were no comments to directly alter the draft regulations, except in one case whereupon a submitter recommended the addition of language referring to audit of information. The Office of Homeland Security included such language. The other submission included questions relating to the legislation, which were answered by the Office of Homeland Security.

Rural Area Flexibility Analysis

Effect on Rural Areas

There is no expected effect on rural areas throughout the State.

Reporting and Recordkeeping

The proposed rules do not impose any additional reporting or record-keeping requirements, except for those qualified taxpayers who wish to apply for the voluntary Security Guard Training Tax Credit, including such information as necessary to prove the information included in the application.

Compliance Requirements

The proposed rules do not impose compliance requirements on any businesses, local governments or individuals in New York State, except for those qualified taxpayers who wish to apply for the voluntary Security Guard Training Tax Credit.

Costs

The proposed rules do not pose a cost to any businesses, local governments or individuals in New York State, except for those qualified taxpayers who wish to apply for the voluntary Security Guard Training Tax Credit in accordance with Section 26 of the New York State Tax Law.

The costs related to this tax credit includes about \$400 to \$500, estimated from the current cost of security guard training multiplied by 5 days, for the training of the guards in the 40 hour Office of Homeland Security certified training. This cost is substantially less than the anticipated \$3,000 per full time security guard credit. Additionally, the necessary increases in hourly wages, as mandated to qualify for the credit under the law is an indefinite cost, which is naturally commensurate with the additionally training received by the guard. Finally, the administrative costs of preparing the tax credit application, which is unknown at this time, will depend on the individual resources of the taxpayer are anticipated. They are, however, expected to be nominal in comparison to the actual credit.

Minimizing Adverse Economic Impact on Rural Areas

There is no economic cost associated with the proposed rules, except for those qualified taxpayers who wish to apply for the voluntary Security Guard Training Tax Credit in accordance with Section 26 of the New York State Tax Law.

Rural Area Participation

While the majority of buildings 500,000 square feet or more will generally be in urban areas, there are other buildings throughout the rural areas of the State that would qualify under the definition. Owners of like kind buildings in rural areas were given the same opportunity to comment and will be eligible to apply for the tax credit.

Job Impact Statement

The Office of Homeland Security has determined that this rule will not have a substantial adverse impact on jobs and employment opportunities. Rather, to the contrary, the tax credit may foster increased jobs in the market of training of security guards, which is a requirement to apply for the tax credit. Further, the advancement of training of security guard may also have a positive economic impact on wages in the long run. The overall intent of this rule making is to satisfy the legislative mandate as described in Section 26(e) of the New York State Tax Law to provide an application process for the Security Guard Training Tax Credit.

Insurance Department

NOTICE OF ADOPTION**Physicians and Surgeons Professional Insurance Merit Rating Plans**

I.D. No. INS-46-06-00011-A

Filing No. 39

Filing date: Jan. 9, 2007

Effective date: Jan. 24, 2007

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

Action taken: Amendment of Part 152 (Regulation 124) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301 and 2343(d) and (e); L. 2002, ch. 1, part A, section 42 as amd. by L. 2002, ch. 82, part J, section 16 and L. 2005, ch. 420

Subject: Physicians and surgeons professional insurance merit rating plans.

Purpose: To establish guidelines and requirements for medical malpractice merit rating plans and risk management plans.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. INS-46-06-00011-EP, Issue of November 15, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Long Island Power Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED**Tariff for Electric Service**

I.D. No. LPA-04-07-00006-P

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

Proposed action: The authority is considering a proposal to adopt revisions to the authority's tariff for electric service relating to commercial service classifications with rate codes having time differentiated rate periods in order to accommodate a change to the start and end dates of daylight saving time (DST).

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

Subject: Tariff for electric service.

Purpose: To adopt revisions to the authority's tariff for electric service relating to commercial service classifications with rate codes having time differentiated rate periods.

Public hearing(s) will be held at: 10:00 a.m., March 13, 2007 at Huntington Town Hall, 100 Main St., Huntington, NY; and 3:00 p.m., March 13, 2007 at 333 Earle Ovington Blvd., 2nd Floor, Uniondale, NY.

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

Interpreter Service: Interpreter services will be made available to deaf 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.

Substance of proposed rule (Full text is not posted on a State website): The Long Island Power Authority ("Authority") is considering a proposal to adopt revisions to its Tariff for Electric Service relating to commercial service classifications with rate codes having time differentiated rate peri-

ods in order to accommodate a change to the start and end dates of Daylight Savings Time (DST). The Authority may approve, modify, or reject, in whole or part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Richard M. Kessel, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, e-mail: rkessel@lipower.org

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.

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.

Office of Mental Health

NOTICE OF ADOPTION

Due Process Protections Afforded to Residents of Residential Programs

I.D. No. OMH-13-06-00014-A

Filing No. 40

Filing date: Jan. 9, 2007

Effective date: Jan. 24, 2007

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

Action taken: Amendment of sections 595.9(f) and (g) and 595.10(a)(2)(vii) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 31.04

Subject: Due process protections afforded to residents of residential programs serving adults with a severe and persistent mental illness who are being discharged from such programs prior to being discharge ready.

Purpose: To strengthen the due process protections for certain residents of residential programs serving adults diagnosed with a severe and persistent mental illness who are discharged prior to being discharge ready.

Text of final rule: 1. Paragraph (2) of subdivision (c) of Section 595.9 of Title 14 NYCRR is amended to read as follows:

(2) the resident's [medical status, psychiatric status, and/or]condition has changed, as follows:

(i) the psychiatric or medical status of the resident has changed such that the resident requires inpatient hospital care; and/or

(ii) the resident's capacity for self preservation, as determined pursuant to section 595.16 of this Part, requires a level of care other than the residential program, or the resident is otherwise at risk due to requiring additional medical or psychiatric services or supports not available within the residential program.

2. Subdivisions (f) and (g) of Section 595.9 of Title 14 NYCRR are amended to read as follows:

(f) A discharge under [paragraph (c)(3) or (2) of this section for those individuals no longer capable of self preservation] subparagraph (c)(2)(ii) of this section, or a discharge under paragraph (c)(3) of this section, requires the following:

(1) The provider shall first [strive] make every reasonable effort to assist the resident in meeting [such] the responsibilities of residency as agreed to by the resident and documented in the clinical record or facilitate the resident's ability for self preservation, as applicable.

(2) If efforts under paragraph (1) of this subdivision are not successful, the provider shall conduct a clinical assessment and [strive] make every reasonable effort to identify a mutually agreed upon discharge plan. The provider and the resident shall consult as needed with the local governmental unit or other appropriate entities in an effort to have any differences between the involved parties mediated or to obtain assistance in procuring residential and service alternatives, which shall include referral to a single point of access process (or a similar successor process), where such process has been established by the local governmental unit.

(3) If efforts under paragraph (2) of this subdivision are not successful, the provider must give the resident a written 30-day preliminary notice of the intent to terminate residency providing the reason(s) for termination, any potential process for correcting the situation and alternative residential and service options. If requested by the local governmental unit, the provider shall send the written notice to the local governmental unit. If the discharge is predicated upon a resident [being] no longer being capable of self preservation, that reason must be included in such notice. Such notice shall also identify the resident grievance procedure as required in subdivision (a) of Section 595.10 of this Part, and shall advise the resident of the availability of the mental hygiene legal service.

(4) If efforts under paragraph (3) of this subdivision are not successful, the provider shall give the resident a written final notice of the intent to terminate residency [within] in 30 days, which shall set forth the reasons for termination, as well as alternative residential and service options which shall include referral to a single point of access process (or a similar successor process), where such process has been established by the local governmental unit. Such notice shall also advise the resident that he or she has the right to submit a written objection to the Office of Mental Health contact person, identified in accordance with the subdivision (a) of Section 595.10 of this Part, within 5 days of the date of the written final notice of intent to terminate residency. If requested by the local governmental unit, the provider shall send the written notice to the local governmental unit.

(5) If the resident elects to object to the determination, he or she must mail a written objection to the Office of Mental Health contact person, within 5 days of receipt of written notice of intent to terminate residency. Upon receipt of such written objection, the Office of Mental Health contact person or his/her designee shall offer the involved parties an opportunity to be heard, which shall include holding a meeting involving all relevant parties, unless waived by all parties. The meeting should be held within 10 days from the date of receipt of written notice to terminate residency, whenever possible. A written decision shall be issued to the involved parties within 5 days thereafter. An audio recording of the meeting shall be made, which shall be used, disclosed, and maintained in accordance with federal and state laws and regulations governing the privacy of individually identifying health information. The mental hygiene legal service or other advocate chosen by the resident may assist the resident with the presentation of his or her objection.

(6) If any party to the proceeding is not satisfied with the decision, a request may be made for an administrative review by the Commissioner. The Commissioner may designate an individual to conduct such administrative review and fulfill his or her responsibilities in accordance with this paragraph.

(i) The request for administrative review shall be made within 5 days of the date of receipt of the written decision of the Office of Mental Health contact person. Such request may include a written detailed statement of the factual issues in dispute.

(ii) The mental hygiene legal service or other advocate chosen by the resident may assist the resident with the submission or may make a submission on his or her behalf, provided, however, that if the submission is not made by the resident, a duly executed authorization form permitting disclosure of information to the mental hygiene legal service or other advocate for the purpose of administrative review of the matter at hand must accompany such submission.

(iii) The Commissioner will issue a final written decision to all parties within 10 days of receipt of the request for an administrative review, which shall be based on the meeting, the written submissions of the involved parties and any relevant documentation provided to the Commissioner by the involved parties. The Commissioner may, at his or her discretion, send the matter back to the relevant Office of Mental Health contact person for further review, which must take place within the 10 day period for the Commissioner's review.

(iv) The determination after the Commissioner's administrative review of the matter shall be final and is not subject to further administrative review.

(7) During the period that an objection is undergoing administrative review:

(i) the resident shall participate in all programming in which he or she agreed to participate, as set forth in the residency agreement; and

(ii) every effort feasible shall be made to maintain the resident in at least his or her current level of programming.

(g) A discharge under paragraph (c)(4) of this section requires the following:

(1) [An observation] The provider of service must determine that the resident's behavior poses an immediate and substantial threat to the health

and well-being of the resident or other individuals or creates a serious and ongoing disruption to the therapeutic environment of the residential program. [The observation] *This determination shall be documented in the clinical record. In such instance, nothing in this Section shall preclude the provider of service [may immediately arrange] from immediately arranging for the removal of the resident to a location which has been determined to be an appropriate location for the resident given the resident's current status, needs, and conduct. Such location shall have the capacity to provide reasonable safety for the resident. If necessary, such removal shall be conducted by a mental health crisis team, where available, or a police officer who is a member of an authorized police department or force, or a sheriff's department.*

(2) The provider of service may give the resident a final written notice of the intent to terminate residency with in 30 days, or if subdivision (h) of this section applies, the period provided for therein, which shall set forth the reasons for termination, as well as alternative residential and service options[.]. *Such notice shall also advise the resident that he or she has the right to submit a written objection to the Office of Mental Health contact person, identified in accordance with the subdivision (a) of Section 595.10 of this Part, within 5 days of the date of the written final notice of intent to terminate residency. The notice shall also identify the resident grievance procedure as required in subdivision (a) of Section 595.10 of this Part, and shall advise the resident of the availability of the mental hygiene legal service. If requested by the local governmental unit, the provider shall send the written notice to the local governmental unit.*

(3) The provider of service shall make diligent efforts to conduct a clinical assessment by clinical staff who are qualified by credentials, training and experience to conduct such assessments to either assist in the reentry of the resident to the program or to recommend discharge from the program. Such efforts shall be documented in the clinical record. *The provider of service shall also make diligent efforts, in consultation with the local governmental unit, to make [Recommendations] recommendations for appropriate residential and treatment alternatives and interventions available to the resident [shall be made] upon discharge from the program, which shall include referral to a single point of access process (or a similar successor process) where such process has been established by the local governmental unit.*

(4) *If the resident elects to object to the determination, he or she must mail a written objection to the Office of Mental Health contact person, within 5 days of receipt of the final written notice of intent to terminate residency. Upon receipt of such written objection, the Office of Mental Health contact person or his/her designee shall offer the involved parties an opportunity to be heard, which shall include holding a meeting involving all relevant parties, unless waived by all parties. Such meeting should occur within 10 days of receipt of the resident's written objection, whenever possible. A written decision shall be issued to the involved parties within 5 days thereafter. An audio recording of the meeting shall be made, which shall be used, disclosed, and maintained in accordance with federal and state laws and regulations governing the privacy of individually identifying health information. The mental hygiene legal service or other advocate chosen by the resident may assist the resident with the presentation of his or her objection.*

(5) *If any party to the proceeding is not satisfied with the decision, a written request may be made for an administrative review by the Commissioner. The Commissioner may designate an individual to conduct such administrative review and fulfill his or her responsibilities in accordance with this paragraph.*

(i) *The request for administrative review shall be made within 5 days of the date of receipt of the written decision by the Office of Mental Health contact person. Such request may include a written detailed statement of the factual issues in dispute.*

(ii) *The mental hygiene legal service or other advocate chosen by the resident may assist the resident with the submission or may make a submission on his or her behalf, provided, however, that if the submission is not made by the resident, a duly executed authorization form permitting disclosure of information to the mental hygiene legal service or other advocate for the purpose of administrative review of the matter at hand must accompany such submission.*

(iii) *The Commissioner will issue a final written decision to all parties within 10 days of receipt of the request for an administrative review, which shall be based on the meeting, the written submissions of the involved parties and any relevant documentation provided to the Commissioner by the involved parties. The Commissioner may, at his or her discretion, send the matter back to the relevant Office of Mental Health*

contact person for further review, which must take place within the 10 day period for the Commissioner's review.

(iv) *The determination after the Commissioner's administrative review of the matter shall be final and is not subject to further administrative review.*

(6) *During the period that the matter is being reviewed by the Office of Mental Health contact person, or by the Commissioner or his/her designee, nothing herein shall preclude a relocation or discharge of a person pending a final administrative decision, provided, however, that the resident shall be assured appropriate residency, and every effort shall be made to maintain the health and safety of all residents of the program, until the issuance of a final administrative determination.*

(i) *The program shall hold the bed until such time as determination by the Commissioner is made, but in such circumstances the bed need not be held for more than 30 days.*

(ii) *In the event the final determination of the Commissioner or his or her designee is that there lacked sufficient grounds to terminate the residency, the Commissioner shall direct that the resident be permitted to re-enter the program, unless it is determined that it would be clinically inappropriate for the resident or others for such resident to so return. In this event, prior to issuing his/her final determination within 10 days of receipt of the request for an administrative review in accordance with paragraph (5) of this subdivision, the Commissioner (or his or her designee) must provide sufficient written notice to the resident and the program, and to any persons authorized by the resident to receive such notice, that relevant clinical information for consideration by the Commissioner may be submitted within 5 days from the date of such notice.*

3. Subparagraph (vii) of paragraph (2) of subdivision (a) of Section 595.10 of Title 14 NYCRR is amended to read as follows:

(vii) the resident grievance procedure, which shall:

(a) ensure an objective review of the issues, timely resolution and adequate documentation;

(b) ensure that the name and number of a New York State Office of Mental Health contact person is made available to a resident upon admission and again whenever a grievance process cannot be resolved to the satisfaction of all parties;

Final rule as compared with last published rule: Nonsubstantive changes were made in section 595.9(c)(2), (f), (6)(iii), (f)(5), (g)(4) and (5)(iii).

Text of rule and any required statements and analyses may be obtained from: Julie Rodak, Director, Bureau of Policy, Regulation and Legislation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 474-1331, e-mail: colejar@omh.state.ny.us

Revised Regulatory Impact Statement

1. Statutory authority:

Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction and to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the provision of services for the mentally ill pursuant to an operating certificate.

2. Legislative objectives:

14 NYCRR Part 595 sets forth standards for the operation of licensed residential programs serving adult individuals diagnosed with a severe and persistent mental illness.

3. Needs and benefits:

Part 595 was developed to establish operating and administration standards for licensed residential programs serving adult individuals diagnosed with a severe and persistent mental illness. In December of 2003, Disability Advocates, Inc. (DAI) initiated a lawsuit challenging that portion of 14 NYCRR Part 595 which permits residents in residential programs for adults to be removed without the need for the provider to go to Housing Court for an eviction order. The challenge was brought in federal court (Northern District of New York) on the basis of federal due process and equal protection guarantees. OMH's position in response to this challenge is that landlord/tenant law does not apply, as licensed residential programs are treatment programs, not housing programs. As such, residents are discharged from these programs, not evicted from housing. In fact, discharge planning commences at the time the resident is admitted to the program.

DAI indicated it would be willing to consider settling the matter if the provisions of Part 595 in question were amended to provide additional due process protections to residents. These proposed amendments represent the results of our settlement discussions with them.

4. Costs:

(a) There are no additional costs to the providers associated with the implementation and continuing compliance with these regulations. However, these amendments may result in an additional cost to providers in certain cases where a resident wishes to appeal a determination to discharge him or her based on the grounds set forth in 14 NYCRR Section 595.9(c)(4), (i.e., the resident's behavior poses an immediate and substantial threat to the health, safety, and well-being of the resident or other individuals or creates a serious and ongoing disruption of the therapeutic environment of the residential program). Although the program retains the ability to immediately relocate the resident, under the proposed revisions, in cases where a resident so discharged elects to appeal this determination, the proposed amendments will require the program to hold the bed for the resident until such time as a determination by the Commissioner is made regarding the appropriateness of the relocation or discharge, but in such circumstances the bed need not be held for more than 30 days. This may, only in those cases, result in some additional cost to providers as they will not be able to repopulate the bed during this time.

(b) Neither the Office of Mental Health nor local governmental units will incur increases in expenditures associated with the rule.

5. Local government mandates:

While no new mandates are directly imposed on local governments, in cases where non discharge-ready residents are discharged, specific reference is now made to utilization of a single point of access process (or similar successor process), where such process has been established by the local governmental unit, to obtain assistance in procuring residential and service alternatives. However, no new or additional duties or responsibilities are imposed upon county, city, town, village, school or fire districts.

6. Paperwork:

The regulatory amendment will not require providers of service to furnish additional information, reports, records, or data.

7. Duplication:

The regulatory amendment does not duplicate existing State or federal requirements.

8. Alternatives:

The only alternative to the regulatory amendments is to proceed with the litigation. While OMH does not believe that the regulations in their current form violate federal due process and equal protection guarantees in any way and believes that the suit can be successfully defended, the consequences of OMH losing the lawsuit could be very serious for persons with mental illness. Were OMH to lose the lawsuit, it is possible that disputed discharges from the programs to which these regulations apply could only be made by obtaining an order of eviction through the Housing Court. This would not only be very costly to individual providers, but it would likely have a devastating negative impact on the continued availability of these programs for many persons suffering from mental illness, particularly those who have higher service needs. OMH believes these amendments represent a reasonable compromise in recognizing that residential programs for adults are first and foremost treatment programs, but providing reasonable dispute resolution due process for residents who are to be discharged from the program before they are discharge ready.

9. Federal standards:

The regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule:

[The amendments will be effective upon adoption] *The amendments shall apply to discharges for which notices to terminate have been issued on or after April 1, 2007.*

Regulatory Flexibility Analysis

The public comments received and revisions made to the Express Terms published with this Notice of Adoption do not require a change to the Regulatory Flexibility Analysis that was last published in the March 29, 2006 issue of the *State Register*. No substantial revisions were made to the express terms and the changes made merely provided further clarification of the rule.

Rural Area Flexibility Analysis

The public comments received and revisions made to the Express Terms published with this Notice of Adoption do not require a change to the Rural Area Regulatory Flexibility Analysis that was last published in the March 29, 2006 issue of the *State Register*. No substantial revisions were made to the express terms and the changes made merely provided further clarification of the rule.

Job Impact Statement

The public comments received and revisions made to the Express Terms published with this Notice of Adoption do not require a change to the Job

Impact Statement that was last published in the March 29, 2006 issue of the *State Register*. No substantial revisions were made to the express terms and the changes made merely provided further clarification of the rule.

Assessment of Public Comment

Comments were received from one trade organization, which raised a number of issues, as follows:

1. Issue: To ensure that residential programs are not subject to landlord/tenant claims, OMH should pursue legislation to amend the RPAPL.

Response: This comment goes beyond the scope of the proposed amendments.

2. Issue: An objection was raised with respect to any outside entity making discharge decisions. The proposed amendments give OMH ultimate authority over decisions that create the most risk to program participants and staff.

Response: In cases where there is an immediate risk to program participants and staff, the regulations permit a relocation or discharge of the individual pending a final administrative decision. The process is also designed to maximize the opportunities for the program and individual to reach agreement on a discharge decision, with the matter only coming before OMH in cases where such an agreement could not be reached. Decisions will be made based on whether or not the provider complied with applicable laws and regulations, consistent with OMH's authority as set forth in Mental Hygiene Law Sections 31.01, 31.02, and 31.04.

3. Issue: There is no deadline for the OMH contact person to offer involved parties an opportunity to be heard, which could extend the process indefinitely.

Response: The regulations have been amended to accommodate this comment, such that in each place in the regulations in which such a meeting is required, it must be held within 10 days from the date of receipt of written notice to terminate residency, whenever possible.

4. Issue: There is no deadline for OMH within which to review a request for administrative review, if sent by the Commissioner to an OMH contact person.

Response: The regulations were amended to clarify that in each case where the Commissioner sends the matter back to the relevant OMH contact person for further review, this review must take place within the 10 day period for the Commissioner's review.

5. Issue: In cases where a person has been discharged because he or she requires a higher level of medical or psychiatric care, the provisions of the amendments that require providers to make every effort feasible to maintain the individual in at least his/her current level of programming do not make sense.

Response: We agree. The regulations were clarified to ensure that persons who require a higher level of medical or psychiatric care will have their beds held for 45 days in accordance with 14 NYCRR Section 595.9(h), but will not be subject to the requirements of either subdivisions (f) or (g) of such Section.

6. Issue: The word "observation" is replaced by "determination" in Section 595.9(g)(1), however the term "determination" is not defined. It implies a higher threshold, and may mean that a clinical judgment need be made.

Response: This is an opinion. We do not agree. Prior to the change, providers must make "an observation" that the resident's behavior poses an immediate and substantial threat to the health and well-being of the resident, or create a serious disruption. In other words, such an event must actually occur in order for it to be observed. A "determination" gives a provider latitude in taking many things into consideration, including but not necessarily limited to an "observation."

7. Issue: Under Part 595.9(g)(6)(i), it is unclear if the determination in this section applies to the appropriateness of the decision to relocate or discharge, or if it applies to the actual placement.

Response: Reference to a determination in this subparagraph is to the pending determination that will be made in Section 595.9(g)(6)(ii), which indicates that the determination applies to whether or not there were sufficient grounds to terminate the residency.

8. Issue: With respect to Section 595.9 (g)(6)(ii), an objection was raised with respect to the resident being given an opportunity to submit additional clinical information, without similar consideration given to the provider.

Response: We agree. The regulations have been amended such that both the resident and the program are provided with the same opportunity to submit additional information.

9. Issue: There is disagreement with respect to whether there will be additional costs to providers as a result of these amendments.

Response: OMH maintains there are no additional costs to the providers associated with the implementation and continuing compliance with these regulations. We acknowledge that these amendments may result in an additional cost to providers in certain cases where a resident wishes to appeal a determination to discharge him or her based on the grounds set forth in 14 NYCRR Section 595.9(c)(4), (i.e., the resident's behavior poses an immediate and substantial threat to the health, safety, and well-being of the resident or other individuals or creates a serious and ongoing disruption of the therapeutic environment of the residential program). Although the program retains the ability to immediately relocate the resident, under the proposed revisions, in cases where a resident so discharged elects to appeal this determination, the proposed amendments will require the program to hold the bed for the resident until such time as a determination by the Commissioner is made regarding the appropriateness of the relocation or discharge, but in such circumstances the bed need not be held for more than 30 days. This may, only in those cases, result in some additional cost to providers as they will not be able to repopulate the bed during this time. Working proactively to resolve disagreements before they reach this level, or voluntarily working with a resident and the OMH Field Offices to seek alternative placement in cases where disagreements are not able to be resolved may reduce the number of cases that reach this level.

10. Issue: It is impossible for providers to be in compliance with the amendments on the date adopted.

Response: OMH has amended the compliance schedule such that the amendments will apply to discharges made on or after April 1, 2007. A Revised Regulatory Impact Statement has been submitted amending the compliance schedule in this fashion.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY RULE MAKING

Enrollment and Appeals in Medicare Prescription Drug Plans

I.D. No. MRD-46-06-00017-E

Filing No. 26

Filing date: Jan. 5, 2007

Effective date: Jan. 5, 2007

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

Action taken: Addition of Subpart 635-11 and amendment of section 635-99.1 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07(a), (c), 13.09(b) and 13.15(a)

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

Specific reasons underlying the finding of necessity: Since January 1, 2006 Medicare beneficiaries have been able to have their prescription drugs paid for under Medicare Part D. Certain individuals with both Medicare and Medicaid benefits, known as dually eligible persons, were automatically enrolled in Medicare Part D effective January 1, 2006. Unlike Medicaid and traditional Medicare, Part D benefits are paid not by the government, but by private companies, known as prescription drug plans. In order to receive these benefits, a person must enroll in a prescription drug plan.

In New York there are many prescription drug plans for persons to choose from. However, each plan has its own formulary (a list of drugs the plan covers), participating pharmacies and other features. Formularies, participating pharmacies and other features vary from plan to plan.

Persons who are already dually eligible have been automatically enrolled in a prescription drug plan, and persons who will become dually eligible in the future will be automatically enrolled in a plan. In addition, each year some dual eligible persons will be automatically reassigned to a plan because their current plan will not be offered for the next year or because their current plan will be able to charge them premiums and co-pays during the next year (i.e., will no longer be a benchmark plan). In all

cases, assignment to a particular plan is done on a random basis. A person could be enrolled in a plan that is not right for him or her. For example, the plan could not cover the medications he or she needs, or could use a pharmacy that is not convenient for the person. In order to be in a plan that is better for the individual, the person has to change plans.

Beginning on November 15, 2005, Medicare beneficiaries could enroll in prescription drug plans, and persons who are dual eligible could change plans. Moreover, plans have exceptions and appeals processes whereby people can request additional coverage and benefits. OMRDD does not know how many people it serves are eligible for only Medicare. However, there are approximately 39,500 dual eligible persons to whom this regulation applies.

This regulation authorizes certain people to make enrollment and exceptions and appeals decisions for consumers receiving services from OMRDD or from an OMRDD regulated provider. Without the regulation, these parties cannot enroll consumers in a prescription drug plan, change plans for consumers or request that plans cover additional drugs for a consumer. Consumers would be left without a prescription drug plan or, if dually eligible, could be enrolled in plans that do not meet their needs. Consumers also could be unable to request coverage for drugs not on a plan's formulary. Consumers would then have to pay for their prescriptions themselves or, in the case of consumers living in residential facilities certified by OMRDD, the operator of the residential facility would have to pay for the prescriptions. The regulation needs to be effective immediately so that enrollment changes, initial enrollments, and other actions related to a Medicare Part D prescription drug plan can take place for these consumers.

Subject: Enrollment and appeals in Medicare prescription drug plans.

Purpose: To identify and authorize those parties who may enroll or act for a person who does not have the ability to enroll or act for herself or himself in a Medicare prescription drug plan.

Text of emergency rule: • Add new Subpart 635-11 as follows:

Subpart 635-11 Enrollment in a Medicare prescription drug plan.

Section 635-11.1 Applicability and definitions.

(a) *This subpart sets forth rules concerning who can enroll beneficiaries in a Medicare Part D prescription drug plan or in a Medicare Advantage Plan with prescription drug coverage, and who can pursue grievances, complaints, exceptions and appeals in such plans. These rules only concern beneficiaries who receive services which are operated, certified, authorized or funded by OMRDD.*

(b) *Definitions. As used in this subpart:*

(1) *"Act in the Part D review process" means doing any of the following within the Part D program:*

(i) *filing a grievance;*

(ii) *submitting a complaint to the quality improvement organization;*

(iii) *requesting and obtaining a coverage determination (including, but not limited to, a request for prior authorization, an exception to a tiered cost sharing structure, a formulary exception and a request for expedited procedures); and*

(iv) *filing and requesting appeals and dealing with any part of the appeals process.*

(2) *"Enroll and enrollment" means enrollment in a PDP and dis-enrollment from a PDP.*

(3) *"Party" means someone or an entity or organization.*

(4) *"PDP" means a prescription drug plan offered under the Medicare Part D program or a Medicare Advantage Plan that provides prescription drug coverage offered under the Medicare Part D program.*

Section 635-11.2 Enrollment and reviews for persons residing in a residential facility operated or certified by OMRDD or a family care home.

(a) *If a person has the ability to choose a PDP, the person may enroll himself or herself in a PDP or appoint another party to enroll him or her. If a person has the ability to act in the Part D review process, the person may act in the Part D review process for himself or herself or appoint another party to act in the Part D review process for him or her.*

(b) *If a person lacks the ability to choose a PDP, but has a guardian lawfully empowered to enroll him or her in a PDP, the guardian may enroll the person in a PDP or appoint another party to enroll the person. If a person lacks the ability to act in the Part D review process, but has a guardian lawfully empowered to act in the Part D review process for the person, the guardian may act in the Part D review process or may appoint another party to act in the Part D review process for the person.*

(c) *If a person is a minor and does not have a guardian lawfully empowered to enroll him or her in a PDP or to act in the Part D review*

process, a parent may enroll him or her or act in the Part D review process for the person, or may appoint another party to enroll or act in the Part D review process for him or her.

(d) In all other situations, the chief executive officer (CEO) (see section 635-99.1) of the agency operating the person's residential facility or sponsoring the family care home, or a designee of the CEO, may enroll the person or act in the Part D review process. The CEO or designee may also enroll the person or act in the Part D review process when any party specified in subdivisions (a) - (c) of this section who would otherwise enroll or act in the Part D review process is unwilling or unavailable.

(1) If a CEO or designee enrolls a person, he or she shall give written notice of such enrollment to the person's correspondent or advocate, and the person's Medicaid service coordinator.

(2) Process to request a different PDP.

(i) A correspondent or advocate may request that the person be enrolled in a different PDP. Such request must be in writing.

(ii) The agency or sponsoring agency shall consider the request and, if it agrees with the request, the CEO or designee shall enroll the person in the PDP requested and notify the advocate or correspondent of the enrollment.

(iii) If the agency or sponsoring agency does not agree with the request, the agency or sponsoring agency shall notify the correspondent or advocate in writing of the disagreement. The notice shall also inform the advocate or correspondent that he or she may appeal in writing to the DDSO Director.

(iv) If the advocate or correspondent appeals in writing to the DDSO Director, the DDSO Director shall review the request and relevant information and shall decide whether to enroll the person in a different PDP. Such decision shall be in writing and shall be sent to the correspondent or advocate and agency or sponsoring agency.

(v) While a request is being considered, the person shall remain enrolled in the PDP selected by the CEO or designee, or in a PDP in which the person is subsequently enrolled by the CEO or designee.

(3) Notwithstanding any other provision of this Title, if the person enrolls in a PDP (or a parent, guardian or appointee enrolls him or her) and the CEO or designee notifies the person, guardian, parent or appointee of the agency or sponsoring agency of the objection to the selection of the PDP, the agency or sponsoring agency is not fiscally responsible for any excess costs that may be incurred, as a result of the selection of the PDP, compared to the costs of the PDP that would have been selected by the CEO or designee. The agency or sponsoring agency's written notification of the objection must inform the person, guardian, parent or appointee that the excess costs are not the responsibility of the agency or sponsoring agency and that the person, guardian, parent or appointee (whoever completed the enrollment) is responsible for the additional costs. Receipt of the written notification must be documented.

Section 635-11.3 Enrollment and reviews for persons not residing in a residential facility or a family care home.

(a) If a person has the ability to choose a PDP, the person may enroll himself or herself in a PDP or appoint another party to enroll him or her. If a person has the ability to act in the Part D review process, the person may act in the Part D review process for himself or herself or appoint another party to act in the Part D review process for him or her.

(b) If a person lacks the ability to choose a PDP, but has a guardian lawfully empowered to enroll him or her in a PDP, the guardian may enroll the person in a PDP or appoint another party to enroll the person. If a person lacks the ability to act in the Part D review process, but has a guardian lawfully empowered to act in the Part D review process for the person, the guardian may act in the Part D review process or appoint another party to act in the Part D review process for the person.

(c) If the person is a minor and does not have a guardian lawfully empowered to enroll him or her in a PDP or to act in the Part D review process, a parent may enroll the person or act in the Part D review process, or may appoint another party to enroll the person or act in the Part D review process.

(d) In all other situations, or if any party specified in subdivisions (a) - (c) of this section who would otherwise enroll the person or act in the Part D review process is unwilling or unavailable, any of the following parties may enroll the person, act in the Part D review process or appoint another party to act in the Part D review process:

(1) an actively involved: spouse, parent, adult child, adult sibling, adult family member or friend, an advocate or correspondent; or

(2) if none of the above are willing and available, the CEO (or designee) of the agency providing service coordination for the person.

Section 635-11.4 Other responsibilities and rights of agencies and sponsoring agencies regarding enrollment and reviews.

(a) No CEO, officer, designee or employee of an agency or sponsoring agency shall solicit, accept or receive from a PDP, pharmacy or contractor of a PDP or pharmacy, for personal use or benefit (other than for the personal use or benefit of the person being enrolled), any payment, discount or other remuneration in consideration of, or as a result of, enrolling the person in a PDP.

(b) No CEO, officer, designee or employee of an agency or sponsoring agency shall charge, accept or receive payment from the person, family or anyone else for enrolling the person in a PDP, for providing advice and assistance in choosing a PDP or for acting for the person in the Part D review process.

(c) When a CEO or designee is authorized to act by this section or appointed to act in the Part D review process for a person, the CEO or designee may appoint a party outside of the agency to act in the Part D review process for the person.

(d) When a CEO or designee enrolls a person he or she shall choose a PDP based on the best interests of the person.

(e) Nothing in this Subpart shall be deemed to diminish or remove the authority of a physician to request a coverage determination or an expedited redetermination on behalf of a beneficiary.

- Revisions to § 635-99.1 Glossary

(c) Agency. The ["agent" or] "operator" of a facility, program or service operated, [or] certified, authorized, or funded through contract by OMRDD. In the case of State-operated facilities, the [B/]DDSO is considered to be the "agency". [Certified] [f]Family care providers are not to be considered an agency (also see "agency, sponsoring").

(e) Agency, sponsoring. The administrator of one or more family care homes. In the case of family care homes operated under State auspice, the [B/]DDSO is considered to be the sponsoring agency.

Note: The following definitions are moved to the proper place in alphabetical order and the rest of the subdivisions renumbered accordingly.

(n) [B/] DDSO. *The Developmental Disabilities Services Office is [T] the local administrative unit[, responsible to the Division of Program Operations of OMRDD, that has major responsibility for the planning and development of community, residential and other program services. The B/ DDSO is responsible for coordinating the service delivery system within a particular service area, planning with community and provider agencies, and ensuring that specific placement of individuals and program plans and provider training programs are implemented. In New York City this unit is called the Borough Developmental Services Office (BDSO); elsewhere in the State it is called the Developmental Disabilities Services Office (DDSO).] of OMRDD. The governing body of the DDSO is the central office administration of OMRDD. The DDSO director is its chief executive officer.*

() Officer, chief executive. *Someone designated by the governing body (see section 635-99.1) with overall and ultimate responsibility for the operation of services certified, authorized or funded through contract by OMRDD, or his or her other designee for specific responsibilities and/or equipment as specified in written agency/facility policy. In a DDSO, this party is referred to as the director.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. MRD-46-06-00017-P, Issue of November 15, 2006. The emergency rule will expire March 5, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Regulatory Impact Statement

1. Statutory Authority:

a. Section 13.07(a) of the Mental Hygiene Law gives OMRDD responsibility for assuring the development of comprehensive plans, programs and services in the areas of prevention, care, treatment, habilitation, reha-

bilitation, vocational and other education and training of persons with mental retardation and developmental disabilities.

b. Section 13.07(c) of the Mental Hygiene Law gives OMRDD responsibility for seeing that persons with mental retardation and developmental disabilities are provided with services, including care and treatment; that such services are of high quality and effectiveness and that the personal and civil rights of persons receiving such services are protected. This section of the law also requires that the services provided seek to promote and attain independence, inclusion, individuality and productivity for persons with mental retardation and developmental disabilities.

c. Section 13.09(b) of the Mental Hygiene Law requires the Commissioner of OMRDD to adopt rules and regulations necessary and proper to implement any matter under his jurisdiction.

d. Section 13.15(a) of the Mental Hygiene Law requires the Commissioner to establish, develop, coordinate and conduct programs and services of prevention, care, treatment, rehabilitation and training for the benefit of persons with mental retardation and developmental disabilities. This section also requires the Commissioner to take all actions necessary, desirable or proper to implement the purposes of the Mental Hygiene Law and to carry out the purposes and objectives of OMRDD within available funding.

2. Legislative Objectives: The emergency amendments further the legislative objectives embodied in sections 13.07(a), 13.07(c), 13.09(b) and 13.15(a) of the New York State Mental Hygiene Law by authorizing parties other than guardians to act on behalf of the many adult consumers served by OMRDD who do not have the capacity to make decisions about the Medicare prescription drug benefit and who do not have guardians. The emergency amendments also authorize other parties to pursue appeals and other reviews for these consumers, so that their rights in a prescription drug plan will be protected.

3. Needs and Benefits: The new Medicare prescription drug program began January 1, 2006. This program is also known as Medicare Part D. Persons who are in Part D have their prescription drugs paid for through private insurance plans, known as prescription drug plans. Persons who have Medicare must enroll in a prescription drug plan in order to receive this benefit. However, persons who have Medicare and Medicaid are automatically enrolled in a plan. These persons are known as dual eligible persons.

Dual eligible persons were and will continue to be randomly assigned to a prescription drug plan as new persons become eligible for the benefit, and as plans no longer participate in Part D or lose their benchmark status. The formularies (lists of drugs each plan covers), participating pharmacies and other services can vary from plan to plan, so that the plan to which a beneficiary is randomly assigned may not be the one best suited to that person's needs.

Unlike Medicare-only beneficiaries, dual eligible persons can change prescription drug plans at any time. From November 15 to December 31, 2005, dual eligible persons could change plans as often as they want. Since January 1, 2006, dual eligible persons can change plans once a month.

Prescription drug plans are required to have review processes. These will allow persons to, for example, complain about the plan, request payment for a drug not on the plan's formulary, request a lower co-pay for a drug in a higher payment tier and appeal from any decision of the plan that is not what the beneficiary requested.

Federal regulations and policy state that only certain persons can make decisions about what prescription drug plan to choose and about pursuing a review: the beneficiary, someone appointed by the beneficiary or someone whom state law authorizes to act on behalf of a beneficiary. Federal guidelines cite guardians as an example of those whom state law authorizes to act for a beneficiary.

There are approximately 39,500 consumers who are dually eligible and who receive services from OMRDD or from an OMRDD regulated provider. Many of these consumers are adults, do not have the capacity to make decisions about the Medicare prescription drug benefit and do not have guardians. OMRDD developed this regulation to help these consumers. These regulations serve as state law which will authorize other people to act on behalf of these consumers, so that they can be enrolled in the prescription drug plan that is right for them. These regulations also serve as state law which will authorize other people to pursue appeals and other reviews for these consumers, so that their rights in a prescription drug plan will be protected.

Specifically, if the person is over 18, without the ability to decide, does not have a guardian and lives in a residential facility, the agency operating the residence can make the decisions. The executive director of the agency has this decision making authority, but he or she can also designate some-

one else in the agency to make these decisions. If a guardian or parent is supposed to make the decisions, but is unwilling or unavailable, the CEO or designee of the residential agency decides.

For adult consumers living at home or on their own who do not have the ability to make decisions about Part D, and who do not have a guardian, any of the following can make Part D decisions: an actively involved spouse, parent, adult child, adult sibling, adult family member, adult friend, advocate or correspondent. If none of these people are available or willing, the CEO (or designee) of the Medicaid Service Coordination agency can choose.

4. Costs: OMRDD considers the emergency amendments to be cost neutral. These emergency amendments may result in some cost savings.

a. Costs to Regulated Parties: No new costs are projected to be incurred by the regulated parties due to the implementation and ongoing compliance with emergency amendments. The emergency amendments may result in cost savings because those consumers receiving services from OMRDD who are affected by the emergency amendments (or members of their families) will not have to seek guardianship to participate in a prescription drug plan or to switch to a more cost effective plan. In addition, the provider of residential services may experience some cost savings because the plan in which the dual eligible consumer is auto-enrolled may result in higher costs to the provider than the plan in which the consumer is enrolled through the mechanisms established by this regulation. Providers are responsible for the costs of all necessary medications that are not covered by a prescription drug plan or some other mechanism.

b. Costs to the Agency, the State and Local Governments: There are no costs to local governmental units or any other special districts. New York State may also experience savings as a provider of state-operated residences (see above). Additionally, New York State and its local governments may experience a savings in the cost of court operations since the emergency amendments make the guardianship process unnecessary for many consumers.

5. Local Government Mandates: There are no new mandates on local governmental units or any other special districts.

6. Paperwork: There are minimal new paperwork requirements resulting from the regulations. If the residential agency chooses to enroll residents the agency is required to notify the advocate or correspondent of the resident. On the other hand, paperwork associated with seeking guardianship and making guardianship decisions is avoided, if guardianship is necessary only to facilitate enrollment in a Medicare prescription drug plan. Paperwork necessary to enroll beneficiaries and act in the Part D review process would be necessary regardless of the promulgation of these regulations.

To facilitate enrollment processes, OMRDD has developed new forms that can be used to appoint someone to enroll the beneficiary. These optional forms can assist consumers, guardians, parents and others who seek to appoint someone else, and are available on the OMRDD website at www.omr.state.ny.us.

7. Duplication: None.

8. Alternatives: If OMRDD did not promulgate the emergency amendments, consumers receiving OMRDD services who are eligible for Medicare only, without the ability to choose a plan and without a guardian would be unable to participate in the Medicare Part D program. Consumers who are dually eligible and without the ability to choose the plan and without a guardian would be unable to move from plans that did not meet their needs, and possibly have to pay for medicines out-of-pocket (or have their residential providers incur such expenses), and have to pursue time-consuming exceptions and appeals that could be avoided by simply switching plans. For some consumers, even the most suitable plan will not cover all medications they need, and consumers in those plans will need to pursue coverage determinations, exceptions and appeals. Without this regulation, adult consumers without guardians who do not have the ability to pursue coverage determinations, exceptions and appeals would be unable to do so.

9. Federal Standards: The emergency amendments do exceed any minimum standards of the Federal government.

10. Compliance Schedule: No time is necessary for regulated parties to achieve compliance with the rule because similar standards have been in effect as an emergency rule since November 15, 2005. In addition, the rule itself does not contain any compliance requirements for the regulated parties. Instead, the rule establishes processes which may be utilized by regulated parties and others at their discretion.

Regulatory Flexibility Analysis

1. Effect on small businesses: These emergency amendments apply to providers of OMRDD residential services and/or providers of Medicaid Service Coordination (MSC), both State-operated and voluntary-operated.

OMRDD has determined, through a review of the certified cost reports, that the voluntary not-for-profit organizations which operate the facilities or provide MSC employ fewer than 100 employees at the discrete certified or authorized sites, and would, therefore, be classified as small businesses.

The emergency amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will not cause undue hardship to small businesses due to increased costs for additional services or increased compliance requirements. The amendments result in no new costs for these entities.

2. Compliance requirements: The emergency amendments require the regulated parties to notify the consumer's advocate (if applicable) and the correspondent (if applicable) of the plan when the CEO of an agency operating a certified residence or his or her designee enrolls the consumer in a prescription plan.

3. Professional services: No additional professional services are required as a result of these emergency amendments. The amendments will have no impact on the professional service needs of the local government.

4. Compliance costs: There are no costs to local governments or small businesses.

5. Economic and technological feasibility: The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse economic impact: These emergency amendments impose no adverse economic impact on local governments or small businesses.

7. Small business and local government participation: OMRDD convened several task forces and committees concerning the implementation of the new Federal Medicare Part D benefit, including a work group that had as one of its specific charges the development of the emergency amendments. Membership of the various groups included providers of services, both State and voluntary-operated, provider association representatives, family members of consumers and other advocates for persons with mental retardation and developmental disabilities. Several of the task forces, committees and sub-committees will have continued to meet to oversee the Part D implementation throughout 2006 and will continue to meet in 2007.

Presentations and ongoing discussions have occurred with the Commissioner's Advisory Council on Family Care and the Statewide Committee on Family Support Services and also with the Part D task force (mentioned above) that helped develop this regulation. A series of informational mailings and frequent e-mail updates regarding Part D generally have been sent to affected providers beginning in June 2005. OMRDD promulgated a similar emergency regulation on November 15, 2005, February 13, 2006, May 12, 2006, August 10, 2006 and on November 8, 2006 and sent informational mailings about the regulations to affected parties. OMRDD has also posted relevant information on its website at www.omr.state.ny.us.

OMRDD has received only positive feedback on the amendments from providers of services, both voluntary and state-operated and family members of consumers since similar amendments first became effective on November 15, 2005.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for the emergency amendments has not been submitted. OMRDD has determined that the amendments will not impose any adverse impact, reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The emergency amendments identify and authorize those parties who may enroll or act for a person who does not have the ability to enroll or act for herself or himself in a Medicare prescription drug plan.

Job Impact Statement

A Job Impact Statement is not submitted because the amendment will not have an adverse impact on existing jobs or employment opportunities. The emergency amendments identify and authorize those parties who may enroll or act for a person who does not have the ability to enroll or act for herself or himself in a Medicare prescription drug plan.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Enrollment and Appeals in Medicare Prescription Drug Plans

I.D. No. MRD-46-06-00017-A

Filing No. 41

Filing date: Jan. 9, 2007

Effective date: Jan. 24, 2007

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

Action taken: Addition of Subpart 635-11 and amendment of section 635-99.1 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07(a), (c), 13.09(b) and 13.15(a)

Subject: Enrollment and appeals in Medicare prescription drug plans.

Purpose: To identify and authorize those parties who may enroll or act for a person who does not have the ability to enroll or act for herself or himself in a Medicare prescription drug plan.

Text or summary was published in the notice of proposed rule making, I.D. No. MRD-46-06-00017-P, Issue of November 15, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection of the Networks between Margaretville Telephone Company, Inc. and Sprint Communications Company L.P.

I.D. No. PSC-04-07-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Margaretville Telephone Company, Inc. and Sprint Communications Company L.P. for approval of an interconnection agreement executed on Dec. 15, 2006.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Margaretville Telephone Company, Inc. and Sprint Communications Company L.P. have reached a negotiated agreement whereby Margaretville Telephone Company, Inc. and Sprint Communications Company L.P. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until December 15, 2007, or as extended.

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:

Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.
(06-C-1583SA1)

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

Elimination of the Annual Limit on Non-Rate Incentives by Rochester Gas and Electric Corporation

I.D. No. PSC-04-07-00009-P

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

Proposed action: In a petition dated Dec. 22, 2006, Rochester Gas and Electric Corporation (RG&E) proposes to eliminate the \$2.2 million annual limit on expenditures for non-rate economic development incentives under its Economic Development Programs.

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

Subject: Elimination of the annual limit on non-rate incentives under RG&E's Economic Development Program.

Purpose: To approve the elimination of the annual limit on non-rate incentives under RG&E's Economic Development Program.

Substance of proposed rule: In a petition dated December 22, 2006, Rochester Gas and Electric Corporation (RG&E) proposes to eliminate the \$2.2 million annual limit on expenditures for non-rate economic development incentives under its Economic Development Program. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(02-E-198SA11)

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

Uniform System of Accounts by the City of Jamestown Board of Public Utilities

I.D. No. PSC-04-07-00010-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 a petition filed by the City of Jamestown Board of Public Utilities seeking permission to recover a deferral amortization of maintenance costs from the dismantling fund set aside in the commission's Sept. 29, 2005 order. The commission may accept, reject, or modify, in whole or in part, the recovery requested.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), and 66(1), (5), (9), and (12)

Subject: Uniform system of accounts—request for recovery of deferral amortization.

Purpose: To allow the City of Jamestown Board of Public Utilities to recover a deferral amortization.

Substance of proposed rule: The Commission is considering a petition by the City of Jamestown Board of Public Utilities seeking permission to recover a deferral amortization of maintenance costs from the dismantling fund set aside in the Commission's September 29, 2005 Order. The Commission may accept, reject, or modify, in whole or in part, the recovery requested.

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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(04-E-1485SA2)

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

Municipal Electric Pole Attachment Rates

I.D. No. PSC-04-07-00011-P

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

Proposed action: The commission is considering methods for determining pole attachment rates charged by municipal electric companies as set out in a notice requesting comments issued on Nov. 21, 2006 in Case 06-E-1427.

Statutory authority: Public Service Law, sections 65(1), 66(5) and (12)

Subject: Municipal electric pole attachment rates.

Purpose: To consider methods for determining municipal electric pole attachment rates.

Substance of proposed rule: The Commission is considering methods for determining pole attachment rates charged by municipal electric companies as set out in a Notice Requesting Comments issued on November 21, 2006 in Case 06-E-1427.

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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(06-E-1427SA1)

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

Petition for Rehearing by Orange and Rockland Utilities, Inc.

I.D. No. PSC-04-07-00012-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 or reject, in whole or in part, a petition for rehearing and clarification filed by Orange and Rockland Utilities, Inc. (Orange and Rockland or the Company) in Case 06-E-1433.

Statutory authority: Public Service Law, section 22

Subject: Order instituting proceeding and to show cause issued Dec. 15, 2006 in Case 06-E-1433.

Purpose: To clarify the order on the grounds that the order is not clear in several instances as to the parameters of the information that the company is required to file.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a Petition for Rehearing and Clarification filed by Orange and Rockland Utilities, Inc. (Orange and Rockland or the Company) in Case 06-E-1433. Orange and Rockland has requested rehearing of the Order Instituting Proceeding to Show Cause issued December 15, 2006, on the grounds that reducing the Company's electric rates pursuant to the accelerated schedule envisioned by the Order would violate the Company's equal protection rights. Orange and Rockland also has requested clarification of the Order on the grounds that the Order is not clear in several instances as to the parameters of the information that the Company is required to file.

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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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. (06-E-1433SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Uniform System of Accounts by the City of Jamestown Board of Public Utilities

I.D. No. PSC-04-07-00013-P

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

Proposed action: The Public Service Commission is considering a petition filed by the City of Jamestown Board of Public Utilities seeking permission to defer expenses related to a gas turbine major maintenance overhaul. The commission may accept, reject, or modify, in whole or in part, the relief requested.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1) and 66(1), (5), (9) and (12)

Subject: Uniform system of accounts—request for accounting authorization to defer expenses.

Purpose: To allow the City of Jamestown Board of Public Utilities to defer expenses beyond the end of the current fiscal year.

Substance of proposed rule: The Commission is considering a petition by the City of Jamestown Board of Public Utilities seeking permission to defer expenses related to a gas turbine major maintenance overhaul. The Commission may consider the accounting treatment of these expenses, and prescribe a methodology to recover these expenses from customers. The Commission may accept, reject, or modify, in whole or in part, the relief requested.

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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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. (06-E-1577SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Residential Time-of-Use Service by Central Hudson Gas & Electric Corporation

I.D. No. PSC-04-07-00014-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 or reject, in whole or in part, a proposal filed by Center Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 15, to become effective April 3, 2007.

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

Subject: Residential time-of-use service.

Purpose: To eliminate the daylight saving time qualification contained in the time-of-use period definitions.

Substance of proposed rule: The Commission is considering Central Hudson Gas & Electric Corporation's (Central Hudson) request to modify Service Classification No. 6—Residential Time-of-Use Service. Central Hudson proposes to eliminate the Daylight Savings Time qualification contained in the Time-of-Use period definitions. Central Hudson's filing has a proposed effective date of April 3, 2007. The Commission may approve, reject or modify, in whole or in part, Central Hudson'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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-E-0012SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Issuance of Common Stock by Corning Natural Gas Corporation

I.D. No. PSC-04-07-00015-P

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

Proposed action: The Commission is considering whether to accept, reject, or modify the request by Corning Natural Gas Corporation to have increased flexibility in the terms by which it is authorized to issue common stock, including attaching warrants to the shares. The modification relates to the remaining shares previously authorized by a prior order issued on Jan. 23, 2003.

Statutory authority: Public Service Law, section 69

Subject: Issuance of common stock.

Purpose: To allow increased flexibility in the terms to issue the common stock already authorized in a prior order issued on Jan. 23, 2003.

Substance of proposed rule: The commission is considering whether to accept, reject, or modify the request by Corning Natural Gas Corporation (Corning) to have increased flexibility in the terms by which it was previously authorized to issue up to 300,000 shares of Common Stock. The modification relates to the remaining shares previously authorized by the Commission's order issued on January 23, 2003. Corning now seeks to expand the purposes for which the stock sale proceeds can be used to paying down existing lines of credit, payment of current sinking fund obligations, and any other purpose permitted by law. Corning also seeks

approval to couple warrants to purchase additional shares (above the 300,000 authorized) with the stock on condition that the issuance of those additional warranted shares remains subject to prior approval by the Commission. In addition, Corning seeks authorization to sell the stock, at its option, by means other than a public offering.

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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(02-G-1106SA3)

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

Annual Reconciliation of Gas Expenses and Gas Cost Recoveries by Corning Natural Gas Corporation

I.D. No. PSC-04-07-00016-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, the filing made by Corning Natural Gas Corporation (Corning) to revise the reconciliation rates established in the order concerning the annual reconciliation of gas costs issued Dec. 22, 2006. The commission may consider all other related matters.

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

Subject: Annual reconciliation of gas expenses and gas cost recoveries.

Purpose: To consider Corning's filing regarding the reconciliation rates established by the commission in the order concerning the annual reconciliation of gas costs issued Dec. 22, 2006 and all other related matters.

Substance of proposed rule: Pursuant to 16 NYCRR § 720-6.5, local gas distribution companies are required to file annual reconciliations of gas costs by October 15th of each year. The 2006 Order concerning the Annual Reconciliation of Gas Costs issued December 22, 2006 reconciled purchased gas costs and gas cost recoveries for the twelve months ended August 31, 2006, and either refunded or surcharged the differences to customers over a 12 month period beginning January 2007.

Corning Natural Gas Corporation's (Corning) Annual Reconciliation of Gas Cost filing contained several errors. Corning did not file revisions, and as a result, the Public Service Commission (Commission) ordered the annual reconciliation rates developed by the Department of Public Service Staff (Staff) to become effective for Corning's three gas supply areas. The Order stated that, if Corning disagreed with the reconciliation rates, Corning could present supporting evidence in a formal filing. Corning filed a revised reconciliation on December 26, 2006.

The Commission is considering whether to approve, reject, or modify, in whole or in part, the filing made by Corning to revise the reconciliation rates established in the Order concerning the Annual Reconciliation of Gas Costs and all 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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(06-G-1581SA1)

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

Transfer of Water Supply Assets and Electronic Tariff Filings by Adrian's Acres West Water Company, Inc., et al.

I.D. No. PSC-04-07-00017-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 or reject, in whole or in part, or modify, a joint petition filed by Adrian's Acres West Water Company, Inc., Upper Porter Mountain Water Association and Lower Porter Mountain Association for approval to transfer the water supply assets of Adrian's Acres West Water Company, Inc., to Upper Porter Mountain Water Association and Lower Porter Mountain Water Association.

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

Subject: Transfer of water supply assets and electronic tariff filings.

Purpose: To transfer the water supply assets of Adrian's Acres West Water Company, Inc. to Upper Porter Mountain Water Association and Lower Porter Mountain Water Association and approve electronic tariff schedules, P.S.C. 1—Water, for Upper Porter Mountain Water Association and Lower Porter Mountain Water Association.

Substance of proposed rule: On October 4, 2006, Adrian's Acres West Water Company, Inc. (Adrian's Acres), Upper Porter Mountain Water Association (Upper Porter) and Lower Porter Mountain Water Association (Lower Porter) filed a joint petition requesting approval to transfer the water supply assets of Adrian's Acres to Upper Porter and Lower Porter. Adrian's Acres currently provides water service to 13 year-round customers and 19 seasonal customers and is located in the Town of Keene, Essex County.

On December 11, 2006, Upper Porter and Lower Porter each filed an electronic tariff schedule, P.S.C. No. 1—Water, which sets forth the rates, charges rules and regulations under which the associations will provide water service to become effective April 1, 2007. The tariff defines when a bill will be delinquent and establishes a late payment charge and a returned check charge. The restoration of service charge will be \$25. Upper Porter and Lower Porter also request waiver of the Public Service Commission's rate setting authority. The Commission may approve or reject, in whole or in part, or modify the petition.

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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(06-W-1187SA1)

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

Issues of Stock, Bonds and Other Forms of Indebtedness; Charges by Beaver Dam Lake Water Corporation

I.D. No. PSC-04-07-00018-P

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

Proposed action: The commission is considering the petition of Beaver Dam Lake Water Corporation for approval to issue and sell long-term debt in an amount not to exceed \$2.1 million and to increase a water surcharge.

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

Subject: Issues of stock, bonds and other forms of indebtedness; charges.

Purpose: To allow Beaver Dam Lake Water Corporation to enter into a loan agreement and increase charges.

Substance of proposed rule: The Commission is considering whether to approve, reject or modify the petition of Beaver Dam Lake Water Corporation for approval to enter into a loan agreement with the Environmental Facilities Corporation for a total amount of \$2.1 million. The loan will be for either thirty or twenty years, depending on whether the company is successful in obtaining a hardship designation from the Environmental Facilities Corporation. Additionally, in order to pay for the loan the company has asked to increase its current customer surcharge from \$320 per customer to approximately \$900.

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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(06-W-1561SA1)

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

Water Rates and Charges by Spring Glen Lake Water Company LLC

I.D. No. PSC-04-07-00019-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 or reject, in whole or in part, or modify, tariff revisions filed by Spring Glen Lake Water Company LLC to make various changes in the rates, charges, rules and regulations in its tariff schedule, P.S.C. No. 1—Water, to become effective April 1, 2007.

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

Subject: Water rates and charges.

Purpose: To increase Spring Glen Water Company LLC’s annual revenues by about \$20,124 or 479 percent.

Substance of proposed rule: On January 5, 2007, Spring Glen Lake Water Company LLC (Spring Glen or the company) filed to become effective April 1, 2007, P.S.C. No. 1 -Water, Leaf Nos. 1-12 and Escrow Statement No. 1. Spring Glen filed a new electronic tariff in compliance with Public Service Commission Order in Cases 04-W-0983 and 06-W-0060 dated August 7, 2006. In addition, Spring Glen requests to increase its annual revenues by about \$20,124 or 479%. The annual flat rate service charge for residential service would increase from \$113.50 to \$657.40 and would be billed quarterly in advance at \$164.35. The company requests an Escrow Account with a maximum balance of \$15,000 for the purpose of making repairs in excess of the amount allowed in rates. Customers would be surcharged \$40 per quarter until the maximum balance is reached and would be replenished as needed. The company’s electronic tariff defines when a bill will be delinquent and establishes a Late Payment Charge of 1 1/2% on unpaid bills of 30 days or longer and a Returned Check Charge equal to the bank charge plus a handling fee of \$5, not to exceed the maximum allowed by Section 5-328 of the General Obligations Law. The company proposes a Restoration of Service Charge of \$25 during normal business hours (8:00 AM to 4:00 PM, Monday through Friday) and \$50 outside of normal business hours Monday through Friday and on weekends or public holidays. Spring Glen’s proposed tariff is available on the Commission’s Home Page on the World Wide Web (www.dps.state.ny.us) -

located under the file room - Tariffs. The company provides flat rate water service to approximately 37 customers in a real estate development known as Spring Glen Lakes Estates in the Town of Mamakating, Sullivan County. The Commission may approve or reject, in whole or in part, or modify, the company’s proposed tariff revisions.

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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(07-W-0018SA1)

State University of New York

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

**Contracting and Purchasing Materials, Services and Construction
I.D. No.** SUN-04-07-00007-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 316.4(b) and (e) of Title 8 NYCRR.

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

Subject: Contracting and purchasing materials, supplies, equipment, services and construction.

Purpose: To implement the results of negotiations between the State University and the Office of the State Comptroller which relate to procurement thresholds.

Text of proposed rule: (b) Competitive selection process.

(1) Up to [\$30,000] \$50,000, a campus may purchase commodities or services directly from a responsible vendor of its choice without formal competitive bidding. While no competitive bidding is required, a campus should take the steps necessary to ensure that prices are reasonable.

(2) Over [\$30,000] \$50,000 up to [\$75,000] \$125,000, a campus must solicit a minimum of three informal quotations or proposals from responsible vendors.

(3) Over [\$75,000] \$125,000, a campus must solicit a minimum of five sealed bids or proposals.

(4) The following types of contracts/purchases are exempt from the above bidding requirements:

- (i) purchases from existing New York State Office of General Services centralized State contracts;
- (ii) sole source, single source or emergency contracts;
- (iii) contracts under which the university provides consideration other than money;

(iv) Intercollegiate Athletics NCAA Division 1 Program procurements up to [\$150,000] \$250,000, upon written determination that competition is not feasible due to the unique nature of the program or circumstances. Such determination must be consistent with standard NCAA Division 1 practices used for intercollegiate athletics programs nationally. The selection must be justified and the prices demonstrated to be reasonable and competitive;

(v) purchases not exceeding [\$50,000] \$125,000 from small business and certified minority-and women-owned business enterprises, and of a commodity or technology that is recycled or manufactured, provided that the campus shall purchase from a responsible vendor and should take steps necessary to ensure that prices are reasonable; and

(vi) the purchase of New York State labeled wine, produced by a winery licensed in accordance with the requirements of section 76 of the Alcohol Beverage Control Law shall be exempt from competitive requirements, regardless of amount. For the purposes of this subparagraph, New York State labeled wine is made from grapes, at least 75 percent of the volume of which were grown in New York State.

* * * * *

(e) External agency contract and purchase order approvals.

(1) Contracts and purchase orders up to [\$150,000] \$250,000 shall require no prior approval by any State agency in order to be binding on the State University, subject to the following exceptions:

(i) a bid protest has been received prior to the time the contract or purchase order is fully executed;

(ii) the apparent low bid or best value is not selected;

(iii) the award is not made in accordance with the provisions of the IFB or RFP; or

(iv) a single or sole source procurement.

(2) In the case of the exceptions in subparagraphs (1)(i)-(iv) of this subdivision, the prior approval of the Attorney General and the Office of the State Comptroller, but no other State agency, will be required for contracts in excess of [\$75,000] \$125,000.

(3) For all intercollegiate athletics NCAA Division I agreements, the exceptions in subparagraphs (1)(i)-(iv) of this subdivision shall not apply, and no approval shall be required by any State agency for such transactions up to [\$150,000] \$250,000.

(4) For those campuses which have been determined by the Vice Chancellor [for Finance and Business] and Chief Financial Officer to lack adequate internal controls, the approval of the Attorney General and Office of the State Comptroller, but no other State agency, will be required for all contracts and purchase orders (other than intercollegiate athletics NCAA Division I agreements) in excess of \$50,000, or in excess of \$75,000 for hospital contracts and purchase orders, until such time as the adequacy of internal controls can be certified.

(5) Contracts exceeding [\$150,000] \$250,000 are subject to the approval of the Attorney General and the Office of the State Comptroller, after consultation with, but not prior approval of, any other State agency, in order to be binding on the State University.

(6) The approval of the Office of the State Comptroller is required for contracts where the State University provides consideration other than money having a reasonably estimated value in excess of \$10,000.

(7) Contracts for the acquisition of facilities suitable for the delivery of health services by purchase, lease, sublease, transfer of jurisdiction or otherwise, and for the repair, maintenance, equipping, rehabilitation or improvement of any such facilities, shall be subject to the prior approval of the Attorney General, Director of the Budget and the Office of the State Comptroller, regardless of amount.

Text of proposed rule and any required statements and analyses may be obtained from: Rose Marie Scrodanus, Associate Counsel, State University of New York, University Plaza, S-315, Albany, NY, (518) 443-5400, e-mail: Rosemarie.Scrodanus@SUNY.edu

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

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

Consensus Rule Making Determination

This rulemaking change will not be of interest to any public or private entity because Education Law section 355 (5) (a) (i) provides that the State University Trustees are authorized, after consultation with the Office of General Services, to annually enter negotiations with the Office of the State Comptroller for the purpose of increasing the contract dollar thresholds set forth in such section. The proposed changes are the direct result of consultation with the Office of General Services and negotiations with the Office of the State Comptroller.

Job Impact Statement

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses an agreement between SUNY and the Office of the State Comptroller.

Urban Development Corporation

EMERGENCY RULE MAKING

Restore New York's Communities Initiative

I.D. No. UDC-04-07-00003-E

Filing No. 31

Filing date: Jan. 9, 2007

Effective date: Jan. 9, 2007

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

Action taken: Addition of Part 4245 to Title 21 NYCRR.

Statutory authority: L. 1994, ch. 169; L. 2001, ch. 471; Urban Development Corporation Act, section 5(4); 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: Effective provision of economic development assistance in accordance with the enabling legislation (including recent amendments thereto) requires creation of the rule.

Subject: Restore New York's Communities Initiative.

Purpose: To provide the framework for administration of the Restore New York's Communities Initiative evaluation criteria, terms and conditions, and the application and evaluation process and make changes to expand the types of program assistance.

Substance of emergency rule: The Restore New York's Communities Initiative (the "Program") was created pursuant to Chapter 109 of the Laws of 2006 (the "Enabling Legislation"). The general purpose of the Program is to promote economic development in the State by encouraging economic and employment opportunities for the State's citizen's and stimulating development of communities throughout the State.

The Enabling Legislation creates Sections 16-n of the New York State Urban Development Corporation Act (the "UDC Act") which governs the Program. The Enabling Legislation requires the New York State Urban Development Corporation d/b/a the Empire State Development Corporation (the "Corporation") to promulgate rules and regulations for the Program (the "Rules") in accordance with the provisions of the State Administrative Procedure Act ("SAPA"). The Rules set forth the framework for the eligibility, evaluation criteria, application and project process and administrative procedures of the Program as follows:

1. Program Assistance:

a) Demolition and Deconstruction Grants of up to twenty thousand dollars per residential real property in need of demolition or deconstruction on the property assessment list.

b) Rehabilitation and Reconstruction Grants of up to one hundred thousand dollars for real property in need of rehabilitation or reconstruction on the property assessment list.

The proposed new Rule sets for the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York's Communities Initiative set forth in Section 16-n of the Urban Development Corporation Act. The initiative promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire April 8, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Antovk Pidejian, Empire State Development Corporation, 633 Third Ave., 37th Fl., New York, NY 10017, (212) 803-3792, e-mail: apidedjian@empire.state.ny.us

Regulatory Impact Statement

1. Statutory Authority:

Chapter 109, Laws of 2006 (Unconsolidated Laws, Section 6266-n. Another Unconsolidated Laws Section 6266-n was added by another act)

authorized the Urban Development Corporation, d/b/a Empire State Development Corporation (the "Corporation") to implement the Restore New York's Communities Initiative (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers municipalities assistance for the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities.

2. Legislative Objective:

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention of jobs or increasing business activity within municipalities or regions of the State.

3. Need and Benefits:

The Program's legislation assists job creation throughout the State by providing the following types of assistance:

- a) Demolition and Deconstruction Grants of up to twenty thousand dollars per residential real property in need of demolition or deconstruction on the property assessment list.
- b) Rehabilitation and Reconstruction Grants of up to one hundred thousand dollars for real property in need of rehabilitation or reconstruction on the property assessment list.

The proposed new Rule sets for the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York's Communities Initiative set forth in Section 16-n of the Urban Development Corporation Act. The initiative promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

1. Evaluation Criteria – The Corporation, will review and evaluate applications for assistance pursuant to eligibility requirements and criteria set forth in the UDC Act and the Rule.

2. Application procedure – Approval of applications shall be made only upon a determination by the Corporation:

- (i) that the proposed project would promote the economic health of the State by facilitating the creation or retention of jobs or would increase business activity within a political subdivision or region of the State or would enhance or help to maintain the economic viability the State.
- (ii) that the project would be unlikely to take place in the State without the requested assistance; and
- (iii) that the project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs.

4. Costs:

The funding source is appropriation funds. Savings will occur as a result of the use of standard applications which allow staff to efficiently assist in the application process.

5. Local Government Mandates:

There is no imposition of any mandates upon local governments by the amended rule.

6. Paperwork: There are no additional reporting or paperwork requirements as a result of this amended rule. Standard applications used for most other Corporation assistance will be employed. This simplification and consolidation is part of the Corporation's overall effort to streamline all of its programs, and, thereby, facilitate, the application process for all of the Corporation's clients.

7. Duplication: There are no duplicative, overlapping or conflicting rules or legal requirements, either federal or state.

8. Federal Standards: There are no applicable federal government standards which apply.

9. Alternatives: This Program was created by the Legislature in our representative form of government. The Corporation is implementing this legislation. It is not for the Corporation to say what harm would be caused by doing nothing. With respect to implementing legislation, doing nothing is NOT an option.

10. Compliance Schedule: No significant time will be needed for compliance.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The proposed Rule will provide the framework for administration of the Restore New York's Communities Initiative (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating develop-

ment of communities throughout the State. The program, in furtherance of the foregoing, offers municipalities assistance for the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities.

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention of jobs or increasing business activity within municipalities or regions of the State.

The proposed new Rule sets for the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York's Communities Initiative set forth in Section 16-n of the Urban Development Corporation Act. The Program promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

2. Compliance Requirement:

No affirmative acts will be needed to comply.

3. Professional Services:

No professional services will be needed to comply.

4. Compliance Costs:

No initial costs will be needed to comply with the proposed Rule.

5. Economic Feasibility:

The Rule makes the Program assistance feasible for local governments, by expressly stating that municipalities are eligible for certain types of Program assistance while permitting local governments access to all other types of Program assistance for which they may be eligible. It is also economically feasible for local governments to coordinate their respective economic development and job retention and attraction efforts.

6. Minimizing Adverse Impact:

The revised rule will have no adverse economic impact on small business or local governments.

7. Small Business and Local Participation:

The Program is a product of the legislative process and, thereby, has had the input of all small businesses participating in the representative process of government. The Program emphasizes the effective provision of economic development throughout New York State. Program funds are available only to municipalities. Small business will benefit from the aid to municipalities provided for this economic development. The Corporation will work with local governments to identify problem areas and make grant applications available.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis Statement is not submitted because the amended rule will not impose any adverse economic impact, reporting requirements, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A JIS is not 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 opportunities. In fact, the proposed amended rule should have a positive impact on job creation because it will facilitate administration of and access to the Empire State Economic Development Fund, which should improve the opportunities for the creation of jobs throughout the State by encouraging business expansion and attraction.

**EMERGENCY
RULE MAKING**

Empire State Economic Development Fund

I.D. No. UDC-04-07-00004-E

Filing No. 38

Filing date: Jan. 9, 2007

Effective date: Jan. 9, 2007

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: L. 1994, ch. 169; L. 2001, ch. 471; Urban Development Corporation Act, section 5(4); and L. 1968, ch. 174

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

Specific reasons underlying the finding of necessity: Effective provision of economic development assistance in accordance with the enabling

legislation (including recent amendments thereto) requires clarification of the rule.

Subject: Empire State Economic Development Fund.

Purpose: To provide the framework for administration of the Empire State Economic Development Fund, evaluation criteria, terms and conditions, and the application and evaluation process and make changes to expand the types of program assistance.

Substance of emergency rule: The Empire State Economic Development Fund (the "Program") was created pursuant to Chapter 309 of the Laws of 1996 as amended by Chapter 432 of the Laws of 1997 and Chapter 471 of the Laws of 2001 (the "Enabling Legislation"). The general purpose of the Program is to promote economic development in the State by encouraging economic and employment opportunities for the State's citizen's and stimulating development of communities throughout the State.

The Enabling Legislation creates Sections 16-m and 16-l of the New York State Urban Development Corporation Act (the "UDC Act") which govern the Program. The Enabling Legislation requires the New York State Urban Development Corporation d/b/a the Empire State Development Corporation (the "Corporation") to promulgate rules and regulations for the Program (the "Rules") in accordance with the provisions of the State Administrative Procedure Act ("SAPA"). The Rules set forth the framework for the eligibility, evaluation criteria, application and project process and administrative procedures of the Program as follows:

1. Program Assistance:

a) *General Development Financing* for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; working capital; and feasibility or planning studies.

b) *Federal and Urban Site Development Financing* for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; and preliminary planning and the soft costs related to any of the above uses.

c) *Competitiveness Improvement Program* for Competitiveness Improvement projects.

d) *Infrastructure Development Financing* for construction or renovation of basic systems and facilities on public or privately-owned property including drainage systems, sewer systems, access roads, sidewalks, docks, parking, wharves, water supply systems, and site clearance, preparation, improvements and demolition; soft costs related to any of the above uses; and preliminary planning.

e) *Regional and Economic Industrial Planning Studies and Economic Development Initiatives* for the purpose of preparation of strategic plans for local and or regional economic development; the analysis of business sectors; marketing and promoting regional business clusters and feasibility studies. Grants for Economic Development Initiatives may be made for the identification of new business opportunities; planning for new enterprise development; and the management of economic development projects provided that the Corporation could not undertake such project.

f) *Commercial Area Development Financing* for new construction, renovation or leasehold improvements; the soft costs related to any of the above uses; and preliminary planning, including feasibility studies and surveys and reports.

g) *Capital Access Program* funds for Capital Access Projects provided through Flexible Financing Programs may be used for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; and working capital.

h) *Rural Revitalization Program* to support community economic development programs and activities including value added small business growth, agricultural, agribusiness and forest products and those projects that promote the family farm, increase or retain employment opportunities and otherwise contribute to the revitalization of local rural areas which are economically distressed.

The proposed amended Rule expands the types of assistance available under the Program. Specifically, the proposed Sections 4243.40-4243.41 allow for grants for the purpose of developing a statewide infrastructure that delivers financing and technical assistance to micro businesses across the state to stimulate new and existing micro business development relating to the use of agricultural products, forest products, cottage and crafts industries, tourism, and other businesses as provided for in subparagraph (i) of paragraph (e) of subdivision 2 of Section 16-l of the section 1 of chapter 174 of the laws of 1968 and 4243.39(a)(4)(i) of this Part, provided such business employs five or fewer full-time persons and is based on the production, processing, and/or marketing of products grown or produced in New York State.

Additionally, the proposed Sections 4243.42-4243.44 provide emergency General Development Financing working capital grant assistance to small businesses, not-for-profit entities, and large businesses that were damaged by the floods that occurred in Southern Tier, Mid-Hudson, Capital and Mohawk Valley Regions and surrounding vicinity of the State of New York during the week of June 26, 2006.

Furthermore, the proposed Sections 4243.45-4243.46 allow for General Development Financing working capital assistance exclusively to State agencies and authorities that own or operate facilities used in connection with the tourism industry. With respect to this type of assistance, costs may be incurred before the application date and before the receipt of a program acceptance letter for such assistance and such assistance may be used for the reduction and repayment of outstanding debt, including payment of any tax or employee benefit arrearages, or to create a reserve for future costs and expenses.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire April 8, 2007.

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

Regulatory Impact Statement

1. Statutory Authority:

Chapter 84, Laws of 2002 (Unconsolidated Laws, Section 6266-m), which was originally enacted by Chapter 309, Laws of 1996 and amended by Part M1 Section 5 of the Article VII Bill of the Budget of 2003, authorized the Urban Development Corporation, d/b/a Empire State Development Corporation (the "Corporation") to implement The Empire State Economic Development Fund (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers private businesses, government entities and not-for-profit entities various forms of assistance, including loans, loan guarantees and grants. Chapter 471, Laws of 2001, (Unconsolidated Laws, Section 6266-l) authorized the Corporation to extend this type of assistance to eligible beneficiaries in rural areas of the State. Chapter 236, Laws of 2004 added micro business revolving loan assistance for rural development. Section 5(4) of the New York State Urban Development Corporation Act (Unconsolidated Laws, Section 6255(4)), which was originally enacted as Chapter 174 of the Laws of 1968, authorizes the Corporation to make rules and regulations with respect to its projects, operations, properties and facilities, in accordance with Section 102 of the Executive Law.

2. Legislative Objective:

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention of jobs or increasing business activity within municipalities or regions of the State.

3. Need and Benefits:

Currently, the Program's legislation assists job creation throughout the State by providing the following types of assistance:

1) *General Development Financing* for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; working capital; and feasibility or planning studies.

2) *Federal and Urban Site Development Financing* for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; and preliminary planning and the soft costs related to any of the above uses.

3) *Competitiveness Improvement Program* for Competitiveness Improvement projects.

4) *Infrastructure Development Financing* for construction or renovation of basic systems and facilities on public or privately-owned property including drainage systems, sewer systems, access roads, sidewalks, docks, parking, wharves, water supply systems, and site clearance, preparation, improvements and demolition; soft costs related to any of the above uses; and preliminary planning.

5) *Regional and Economic Industrial Planning Studies and Economic Development Initiatives* for the purpose of preparation of strategic plans for local and or regional economic development; the analysis of business sectors; marketing and promoting regional business clusters and feasibility studies. Grants for Economic Development Initiatives may be made for the identification of new business opportunities; planning for new enterprise

development; and the management of economic development projects provided that the Corporation could not undertake such project.

6) Commercial Area Development Financing for new construction, renovation or leasehold improvements; the soft costs related to any of the above uses; and preliminary planning, including feasibility studies and surveys and reports.

7) *Capital Access* Program funds for Capital Access Projects provided through Flexible Financing Programs may be used for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; and working capital.

8) *Rural Revitalization Assistance* grants or contracts for services, on a competitive basis in response to requests for proposals, to eligible entities and organizations to support community economic development programs and activities which increase or retain employment opportunities in rural New York State and otherwise contribute to the revitalization of local rural areas which are economically distressed through innovative activities designed to generate economic alternatives and opportunities in rural areas.

The proposed change will improve the accessibility of the program to eligible entities throughout the State and enable the Corporation to more effectively administer the Program. The goal of such improvements is to better achieve the Program's objectives, including the retention and creation of employment opportunities, and to otherwise contribute to the economic health of New York State.

The proposed amended Rule expands the types of assistance available under the Program. Specifically, the proposed Sections 4243.40-4243.41 allow for grants for the purpose of developing a statewide infrastructure that delivers financing and technical assistance to micro businesses across the state to stimulate new and existing micro business development relating to the use of agricultural products, forest products, cottage and crafts industries, tourism, and other businesses as provided for in subparagraph (i) of paragraph (e) of subdivision 2 of Section 16-1 of the section 1 of chapter 174 of the laws of 1968 and 4243.39(a)(4)(i) of this Part, provided such business employs five or fewer full-time persons and is based on the production, processing, and/or marketing of products grown or produced in New York State.

Additionally, the proposed Sections 4243.42-4243.44 provide emergency General Development Financing working capital grant assistance to small businesses, not-for-profit entities, and large businesses that were damaged by the floods that occurred in Southern Tier, Mid-Hudson, Capital and Mohawk Valley Regions and surrounding vicinity of the State of New York during the week of June 26, 2006.

Furthermore, the proposed Sections 4243.45-4243.46 allow for General Development Financing working capital assistance exclusively to State agencies and authorities that own or operate facilities used in connection with the tourism industry. With respect to this type of assistance, costs may be incurred before the application date and before the receipt of a program acceptance letter for such assistance and such assistance may be used for the reduction and repayment of outstanding debt, including payment of any tax or employee benefit arrearages, or to create a reserve for future costs and expenses.

1. Evaluation Criteria—The Corporation, will continue to review and evaluate applications for assistance pursuant to eligibility requirements and criteria set forth in the UDC Act and the Rule.

2. Application procedure—Approval of applications shall be made only upon a determination by the Corporation:

(i) that the proposed project would promote the economic health of the State by facilitating the creation or retention of jobs or would increase business activity within a political subdivision or region of the State or would enhance or help to maintain the economic viability the State.

(ii) that the project would be unlikely to take place in the State without the requested assistance; and

(iii) that the project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs.

4. Costs:

The changes should not increase costs for the Program.

The funding source is appropriation funds. Savings will occur as a result of the use of standard applications which allow staff to efficiently assist in the application process.

5. Local Government Mandates:

There is no imposition of any mandates upon local governments by the amended rule.

6. Paperwork:

There are no additional reporting or paperwork requirements as a result of this amended rule. Standard applications used for most other Corpora-

tion assistance will be employed. This simplification and consolidation is part of the Corporation's overall effort to streamline all of its programs, and, thereby, facilitate, the application process for all of the Corporation's clients.

7. Duplication:

There are no duplicative, overlapping or conflicting rules or legal requirements, either federal or state.

8. Federal Standards:

There are no applicable federal government standards which apply.

9. Alternatives:

This Program was created by the Legislature in our representative form of government. The Corporation is implementing this legislation. It is not for the Corporation to say what harm would be caused by doing nothing. With respect to implementing legislation, doing nothing is NOT an option.

10. Compliance Schedule:

No significant time will be needed for compliance.

Regulatory Flexibility Analysis

1. Effect of Rule:

The amended Rule will improve the accessibility of the program to eligible entities throughout the State and enable the Corporation to more effectively administer the Program. The goal of such improvements is to better achieve the Program's objectives, including the retention and creation of employment opportunities, and to otherwise contribute to the economic health of New York State.

The proposed amended Rule expands the types of assistance available under the Program. Specifically, the proposed Sections 4243.40-4243.41 allow for grants for the purpose of developing a statewide infrastructure that delivers financing and technical assistance to micro businesses across the state to stimulate new and existing micro business development relating to the use of agricultural products, forest products, cottage and crafts industries, tourism, and other businesses as provided for in subparagraph (i) of paragraph (e) of subdivision 2 of Section 16-1 of the section 1 of chapter 174 of the laws of 1968 and 4243.39(a)(4)(i) of this Part, provided such business employs five or fewer full-time persons and is based on the production, processing, and/or marketing of products grown or produced in New York State.

Additionally, the proposed Sections 4243.42-4243.44 provide emergency General Development Financing working capital grant assistance to small businesses, not-for-profit entities, and large businesses that were damaged by the floods that occurred in Southern Tier, Mid-Hudson, Capital and Mohawk Valley Regions and surrounding vicinity of the State of New York during the week of June 26, 2006.

Furthermore, the proposed Sections 4243.45-4243.46 allow for General Development Financing working capital assistance exclusively to State agencies and authorities that own or operate facilities used in connection with the tourism industry. With respect to this type of assistance, costs may be incurred before the application date and before the receipt of a program acceptance letter for such assistance and such assistance may be used for the reduction and repayment of outstanding debt, including payment of any tax or employee benefit arrearages, or to create a reserve for future costs and expenses.

This should not affect the Program's accessibility to small business.

2. Compliance Requirement:

No affirmative acts will be needed to comply.

3. Professional Services:

No professional services will be needed to comply.

4. Compliance Costs:

No initial costs will be needed to comply with the amended rule.

5. Economic and Technological Feasibility:

The Rule makes The Empire State Economic Development Fund assistance feasible for small businesses, by expressly stating that small businesses are eligible for certain types of program assistance while permitting small businesses access to all other types of program assistance for which they may be legible, notwithstanding the size of such businesses. The Rule also makes the program assistance feasible for local governments by expressly stating that government entities and municipalities are eligible for program assistance. It is also economically feasible for local governments to coordinate their respective economic development and job retention and attraction efforts with the program. There are no aspects of the Rule that make The Empire State Economic Development Fund assistance or the Rule technologically infeasible for small business or local government.

6. Minimizing Adverse Impact:

The revised rule will have no adverse economic impact on small business or local governments.

7. Small Business and Local Participation:

The Program is a product of the legislative process and, thereby, has had the input of all small businesses participating in the representative process of government. The Empire State Economic Development Fund emphasizes the effective provision of economic development throughout New York State. Small business may participate by requesting assistance when the requisite eligibility criteria are met. The Corporation will work with local governments to identify problem areas and make grant applications available.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis Statement is not submitted because the amended rule will not impose any adverse economic impact, reporting requirements, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A JIS is not 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 opportunities. In fact, the proposed amended rule should have a positive impact on job creation because it will facilitate administration of and access to the Empire State Economic Development Fund, which should improve the opportunities for the creation of jobs throughout the State by encouraging business expansion and attraction.