

# RULE MAKING ACTIVITIES

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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.

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## Banking Department

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### NOTICE OF ADOPTION

#### Authorization and Education Requirements for Mortgage Loan Originators

**I.D. No.** BNK-01-08-00019-A

**Filing No.** 308

**Filing date:** March 28, 2008

**Effective date:** April 16, 2008

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

**Action taken:** Addition of Part 420 and Supervisory Procedure 107 to Title 3 NYCRR.

**Statutory authority:** Banking Law, art. 12-E

**Subject:** Authorization and education requirements for mortgage loan originators.

**Purpose:** To require persons who originate mortgage loans on residential real property on or after Jan. 1, 2008 to be authorized by the Superintendent of Banks; set forth application exemption and approval procedures for authorization as a mortgage loan originator (MLO); set forth education requirements for MLOs, describe prohibited conduct and set forth penalties. Supervisory Procedure MB 107 sets forth the details of the application procedure.

**Substance of final rule:** PART 420

Section 420.1 summarizes Section 599-c of the Banking Law, which describes the authorization and application process to become a Mortgage

Loan Originator (MLO), and Section 599-g of the Banking Law, which describes the grounds for suspension or revocation of an MLO authorization.

Section 420.2 summarizes the exemptions from the requirement to register as an MLO that are contained in Section 599-e of the Banking Law.

Section 420.3 contains a number of definitions of terms that are used in Part 420, including the crucial terms “Mortgage Loan Originator, Mortgage Loan Originating, and Originating Entity”.

Section 420.4 sets forth the application procedure for initial authorization as an MLO. It includes two grace periods that are contained in the Banking Law, and one that is being adopted by the Superintendent of Banks under authority granted in Section 599-h of the Banking Law and Section 5 of chapter 749 of the laws of 2006. Specifically, a person who was employed by or affiliated with an Originating Entity as an MLO prior to January 1, 2008 may continue to engage in Mortgage Loan Originating until the earlier of January 1, 2010 or the date such person receives notice from the Superintendent that his or her application has been denied. Such a person must file an application to become authorized by July 1, 2008, or such later date as the Superintendent may agree with such MLO’s Originating Entity. A person who is initially employed by or affiliated with an Originating Entity as an MLO on or after January 1, 2008 may engage in Mortgage Loan Originating after April 1, 2008 only if he or she has submitted an application, fingerprints and required fees in accordance with Part 420 and either such person or his or her Originating Entity has received notice from the Superintendent that his or her application has been accepted for processing and has not received notice that such application has been denied.

This Section also sets forth information as to the elements of an application for authorization.

Section 420.5 allows Originating Entities to employ certain persons after the January 1, 2008 effective date of the MLO provisions of the Banking Law, even though they have not yet become authorized.

Section 420.6 sets forth the method in which the Superintendent will notify applicants of the approval or denial of an application to become an authorized MLO. It summarizes the statutory grounds on which the Superintendent may deny an application. It also repeats the statutory requirement that the Superintendent maintain on the Department’s website a list of authorized MLOs.

Section 420.7 describes the “inactive status” that occurs during any period when an MLO is not employed by or affiliated with a mortgage banker or mortgage banker licensed under Article 12-D of the Banking Law, and the requirements placed on Originating Entities to notify the Superintendent when that occurs.

Section 420.8 describes the grounds for suspension and expiration of authorization as an MLO, including failure to timely pay the annual authorization fee and failure to timely complete the education requirements. It also makes clear that the suspension or expiration of an authorization does not affect the MLO’s civil or criminal liability for acts committed prior to the suspension or expiration.

Section 420.9 describes the procedures for annual renewal of an authorization as an MLO.

Section 420.10 contains the requirements for surrender of an authorization as an MLO. It also makes clear that the surrender of an authorization does not affect the MLO’s civil or criminal liability for acts committed prior to the surrender.

Section 420.11 first sets forth the education requirements that apply as a condition to initial authorization and as a condition to annual renewal of

authorization. Second, it requires each Originating Entity to obtain proof, in the form of certificates of course completion in the form required by the Superintendent, that each MLO employed by or affiliated with it has completed the required Education Courses. Third, the rule sets out the education requirements (i.e. required number of hours of Education Courses) that must be completed by MLOs, as well as the requirements with respect to course content. Fourth, the Section describes the consequences of failure to comply with the education requirements and the procedure for requesting variances and extensions. Finally, the Section defines, for purposes of Section 599-e, an educational program that is substantially equivalent to the requirements for non-exempt MLOs. This is important to MLOs employed by or affiliated with certain Originating Entities that are subsidiaries or affiliates of certain banking organizations, which are required by the Banking Law, as a condition to their exemption from the authorization provisions of the statute, to provide Education Courses that are the substantial equivalent of those provided by non-exempt entities.

Section 420.12 summarizes the provisions of Article 12-E of the Banking Law with respect to persons or entities authorized to provide Education Courses. Some such entities are authorized in the statute to give Education Courses (referred to in Section 420 as "Authorized Providers"). Others must be approved by the Superintendent (referred to in Section 420 as "Approved Providers"). Second, the Section describes the application process for those providers that must be approved by the Superintendent. Third, it also requires Authorized Providers nevertheless to give notice to the Superintendent that they plan to provide Education Courses to MLOs in this state and provide the Superintendent with information about such courses. Fourth, the Section sets forth the procedure whereby Approved Providers must obtain approval for particular Education Courses. Fifth, the section contains rules with respect to advertising that a course has been approved by the Superintendent. Sixth, it describes information about Approved Providers, approved Education Courses, and Authorized Providers that will be listed on the Department's website. Seventh, the section notes that the Superintendent may approve Education Courses that meet the requirements of another jurisdiction that the Superintendent determines meet the standards of Article 12-E and provides for a list of such jurisdictions to be posted on the Department's website. Eighth, the Section requires Authorized Providers and Approved Providers to file an annual report with the Superintendent that provides certain information with respect to the Education Courses given by it for which it has granted a certificate of course completion to a New York MLO. Finally, it provides for the examination of providers of Education Courses and for revocation of the authorization to act as such provider.

Section 420.13 provides for certain fees for an initial authorization application and an annual re-authorization application.

Section 420.14 contains certain duties of Originating Entities.

Section 420.15 contains certain duties of MLOs.

Section 420.16 summarizes the circumstances in which the Superintendent may revoke a person's authorization as an MLO or suspend such authorization. It also states that an order of suspension may include, as a condition of reinstatement, that restitution be made to consumers with respect to fees or other charges that the MLO has improperly charged or collected, as determined by the Superintendent. Furthermore, it reminds MLOs that, under Section 44 of the Banking Law, the Superintendent may impose fines against MLOs. The section sets forth a number of grounds for disciplinary action, and states that administrative hearings will be conducted under Supervisory Procedure G111.

Section 420.17 provides that Section 420 will be effective immediately upon adoption.

#### SUPERVISORY PROCEDURE 107

Section 107.1 contains definitions of defined terms used in the Supervisory Procedure. Importantly, it defines the National Mortgage Licensing System (NMLS), the web-based system with which the Superintendent has entered into a written contract to process applications for authorization and applications for annual re-authorization of MLOs.

Section 107.2 contains general information about applications for authorization and annual re-authorization as an MLO, including the address where certain parts of the application for authorization must be mailed.

Section 107.3 describes the parts of an application for initial authorization and states that a sample of the application form (which must be completed online) may be found on the Department's website. The application includes (1) the application form, (2) fingerprint cards, (3) the fees, (4) applicant's credit report, (5) an affidavit subscribed under penalty of perjury in the form prescribed by the Superintendent, and (6) any other information that may be required by the Superintendent. It also describes

the procedure when the Superintendent determines that the information provided by the application is not complete.

Section 107.4 describes the required submissions for annual re-authorization of an MLO.

Section 107.5 covers inactive status.

Section 107.6 provides information on places where applicants may obtain additional instructions and assistance on the Department's website, by email, by mail, and by telephone.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 420.1, 420.3, 420.4, 420.11, 420.14, 420.15 and 420.16.

**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

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

The changes to Part 420 as proposed do not necessitate revision of the previously published RIS, RFA, RAFA or JIS. There were no changes to Supervisory Procedure MB 107 as proposed.

#### Assessment of Public Comment

The Department received one comment letter on the proposed rules, from a provider of education courses.

The commenter argued that MLOs should not be limited to live classroom training, but should be given the option of taking the requisite hours of required continuing education courses in a other learning formats, such as computer-based training or correspondence courses. The Department expects shortly to propose for public comment a Supervisory Procedure on Education Course Providers and intends to provide guidance on acceptable course formats in that Supervisory Procedure.

The commenter expressed the opinion that the "staged roll-out" of the education requirements with different requirements for MLO's who were in the business prior to January 1, 2008 and those who did not become MLO's until on or after January 1, 2008. The Department did not make any changes to the staged roll-out, since those requirements are statutory. See Banking Law Section 599-d(2).

The commenter also opined that having continuing education periods of either two or four years was confusing. It recommended that the education requirements be stated as annual requirements (e.g., 9 hours annually instead of 18 hours bi-annually). Again, however, this requirement is statutory. See Banking Law Section 599-d(3).

The commenter expressed the opinion that the regulations evidenced an imbalance of regulation between mortgage bankers and mortgage brokers, because mortgage brokers have more strict and comprehensive regulations while mortgage bankers may take courses given by the bank as long as they are "substantially equivalent." The Department believes this comment actually relates to differences between MLO's who work for a subsidiary or affiliate of certain exempt financial institution and those who work for other licensed mortgage bankers or registered mortgage brokers. The Commenter believes that the fact that a loan officer is employed by a bank does not warrant less oversight by the Superintendent. The Department believes that this dichotomy is required by the statute. Section 599-e of the Banking Law provides that the provisions of Article 12-E do not apply to an individual employed by various exempt organizations, including a bank, trust company, private banker, bank holding company, savings bank, savings and loan association, thrift holding company or credit union organized under the law of New York, another state or the United States or a subsidiary or affiliate of such an entity, except that, if such a subsidiary or affiliate is registered under Article 12-D, then it must provide an educational program or courses for its employees who engage in mortgage loan originating that is the substantial equivalent (as determined by the Superintendent) of the educational requirements applicable to MLOs under Article 12-E. Paragraph k of Part 420.11 sets forth the Superintendent's determination of the meaning of substantial equivalence.

Similarly, the commenter suggested that training for all MLO's should be conducted by third party mortgage education providers and not left to the vagaries of internally conducted "equivalent" programs with employers who may be more interested in day to day production than in proper and comprehensive training. However, the statute provides only that a subsidiary or affiliate of an exempt organization must "provide an educational program or courses for its employees who engage in mortgage loan originating." It does not require that an exempt organization use third party providers, as it does not require any other Article 12-D mortgage banker or broker to use a third party provider.

The commenter recommended that the proposed regulations should include a testing requirement, because testing ensures a higher degree of learning effectiveness. However, the statute does not require that MLO's be tested, either to gain initial registration or thereafter. Consequently, before determining that testing is desirable, the Department intends to see whether the educational requirements alone will have a beneficial effect on the level of expertise of mortgage loan originators. We note, as well, that several bills introduced into the U.S. Congress have proposed mandatory registration of mortgage loan originators, along with a testing requirement for initial registration.

The commenter suggested that Part 420 be amended to include specific controls for training providers to verify to the Superintendent that the MLO has properly completed the education requirements. The Superintendent expects to propose for public comment a Supervisory Procedure on Education Course Providers that will contain a requirement for course providers to use certain methods to verify attendance.

The commenter observed that Section 420.12 does not require prior approval by the Superintendent of education courses provided by either trade associations or institutions of post-secondary education approved by the Board of Regents. The commenter opined that there is a wide disparity in the quality of courses and controls within associations and post-secondary schools and, therefore, all courses should be submitted for review for consistency with the requirements, including the experience of the trade association or school in the mortgage industry, the experience of their instructors and their ability to provide the controls prescribed by the Superintendent. The Superintendent believes that such a requirement is inconsistent with the statutory scheme. Section 599-b(4) states: "Education courses required by this article may be offered by (a) national, New York state or other state associations that are controlled by and whose membership comprises, but is not necessarily restricted to, mortgage banks, mortgage brokers, or banking institutions; provided however, that any such association shall maintain supervision of such education courses satisfactory to the superintendent; (b) degree and non-degree granting institutions of post-secondary education chartered, approved or licensed by the Board of Regents; or (c) any other entities as may be approved by the superintendent." It is clear from this language that trade associations and educational institutions approved by the Board of Regents do not need the approval of the Superintendent, although the Superintendent may assume more power over the former if he finds that the trade association is not maintaining a level of supervision over the course content and management that is satisfactory to the Superintendent.

Conversely, the commenter offered that some state or national associations may utilize third party private providers under their supervision "to generate course content." It therefore opined that Section 420.12(a)(1) should be modified to read "(1) national, New York state or other state associations or their designees." The language in Section 12(a)(1), with the exception of the definitions, comes directly from the statute. The Superintendent believes that a trade association may hire unregistered persons to help it develop course materials, as long as the trade association approves the materials. However, if the third party acts as a provider of courses to MLOs, it must be an approved person.

With respect to recognition of qualified courses from other jurisdictions under 420.12(g), the commenter believed that the regulation should ensure that the provider has the appropriate controls in place to deliver content in a manner approved by the Superintendent. The Department agrees that there should be some standards for determining when courses from another state should be given reciprocity. We intend to put such standards into a Supervisory Procedure on Education Course Providers.

The commenter recommended that Section 12(i) be amended to specify the period of time given to authorized course providers to remedy a deficiency. The Department agrees that such a time period is appropriate and intends to specify a time period in the Supervisory Procedure on Education Course Providers.

## State Consumer Protection Board

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

#### Do Not Call

I.D. No. CPR-16-08-00001-P

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

**Proposed action:** Amendment of sections 4602.1, 4602.2, 4603.1, 4603.2, 4603.3 and 4603.4 of Title 21 NYCRR.

**Statutory authority:** General Business Law, section 399-z; L. 2000, ch. 547

**Subject:** Do not call.

**Purpose:** To provide technical changes that clarify and streamline the rules to conform them to Federal and State rules.

**Text of proposed rule:** Pursuant to the authority vested in the State Consumer Protection Board and the Chairperson and Executive Director by section 553 of the Executive Law and section 399-z, Laws of 2000, Chapter 547, Title 21, Parts 4602.1, 4602.2, 4603.1, 4603.2, 4603.3, 4603.4 of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subdivisions (a) and (b) of section 4602.1 are amended to read as follows: Section 4602.1 Authorization of transfer of telephone numbers to federal registry.

(a) The Consumer Protection Board is authorized to have the national "[D]do- [N]not-[C]call" registry, established, managed and maintained by the Federal Trade Commission pursuant to 16 C.F.R. Section 310.4(b)(1)(iii)(B)\*, (herein referred to as the national "[D]do-[N]not-[C]call" registry), serve as the New York State "do- not- call" registry.

(b) Consumer telephone numbers listed on the New York State no telemarketing sales calls statewide registry will be transferred to the Federal Trade Commission for inclusion in its national "[D]do- [N]not-[C]call" registry as established by 16 C.F.R. Section 310.4(b)(1)(iii)(B).

(c) The registry is open to all natural persons who: (1) reside in this state, and (2) have telephone service in this state that receives incoming calls. \*The text of 16 C.F.R. Part 310, which codifies 15 U.S.C. 6108, the Telemarketing and Consumer Fraud and Abuse Prevention Act, as amended, appears in the "Federal Register", Vol. 68, No. 19, January 29, 2003. Copies of the Rule are also available for public inspection and photocopying at the New York State Consumer Protection Board, 5 Empire State Plaza, Suite 2101, Albany, NY 12223.

Subdivisions (e) and (f) of section 4602.2 are amended to read as follows:

4602.2 Definitions.

(a) Consumer means any natural person who: (1) resides in this state; and (2) has telephone service in this state that receives incoming calls. The term "customer" shall have the same meaning as the definition of "consumer" defined herein.

(b) Doing business in this state means conducting telephonic sales calls: (1) from any location within New York State; or (2) from a location outside of New York State to consumers residing and having a telephone number in this state.

(c) Goods and services means any goods and services, including any real property or any tangible personal property, and services of any kind. (1) The term "goods" shall be the same as defined under Section 2-105 of the New York Uniform Commercial Code. (2) The term "services" shall be defined as the duty, labor, obligation, act, or commitment to be rendered by one person to another for profit, whereby the telemarketer offers, seeks to offer, or contracts to offer any performance of labor or other such act for the benefit of the consumer, or at the consumer's direction or authority.

(d) Telemarketer means any person who, for financial profit or commercial purposes in connection with telemarketing, makes a telemarketing sales call to a consumer in this state or any person who directly controls or supervises the conduct of a telemarketer. Telemarketer shall also include any person, firm, or corporation acting as an agent or representative of such telemarketer. For purposes of this paragraph, commercial purposes shall mean the sale or offer for sale of goods and services. Charitable

organizations as defined in § 171-a(1) of the Executive Law and registered pursuant to § 172 of the Executive Law, religious corporations as defined in § 2 of the Religious Corporations Law, political parties as defined in § 1-104(3) of the Election Law, and political committees as defined in § 14-100(1) of the Election Law, are deemed not able to conduct any act or activity for “commercial purposes” and are deemed not to be operating for financial profit for purposes of these regulations.

(e) Telemarketing means any plan, program or campaign which is initiated by a telephone call to a consumer or a message left on a telephone answering machine or voice mail system of a consumer, conducted to induce or encourage payment or the exchange of any other consideration for any goods or services by use of one or more telephones and which involves more than one telephone call by a telemarketer in which the [customer] consumer receiving such call or message is located within the state at the time of the call. Telemarketing does not include the solicitation of sales through media other than by telephone calls.

(f) Telemarketing sales call means a telephone call made by a telemarketer to a consumer for the purpose of encouraging the purchase or rental of, or investment in property, goods or services, or inducing payment or the exchange of any other consideration for any goods or services, where the consumer’s receiving device is a telephone.

Subdivisions (b), (c), (d), (e) and (f) of section 4603.1 are repealed. Subdivision (a) of section 4603.1 is amended to read as follows:

Section 4603.1 [Enforcement and] [v] *Violations*.

[(a)] No telemarketer or seller may make or cause to be made any unsolicited telemarketing sales call to any consumer more than thirty-one (31) days after: (1) the telephone number appears on the national do-not-call registry, pursuant to 16 C.F.R. Section 310.4(b)(1)(iii)(B), [the then current registry is published or made available by the agency; and (2) the customer’s telephone number(s) appears on the then current registry.] Each call to a telephone number shall be deemed a separate occurrence for purposes of the penalty and enforcement provisions of these regulations.

Subdivisions (a), (b) and (c) of section 4603.2 are amended to read as follows:

4603.2 Exceptions.

(a) [“Unsolicited telemarketing sales call”] means any telemarketing sales call other than a call made: (1) in response to an express written or verbal request of the specific customer called; (2) in connection with an established business relationship, which has not been terminated by either party, unless such customer has stated to the telemarketer or the telemarketer’s agent that such customer no longer wishes to receive the telemarketing sales calls of such telemarketer; or (3) to an existing customer, unless such customer has stated to the telemarketer or the telemarketer’s agent that such customer no longer wishes to receive the telemarketing sales calls of such telemarketer.

(b) Established business relationship shall mean [the existence of an oral or written arrangement, agreement, contract, or other such legal state of affairs between the telemarketer and an existing customer where both parties have a course of conduct or established pattern of activity for commercial or mercantile purposes and for the benefit or profit of both parties. A pattern of activity does not necessarily mean multiple previous contacts. The “established business relationship” must exist between the existing customer and the telemarketer directly, and does not extend to any related business entity or other business organization of the telemarketer or related to the telemarketer or the telemarketer’s agent including, but not limited to, a parent corporation, subsidiary partnership, company, or other corporation or affiliate.] a prior or existing relationship formed by a voluntary two-way communication between a consumer and a telemarketer with or without an exchange of consideration, on the basis of the consumer’s purchase or transaction with the telemarketer within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the consumer’s inquiry or application regarding products or services offered by the telemarketer within the three (3) months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

[(c)] Existing customer shall mean an individual who has entered into an arrangement, agreement, contract, or other such legal state of affairs between the telemarketer and the consumer where the payment or exchange of consideration for any goods or services has taken place within the preceding eighteen (18) months, or has been previously arranged to take place at a future time.]

[(d)] (c) Person shall mean any natural person, association, partnership, firm, corporation, and its affiliates or subsidiaries or other business entity.

4603.3 Safe harbor provisions.

A person (which includes an entity, corporation, or other telemarketer) shall not be held liable for violating these regulations if the person can demonstrate, by clear and convincing evidence, that: (1) the person has obtained a [copy of an updated, quarterly ‘do not call’ registry] version of the national “do-not-call” registry from the Federal Trade Commission no more than thirty-one (31) days prior to the date any telemarketing call is made, pursuant to 16 C.F.R. Section 310.4(6)(i)(iii)(B), and can demonstrate as a part of the person’s routine business practice it has established and implemented written policies and procedures related to the requirements of these regulations; (2) the person has trained [his or her] all personnel conducting telemarketing sales calls in the requirements of these regulations; (3) the person maintains and produces records demonstrating compliance with this section and the requirements of these regulations in response to a notice from the board of alleged “do-not-call” violations; and (4) any subsequent unsolicited telemarketing sales call is the result of an error.

Section 4603.4 is repealed. New section 4603.4 reads as follows:

Section 4603.4 *Enforcement*.

(a) Upon allegation(s) of non-compliance with applicable law, or upon its own initiative, the board may conduct an inquiry as to the sufficiency of any alleged violations. If the board finds any grounds to indicate that a violation(s) may have occurred, the board may, as the public interest demands, send a notice of apparent liability to the alleged violator seeking a response.

(b) The board shall mail a copy of the notice of apparent liability to the last known business address of the alleged violator. Mailing of the notice shall be deemed receipt thereof.

(c) The alleged violator shall respond to the notice not later than thirty-five (35) days from the date the board mailed such notice.

(d) The board will evaluate such response, conduct a review based on the evidence before it, and provide notice of its decision to the alleged violator within sixty (60) days of receipt of the response. Mailing of the decision shall be deemed receipt thereof.

(e) If the alleged violator disputes the board decision, such violator may file an administrative appeal with the board by requesting in writing an administrative hearing, within ten (10) days of receipt of the decision. The administrative hearing shall be subject to Article 3 of the State Administrative Procedure Act (“SAPA”).

(f) If the alleged violator does not file an administrative appeal by requesting a hearing in writing within ten (10) days of receipt of such decision, the initial decision of the board is deemed the final board decision and the alleged violator shall remit to the board a fine payable to the “State Consumer Protection Board” as set out in the initial decision of the board, within ten (10) days of receipt of the initial decision of the board.

(g) If an administrative appeal is properly filed, the board shall stay any fine pending the decision of such appeal.

(h) During the hearing proceeding, the board may establish evidentiary rebuttable presumption(s) under these regulations.

(i) Any facts or evidence received by the board may be used in any proceeding and shall be afforded appropriate consideration by the presiding officer. All evidence shall be kept in the custody of the presiding officer.

(j) Where it is determined after the administrative hearing that the alleged violator has violated one or more provisions of these regulations, the presiding officer may assess a fine not to exceed eleven thousand dollars (\$11,000) for each violation.

(k) If the alleged violator requests an administrative appeal pursuant to paragraph (e) of this section and an administrative hearing is held, the administrative hearing decision shall constitute a final board decision. Violators shall remit to the board a fine payable to the “State Consumer Protection Board” as set out in the administrative hearing decision within ten (10) days of the receipt of such decision.

(l) If the alleged violator does not respond to the notice of apparent liability within thirty five (35) days of receipt of the notice pursuant to paragraph (c) of this section, said notice of apparent liability shall constitute the final board decision. The alleged violator shall remit to the board a fine payable to the “State Consumer Protection Board” as set out in the notice of apparent liability, within sixty (60) days from the date the board mailed such notice.

**Text of proposed rule and any required statements and analyses may be obtained from:** Lisa Renee Harris, Consumer Protection Board, 5 Empire State Plaza, Suite 2101, Albany, NY 12223, (518) 474-3514, e-mail: Lisa.Harris@consumer.state.ny.us

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

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

**Regulatory Impact Statement**

**1. STATUTORY AUTHORITY:**

Subdivision 1(d) of section 553 of the Executive Law as amended by Chapter 691 of the Laws of 2003, titled Powers and duties of the Board and the Executive Director, grants general rulemaking authority to the Consumer Protection Board to implement other powers and duties by regulation and otherwise as prescribed by any provision of law. Section 399-z (5) of the General Business Law, as added by Chapter 547 of the Laws of 2000, gives the Board authority to prescribe rules and regulations to administer section 399-z of the General Business Law relating to the do-not-call program.

**2. LEGISLATIVE OBJECTIVES:**

The objective of the do-not-call law is to give natural persons, who are New York residents, an effective mechanism for preventing unsolicited and unwanted telemarketing calls. The proposed amendments carry out the intent of the statute by providing technical changes that clarify the rules, conform the rules with federal and state laws and rules and streamline the Board's administrative enforcement procedures.

**3. NEEDS AND BENEFITS:**

The Federal Telephone Consumer Protection Act was amended in 2003 and 2004. As a result of those changes, General Business Law § 399-z as added in 2000, has been amended by Chapter 124 of the Laws of 2003, Chapter 417 of the Laws of 2004, Chapter 214 of the Laws of 2005, Chapter 263 of the Laws of 2006 and Chapter 69 of the Laws of 2007. These amendments include the provision requiring a person to obtain a version of the "do-not-call" registry from the Federal Trade Commission no more than thirty-one (31) days prior to the day any telemarketing call is made. The changes herein more closely reflect current Federal and State law and rules.

The purpose of the proposed amendments is to clarify and streamline the administrative enforcement procedures to enhance and further achieve the statutory objectives of the legislation.

The benefits of the proposed amendments include enhancing protections to New York consumers by clarifying and streamlining the enforcement process that must be followed by alleged violators.

**4. COSTS:**

(a) Costs to State Government: There will be no additional costs to the Board.

(b) Costs to private regulated parties: There will be no additional cost to private regulated parties.

(c) Costs to local governments: The proposed amendments will not impose any costs on local government.

**5. PAPERWORK:**

This regulation clarifies the need for telemarketers and businesses to keep accurate and current records regarding their do-not-call policies, procedures and compliance training.

**6. DUPLICATION:**

This regulation does not duplicate any existing New York State rule or statute.

**7. ALTERNATIVE:**

There were alternatives considered with respect to the administrative process. The Board for example could have determined not to change the current process. However, the Board has determined that the proposed administrative process would maximize government and businesses efficiencies.

The Board also looked at alternatives regarding the period of time needed by the alleged violator to request an administrative hearing. Upon receipt of the Notice of Apparent Liability (NOAL) issued by the Board, the alleged violator has thirty-five (35) days from the day the notice was sent, to respond. The current process allows the Board thirty (30) days upon receipt of the response to evaluate the response, conduct a review based on the evidence and communicate its decision to the alleged violator. The proposed rules allow the Board sixty (60) days to evaluate the response, conduct a review based on the evidence and communicate its decision to the alleged violator. The Board considered allowing the alleged violator twenty (20) days upon receipt of the Board's decision to request an administrative hearing. However, the Board determined that more than three (3) months would have lapsed from the time a formal notice of apparent liability (NOAL) was issued and decided that a ten (10) day period was appropriate and would allow for a more streamlined process.

**8. LOCAL GOVERNMENT MANDATES:**

The proposed amendments do not impose any program, service, duty, or responsibility upon local government.

**9. FEDERAL STANDARDS:**

The proposed amendments are in compliance with federal standards (47 C.F.R. § 64.1200(f)(3)(2004) and 47 C.F.R. § 64.1200(f)(4)(2004).)

**10. COMPLIANCE SCHEDULE:**

The effective date of the proposed regulations is upon the publication of the notice of adoption in the State Register.

**Regulatory Flexibility Analysis**

**1. EFFECT OF RULE:**

The proposed amendments will have no effect on local governments and will not impose reporting, record-keeping or other compliance requirements on local governments. The basis of this finding is that these amendments are directed at businesses who telemarket and telemarketers.

The amendments will not have additional effect on small businesses, which are defined as employing 100 or less individuals (SAPA § 102(8).) The purpose of the proposed amendments is to clarify and streamline the administrative enforcement procedures to enhance and further achieve the statutory objectives of the legislation.

The benefits of the proposed amendments include enhancing protections to the New York consumers by clarifying the enforcement process that must be followed by the alleged violators and streamlining the administrative enforcement process. The proposed amendments will not impose additional costs to the Board or to private regulated parties.

**2. COMPLIANCE REQUIREMENT:**

There are no additional reporting requirements to the Board.

**3. PROFESSIONAL SERVICES:**

Affected small businesses will not need to retain additional professional services to comply with the proposed amendments.

**4. COMPLIANCE COSTS:**

There are no expected compliance costs as the result of the amendments.

**5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:**

The proposed amendments do not impose new technological changes.

**6. MINIMIZING ADVERSE IMPACT:**

The regulations apply uniformly to all telemarketers including small businesses. They are intended to clarify and streamline the administrative enforcement process and impose no additional negative impact on small businesses beyond those in the statute. The regulations are not applicable to local government.

**7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:**

Local governments are not affected. The proposed amendments have no unique features which would require the participation of small businesses. The Board will carefully consider all comments filed in response to this notice and make changes to the extent necessary to reflect any unanticipated impacts on small businesses.

**Rural Area Flexibility Analysis**

**1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:**

Regulated businesses covered by the proposed amendments do business in every county in the State. There are forty four rural counties in New York State, which are defined in the Executive Law § 481(7) as counties within the state having less than two hundred thousand population. The number of small businesses in the forty-four rural counties for the year 2005 is estimated by the Empire State Development Division for Small Businesses to be 264,295. The proposed amendments will not have an additional effect on small businesses located in rural areas. Any of these small businesses that utilize telemarketing and are alleged to have violated the Do-Not-Call law, will benefit from the clarified and streamlined administrative enforcement procedure.

The proposed amendments will not impose additional costs to the Board or to private regulated parties.

**2. REPORTING, RECORDKEEPING OR OTHER COMPLIANCE REQUIREMENTS:**

The proposed amendments impose no new reporting requirements.

**3. COSTS:**

There will be no additional costs to rural areas.

**4. MINIMIZING ADVERSE IMPACT:**

The proposed amendments apply uniformly to telemarketers that do business in both rural and non-rural areas of New York State. The proposed amendments do not impose any additional burden on persons located in rural areas and the Board does not believe that the proposed amendments will have an adverse impact on rural areas. The Board contemplated leaving the rules as written but instead, opted to create rules that reflect a clearer and less cumbersome administrative process. However, the Board determined that the proposed streamlined administrative process would maximize government and business efficiencies. The Board also

looked at alternatives regarding the period of time needed by the alleged violator to request an administrative hearing. Upon receipt of the Notice of Apparent Liability (NOAL) issued by the Board, the alleged violator has thirty-five (35) days from the day the notice was sent to respond. The current process allows the Board sixty (60) days upon receipt of the response to evaluate the response, conduct a review based on the evidence, and communicate its decision to the alleged violator. The Board considered allowing the alleged violator twenty (20) days upon receipt of the Board's decision to request an administrative hearing. However, the Board determined that more than three (3) months would have lapsed from the time a formal notice of apparent liability (NOAL) was issued and decided that a ten (10) day period was appropriate in the interest of efficiency.

#### 5. RURAL AREA PARTICIPATION:

The proposed amendments have no unique features such that rural area participation was required. The Board will carefully consider any comments filed in response to this notice, and make changes to the extent necessary to reflect any impacts on rural areas.

#### Job Impact Statement

The proposed amendments provide technical changes that clarify the rules, conform to federal and State laws and rules and streamline the Board's administrative enforcement procedures. Additionally, small businesses that utilize telemarketing and are alleged to have violated the do-not-call law will benefit from the clarified and streamlined administrative enforcement procedure. Because it is evident from the nature of the amendments that they would have little impact on the number of jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required.

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## Department of Health

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### EMERGENCY RULE MAKING

#### Non-Precription Emergency Contraceptive Drugs

**I.D. No.** HLT-04-08-00003-E

**Filing No.** 304

**Filing date:** March 28, 2008

**Effective date:** March 28, 2008

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

**Action taken:** Amendment of section 505.3(b)(1) of Title 18 NYCRR.

**Statutory authority:** Public Health Law, sections 201(1)(v) and 206; and Social Services Law, section 363-a(2)

**Finding of necessity for emergency rule:** Preservation of public health.

**Specific reasons underlying the finding of necessity:** We are proposing that this regulatory amendment be adopted on an emergency basis because emergency contraceptive drugs have been approved by the Federal Food and Drug Administration as a non-prescription drug for women 18 years of age and older. Medicaid law requires a written order for non-prescription drugs. A written order requires that a qualified medical practitioner provide the pharmacy with a written, telephone or fax order for a specific drug for a specific patient. This requirement can delay the use of non-prescription emergency contraceptive drugs. Such drugs are effective if taken within 72 hours of unprotected intercourse but are most effective if taken sooner, ideally within 12 hours. The requirement for a written order impedes earliest access to the drug and reduces the effectiveness of the drug.

The FDA approval of emergency contraceptive drugs as non-prescription drugs is limited to women 18 years of age and older. New York State Medicaid will limit dispensing of this drug to 6 courses of treatment in any 12 month period without a prescription or written order for women 18 years of age and older.

**Subject:** Non-prescription emergency contraceptive drugs.

**Purpose:** To allow access to FDA approved non-prescription contraceptive drugs dispensed by a pharmacy without a fiscal order to women 18 years of age and older.

**Text of emergency rule:** Paragraph (1) of subdivision (b) of Section 505.3 is amended to read as follows:

(b) Written order required. (1) Drugs may be obtained only upon the written order of a practitioner, except for *non-prescription emergency contraceptive drugs as described in subparagraph (i) of this paragraph, and for telephone and electronic orders for drugs filled in compliance with this section and 10 NYCRR Part 910.*

*(i) Non-prescription emergency contraceptive drugs for recipients 18 years of age or older may be obtained without a written order subject to a utilization frequency limit of 6 courses of treatment in any 12 month period.*

*(i)(i) The ordering/prescribing of drugs is limited to the practitioner's scope of practice.*

*(ii)(i) The ordering/prescribing of drugs is limited to practitioners not excluded from participating in the medical assistance program.*

**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 May 26, 2008.

**Text of emergency rule and any required statements and analyses may be obtained from:** Katherine E. Ceroalo, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsqa@health.state.ny.us

#### Regulatory Impact Statement

Statutory Authority:

The authority for the proposed rule is contained in Sections 363, 363-a and 365-a of the Social Services Law (SSL). Section 363 of the SSL states that the goal of the Medicaid program is to make available to everyone, regardless of race, age, national origin or economic standing, uniform, high quality medical care. Section 363-a of the SSL designates the Department of Health (Department) as the single state agency for the administration of the Medicaid program and provides that the Department shall make such regulations, not inconsistent with law, as may be necessary to implement the provisions of the program. Section 365-a(2)(g) of the SSL defines "medical assistance" as including prescription and non prescription drugs.

Legislative Objective:

The proposed rule meets the legislative objective of providing timely access to medically necessary care for indigent Medicaid recipients 18 years of age and older who require emergency contraception. The proposed rule will exempt Federal Food and Drug Administration (FDA) approved over-the-counter drugs for emergency contraception from the Department's regulations which require that a pharmacy have a written order from a practitioner prior to dispensing drugs to Medicaid recipients.

Needs and Benefits:

Emergency contraceptive drugs have been available for some time by prescription only. In August of 2006, the FDA approved emergency contraceptive drugs as non-prescription drugs ("over the counter") when used by women 18 years of age and older. According to current State Medicaid regulations, 18 NYCRR Section 505.3(b)(1), pharmacies must have a written order (also known as a fiscal order) from a practitioner prior to dispensing an over-the-counter drug to a Medicaid recipient. The regulations do provide an exception, however, for telephone orders from a practitioner which comply with the provisions of the Education Law with respect to such orders. The requirement for a written order necessitates that the recipient visit or call a licensed practitioner prior to going to the pharmacy and then either bring the written order to the pharmacy, have the pharmacist and the practitioner talk on the phone, or have the practitioner send the order by fax. The Department wants to avoid any time barriers to accessing emergency contraceptive drugs since the drugs are most effective in preventing pregnancy if taken within 72 hours after an act of unprotected sex. The Department is eliminating the written order requirement specifically for FDA approved over-the-counter emergency contraceptive drugs dispensed for use by women 18 years of age and older. Women under 18 years of age must still obtain and present a prescription which meets the requirements of section 6810 of the Education Law in order to obtain these drugs.

COSTS:

Costs for Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:

There would be no increased costs to the pharmacies for implementation of and continuing compliance with this rule.

Costs to State Government:

Because the Department is eliminating the requirement that there be a written order of a practitioner prior to dispensing this over-the counter drug, payment for emergency contraceptive drugs under New York's Medicaid program will no longer comply with the federal requirement for such an order. The Department, therefore, proposes using 100% State

funds for payment for these drugs. The agency will absorb costs associated with system changes to remove these claims from the federal payment program. These costs are considered minimal. It is estimated that the additional annual cost of payment for emergency contraceptive drugs to the State will be \$1.5 million. These costs to the State will be offset, however, by estimated cost avoidance from reduced births and deliveries attributed to increased access to emergency contraceptive drugs.

The Department examined two years of Medicaid claim data for emergency contraceptive drugs (date of payment from December 1, 2004 to November 30, 2006). The data was extracted from the eMedNY Data warehouse. The Department made the assumption that costs for these drugs would roughly double after this regulation became effective with 100% of rebate adjusted costs being assumed by the State.

Gross annual savings estimates of approximately \$3.2 million were calculated using birth and delivery costs determined in a recent New York State Department of Health, Office of Medicaid Management study. This study analyzed New York State Department of Health vital statistics and New York State Department of Health Medicaid claim data pertaining to prenatal care, delivery and other associated health care costs. Assuming that eliminating the fiscal order mandate would double prescriptions for contraceptive drugs, the Department used claim data for the one year period December 1, 2005 to November 30, 2006 and assumed that approximately 2 in 100 of these claims would have resulted in a birth and delivery cost. The Department used a two year period to determine the expected ongoing increase in the cost of these drugs. The Department only used the one year period (December 1, 2005 to November 30, 2006) to calculate savings, which had the effect of creating a more conservative savings estimate. The gross annual savings in the cost of prenatal care, delivery and other health care costs associated with delivery using this methodology would be \$3.2 million, with approximately \$1.5 million each representing the federal and state share of savings. There is no local share in savings because of the local share cap which is set at calendar year 2005 (trended) levels.

**Costs to Local Government:**

There will be no cost to local government.

**Local Government Mandates:**

The proposed regulatory amendment will not impose any program service, duty, or responsibility upon any county, city, town, village, school district, fire district or other special district.

**Paperwork:**

This regulatory amendment will decrease paperwork for medical providers and pharmacies since a fiscal order is not needed for this drug for women 18 years of age or older.

**Duplication:**

This regulatory amendment does not duplicate, overlap or conflict with any other State or federal law or regulations.

**Alternatives:**

Currently, a written order of a practitioner is required by federal regulations (42 CFR 440.120(a)(3)) and State Medicaid regulations for the dispensing of emergency contraceptive drugs. The Department considered another proposal to eliminate the need for each recipient to obtain an individual written order from a practitioner for emergency contraceptive drugs. That alternative was to replace the requirement for a fiscal order with a "non-patient specific order" as provided for in section 6909(5) of the Education Law. The non-patient specific order would be written by a qualified medical practitioner in agreement with a specific pharmacy to dispense emergency contraception as an over the counter drug to any eligible woman 18 years of age and older who requests it. The order is not patient specific so it would eliminate the delay in treatment inherent in requiring the recipient to obtain a written order. The Department determined this alternative would not likely be available without a statutory amendment because the Education Law and regulations limit its use to situations involving immunizations, emergency treatment of anaphylaxis, purified protein derivative tests and HIV testing.

**Federal Standards:**

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

**Compliance Schedule:**

The proposed regulatory amendment will become effective upon filing with the Department of State.

**Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis is not required because the proposed rule will not have a substantial adverse impact on small businesses or local governments.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not required because the proposed rule will not have any adverse impact on rural areas.

**Job Impact Statement**

A Job Impact Statement is not required because the proposed rule will not have any adverse impact on jobs and employment opportunities.

**NOTICE OF ADOPTION**

**Payment for Nursing Services Provided to Medically Fragile Children**

**I.D. No.** HLT-51-07-00002-A

**Filing No.** 303

**Filing date:** March 28, 2008

**Effective date:** April 16, 2008

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

**Action taken:** Amendment of section 505.8(g) of Title 18 NYCRR.

**Statutory authority:** Social Services Law, section 363-a

**Subject:** Payment for nursing services provided to medically fragile children.

**Purpose:** To authorize payment of Medicaid reimbursement for private duty nursing services at an enhanced rate provided to medically fragile children.

**Text or summary was published** in the notice of proposed rule making, I.D. No. HLT-51-07-00002-P, Issue of December 19, 2007.

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

**Text of rule and any required statements and analyses may be obtained from:** Katherine E. Ceroalo, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsqna@health.state.ny.us

**Revised Regulatory Impact Statement**

**Statutory Authority:**

Section 206(1)(f) of the Public Health Law requires the Department of Health (Department) to enforce the provisions of the Medical Assistance (Medicaid) program, pursuant to titles eleven, eleven-A, and eleven-B of the Social Services Law (SSL). Section 363 of the SSL states that the goal of the Medicaid program is to make available to everyone, regardless of race, age, national origin or economic standing, uniform, high quality medical care. Section 363-a of the SSL designates the Department as the single state agency for the administration of the Medicaid program and authorizes the Department to establish such regulations as may be necessary to implement the Medicaid program. Section 365-a of the SSL defines Medicaid to include payment of part or all of the cost of medically necessary care, services, and supplies, including the care and services of private duty nurses. Section 367-r(1-a) of the SSL authorizes the Department to increase the Medicaid payment rate for private duty nursing services provided to medically fragile children, in order to recruit and retain private duty nurses and ensure service delivery to medically fragile children.

**Legislative Objectives:**

The proposed regulatory amendment is necessary to implement the payment of enhanced Medicaid rates for private duty nursing services provided to medically fragile children, and to require such providers to certify that they are trained and experienced to care for medically fragile children.

**Needs and Benefits:**

Effective January 1, 2007, rates of payment for private duty nursing services provided to medically fragile children were increased to ensure the availability of a sufficient number of qualified providers to deliver services to these children in the community setting. Previously, providers were reimbursed at the hourly nursing services rate established for their geographic area, without regard to the relative acuity of the pediatric non-institutional population, the corresponding intensity of continuous medical intervention and supervision necessary to sustain these children safely in the community setting, or a shortage of qualified providers. The need for continuous coverage by nurses possessing the specialized training and experience these cases require often resulted in a shortage of available qualified providers sufficient to ensure service delivery in a geographic area. The increased rate of payment will facilitate the recruitment and retention of qualified private duty nurses by providing adequate financial incentive to attract and retain skilled providers sufficiently qualified to meet the complex medical needs of these children. The proposed regulatory amendment requires providers to certify to the Department their requisite training and experience in order to receive the enhanced rate, to

ensure that only qualified providers are recruited. Social Services Law Section 367-r requires the Department to consider several factors in establishing the enhanced rate, including the case mix adjustment factor used for AIDS home care program services. The proposed regulatory amendment calculates the enhanced rate as a thirty percent (30%) add-on to the provider's standard nursing services rate, which is equivalent to using the AIDS home care case mix adjustment factor. Because the entire population of pediatric patients receiving continuous at-home private duty nursing services is by definition medically fragile, the regulation provides for payment of the enhanced rate for such services when provided to any Medicaid enrollee under age 21 in a community setting.

**Costs:**

There should be no additional costs associated with this regulatory amendment. While the regulatory amendment will result in the payment of increased Medicaid reimbursements to qualified providers, this will be offset by cost savings achieved from caring for increased numbers of children in the more cost-effective community setting. Consequently, rates of payment established through this regulatory amendment will result in budget neutrality to the Medicaid program.

**Local Government Mandates:**

The proposed regulatory amendment does not impose any new mandates to local social services districts.

**Paperwork:**

The proposed regulatory amendment will result in a minimal amount of additional paperwork for medical providers, since they must complete and submit a one-page certification of training and experience to Department, upon which a specialty code will be added to the provider's enrollment file to enable the provider to receive the enhanced rate.

**Duplication:**

This proposed regulatory amendment does not duplicate, overlap, or conflict with any other State or federal law or regulations.

**Alternatives:**

Section 367-r of the SSL authorizes the payment of an enhanced rate to qualified providers upon demonstration of satisfactory training and experience to the Department. No alternatives were considered.

**Federal Standards:**

The proposed regulatory amendment does not exceed any minimum federal standards.

**Compliance Schedule:**

The proposed regulatory amendment will become effective upon filing with the Department of State.

**Assessment of Public Comment**

The agency received no public comment.

**Text of final rule:** Section 68.1(b)(3) of Part 68 is hereby amended to read as follows:

(3) A "licensed health provider" means a licensed healthcare professional acting within the scope of his or her licensure or an entity, including a pharmacy, properly formed in accordance with applicable law and acting within the scope of its license.

Part E of Appendix 17-C to Part 68 is repealed and the appendix heading Part E is reserved.

Part F of Appendix 17-C to Part 68 is repealed and the appendix heading Part F is reserved.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in Appendix 17-C.

**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

**Job Impact Statement**

We did not make any changes to the previously published Job Impact Statement.

**Assessment of Public Comment**

The agency received no public comment.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Establishment of the Industry Standard Rate for Use in Conjunction with Payments to the Aggregate Trust Fund

**I.D. No.** INS-16-08-00007-P

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

**Proposed action:** Amendment of Part 151 (Regulation 119) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201 and 301; Workers' Compensation Law, section 27

**Subject:** Establishment of the industry standard rate for use in conjunction with payments made by workers' compensation insurers to the aggregate trust fund.

**Purpose:** To establish the interest rate applicable when workers' compensation insurers are required to deposit the present value of unpaid benefits for permanent partial disability and death benefit cases into the aggregate trust fund.

**Text of proposed rule:** Part 151 is hereby retitled: "Workers' Compensation Insurance Rates."

Part 151 (Regulation No. 119) is hereby renumbered Subpart 151-1, in sequence. Subpart 151-1 shall be entitled: "Rate Filings Prior Approval."

A new Subpart 151-2, entitled "Industry Standard Rate for Aggregate Trust Fund," is added to read as follows:

*Section 151-2.1 Preamble.*

(a) *Section 27 of the Workers' Compensation Law requires the present value of certain awards of compensation to be deposited into the Aggregate Trust Fund on either a mandatory basis or by the discretion of the Workers' Compensation Board. The present value is discounted by a percentage rate specified by section 27. On March 13, 2007, legislation establishing comprehensive reform to New York's Workers' Compensation Law was signed into law, becoming chapter 6 of the laws of 2007. Chapter 6 amended section 27 to replace the 6% discount rate previously applicable to ATF deposits, as well as various other interest rates associated with ATF deposits, with an "industry standard rate" to be determined by the Superintendent of Insurance by regulation. Section 27, as amended, applies the industry standard rate to accidents occurring on or after January 1, 2001.*

(b) *After discussions with the New York State Insurance Fund (NYSIF) (which administers the ATF), insurers, the Workers' Compensation Board, and other interested parties, the superintendent has determined the industry standard rate. Among the factors that were considered by the superintendent in making this determination were the following:*

(1) *the rate of return on invested assets experienced by the NYSIF in recent years;*

(2) *the investment performance of domestic property/casualty insurers;*

(3) *the rates of return on low risk investments of comparable duration to that of the ATF liabilities; and*

(4) *the discount rate used in calculating the minimum individual case reserves for policies of workers' compensation insurance, pursuant to*

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## Insurance Department

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### NOTICE OF ADOPTION

**Charges for Professional Health Services**

**I.D. No.** INS-02-08-00005-A

**Filing No.** 307

**Filing date:** March 27, 2008

**Effective date:** April 16, 2008

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

**Action taken:** Amendment of Part 68 (Regulation 83) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 5108, 5221 and art. 51

**Subject:** Charges for professional health services.

**Purpose:** To repeal the fee schedules previously established by the Insurance Department for prescription drugs, durable medical equipment, medical/surgical supplies, orthopedic footwear, and orthotic and prosthetic appliances that are now covered by the two fee schedules established by the Workers' Compensation Board, clarifies that a pharmacy is deemed to be a provider of health services for purposes of eligibility of direct payments pursuant to Regulation 68-C.

section 4117(d) of the Insurance Law and section 86 of the Workers' Compensation Law.

*Section 151-2.2 Industry Standard Rate.*

*The industry standard rate shall be five percent per year.*

*Section 151-2.3 Effective Date*

*This Subpart shall apply to all new deposits made into the ATF on or after July 1, 2007, for accidents occurring on or after January 1, 2001, as mandated by chapter 6 of the laws of 2007.*

**Text of proposed 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

**Data, views or arguments may be submitted to:** Hampton Finer, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-7212, e-mail: hfiner@ins.state.ny.us

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

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

#### **Regulatory Impact Statement**

1. Statutory authority: The Superintendent's authority for the promulgation of the first amendment to Part 151 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 119) derives from Sections 201 and 301 of the Insurance Law of the State of New York, and Section 27 of the Workers' Compensation Law of the State of New York. These sections establish the Superintendent's authority to approve workers' compensation premium rates and related materials that impact on premium rates.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to effectuate any power accorded to him by the Insurance Law, and to prescribe regulations interpreting the Insurance Law.

Section 27 of the Workers' Compensation Law establishes the circumstances when insurers must deposit, into the aggregate trust fund (ATF), an amount equal to the present value of all unpaid benefits for certain awards of compensation. It also establishes the formula for calculation of the present value of unpaid future benefits, including the direction that the "industry standard rate" of interest shall be determined by the Superintendent of Insurance by regulation.

2. Legislative objectives: Chapter 6 of the Laws of 2007 established comprehensive reforms to New York's Workers' Compensation Law by: (1) increasing maximum and minimum benefits for injured workers and indexing the maximum to New York's average weekly wage; (2) dramatically reducing costs in the workers' compensation system, thus making hundreds of millions of dollars available annually to be translated into premium reductions; (3) establishing enhanced measures to combat workers' compensation fraud; (4) replacing the Special Disability Fund with enhanced protections for injured veterans; (5) preventing insurers from transferring costs to New York employers by closing the Special Disability Fund to new claims; and (6) creating a financing mechanism to allow for settlement of the Fund's existing liabilities.

The legislation requires that the present value of certain awards of compensation to be deposited into the ATF on either a mandatory basis or by the discretion of the Workers' Compensation Board (WCB). The legislation amended section 27(4) of the Workers' Compensation Law to authorize the Superintendent to determine, by regulation, the "industry standard rate" for calculating simple interest to be used in calculating the present value of future benefits when the employer or insurer is required to deposit such amount into the ATF. The WCB shall compute the present value thereof and require payment of such amount into the ATF.

3. Needs and benefits: Chapter 6 of the Laws of 2007 added a provision to Section 27 of the Workers' Compensation Law whereby the Superintendent sets the "industry standard rate" to be used in calculating future workers' compensation indemnity liabilities when the WCB computes required contributions to the ATF. The industry standard rate constitutes the reduction from the present value of certain compensation awards to be applied in calculating the amount the carrier must pay into the ATF.

After discussions with the New York State Insurance Fund (NYSIF) (which administers the ATF), insurance carriers, the WCB, and other interested parties, the Superintendent has determined that the industry standard rate shall be set at 5% per year. This will decrease the "discount" rate for carriers, since the previous law set the industry standard rate at 6% per year. The Superintendent's determination is based on the consideration of the following:

- A review of the rates of return on invested assets experienced by NYSIF in the most recent five years indicates that it has realized returns

that are at or near 5% per year. Prudent investment of the carrier contributions will insure that the ATF has adequate funds to meet its obligations.

- The Department expects that NYSIF will settle a significant number of claims at an amount significantly less than the present value of the associated liabilities. The new law does not entitle insurers to recover any funds that remain after NYSIF settles, so settlement-related savings will add to ATF capital.

- A 5% industry standard rate is consistent with the investment performance of New York-domiciled property/casualty insurers. Therefore, the Department does not expect that insurers will experience a downfall when transferring liabilities to the ATF.

- A 5% industry standard rate is consistent with the rates of return on low risk investments of duration comparable to that of the ATF liabilities.

- In establishing the minimum reserves under workers' compensation policies, Section 4117(d) of the Insurance Law and Section 86 of the Workers' Compensation Law require a company's individual case reserves to be no less than the sum of the present values, at five percent interest per annum, of the determined and unpaid losses, plus the estimated unpaid loss expenses.

4. Costs: This regulation does not establish any new requirements on regulated parties. The Legislature mandated that insurers deposit the present value of all unpaid benefits into the ATF, and that the Superintendent determine the "industry standard rate" by regulation. The determination of the industry standard rate affects the amount of the deposit that carriers must make into the ATF. The industry standard rate constitutes the reduction from the present value of certain compensation awards to be applied in calculating the amount the carrier must pay into the ATF. By virtue of the Superintendent's determination that the industry standard rate shall be set at 5% per year, the "discount" rate for carriers will be decreased, since the previous law set the industry standard rate at 6% per year. This was found to be necessary in order to ensure that the ATF receives deposits adequate to allow it to meet its obligations. The Superintendent will continue to monitor the appropriateness of the industry standard rate. Issues such as the timing of the application of the industry standard rate must be determined by the WCB and the NYSIF.

5. Local government mandates: This regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This regulation does not impose any new reporting requirements on regulated parties.

7. Duplication: This regulation does not duplicate any existing law or regulations.

8. Alternatives: Chapter 6 of the Laws of 2007 established comprehensive reforms to New York's Workers' Compensation Law. Prior to the enactment of the legislation, the industry standard rate was established by statute, and such rate could only be changed by the Legislature. In enacting Chapter 6, the Legislature directed that the industry standard rate be determined by the Superintendent by regulation. The only alternatives to this rule considered by the Superintendent were with regard to the factors considered in determining an appropriate industry standard rate. The Superintendent considered a "floating" rate keyed to financial market interest rate fluctuations. The floating rate was rejected as volatile and unpredictable. The SIF proposed that the industry standard rate be set at 3½% per year, which would have further reduced the insurers' ATF deposit "discount". The Superintendent determined that 5% would be sufficient to ensure that the ATF is adequately funded. Should future adjustment of the industry standard rate become necessary, it can be accomplished by amendment to the regulation.

9. Federal standards: There are no applicable federal standards.

10. Compliance schedule: The legislation requires that the present value of certain awards of compensation be deposited into the Aggregate Trust Fund on either a mandatory basis or by the discretion of the Workers' Compensation Board. The Superintendent's responsibility is to establish the "industry standard rate" to be applied in calculating the amount the carrier must deposit in the ATF. Calculation of the present value of all unpaid benefits is the responsibility of the WCB. Other procedures regarding the deposit of funds into the ATF may be established by the NYSIF (as administrator of the ATF).

#### **Regulatory Flexibility Analysis**

1. Small businesses:

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all workers' compensation insurers authorized to do business in New York State, none

of which fall within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of workers' compensation insurers, and believes that none of them falls within the definition of "small business", because there are none that are both independently owned and have less than one hundred employees.

#### 2. Local governments:

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

#### Rural Area Flexibility Analysis

The Insurance Department finds that this rule does not impose any additional burden on persons located in rural areas, and the Insurance Department finds that it will not have an adverse impact on rural areas.

The entities covered by this regulation, authorized workers' compensation insurance companies licensed to do business in New York State, do business in every county in this state, including rural areas as defined under SAPA 102(10).

#### Job Impact Statement

This rule will not adversely impact job or employment opportunities in New York. Determination of the "industry standard rate" by the superintendent was mandated by the Legislature. It will affect the calculation of the present value of all unpaid benefits resulting from a claim for permanent partial disability and death benefits, and the resulting amount that workers' compensation insurers must pay into the aggregate trust fund (ATF) in such cases. The Legislature has determined that such payments are required. This rule only establishes the "discount" rate on the amount that must be deposited into the ATF. This rule should not have any impact on jobs and employment opportunities in this state.

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## Office of Mental Retardation and Developmental Disabilities

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### EMERGENCY RULE MAKING

#### Notification of Incidents and Access to Records

**I.D. No.** MRD-16-08-00003-E

**Filing No.** 302

**Filing date:** March 27, 2008

**Effective date:** March 27, 2008

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

**Action taken:** Amendment of sections 624.1, 624.2, 624.3, 624.4, 624.5, 624.6 and 624.20; and addition of section 624.8 to Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.07, 13.09(b), 33.23 and 33.25; L. 2007, ch. 24

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

**Specific reasons underlying the finding of necessity:** The emergency regulations expand upon the provisions of Jonathan's Law to require notification of advocates and correspondents who are not "qualified persons" when incidents occur and allegations of abuse are made. The emergency regulations also expand upon the statutory provisions by extending the requirements from only certified facilities to all programs and services in the OMRDD system.

The additional incident notifications resulting from the new regulatory requirements will create new opportunities for oversight by the individuals who are notified. Through notification, these individuals are better able to monitor whether the health and safety needs of individuals are properly addressed and whether appropriate steps are being taken to remedy potentially harmful conditions which may have contributed to the incident. Without the promulgation of these regulations on an emergency basis, the additional monitoring enabled by the requirements would not occur until such time as the regulations could be finalized through the regular rulemaking process. During this period of time, potentially harmful situations that might have been remedied through the additional oversight could

persist and adversely affect the health, safety and welfare of people receiving services.

**Subject:** Notification of incidents and access to records.

**Purpose:** To require notification of certain incidents and allegations of abuse and associated follow-up activities. Additionally the rule provides for the release of records and documents pertaining to allegations and investigations of abuse.

**Substance of emergency rule:** Effective March 27, 2008. Replaces similar emergency regulations that were effective October 1, 2007 and December 30, 2007.

The following change was made compared to the December 30, 2007 emergency regulations:

- Qualified persons may no longer make requests for records related to allegations of abuse which occurred or were discovered prior to May 5, 2007. All such requests must have been submitted by December 31, 2007.

#### General:

The regulations amend existing OMRDD regulations on incidents and abuse (Part 624).

The regulations apply to all facilities and services operated, certified, authorized or funded through contract by OMRDD. This includes residential facilities, day programs, HCBS waiver services, and Medicaid Service Coordination.

New notification and disclosure requirements do not apply to events or situations which are not under the auspices of the agency, such as allegations of abuse by family members in private residences. Requirements that agencies intervene and take appropriate action in these events or situations are unchanged.

The OMR 147(I) and OMR 147(A) are removed from the regulation. OMRDD is replacing these forms with a single revised form.

The OMR 147 must be used for all reportable incidents, serious reportable incidents and allegations of abuse.

Full documentation of compliance is required.

Existing requirements are unchanged for notification to CQCAPD, law enforcement officials, Statewide Central Register of Child Abuse and Maltreatment, etc.

For the Willowbrook class, agencies must continue to comply with the incident reporting requirements of the Willowbrook Permanent Injunction.

An old requirement for a "written preliminary finding" within 24 hours of the occurrence or discovery has been eliminated. The OMR 148 or equivalent report on actions taken takes the place of the written preliminary finding.

The use of a diagnostic procedure (*e.g.*, x-ray) when the results are negative (nothing broken) is no longer considered a reportable injury.

Service coordinators must be notified of all reportable incidents, serious reportable incidents and allegations of abuse whether or not the event or situation is "under the auspices" of the agency or sponsoring agency.

Regulations to implement Section 33.23 MHL:

The regulations build on notification requirements in pre-existing OMRDD regulations, which required notification of serious reportable incidents and allegations of abuse to guardians, parents and advocates/correspondents.

The following types of events/situations are subject to the new requirements:

- Reportable incidents in the categories of injury, medication error and death.

- Serious reportable incidents in the categories of injury, missing person, medication error and death.

- All allegations of abuse.

Current notification requirements are maintained for serious reportable incidents which are in the other categories (restraint, possible criminal act, and sensitive situation). Notification must occur within 24 hours of completion of the OMR 147.

Neither notification nor disclosure is required for reportable incidents in the category of sensitive situation or for events/situations which do not rise to the level of reportable incidents (*e.g.*, "agency reportable incidents").

The new requirements require notification to one of the following: guardian, parent, spouse or adult child.

Exceptions:

- The guardian, parent, spouse or adult child objects to notification to himself or herself.

- The person receiving services is a capable adult who objects to the notification being made to someone else.

- The person who would otherwise be notified is the alleged abuser.

If there is no guardian, parent, spouse or adult child (or they are unavailable), but the person has an advocate or correspondent, notification should be made to that individual in the same manner. Advocates/correspondents must also be offered a meeting and must be sent the report on actions taken. Upon request, advocates/correspondents must be sent the redacted OMR 147. (Note: the advocate or correspondent is not eligible to request disclosure of the investigation report and other investigation documents).

If there is no guardian, parent, spouse or adult child (or they are unavailable), and the person receiving services is a "capable adult" as defined in the regulations, the person receiving services must be notified. In addition, the person receiving services must be offered a meeting and must receive the report on actions taken.

The notification must be by telephone or in person, or by other methods at the request of the recipient of the notice.

The notification must be made within 24 hours of the completion of the OMR 147.

The notice must include:

- A description of the event or situation and a description of initial actions taken to address the incident or alleged abuse, if any,
- An offer to meet with the chief executive officer or designee, and
- For allegations of abuse, an offer to provide information on the status and resolution of the allegation (this is a pre-existing requirement).

Upon request, a copy of the OMR 147 reporting form must be provided to the person receiving services, guardian, parent, spouse, adult child, or advocate/correspondent. Records must be redacted.

The agency must provide a written report on actions taken to address the incident or alleged abuse for every incident and allegation subject to the new notification process.

- The report must be provided to the individual that was notified.
- The report must include: any immediate steps taken in response to the incident or alleged abuse to safeguard the health or safety of the person receiving services, and a general description of any initial medical or dental treatment or counseling provided to the person in response to the incident or alleged abuse.
- The report must be on a form developed by OMRDD or a similar agency form.
- The report must be provided within 10 days of the completion of the OMR 147.
- The report on actions taken cannot include names of others involved in the incident/allegation or investigation or information tending to identify them.

Regulations to implement Section 33.25 MHL:

The regulations require the release of records and documents pertaining to allegations and investigations into abuse under the auspices of the agency.

Only guardians, parents, spouses and adult children who are considered to be a "qualified person" according to the definition in the Mental Hygiene Law, are eligible to receive records.

If the otherwise eligible requestor is the alleged abuser he or she is not eligible to receive records.

If the consumer is a capable adult and objects to the release of records, the otherwise eligible requestor is not eligible to receive records.

Requests must be in writing.

Documents and records must be released 21 days after the closure of the alleged abuse case or 21 days after the request, if the request is made after closure.

For purposes of determining when the 21 day clock begins, closure is considered the time when the standing committee has ascertained that no further investigation is necessary and a conclusion is reached whether the allegation is substantiated, disconfirmed or inconclusive.

Records must be redacted.

Agencies are only required to release records pertaining to allegations of abuse which occurred or were discovered on or after May 5, 2007.

Records may not be redisclosed by recipients.

Redaction (applicable to the release of documents and records pursuant to Section 33.25 MHL and the OMR 147). The following should be redacted:

Names or other information tending to identify people receiving services and employees. Redaction shall be waived if the employee or person receiving services authorizes disclosure (unless redaction is needed because the information would tend to identify a different person whose identity is shielded by the regulations). The definition of employee is very inclusive, but only for the purposes of redaction of these records in compliance with the new law and the implementing regulations. It includes

consultants, contractors, volunteers, family care providers and family care respite/substitute providers, and individuals who live in home of the provider.

Names or other information tending to identify anyone who made a report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR, or otherwise cooperated in a child abuse/maltreatment investigation.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 24, 2008.

**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. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) statutory responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and developmental disabilities, as stated in Section 13.07 of the New York State Mental Hygiene Law.

b. OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in Section 13.09(b) of the Mental Hygiene Law.

c. Section 33.23 of the Mental Hygiene Law, which requires specific incident notifications and the release of specified reports.

d. Section 33.25 of the Mental Hygiene Law, which requires the release of records and documents pertaining to allegations and investigations of abuse.

2. Legislative Objectives: These amendments further the legislative objectives embodied in sections 13.07, 13.09(b), 33.23 and 33.25 of the Mental Hygiene Law. The promulgation of these amendments will provide a more extensive notification process for certain incidents and allegations of abuse. In addition, the amendments provide greater access by specified individuals to records and documents pertaining to allegations and investigations of abuse.

3. Needs and Benefits: Chapter 24 of the Laws of 2007 (MHL Sections 33.23 and 33.25), otherwise known as "Jonathan's Law," was signed by the Governor on May 5, 2007 and was effective immediately.

The regulatory amendments are necessary to implement the new laws and to make longstanding OMRDD regulations related to incidents and abuse consistent with the statutory requirements. In addition, these amendments clarify ambiguities in the law, as well as provide more specific direction and guidance to providers so that implementation is more effective and consistent statewide. Further, the regulations build on the notification process requirements established by statute to extend certain provisions to advocates and correspondents who are not "qualified persons" and to require compliance by all providers in the OMRDD system, not just "facilities" as specified in the law.

The new law and the associated regulations require providers to implement a more extensive notification process for certain incidents and all allegations of abuse. This notification process will provide timely information about incidents that affect the health or safety of a person receiving services to the following: a person's guardian, parent, spouse, adult child or advocate/correspondent. In addition to an initial telephone notification, the individual will have access to the initial incident/allegation of abuse report, will be provided a report on initial actions taken and will be offered the opportunity to meet with the agency Chief Executive Officer/DDSO Director (or a designee) to discuss the incident or allegation of abuse.

The law and implementing regulations also provide a qualified person with access to records and documents pertaining to allegations and investigations of abuse. For this purpose a qualified person is defined in Mental Hygiene Law 33.16 and may include: persons receiving services or who formerly received services; and guardians, parents, spouses and adult children of such persons. The regulations extend applicability of the new

requirements from only events occurring “at a facility” as specified by statute to allegations of abuse occurring while individuals are receiving facility-based services at a location away from the facility. In addition, the regulations extend applicability to services in the OMRDD system which are not facility-based, such as at-home residential habilitation and supported employment. OMRDD considers that allegations of abuse by employees should be treated the same regardless of the type of service received or location of service delivery.

4. Costs:

a. The amendments impose minor additional costs beyond the cost of complying with the new laws. Compliance with the new laws will likely require additional expenditures for personnel, paperwork, phone charges and postage. Although pre-existing OMRDD regulations already required notification of some types of incidents and allegations of abuse, the law requires notification (with its attendant costs) of additional incidents. In addition, the law requires that a report on actions taken be provided for each incident and allegation of abuse subject to the new notification requirements. Additional meetings may occur as a result of the mandated offer to hold a meeting. Lastly, documents and records must be provided upon request and must be redacted in accordance with the law.

While the statute limited the individuals being notified to “qualified persons,” the regulations extended the new notification process requirements to include advocates and correspondents. While advocates and correspondents were required to be notified of some incidents by the pre-existing OMRDD regulations, minor additional costs will be incurred through both notification of additional incidents and through the additional features of the notification process imposed by Jonathan’s Law, such as the provision of the report on actions taken.

In addition, the statute only applied to allegations of abuse occurring at a facility. However, providers in the OMRDD system operate many services which are not “facilities,” such as service coordination, supported employment, and at-home residential habilitation. The OMRDD regulations extended the requirements of Jonathan’s Law to include all services in the OMRDD system, as well as allegations of abuse when individuals are receiving facility-based services at a location away from the facility. This extension applies to both the notification process and the eligibility to request records and documents pertaining to allegations and investigations of abuse.

OMRDD is unable to quantify the modest additional costs that will be incurred by these extensions of the statutory requirements.

b. OMRDD will incur additional costs as a provider of state-operated services as noted above. These additional costs cannot be quantified.

OMRDD will use existing staff to administer this rule and does not anticipate any significant expenditure related to its administration. There are minimal additional expenditures related to informing and training providers of both Jonathan’s Law and the implementing regulations.

c. There will be no additional costs to local governments.

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

6. Paperwork: Compliance with the new laws entails an increase in paperwork. The new law requires that a written report on actions taken be provided for every incident that is subject to the new requirements. OMRDD has developed a new form to assist agencies in providing this report. Agencies are also required to provide redacted incident reports upon request as a part of the notification process. Further, agencies are required to provide redacted records and documents pertaining to allegations and investigations into abuse. The regulations add minimal new paperwork requirements to the statutory requirements by extending provisions related to the notification process to include advocates and correspondents, and extending requirements to encompass all services in the OMRDD system and incidents related to facility-based programs which occur in community settings with staff.

7. Duplication: The regulatory amendment does not duplicate existing state or federal requirements.

8. Alternatives: The law only requires the notification requirements to be made to a qualified person as defined in MHL 33.16. “Qualified persons” include only guardians, parents, spouse or adult child. OMRDD had considered limiting the applicability of the notification requirements to “qualified persons.” However, OMRDD recognizes the valuable role played by siblings, family members, friends and others who are advocates and correspondents but who are not “qualified persons.” OMRDD considers that individuals without a “qualified person” who have an advocate or correspondent should also be able to benefit from the additional notification

process requirements. OMRDD consequently extended the new notification process requirements to include advocates/correspondents.

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

10. Compliance Schedule: OMRDD filed similar emergency regulations effective on October 1, 2007 and December 30, 2007.

OMRDD intends to finalize regulations within the time frames provided for by the State Administrative Procedure Act (SAPA).

**Regulatory Flexibility Analysis**

1. Effect on Small Business: These regulatory amendments will apply to providers of services that operate all programs certified, authorized or approved by OMRDD.

OMRDD has determined, through a review of the certified cost reports, that the organizations which operate the facilities or provide the developmental disabilities services employ fewer than 100 employees at the discrete certified or authorized sites and would, therefore, be classified as small businesses.

The 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 business providers due to increased costs for additional services or increased compliance requirements.

2. Compliance Requirements: The new law required a variety of compliance activities. These activities include: providing telephone notice to a qualified person for certain incidents and allegations of abuse, offering a meeting with the agency’s Chief Executive Officer or DDSO Director or a designee, and offering to provide a written report on actions taken. In addition, upon the request of a qualified person, documents and records pertaining to allegations and investigations of abuse must be released. All the above referenced documents must have names and identifying information redacted. The implementing regulations extend the requirements to advocates and correspondents, to non-facility based services and to situations when facility-based services are delivered at a location away from the facility. Agencies will need to make the changes needed for implementation in these situations where the regulatory requirements exceed the statutory requirements.

OMRDD has carefully considered the desirability of a small business regulation guide to assist provider agencies with this rule, as provided for by new section 102-a of the State Administrative Procedure Act. However, OMRDD has already developed a regulatory handbook on the implementation of 14 NYCRR Part 624. This handbook will be updated to reflect the new requirements outlined in these amendments.

3. Professional Services: Modest additional professional services are required as a result of these amendments, due to the need for the involvement of legal professionals in redaction and interpretation of the regulations, to the extent that the regulatory requirements exceed the statutory requirements. The amendments will have no effect on the professional service needs of local governments.

4. Compliance Costs: There are no costs to local governments.

The amendments impose minor new compliance costs. There are minimal additional costs associated with implementation and compliance with the law. In the areas noted above where the regulatory requirements exceed the statutory requirements, these modest compliance costs will be increased as notification is required in new situations and in additional service types.

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

6. Minimizing Adverse Economic Impact: As stated in the Regulatory Impact Statement, the proposed regulation will have no fiscal effect on State or local governments, and minimal fiscal impact on regulated parties (including the state as a provider). Modest additional costs are necessary to the extent regulatory requirements exceed statutory requirements. OMRDD has reviewed and considered the approaches for minimizing economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. In order to minimize adverse economic impact, OMRDD has developed a standardized form for the report on actions taken. The use of this form will minimize staff resources devoted to completing the form, instead of each agency developing its own form or not using a form for this purpose.

7. Small Business and Local Government Participation: OMRDD convened a Jonathan’s Law implementation workgroup which included representatives from provider associations. The group met on June 1, June 20 and November 7, 2007. Presentations were made to various groups including committees of the Cerebral Palsy Associations of New York State and the New York State Association of Residential and Community Agencies

(NYSACRA). OMRDD staff presented at training sessions with hundreds of provider representatives hosted by NYSACRA on June 28 and July 20. OMRDD staff also presented at a training session hosted by the Long Island Alliance on August 23. In addition, OMRDD staff made a presentation at a meeting of the Conference of Local Mental Hygiene Directors on August 17. OMRDD also conducted a series of internal training sessions on October 3, October 11, October 18 and October 29. Informational mailings were sent to affected providers regarding the implementation of the new law on May 11 and May 15. A detailed informational mailing specifically discussing the emergency regulations was sent to providers and other interested parties on August 31. OMRDD also solicited comments from the Self-Advocacy Association, the Statewide Family Support Services Committee and the NYSARC Adult Services Committee. OMRDD informed all provider agencies, provider associations, and other interested parties (including parents, family members and individuals receiving services) of the October 1 and December 30 emergency regulations by mail. In addition, numerous questions and comments were received from voluntary providers, local government representatives and others at the events noted above and through individual contact.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis for these amendments is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas because of the location of their operations (rural/urban). This finding is based on the fact that the proposed rule changes the way in which notifications are made regarding certain incidents and allegations of abuse. The proposed rule also provides greater access by qualified persons, including parents and legal guardians, to records and documents pertaining to allegations and investigations of abuse and mistreatment. OMRDD expects that adoption of the amendments will not have adverse effects on regulated parties because of the location of their operations. Further, the amendments will have no adverse fiscal impact on providers as a result of the location of their operations. Specific effects of the rule on providers of services have been discussed in the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

**Job Impact Statement**

A Job Impact Statement for these amendments is not submitted because it is apparent from the nature and purposes of the amendments that they will not have an adverse impact on jobs and/or employment opportunities and they may have a slightly positive impact on employment opportunities due to new features in the rule. This finding is based on the fact that the regulatory requirements exceed the statutory requirements of Jonathan’s Law to require modest additional notifications and access to records as noted in the Regulatory Impact Statement. It is anticipated that providers will generally utilize existing staff to accomplish these tasks. In unusual circumstances, providers may find it necessary to hire or contract for additional staff.

(a) When a driver’s license is suspended pending prosecution pursuant to section 1193(2)(e)(7) of the Vehicle and Traffic Law, the holder of such license may be issued a conditional license, 30 days after such suspension takes effect, provided such person is eligible for such a license as set forth in section 134.7 of this Part and section 1196 of the Vehicle and Traffic Law. *Such license shall not be valid for the operation of a commercial motor vehicle or a taxicab. The holder of such license* [Such person] shall not be required to and may not participate in the alcohol and drug rehabilitation program when issued a conditional license pursuant to this section.

(c) Revocation of conditional license. The provisions of section [134.9(c)] 134.9(d) of this Part shall be applicable to a conditional license issued under this section.

**Text of proposed rule and any required statements and analyses may be obtained from:** Heidi Bazicki, Counsel’s Office, Department of Motor Vehicles, Six Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: heidi.bazicki@dmv.state.ny.us

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

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

**Consensus Rule Making Determination**

Section 1193(2)(e)(7) of the Vehicle and Traffic Law provides for the issuance of a pre-conviction conditional license in certain circumstances to persons suspended pending prosecution. Part 134.18(c) sets forth the criteria for the revocation of this conditional license by cross-referencing Part 134.9(c). Such cross reference should be to 134.9(d), Revocation of Conditional License. This consensus rule corrects this inaccurate cross reference.

In addition, this regulation simply reflects the statutory language in Vehicle and Traffic Law sections 1193(2)(e)(7)(d) and 1196(7)(g) that a conditional license is not valid for the operation of a commercial motor vehicle or a taxicab.

**Job Impact Statement**

A Job Impact Statement is not submitted with this proposed rule because it will have no adverse impact on job development in New York State.

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## Public Service Commission

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### NOTICE OF ADOPTION

**Water Rates and Charges by Hill Waterworks Corp.**

**I.D. No.** PSC-48-07-00010-A  
**Filing date:** March 26, 2008  
**Effective date:** March 26, 2008

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

**Action taken:** The commission, on March 19, 2008, adopted an order approving Hill Waterworks Corp.’s request to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 2—Water, to become effective April 1, 2008.

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

**Subject:** Water rates and charges.

**Purpose:** To approve an increase in Hill Waterworks Corp.’s annual revenues by \$6,211 or 38 percent.

**Substance of final rule:** The Commission adopted an order allowing Hill Waterworks Corp., Inc. to increase annual revenues by \$6,211 or 38 percent, effective April 1, 2008, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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## Department of Motor Vehicles

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

**Pre-Conviction Conditional Licenses**

**I.D. No.** MTV-16-08-00008-P

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

**Proposed action:** This is a consensus rule making to amend Part 134 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 1193(2)(e)(7)

**Subject:** Pre-conviction conditional licenses.

**Purpose:** To make technical amendments related to the pre-conviction conditional license.

**Text of proposed rule:** Subdivisions (a) and (c) of section 134.18 are amended to read as follows:

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-W-1257SA1)

### NOTICE OF ADOPTION

#### Submetering of Electricity by Herbert E. Hirschfeld

**I.D. No.** PSC-51-07-00005-A  
**Filing date:** March 27, 2008  
**Effective date:** March 27, 2008

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

**Action taken:** The commission, on March 19, 2008, adopted an order in Case 07-E-1374 approving the petition filed by Herbert E. Hirschfeld, P.E., on behalf of BLDG Management Co., Inc., to submeter electricity at 95 Christopher St., New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

**Statutory authority:** Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

**Subject:** Submetering of electricity.

**Purpose:** To submeter electricity at 95 Christopher St., New York, NY.

**Substance of final rule:** The Commission approved a petition by Herbert E. Hirschfeld, P.E., on behalf of BLDG Management Co., Inc., to submeter electricity at 95 Christopher Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-E-1374SA1)

### NOTICE OF ADOPTION

#### Submetering of Electricity by 447-453 West 18 LP

**I.D. No.** PSC-01-08-00032-A  
**Filing date:** March 27, 2008  
**Effective date:** March 27, 2008

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

**Action taken:** The commission, on March 19, 2008, adopted an order in Case 07-E-1484 approving the petition filed by 447-453 West LP, to submeter electricity at 447 W. 18th St., New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

**Statutory authority:** Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

**Subject:** Submetering of electricity.

**Purpose:** To submeter electricity at 447 W. 18th St., New York, NY.

**Substance of final rule:** The Commission approved a petition by 447-453 West LP, to submeter electricity at 447 West 18th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-E-1484SA1)

### NOTICE OF ADOPTION

#### Uniform System of Accounts by Central Hudson Gas & Electric Corporation

**I.D. No.** PSC-01-08-00033-A  
**Filing date:** March 27, 2008  
**Effective date:** March 27, 2008

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

**Action taken:** The commission, on March 19, 2008, denied the petition of Central Hudson Gas & Electric Corporation (Central Hudson) for authority to defer certain gas expenses incurred in the rate year ended June 30, 2007.

**Statutory authority:** Public Service Law, section 66(9)

**Subject:** Uniform system of accounts—denying the request for accounting authorization.

**Purpose:** To deny the request of Central Hudson for deferred accounting treatment for certain expenses beyond the end of the year in which such expenses were incurred.

**Substance of final rule:** The Commission denied the petition of Central Hudson Gas & Electric Corporation for authority to defer accounting treatment of certain gas expenses incurred in the rate year ended June 30, 2007.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-G-1411SA1)

### NOTICE OF ADOPTION

#### Proposed Financial Protections by Niagara Mohawk Power Corporation d/b/a National Grid

**I.D. No.** PSC-01-08-00035-A  
**Filing date:** March 28, 2008  
**Effective date:** March 28, 2008

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

**Action taken:** The commission, on March 19, 2008, adopted an order approving the petition of Niagara Mohawk Power Corporation d/b/a National Grid for financial protections that are consistent with those adopted for the KeySpan Companies in Case 06-M-0878.

**Statutory authority:** Public Service Law, section 66

**Subject:** Proposed financial protections for Niagara Mohawk Power Corporation comparable to other National Grid New York affiliates.

**Purpose:** To adopt financial protections for Niagara Mohawk Power Corporation.

**Substance of final rule:** The Public Service Commission approving the petition of Niagara Mohawk Power Corporation d/b/a National Grid for financial protections that are consistent with those adopted for the KeySpan Companies in Case 06-M-0878, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(01-M-0075SA40)

## NOTICE OF ADOPTION

**Submetering of Electricity by 343 LLC****I.D. No.** PSC-03-08-00004-A**Filing date:** March 27, 2008**Effective date:** March 27, 2008

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

**Action taken:** The commission, on March 19, 2008, adopted an order in Case 07-E-0955 approving the petition filed by 343 LLC, to submeter electricity at 353 Fourth Ave., Brooklyn, NY, located in the territory of Consolidated Edison Company of New York, Inc.

**Statutory authority:** Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

**Subject:** Petition for the submetering of electricity.

**Purpose:** To grant the petition of 343 LLC, to submeter electricity at 353 Fourth Ave., Brooklyn, NY.

**Substance of final rule:** The Commission approved a petition by 343 LLC, to submeter electricity at 353 Fourth Avenue, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-E-0955SA2)

## NOTICE OF ADOPTION

**Joint Proposal Regarding the Provision of Water Service by United Water New Rochelle, Inc., et al.****I.D. No.** PSC-03-08-00005-A**Filing date:** March 26, 2008**Effective date:** March 26, 2008

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

**Action taken:** The commission, on March 19, 2008, adopted an order approving the joint proposal of United Water New Rochelle, Inc., New Roc Parcel 1A, LLC, and New Rochelle Revitalization, LLC and Louis Cappelli (collectively, the parties) to file for recovery of the customer portion of the costs via the costs through the long term main replacement surcharge mechanism.

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

**Subject:** Joint proposal regarding the provision of water service.

**Purpose:** To approve the joint proposal executed by the parties on Dec. 19, 2007 regarding the provision of water service.

**Substance of final rule:** The Commission approved the joint proposal of United Water New Rochelle, Inc., New Roc Parcel 1A, LLC, and New Rochelle Revitalization, LLC and Louis Cappelli resolving all issues related to water service to the Trump Plaza New Rochelle located on the New Roc premises located at 175 Huguenot Street, in the City of New Rochelle, and the Le Count Square Project on the New Rochelle Revitalization, LLC premises in New Rochelle, New York and to file for recovery of the customer portion of the costs through the Long Term Main Replacement Program surcharge mechanism.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-W-0774SA1)

**PROPOSED RULE MAKING HEARING(S) SCHEDULED****Property Tax Refund of Approximately \$13.0 Million by Consolidated Edison Company of New York, Inc.****I.D. No.** PSC-16-08-00009-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, or modify, in whole or in part, a petition of Consolidated Edison Company of New York, Inc. (Con Edison or the company), dated Aug. 2, 2007 and updated March 10, 2008, notifying the commission of a property tax refund of approximately \$13.0 million and proposed allocation of this refund between the company it is customers.

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

**Subject:** Con Edison's petition concerning the allocation of a property tax refund.

**Purpose:** To consider the proposed allocation of a property tax refund between Con Edison and its customers.

**Public hearing(s) will be held at:** 1:30 p.m., May 20, 2008\* at Public Service Commission, Three Empire State Plaza, 3rd Fl., Alternative Dispute Resolution Rm., Albany, NY.

\* There could be requests to reschedule the hearings. Notification of any subsequent scheduling changes will be available at the DPS website ([www.dps.state.ny.us](http://www.dps.state.ny.us)) under Case No. 07-E-0927.

**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:** The Commission is considering whether to approve, reject, or modify, in whole or in part, a petition of Consolidated Edison Company of New York, Inc. (the Company), dated August 2, 2007 and updated March 10, 2008, notifying the Commission of a property tax refund of approximately \$13.0 million pursuant to 16 NYCRR 89.3, and proposed allocation of this refund between the company and its customers in accord with provisions of the rate plan established in Case 04-E-0572 and Section 113(2) of the Public Service Law. The Company plans to allocate 86% of the property tax refund for the benefit of its electric customers, and to retain 14%.

**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/196dir.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. Brillig, 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-0927SA1)

**PROPOSED RULE MAKING HEARING(S) SCHEDULED****Property Tax Refund of Approximately \$1.46 Million by Consolidated Edison Company of New York, Inc.****I.D. No.** PSC-16-08-00012-P

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

**Proposed action:** The commission is considering whether to approve, reject, or modify, in whole or in part, a petition of Consolidated Edison Company of New York, Inc. (Con Edison or the company), dated March 17, 2008 notifying the commission of a property tax refund of approximately \$1.46 million and proposed allocation of this refund between the company and its customers.

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

**Subject:** Con Edison's petition concerning the allocation of a property tax refund.

**Purpose:** To consider the proposed allocation of a property tax refund between Con Edison and its customers.

**Public hearing(s) will be held at:** 1:30 p.m., May 20, 2008\* at Public Service Commission, Three Empire State Plaza, 3rd Fl., Alternative Dispute Resolution Rm., Albany, NY.

\* There could be requests to reschedule the hearings. Notification of any subsequent scheduling changes will be available at the DPS website ([www.dps.state.ny.us](http://www.dps.state.ny.us)) under Case No. 08-M-0281.

**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:** The Commission is considering whether to approve, reject, or modify, in whole or in part, a petition of Consolidated Edison Company of New York, Inc. (the Company), dated March 17, 2008, notifying the Commission of a property tax refund of approximately \$1.46 million pursuant to 16 NYCRR 89.3, and proposed allocation of this refund between the company and its customers in accord with provisions of the rate plan established in Case 04-E-0572 and Section 113(2) of the Public Service Law. The Company plans to allocate 86% of the property tax refund for the benefit of its electric customers, and to retain 14%.

**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.

(08-M-0281SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Pole Attachment Rates by Central Hudson Gas & Electric Corporation**

**I.D. No.** PSC-16-08-00010-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 considering whether to approve or reject, in whole or in part, a proposal filed by Central 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—Electricity, to become effective July 1, 2008.

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

**Subject:** Pole attachment rates.

**Purpose:** For approval to update the pole attachment rate for cable system operators and telecommunication carriers.

**Substance of proposed rule:** The Commission is considering Central Hudson Gas & Electric Corporation's (Central Hudson) proposal to update its electric tariff schedule to reflect a new annual pole attachment rate applicable to Cable System Operators and Telecommunication Carriers. The proposal annual pole attachment rate is \$15.43 per equivalent pole based on 2007 data, \$2.96 more than the current annual rate of \$12.47 per

equivalent pole. The proposed filing has an effective date of July 1, 2008. 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.

(08-E-0330SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Low Income Affordability Program by Niagara Mohawk Power Corporation d/b/a National Grid**

**I.D. No.** PSC-16-08-00011-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, reject, or modify, in whole or in part, a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) for approval to make certain modifications to the Low Income Affordability Program.

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

**Subject:** Certain modifications to the Low Income Affordability Program.

**Purpose:** To consider the petition by National Grid to make certain modifications to the Low Income Affordability Program.

**Substance of proposed rule:** The Commission is considering whether to approve, reject, or modify, in whole or in part, a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid for approval to make certain modifications to the Low Income Affordability Program.

**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.

(01-M-0075SA41)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**PEG and Catch-All Language by the Westchester Cable Television Consortium**

**I.D. No.** PSC-16-08-00013-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 (Commission) is considering whether to approve or deny, in whole or in part, a request for clarification filed by the Westchester Cable Television Consortium regarding certain conditions contained in the commission's order approving

Verizon New York Inc.'s certificate of confirmation for its cable television franchise with the Village of Briarcliff Manor concerning public, educational and government (PEG) access and catch-all language.

**Statutory authority:** Public Service Law, sections 215(1) and 221(4)

**Subject:** Request for clarification regarding certain PEG and catch-all language.

**Purpose:** To consider a request for clarification filed by the Westchester Cable Television Consortium regarding the commission's order and certificate of confirmation.

**Substance of proposed rule:** The New York Public Service Commission (Commission) is considering whether to approve or deny, in whole or in part, a request for clarification filed by the Westchester Cable Television Consortium regarding certain conditions contained in the Commission's Order approving Verizon New York Inc.'s Certificate of Confirmation for its cable television franchise with the Village of Briarcliff Manor concerning public, educational and government (PEG) access and catch-all language.

**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. Brillong, 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-V-1524SA2)

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## Office of Real Property Services

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### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### Annual Charges to Railroad Companies

**I.D. No.** RPS-16-08-00006-P

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

**Proposed action:** Repeal of section 200-6.7 and addition of section 200-7.1 to Title 9 NYCRR.

**Statutory authority:** Real Property Tax Law, sections 202(1)(l), 489-q and 489-nn; and State Finance Law, section 97-jj

**Subject:** Annual charges to railroad companies.

**Purpose:** To restore the process of establishing annual charges that was unintentionally deleted in a prior rule making.

**Public hearing(s) will be held at:** 10:00 a.m., May 14, 2008 at 16 Sheridan Ave., Albany, NY 12210

**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.

**Text of proposed rule:** The State Board of Real Property Services hereby amends Part 200 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York as follows:

Section one: Section 200-6.7 is repealed.

Section 2. Part 200 is amended by adding a new section 200-7.1 to read as follows:

200-7.1 Annual charge to railroad companies.

§ 200-7.1 Annual charge to railroad companies. (a) Each year a charge shall be computed for each railroad company receiving a tentative railroad ceiling.

(b) The charge shall be computed as follows:

(1) The executive director or his designee shall establish a dollar amount for the direct and indirect costs and expenses for computing and establishing railroad ceilings. In establishing this amount, the executive director shall include the costs of obtaining valuation information, processing that information, calculating values, establishing ceilings and complying with all statutory and regulatory notice and hearing requirements for establishing those ceilings. He shall not include the cost of any contractual expenses incurred in defense of any railroad ceilings.

(2) The value of railroad real property used for transportation purposes used to establish the final railroad ceilings for the previous year for all railroad companies shall be divided into the dollar amount determined in paragraph (1) of this subdivision. This shall be the charge rate.

(3) The charge rate shall be multiplied by the value of real property used for transportation purposes which was used to compute the final railroad ceiling for a railroad company for the previous year. In the first year a railroad company receives a railroad ceiling, the charge rate shall be multiplied by the value of real property used for transportation purposes which was used to compute the tentative railroad ceiling for that company.

(4) Where a charge of less than \$25 is computed, no charge shall be imposed. Annual charges unpaid more than 60 days after the billing date shall be considered past due.

(c) Charges shall be computed and billed annually on or about July 1st, or within 45 days of the adoption of the State Operations Budget, whichever is later. If the total amount computed and billed is more than the amount previously estimated and sent to a railroad company in the preceding calendar year after submission of the budget request pursuant to section 200-7.5(f) of this section, the bill should be accompanied by a detailed explanation of the difference.

(d) All revenue collected pursuant to this Subpart shall be deposited in the industrial and utility service account of the miscellaneous special revenue fund.

(e) In no event may the amount computed and billed for the railroad ceiling program exceed the funds appropriated for this program in the State Operations Budget. The amount computed shall be reduced prior to billing by the amount of any funds remaining unexpended in the industrial and utility service account of the special revenue fund that are identifiable to the railroad ceiling program.

(f) No later than 30 days prior to the submission of the next fiscal year's budget request, the Office of Real Property Services shall notify railroad companies of prospective program changes, if any, and the preliminary estimated cost for administration of the railroad ceiling program for the next fiscal year. Railroad companies may submit comments regarding these changes and costs up to 15 days after issuance of the notice. These comments shall be considered by office staff in finalizing the budget request. After submission of the budget request, ORPS shall notify railroad companies of the final estimated cost for administration of the program for the next fiscal year.

(g) Within 10 days of receipt of the notice of any prospective program changes and the preliminary estimated cost of administration of the program for the next fiscal year, any railroad company may request that a meeting be scheduled for railroad companies to discuss these proposed program changes and preliminary estimated costs with ORPS staff. Upon receipt of any such request, ORPS shall schedule such a meeting and shall meeting all railroad companies with notice of the time and place that such meeting will be held.

(h) At the same time that the Office of Real Property Services notifies railroad companies of prospective program changes for the next fiscal year, an accounting of the costs of administering the railroad ceiling program for the preceding fiscal year shall be available upon request.

(i) (1) Costs and expenses incurred in the establishment of railroad ceilings which shall be paid from the collection of the annual charge shall include direct personal services, nonpersonal services, and indirect costs.

(2) Direct personal services shall be calculated in the following manner. The executive director shall identify those job titles that directly perform tasks required by the railroad ceiling program and shall enumerate the percent of time each particular job title is expected to spend on the program.

(3) Nonpersonal services include travel, supplies, equipment, contractual obligations, and mandated fringe benefit charges as published

annually by the Office of the State Comptroller and expressed as a percentage of estimated personal service costs.

(4) Indirect costs, or overhead, include space rental, heat, utilities, security, computing and data processing costs, training and staff development costs, and the cost of executive direction and administration.

(5) In computing indirect costs, the amount of time individual employees spend in the establishment of railroad ceilings, as enumerated pursuant to paragraph (2) of this subdivision, shall be expressed as full-time employee equivalents. This number shall be divided by the number of full-time employee equivalents of ORPS whose official station is the Albany office of ORPS on the first day of the fiscal year for which the annual charge is determined. This percentage shall be computed to the third decimal place. The resulting percentage shall be applied to total costs for Albany space rental, heat, utilities, security, computing and data processing, and training and staff development to determine indirect costs other than the cost of executive direction and administration.

(6) The cost of executive direction and administration required for the establishment of railroad ceilings, which includes the costs of legal services, fiscal and administrative services, human resource management and development, and the office of the executive director, shall be determined by dividing the total personal services appropriation of ORPS for the fiscal year for which the annual charge is being computed into the salary equivalents of the sum of those individuals responsible for providing these services. The resulting percentage, computed to the third decimal place, shall be applied to the amount determined for the cost of direct personal services pursuant to paragraph (2) of this subdivision to determine the indirect cost of executive direction and administration.

(i)\* In computing the annual charge rate or the annual charge for any railroad company pursuant to this section, the value of railroad real property shall be determined without any adjustment for any economic factor established pursuant to title 2-A of article 4 of the Real Property Tax Law.

Section 3. This amendment shall take effect immediately and apply to all annual fees imposed for fiscal years ending on or after April 30, 2008.

**Text of proposed rule and any required statements and analyses may be obtained from:** Hung Kay Lo, Office of Real Property Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821, e-mail: internet.legal@orps.state.ny.us

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

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

#### **Regulatory Impact Statement**

1. Statutory Authority: Section 202(1)(l) of the Real Property Tax Law (RPTL) authorizes the State Board of Real Property Services (State Board) to adopt such rules "as may be necessary for the exercise of its powers and the performance of its duties."

Sections 489-q (for intrastate railroads) and 489-nn (for interstate railroads) of the RPTL authorizes the State Board to impose an annual charge on railroad companies to defray the cost of the railroad ceilings program.

Section 97-jj of the State Finance Law creates an Industrial and Utility Service Account for those annual charges.

2. Legislative Objectives: Funding of the railroad ceiling program through the imposition of annual charges on railroad companies.

3. Needs and Benefits: Titles 2-A and 2-B of Article 4 of the RPTL provide a de facto exemption for railroads operating in New York. Each year the State Board establishes ceilings for transportation property of approximately 20 railroads in each of approximately 385 assessing unit. Taxes are subsequently extended against the lower of the ceiling or the assessment placed on the property by the local assessor.

This estimate includes certain adjustments that make the estimate lower than that which would be established under normal circumstances. This cost estimate is then reduced further by application of a factor that reflects the profitability of the individual railroad – the less profitable the railroad, the lower the value. The resulting values are equalized to provide a ceiling, so that the railroad company pays on the lower of the ceiling or the local assessment of the property.

In 2006 the staff of the State Office of Real Property Services (ORPS) reviewed the provisions of Part 200 of Title 9 concerning the railroad ceiling program and, at a March 21, 2006, meeting of the State Board, recommended certain changes to those rules, which contain the process the Board has established for the ceiling program. Some information is no longer needed and the requirements for forms RPRR-A, RPRR-D and RPRR-5 are deleted. Chapter 733 of the Laws of 2004 changed the valuation date for railroad ceilings from the prior (or second prior) December 31 to the prior July 1 (489-c[3], 489-cc[3]). This in turn requires changes in

the dates for some of the annual reports. The Railroad Infrastructure Investment Act of 2002 (Chapter 698), which provides additional reductions in the cost calculation and adjustments to the profitability curves, also requires minor changes to the rules. In addition, some valuation information has been deleted due to internal agency operations being more appropriate in procedure rather than rule.

In 2007 amendments were made to Part 200 to recognize changes in State and Federal law (RPS-40-06-00007, April 11, 2007). Those amendments inadvertently retained section 200-6.7, which is duplicative of statute (Real Property Tax Law 1224), and repealed section 200-7.1, which provides the process for establishing annual charges for railroad companies. This proposal corrects that error.

4. Costs: (a) To State Government: None.

(b) To local governments: None.

(c) To private regulated parties: None. The annual charge is imposed by statute.

(d) Basis of cost estimates: The nature of the amendment.

5. Local Government Mandates: None.

6. Paperwork: None.

7. Duplication: There are no comparable State or Federal requirements.

8. Alternatives: Establishment of annual charges without the process being contained in rule. A set of the proposed amendments were sent to each of the affected railroad companies on December 4, 2007, requesting comments. By the deadline date of December 21, 2007, no comment has been received.

9. Federal Standards: There are no Federal regulations concerning this subject.

10. Compliance Schedule: The annual charges would continue in place without change. There would be no compliance imposed on railroad companies.

#### **Regulatory Flexibility Analysis**

The amendments proposed would not impose any adverse economic conditions or any reporting, recordkeeping or other compliance requirements on small businesses. The proposal restores the process for establishing the annual fee imposed by statute on railroad companies of whatever size.

The rule imposes no additional recordkeeping or reporting requirements on local governments.

#### **Rural Area Flexibility Analysis**

A rural area flexibility analysis is not required for this rule making because the amendments would not impose any adverse economic conditions, any reporting, recordkeeping or compliance requirements on public or private entities in rural areas. The proposal restores the process for the imposition of statutory annual fees.

#### **Job Impact Statement**

These amendments concern the establishment of the annual fee for railroad companies under the existing railroad ceiling program. The proposal should have no effect, positive or negative, on job opportunities.

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## Susquehanna River Basin Commission

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Notice of Public Comment and Public Hearing

AGENCY: Susquehanna River Basin Commission

ACTION: Notice of Public Comment and Public Hearing

SUMMARY: The Susquehanna River Basin Commission (SRBC) will hold a public hearing on April 23, 2008 in the Susquehanna Room, Pennsylvania Fish & Boat Commission, 1601 Elmerton Ave., Harrisburg, Pennsylvania 17110, beginning at 10:00 a.m. The purpose of the hearing is to receive comments on a proposed increase in the SRBC Consumptive Use Mitigation Fee and is being held in conjunction with a 60-day public comment period established for the proposal. Details concerning the subject matter of the public hearing are contained in the Supplementary Information section of this notice.

DATE: April 23, 2008, beginning at 10:00 a.m.

ADDRESS: Pennsylvania Fish and Boat Commission, 1601 Elmerton Ave., Harrisburg, Pennsylvania 17110.

FOR FURTHER INFORMATION CONTACT: More information on the proposed increase can be obtained from SRBC's web site at <http://www.srbc.net/programs/projreview.htm> or by calling (717) 238-0423.

SUPPLEMENTARY INFORMATION: As noted in the summary, the purpose of the 60-day comment period and the hearing is to receive comments on a proposed increase in the SRBC Consumptive Use Mitigation Fee. The fee, which is paid by the sponsors of consumptive use projects as an optional method of compliance with the SRBC's consumptive use mitigation requirements, has not been adjusted since January 1, 1993. Under the proposal, the fee would increase from its current level of 14 cents per 1,000 gallons of water consumed to 28 cents per 1,000 gallons of water consumed, to take effect on January 1, 2009, with annual inflationary adjustments in subsequent years.

Opportunity to Appear and Comment:

Interested parties may appear at the above hearing to offer written or oral comments to the Commission. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Anyone planning to comment at the public hearing should contact Richard A. Cairo, General Counsel, SRBC, 1721 N. Front Street, Harrisburg, PA 17102-2391; (717) 238-0423, ext. 306. Public comments will also be accepted during the 60-day comment period that begins April 1, 2008 and concludes May 31, 2008, and can be sent to Mr. Cairo by mail, by e-mail at SRBCfeecomments@srbc.net, and by fax at (717) 238-2436.

AUTHORITY: P.L. 91-575, 84 Stat. 1509 *et seq.*, 18 CFR Parts 806, 807, and 808.

Dated: March 24, 2008.

Thomas W. Beauduy,

Deputy Director.

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## Office of Temporary and Disability Assistance

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

**Home Energy Assistance Program**

**I.D. No.** TDA-16-08-00002-P

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

**Proposed action:** This is a consensus rule making to amend section 393.4(c) of Title 18 NYCRR. This rule is proposed pursuant to SAPA section 207(3), 5-Year Review of Existing Rules.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34, 97 and 131(1)

**Subject:** Home Energy Assistance Program.

**Purpose:** To relocate an undesignated paragraph concerning regular Home Energy Assistance Program benefits to a more appropriate location within the same regulatory section.

**Text of proposed rule:** Subdivision (c) of section 393.4 is amended to read as follows:

(c) "Regular HEAP benefit." *For purposes of the annual HEAP State Plan, eligibility for the regular HEAP benefit must be determined annually and must be based on the household's circumstances (income, household size, energy type, etc.) for the entire calendar month in which the household has filed its application. In order to be eligible for a regular HEAP benefit, a household must pay for heat directly or make undesignated energy payments for heat in the form of rent and not reside in an ineligible living situation as provided in paragraph (3) of this subdivision. If heat is not included in the applicant's rent, a vendor relationship must be established for the applicant household. The vendor relationship must be documented by a current fuel/utility bill or contact with the fuel/utility company. While the applicant is not required to be the customer of record for regular HEAP, direct responsibility for payment of the bill must be established if the applicant or member of the applicant household is not the customer of record. The term "customer of record" means a person or persons who have an account, in their name, with a home energy vendor.*

*The term "home energy vendor" means an individual or entity engaged in the business of selling electricity, natural gas, oil, propane, kerosene, coal, wood, or any other fuel used for residential heating. Once determined eligible, a household will receive a regular HEAP benefit for such program year in an amount to be set by the Office of Temporary and Disability Assistance (the office). The office must annually establish a payment matrix which will enable the office to meet the requirements of 42 USC section 8624(b)(5) and (8) and which sets payment levels with consideration to the availability of Federal funds and utilizes various factors including, but not limited to, income and fuel costs. Except as provided in paragraph (3) of this subdivision, the following households shall be eligible to receive a regular HEAP benefit, if and to the extent that an allocation of Federal funds is available to the district in which the household resides.*

The undesignated paragraph following subparagraph (ix) of paragraph (4) of subdivision (c) of section 393.4 is repealed.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jeanine Stander Behuniak, Office of Temporary and Disability Assistance, 40 N. Pearl St., 16C, Albany, NY 12243-0001, (518) 474-9779, e-mail: Jeanine.Behuniak@otda.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.

**Reasoned Justification for Modification of the Rule**

Pursuant to section 207 of the State Administrative Procedure Act (SAPA), the Office of Temporary and Disability Assistance (OTDA) must review at five-year intervals those regulations that were adopted on or after January 1, 1997. In accordance with this provision, OTDA published in the *New York State Register*, on January 4, 2006, a list of regulations that it had adopted in the year 2002. OTDA received one letter in response to the rule review. That letter, in part, asserted that subdivision (c) of section 393.4 of Title 18 NYCRR was difficult to cite due to an undesignated paragraph at the end of that subdivision.

OTDA is proposing a technical amendment to subdivision (c) of section 393.4 to relocate the undesignated paragraph to a more appropriate location. The undesignated paragraph generally addresses regular Home Energy Assistance Program (HEAP) benefits. At the present time, the undesignated paragraph is located after paragraph (4) of subdivision (c) of that section. Paragraph (4) concerns specific eligibility requirements. It would be more appropriate if the undesignated paragraph were moved from paragraph (4) to the beginning of that subdivision, which addresses regular HEAP benefits. From a program perspective, it would be more logical if the undesignated paragraph were located at the beginning of subdivision (c), and as a practical matter, the undesignated paragraph could then be accurately cited as subdivision (c) of section 393.4 of Title 18 NYCRR.

**Consensus Rule Making Determination**

The Office of Temporary and Disability Assistance (OTDA) is proposing a rule to amend subdivision (c) of section 393.4 of Title 18 NYCRR to relocate an undesignated paragraph concerning regular Home Energy Assistance Program (HEAP) benefits. OTDA has determined that no person is likely to object to the adoption of the proposed rule as written.

This proposed rule is a technical amendment. At the present time, there is an undesignated paragraph, which generally addresses regular HEAP benefits, at the end of subdivision (c) of section 393.4. The undesignated paragraph is located after paragraph (4) of subdivision (c) of that section. Paragraph (4) concerns specific eligibility requirements for HEAP. It would be more appropriate if the undesignated paragraph were moved from paragraph (4) to the beginning of that subdivision, which addresses regular HEAP benefits. From a program perspective, it would be more logical if the undesignated paragraph were located at the beginning of subdivision (c), and as a practical matter, the undesignated paragraph could then be cited as subdivision (c) of section 393.4 of Title 18 NYCRR.

It is expected that no person will object to the proposed amendments contained in this consensus rule since the rule renders section 393.4 of Title 18 NYCRR more comprehensible to the public.

**Job Impact Statement**

A job impact statement has not been prepared for the proposed regulatory amendment. It is evident from the technical nature of the amendment that the jobs of the workers applying the regulation impacted by the proposed amendment would not be affected in any real way. Thus, the change would not have any impact on jobs and employment opportunities in the State.

## Urban Development Corporation

### EMERGENCY RULE MAKING

#### Restore New York's Communities Initiative

**I.D. No.** UDC-16-08-00004-E

**Filing No.** 305

**Filing date:** March 28, 2008

**Effective date:** March 28, 2008

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

**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 the creation of the rule. This assistance is necessary to address the dangers to public health, safety and welfare posed by vacant, abandoned, surplus or condemned buildings in municipalities.

**Subject:** Restore New York's communities initiative.

**Purpose:** To provide framework for administration of the restore New York's communities initiative.

**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 June 25, 2008.

**Text of emergency rule and any required statements and analyses may be obtained from:** Antovk Pidedjian, Urban Development Corporation d/b/a 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 pro-

mote 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.

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 Government 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**

**Economic Development and Job Creation Throughout New York State**

**I.D. No.** UDC-16-08-00005-E

**Filing No.** 306

**Filing date:** March 28, 2008

**Effective date:** March 28, 2008

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

**Action taken:** Addition of sections 4243.40-4243.46 to Title 21 NYCRR.

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

**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 and elimination of inconsistencies in the rule.

**Subject:** Economic development and job creation throughout New York State.

**Purpose:** To provide 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 June 25, 2008.

**Text of emergency rule and any required statements and analyses may be obtained from:** Antovk Pidedjian, Urban Development Corporation d/b/a 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. Needs 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-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.

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 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 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, recordkeeping 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.