

RULE MAKING ACTIVITIES

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

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

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

Education Department

EMERGENCY RULE MAKING

State Aid for High Needs Nursing Programs

I.D. No. EDU-23-09-00004-E

Filing No. 594

Filing Date: 2009-05-22

Effective Date: 2009-05-22

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

Action taken: Amendment of section 150.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 and 6401-a; and L. 2008, ch. 57

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

Specific reasons underlying the finding of necessity: Section 6401-a of the Education Law authorizes the Commissioner of Education to award state aid to certain eligible independent colleges and universities for high needs nursing programs.

Emergency action is necessary for the preservation of the general welfare to extend the deadline for submission of annual reports to provide institutions with an adequate amount of time to submit their annual reports. Currently, the Regulations of the Commissioner of Education require each institution to submit an annual report to the Department by June 1, detailing expenditures of any state aid received. Institutions, however, are required to submit a report to the Department by November 15, certifying the number of students enrolled in a high needs nursing program at such institution for the fall semester and they do not receive any state aid until March or later. Therefore, the current June 1 date for submission of annual

reports detailing expenditure of such aid does not provide a sufficient amount of time for institutions to comply. Therefore, the proposed amendment seeks to extend the date for submission of annual reports from June 1 to November 15 of each year to provide institutions with an adequate amount of time to complete their reports.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption at the September 2009 Regents Meeting.

Subject: State aid for high needs nursing programs.

Purpose: To extend the deadline for submission of annual reports from June 1 to November 15 of each year.

Text of emergency rule: Subdivision (f) of section 150.4 of the Regulations of the Commissioner of Education is amended, effective May 22, 2009, as follows:

(f) Annual reports. Each eligible institution that receives State aid pursuant to section 6401-a of the Education Law shall submit an annual report to the commissioner by [June 1] *November 15* of each year, detailing each expenditure of State aid received and any other information the commissioner may require, in a form prescribed by the commissioner.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 19, 2009.

Text of rule and any required statements and analyses may be obtained from: Christine Moore, Office of Counsel, New York State Education Department, Counsel's Office, Room 148, 89 Washington Avenue, Albany, New York 12234, (518) 473-4921, email: cmoore@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 215 of the Education Law authorizes the Commissioner of Education, or their representative, to visit, examine into and inspect, any institution in the university and any school or institution under the educational supervision of the state, and may require, as often as desired, reports in such form as the Regents or the Commissioner of Education may require.

Section 6401-a of the Education Law, as added by Chapter 57 of the Laws of 2007, authorizes the Commissioner of Education to award state aid for high needs nursing programs at certain independent colleges and universities and to promulgate any regulations necessary to implement the requirements of this section.

Chapter 57 of the Laws of 2008 authorizes the Commissioner of Education to award state aid to certain eligible independent colleges and universities for high needs nursing programs, including those institutions that offer online nursing programs via the internet.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives set forth in the aforementioned statutes in that it requires each institution that receives state aid under Section 6401-a of the Education Law to submit an annual report by November 15 detailing each expenditure of state aid.

3. NEEDS AND BENEFITS:

Section 6401-a of the Education Law, as amended by Chapter 57 of the Laws of 2008, authorizes the Commissioner of Education to award state aid for high needs nursing programs at certain independent institutions of higher education within the State, including those offering online nursing programs via the internet. Currently, the Regulations of the Commissioner of Education requires each institution to submit an annual report to the Department by June 1, detailing each expenditure of state aid. Institutions, however, are required to submit a report to the Department by November 15, certifying the number of students enrolled in a high needs nursing program at such institution for the fall semester and they do not receive any state aid until March or later. Therefore, the current June 1 date for submission of annual reports detailing expenditure of such aid does not

provide a sufficient amount of time for institutions to comply. The purpose of the proposed amendment is to extend the deadline for submission of annual reports from June 1 to November 15 of each year to provide institutions with an adequate amount of time to submit their annual reports.

4. COSTS:

a. Costs to the State government. The proposed amendment will not impose additional costs on State government.

b. Costs to local government. None.

c. Costs to private regulatory parties. The proposed amendment will not impose any additional costs on State government beyond those currently imposed by regulation.

d. Costs to the regulatory agency. None.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment will not impose any new mandates on local governments.

6. PAPERWORK:

Other than the annual report mentioned above, the amendment does not add or alter any other reporting or recordkeeping requirements for independent colleges and universities. The amendment will not require regulated parties to acquire professional services.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment at this time.

9. FEDERAL STANDARDS:

The proposed amendment provides State aid for certain independent institutions of higher learning that offer online high needs nursing programs.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed regulation by its stated effective date.

Regulatory Flexibility Analysis

Section 6401-a of the Education Law, as amended by Chapter 57 of the Laws of 2008, authorizes the Commissioner of Education to award state aid to certain eligible independent colleges and universities for high needs nursing programs, including those institutions that offer online nursing programs via the internet. Currently, the Regulations of the Commissioner of Education require each institution to submit an annual report to the Department by June 1, detailing each expenditure of state aid. Institutions, however, are required to submit a report to the Department by November 15, certifying the number of students enrolled in a high needs nursing program at such institution for the fall semester and they do not receive any state aid until March or later. Therefore, the current June 1 date for submission of annual reports detailing expenditure of such aid does not provide a sufficient amount of time for institutions to comply. The purpose of the proposed amendment is to extend the date that institutions may submit annual reports to the department from June 1 to November 15.

Because it is evident from the nature of the proposed amendment that it will not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to certain independent colleges and universities that offer nursing programs in New York State with high needs nursing programs registered by the State Education Department. Based on 2005-2006 academic year data, the Department estimates that approximately 43 colleges and universities will be eligible for state aid under the proposed regulation. Of these, approximately 12 are located in rural areas, defined as the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

Section 6401-a of the Education Law, as amended by Chapter 57 of the Laws of 2008, authorizes the Commissioner of Education to award state aid to certain eligible independent colleges and universities for high needs nursing programs, including those institutions that offer online nursing programs via the internet. Currently, section 150.4 of the Regulations of the Commissioner of Education requires each institution to submit an annual report to the Department by June 1, detailing each expenditure of state aid. Institutions, however, are required to submit a report to the Department by November 15, certifying the number of students enrolled in a high needs nursing program at such institution for the fall semester and they do not receive any state aid until March or later. Therefore, the current June 1 date for submission of annual reports detailing expenditure of such aid does not provide a sufficient amount of time for institutions to

comply. The purpose of the proposed amendment is to extend the deadline for submission of annual reports from June 1 to November 15 of each year to provide institutions with an adequate amount of time to submit their annual reports.

3. COSTS:

The proposed amendment does not impose any additional costs, beyond those currently imposed by statute or regulation.

4. MINIMIZING ADVERSE IMPACT:

The statute makes no exceptions for eligible independent colleges and universities located in rural areas.

5. RURAL AREA PARTICIPATION:

A copy of the proposed amendment was shared with each of the independent colleges and universities in New York State with high needs nursing programs, including those located in rural areas.

In addition, comments on the proposed amendment were solicited from the Rural Education Advisory Committee, whose membership includes, among others, representatives of school districts, BOCES, business interests, and government entities located in rural areas.

Job Impact Statement

Section 6401-a of the Education Law, as amended by Chapter 57 of the Laws of 2008, authorizes the Commissioner of Education to award state aid to certain eligible independent colleges and universities for high needs nursing programs. Currently, the Regulations of the Commissioner of Education requires each institution to submit an annual report to the Department by June 1, detailing each expenditure of state aid. Institutions, however, are required to submit a report to the Department by November 15, certifying the number of students enrolled in a high needs nursing program at such institution for the fall semester and they do not receive any state aid until March or later. Therefore, the current June 1 date for submission of annual reports detailing expenditure of such aid does not provide a sufficient amount of time for institutions to comply. The purpose of the proposed amendment is to extend the deadline for submission of annual reports from June 1 to November 15 of each year to provide institutions with an adequate amount of time to submit their annual reports.

Because it is evident from the nature of this proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

NOTICE OF ADOPTION

Public Library Systems

I.D. No. EDU-09-09-00005-A

Filing No. 596

Filing Date: 2009-05-26

Effective Date: 2009-06-11

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

Action taken: Amendment of section 90.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 215 (not subdivided), 254 (not subdivided), 255 (1 through 5), 272(1)(h) and 273(1)

Subject: Public Library Systems.

Purpose: To update terminology and clarify procedures relating to State aid for public library systems.

Text or summary was published in the March 4, 2009 issue of the Register, I.D. No. EDU-09-09-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, 89 Washington Avenue, Room 148 EB, Albany, NY 12234, (518) 473-4921, email: legal@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

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

State Aid for High Needs Nursing Programs

I.D. No. EDU-23-09-00005-P

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

Proposed Action: Amendment of section 150.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 and 6401-a; L. 2008, ch. 57

Subject: State aid for high needs nursing programs.

Purpose: To extend the deadline for submission of annual reports from June 1 to November 15 of each year.

Text of proposed rule: Subdivision (f) of section 150.4 of the Regulations of the Commissioner of Education is amended, effective October 8, 2009, as follows:

(f) Annual reports. Each eligible institution that receives State aid pursuant to section 6401-a of the Education Law shall submit an annual report to the commissioner by [June 1] *November 15* of each year, detailing each expenditure of State aid received and any other information the commissioner may require, in a form prescribed by the commissioner.

Text of proposed rule and any required statements and analyses may be obtained from: Christine Moore, New York State Education Department, Office of Counsel, Room 148, Albany, New York 12234, (518) 473-4921, email: cmoore@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Senior Deputy Commissioner of P16, New York State Education Department, 2nd Floor, West Wing, Education Bldg., Albany, New York 12257, (518) 474-3862, email: p16education@mail.nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 215 of the Education Law authorizes the Commissioner of Education, or their representative, to visit, examine into and inspect, any institution in the university and any school or institution under the educational supervision of the state, and may require, as often as desired, reports in such form as the Regents or the Commissioner of Education may require.

Section 6401-a of the Education Law, as added by Chapter 57 of the Laws of 2007, authorizes the Commissioner of Education to award state aid for high needs nursing programs at certain independent colleges and universities and to promulgate any regulations necessary to implement the requirements of this section.

Chapter 57 of the Laws of 2008 authorizes the Commissioner of Education to award state aid to certain eligible independent colleges and universities for high needs nursing programs, including those institutions that offer online nursing programs via the internet.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives set forth in the aforementioned statutes in that it requires each institution that receives state aid under Section 6401-a of the Education Law to submit an annual report by November 15 detailing each expenditure of state aid.

3. NEEDS AND BENEFITS:

Section 6401-a of the Education Law, as amended by Chapter 57 of the Laws of 2008, authorizes the Commissioner of Education to award state aid for high needs nursing programs at certain independent institutions of higher education within the State, including those offering online nursing programs via the internet. Currently, the Regulations of the Commissioner of Education requires each institution to submit an annual report to the Department by June 1, detailing each expenditure of state aid. Institutions, however, are required to submit a report to the Department by November 15, certifying the number of students enrolled in a high needs nursing program at such institution for the fall semester and they do not receive any state aid until March or later. Therefore, the current June 1 date for submission of annual reports detailing expenditure of such aid does not provide a sufficient amount of time for institutions to comply. The purpose of the proposed amendment is to extend the deadline for submission of annual reports from June 1 to November 15 of each year to provide institutions with an adequate amount of time to submit their annual reports.

4. COSTS:

a. Costs to the State government. The proposed amendment will not impose additional costs on State government.

b. Costs to local government. None.

c. Costs to private regulatory parties. The proposed amendment will not impose any additional costs on State government beyond those currently imposed by regulation.

d. Costs to the regulatory agency. None.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment will not impose any new mandates on local governments.

6. PAPERWORK:

Other than the annual report mentioned above, the amendment does not add or alter any other reporting or recordkeeping requirements for independent colleges and universities. The amendment will not require regulated parties to acquire professional services.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment at this time.

9. FEDERAL STANDARDS:

The proposed amendment provides State aid for certain independent institutions of higher learning that offer online high needs nursing programs.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed regulation by its stated effective date.

Regulatory Flexibility Analysis

Section 6401-a of the Education Law, as amended by Chapter 57 of the Laws of 2008, authorizes the Commissioner of Education to award state aid to certain eligible independent colleges and universities for high needs nursing programs, including those institutions that offer online nursing programs via the internet. Currently, the Regulations of the Commissioner of Education require each institution to submit an annual report to the Department by June 1, detailing each expenditure of state aid. Institutions, however, are required to submit a report to the Department by November 15, certifying the number of students enrolled in a high needs nursing program at such institution for the fall semester and they do not receive any state aid until March or later. Therefore, the current June 1 date for submission of annual reports detailing expenditure of such aid does not provide a sufficient amount of time for institutions to comply. The purpose of the proposed amendment is to extend the date that institutions may submit annual reports to the department from June 1 to November 15.

Because it is evident from the nature of the proposed amendment that it will not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to certain independent colleges and universities that offer nursing programs in New York State with high needs nursing programs registered by the State Education Department. Based on 2005-2006 academic year data, the Department estimates that approximately 43 colleges and universities will be eligible for state aid under the proposed regulation. Of these, approximately 12 are located in rural areas, defined as the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

Section 6401-a of the Education Law, as amended by Chapter 57 of the Laws of 2008, authorizes the Commissioner of Education to award state aid to certain eligible independent colleges and universities for high needs nursing programs, including those institutions that offer online nursing programs via the internet. Currently, section 150.4 of the Regulations of the Commissioner of Education requires each institution to submit an annual report to the Department by June 1, detailing each expenditure of state aid. Institutions, however, are required to submit a report to the Department by November 15, certifying the number of students enrolled in a high needs nursing program at such institution for the fall semester and they do not receive any state aid until March or later. Therefore, the current June 1 date for submission of annual reports detailing expenditure of such aid does not provide a sufficient amount of time for institutions to comply. The purpose of the proposed amendment is to extend the deadline for submission of annual reports from June 1 to November 15 of each year to provide institutions with an adequate amount of time to submit their annual reports.

3. COSTS:

The proposed amendment does not impose any additional costs, beyond those currently imposed by statute or regulation.

4. MINIMIZING ADVERSE IMPACT:

The statute makes no exceptions for eligible independent colleges and universities located in rural areas.

5. RURAL AREA PARTICIPATION:

A copy of the proposed amendment was shared with each of the independent colleges and universities in New York State with high needs nursing programs, including those located in rural areas.

In addition, comments on the proposed amendment were solicited from

the Rural Education Advisory Committee, whose membership includes, among others, representatives of school districts, BOCES, business interests, and government entities located in rural areas.

Job Impact Statement

Section 6401-a of the Education Law, as amended by Chapter 57 of the Laws of 2008, authorizes the Commissioner of Education to award state aid to certain eligible independent colleges and universities for high needs nursing programs. Currently, the Regulations of the Commissioner of Education requires each institution to submit an annual report to the Department by June 1, detailing each expenditure of state aid. Institutions, however, are required to submit a report to the Department by November 15, certifying the number of students enrolled in a high needs nursing program at such institution for the fall semester and they do not receive any state aid until March or later. Therefore, the current June 1 date for submission of annual reports detailing expenditure of such aid does not provide a sufficient amount of time for institutions to comply. The purpose of the proposed amendment is to extend the deadline for submission of annual reports from June 1 to November 15 of each year to provide institutions with an adequate amount of time to submit their annual reports.

Because it is evident from the nature of this proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

State Board of Elections

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Bipartisan Processing of All Voter Registration Information

I.D. No. SBE-23-09-00006-P

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

Proposed Action: Amendment of section 6217.5(c) of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-102 and 5-614; and L. 2005, ch. 24

Subject: Bipartisan processing of all voter registration information.

Purpose: Govern bipartisan voter registration processing of data and the transmission of same to the statewide voter registration list.

Text of proposed rule: Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended by amending Part 6217.5(c) Voter Registration Processing, to read as follows:

(c) All voter registration activity must be done by a bipartisan team of workers, to assure fairness and uniformity in the process.

1. Bipartisan processing:

i. Staff member(s) of one major political party review(s) and enters the information from either an individual application or a batch of applications[, electronically signing their work].

ii. The work on [that] *such* application or batch of applications is proofread and reviewed by a staff member(s) of the opposite major political party[, who also electronically signs their work].

iii. Any edits or changes to the information initially entered must be made and [signed] *approved, in a bipartisan process*, by the two staff [persons] *members* of opposite parties.

iv. Once [signed] *completed* by two staff [persons] *members* of opposite parties, the information is sent from the county registration system to NYSVoter for inclusion on the statewide list of registered voters, and verification of each voter's identity.

Text of proposed rule and any required statements and analyses may be obtained from: Kimberly A. Galvin, New York State Board of Elections, 40 Steuben Street, Albany, NY 12207, (518) 474-6367, email: kgalvin@elections.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:

Election Law Section 3-102.1 provides for the State Board to promulgate rules and regulations relating to the administration of the election process; and Section 5-614, as added by Ch. 24 L. 2005, requires the State

Board to promulgate regulations relative to the creation of the statewide voter registration list; the transmission of voter registration information by county boards of elections to the statewide voter registration list; and to establish minimum standards for statewide voter registration list maintenance.

2. Legislative Objectives:

In 2005, the Legislature amended the NYS Election Law to add a new section 5-614 in relation to creating a statewide voter registration list (Chapter 24 of the Laws of 2005). In 2007, the New York State Board of Elections finalized the adoption of rules which were required to be promulgated by this legislation relative to: the creation of the statewide voter registration list; the transmission of voter registration information by county boards of elections to the statewide voter registration list; and to establish minimum standards for statewide voter registration list maintenance. The statute further required that such rules and regulations shall be designed, to the maximum extent practicable, to allow each local board of elections to continue to use its existing computer infrastructure, computer software and database applications to access data from and transmit data to the statewide voter registration list.

After careful consideration of the real world performance after the initial implementation of the statewide voter registration list, this amendment is made to eliminate the mandate for the use of electronic signatures. The adjustment to the adopted rule relating to the bipartisan processing of voter registration information, eliminating the mandate for electronic signatures, will allow county boards of elections to continue to follow existing bipartisan procedures in place in each respective jurisdiction, thus ensuring fairness and accuracy of elections consistent with the legislative intent and the statutory requirements.

3. Needs and Benefits:

The proposed adjustments to the adopted rule, eliminating the mandate for electronic signatures, have been prepared while taking into consideration the statutory objectives and balancing the impact of the statute and these regulations on county boards of elections against the need for the constant affirmation of accuracy in order to maintain public confidence. The existing rule exceeded the legislative intent to create and support a statewide voter registration list that to the maximum extent practicable, allowing each local board of elections to continue to use its existing computer infrastructure. Compliance with the amended rule can be achieved utilizing long-established local bipartisan processes to ensure the integrity of the registration list and ensure both accuracy and authenticity of those lists while maintaining the fundamental requirement for bipartisan processing of voter registration information.

The amended regulation allows each local board of elections to continue to use its existing computer infrastructure, computer software and database applications to access data from and transmit data to the statewide voter registration list, while utilizing long-established local bipartisan processes.

Public trust in our elections is fundamental to governmental effectiveness. County boards of elections currently process voter registration information using bipartisan procedures adopted by the respective commissioners of the county board of elections. This is a continuation of an ongoing obligation.

4. Costs:

These amendments will add no additional costs for county boards of elections, and avoids significant costs if the existing rule were not amended in this manner. The cost associated with processing voter registration information by the county boards of elections is a standard business process, accomplished by county board employees and the costs are fixed. Saved or avoided costs would accrue by not developing and implementing significant changes to the existing county computer infrastructure, software and database applications; developing new policies and procedures; and, retraining county board of elections personnel in the processing and transmission of voter registration information.

This amendment shall not incur costs to the State.

5. Local Governmental Mandates:

These adjusted procedures are consistent with long-standing county board of elections bipartisan voter registration proceedings, is a standard business procedure, and eliminates a mandate for electronic signatures.

6. Paperwork:

These adjusted procedures do not reduce, increase, or modify compliance with paperwork or preparation of forms and will adjust the rules to accurately reflect the technical and functional requirements of the system that houses the statewide list.

7. Duplication:

These regulations do not duplicate or overlap with any other federal or state regulations.

8. Alternatives:

The adjustments to the adopted rule have been prepared while taking into account the statutory objectives to adopt a 'bottom-up approach' when creating the statewide voter registration list and the need to access data and transmit data to the statewide voter registration list while maintaining

the integrity, accuracy and authenticity of the list. This amendment was made after careful consideration of real world performance after the initial implementation of the statewide voter registration list and this amendment allows for compliance while maximizing legislative intent to create and support a 'bottom-up' system, at no additional cost or risk to the ongoing operation and performance of the statewide voter registration list.

One alternative discussed was to do nothing and not amend this regulation. This option was rejected, as it would result in significant cost to county boards of elections and to the State Board to modify voter registration systems, the NYSVoter interface between the State Board and the county boards of elections and would add a potential risk to the existing NYSVoter system, all of which are currently performing well.

9. Federal Standards:

The Help America Vote Act (42 USC 15483(a)) mandated the establishment by New York State of a computerized statewide voter registration list. This regulation complies with that requirement without exceeding it.

10. Compliance Schedules:

Compliance can be achieved by the county boards of election immediately after adoption.

Regulatory Flexibility Analysis

1. Effect of Rule:

There are 58 local boards of elections which must meet these requirements. The amendment to the adopted regulation is anticipated to have no effect on small businesses.

2. Compliance Requirements:

This amendment to the adopted rule eliminates the mandate for electronic signatures and allows county boards of elections to be able to comply with the requirement for bipartisan processing of voter registration information utilizing their existing infrastructure and long-established bipartisan processes. Bipartisan procedures have been established by the respective commissioners of the county board of election who will also supervise staff compliance with these requirements.

3. Professional Services:

The county boards of elections and/or their designated staff will be able to develop and implement the requirements of the NYS Election Law and these regulations.

4. Compliance Costs:

These amendments will add no additional costs for county boards of elections and avoids significant costs by eliminating the mandate for electronic signatures. The costs associated with processing of voter registration information by the county boards of elections is a standard business process, accomplished by county board employees and such voter registration and related list maintenance activities are part of their job description.

This amendment shall not incur costs to the State.

5. Economic and Technological Feasibility:

County boards of elections are currently required by statute to process voter registration information using bipartisan procedures adopted by the respective commissioners of the county board of elections. The amendment eliminating the mandate for electronic signatures makes the rule more feasible for compliance by county boards of elections. This is a continuation of an ongoing obligation.

6. Minimizing Adverse Impact:

The adjustment to the adopted rule will continue a normal business process and have no adverse impact on the local boards of elections.

Public trust in our elections is fundamental to governmental effectiveness. These draft proposed regulations have been prepared while taking into considerations the statutory obligations and balancing the impact of the statute and these regulations on county boards of elections against the need for the constant affirmation of accuracy in order to maintain voter confidence.

7. Small Business and Local Government Participation:

The State Board has had discussions with county election commissioners, county boards of election staff members and certain voter registration system vendors to obtain their opinions and suggestions during the preparation of these draft regulations.

Rural Area Flexibility Analysis

The adjustment to the adopted rule will have a positive impact on jurisdictions from rural areas of New York State by allowing the county boards of elections to continue to utilize long-established bipartisan practices when processing voter registration information.

These draft proposed regulations have been prepared while taking into consideration the statutory obligations and balancing the impact of the statute and these regulations on county boards of election against the need for the constant affirmation of accuracy in order to maintain voter confidence. Public trust in our elections is fundamental to governmental effectiveness. The adjustment to the adopted rule will continue a normal business process and have no adverse effect on the local boards of elections that are impacted.

Job Impact Statement

It is evident from the nature and purpose of the rule that these regulations neither create nor eliminate employment positions and/or opportunities, and, therefore, have no adverse impact on employment opportunities in New York State.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Mandatory Audit of Voting Systems, Setting of Procedures and Discrepancy Thresholds

I.D. No. SBE-23-09-00007-P

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

Proposed Action: Amendment of section 6210.18 of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-102, 7-201, 7-206 and 9-211

Subject: Mandatory audit of voting systems, setting of procedures and discrepancy thresholds.

Purpose: Provide procedures for conducting mandatory audit of voting systems and set discrepancy thresholds for escalated audits.

Substance of proposed rule (Full text is posted at the following State website: www.elections.state.ny.us): New York State Election Law requires that a bipartisan audit be conducted of voting systems utilized in New York State elections. This amendment sets forth the requirements (notice requirements; reporting requirements; and discrepancy thresholds for escalating audits; etc.) that must be complied with leading up to the audit. The amendment provides the procedures that must be utilized to actually conduct such audits and contains various safeguards built into the process both to ensure that the audit is conducted in an objective and forthright manner and is done to ensure the accuracy of the results generated by the voting systems.

Text of proposed rule and any required statements and analyses may be obtained from: Kimberly A. Galvin, New York State Board of Elections, 40 Steuben Street, Albany, NY 12207, (518) 474-6367, email: kgalvin@elections.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:

Election Law Sections 3-102.10 provides for the State Board to promulgate rules and regulations relating to the administration of the election process; and Section 7-201.3 provides for the examination of voting systems to determine if they are safe for use in elections; and, if found not to be safe, a process is provided to rescind the approval to use such voting machine or system; Section 7-206.3 provides for routine testing of voting systems, at least annually, in a manner prescribed by the State Board of Election; and Section 9-211 requires that regulations be promulgated by the New York State Board of Elections to set uniform statewide standards to be used by boards of elections to determine when a discrepancy between the manual audit tallies and the voting machine or system tallies shall require a further audit escalation. This is necessary to ensure that the voting equipment used in New York State is safe, secure and reliable and will accurately record the votes cast on them in the elections in which they are used.

2. Legislative Objectives:

The Election Reform and Modernization Act of 2005 (Chapter 181 / Laws of 2005), enacted a new subdivision 9-211 requiring late to auditing voter verifiable audit records to be audited within fifteen days after each general election or special election, and within seven days after every primary or village election conducted by the board of elections. These regulations establish provisions set uniform statewide standards to be used by boards of elections to determine when a discrepancy between the manual audit tallies and the voting machine or system tallies shall require a further voter verifiable record audit escalation of additional voting machines.

That in turn helps to provide the assurance that the voting equipment used in New York State is safe and reliable and will accurately record votes cast on them in the elections in which they are used. This new audit requirement is required for new voting machines or systems, and central count absentee systems that will be certified pursuant to the requirements of the Election Law for use in elections in New York State. The new voting systems are intended to replace the traditional mechanical/lever voting machines.

3. Needs and Benefits:

Public trust in our elections is fundamental to governmental effectiveness. Uniform manual audit standards are now required due to changes in the type of voting systems that will be available for use in New York State pursuant to Chapter 181 / Laws of 2005. help ensure that public confidence in the fairness and accuracy of elections continues to be maintained. The previous mechanical/lever voting machines did not produce a voter verifiable audit record, so this new manual audit requirement was created for use by county boards of elections to audit such records utilized with new voting equipment.

The new audit requirements will help ensure that public confidence in the fairness and accuracy of elections continues to be maintained. The statute provides for the time period in which to conduct an audit; and mandates notice and reporting requirements for county boards of elections; as well as the comparison of manual audit tallies for each voting machine or system with the tallies recorded by such voting machines or systems which are subject to the audit. These regulations were prepared pursuant to Section 9-211.3 that requires the State Board of Elections to establishing a uniform statewide standard to be used by boards of elections to determine when a discrepancy between the manual audit tallies and the voting machine or system tallies shall require an escalation on the numbers of voting machines.

4. Costs:

Post-election manual audits of voter verifiable audit records are now required pursuant to NYS Election Law Section 9-211. These regulations govern when such audit results should trigger a larger audit. Costs to counties will depend upon the salaries of the employees responsible for such manual audits; the numbers of election districts and voting machines or systems in use in elections conducted by the board of elections; the number of audit teams which will conduct such audits; the total number of voter verifiable audit records to be counted; and any overtime hours that may accrue. Initial costs will include developing county-specific policies and procedures; training county-designated personnel; and preparing new audit tracking documents. Ongoing costs will include expenses associated with randomly selected voting systems to be audited; manually auditing the voter verifiable audit records; and such audit tracking documents in use by such jurisdiction.

Costs of this process will vary depending upon the ballot size on which the audit is being conducted and the number of election districts covered therein. Small contests in a very small county would have minimal costs, while contests in which the initial audit detects discrepancies that require significant escalation (which could lead to a full hand count) would be quite substantial. These are statutorily prescribed audit requirements that contain significant time constraints for completion. These time constraints may also add to a cost escalation in that they may require additional staffing, staff overtime, etc.

There are many issues that vary greatly from county-to-county and election-to-election. Therefore, it is impossible to truly make an actual calculation of the costs due these changing variables which include the total number of voters; voting systems; election districts; different ballot styles; number of candidates and contests.

There will be minimal costs to the State Board of Elections to establish uniform policies, procedures and forms, the development and implementation of training for county board of election commissioners and designated staff members, and to provide ongoing compliance supervision.

5. Local Governmental Mandates:

The new These manual audit requirements create uniform procedures that are mandated to be followed by county boards of elections are mandated to follow pursuant to Election Law and these rules.

6. Paperwork:

Counties are now required by Election Law and these procedures to prepare a reconciliation report that reports and compares the manual and electronic vote tabulations for each audited candidate, contest and/or question or proposal from each machine or system subject to the audit; along with any discrepancies and a description of the actions taken for the resolution of discrepancies, if any.

7. Duplication:

These regulations do not duplicate or overlap with any other federal or state regulations.

8. Alternatives:

A number of alternatives have been that was considered was to complete a manual audit of all machines or systems based upon a statistical-power-based vote tabulation audit versus the percentage-based audit required by Section 9-211 of the Election Law and these regulations. in relation to determining when a discrepancy between the manual audit tallies and the voting machine or system tallies shall require a further voter verifiable record audit of additional voting machines or systems or a complete manual audit of all machines or systems. This proposal was rejected because 9-211.1 requires a manual audit of the voter verifiable audit records from three percent of the voting machines or systems within the jurisdiction of the county board of elections rather than a mathematical calculation of the vote differences between candidates or ballot proposals.

Also, based on a review of comments received during previous rule-making activities surrounding the Part 6210 regulations, amendments were considered and included in the draft proposal relative to the time and place fixed for the random selection process; the type of contests to be included in the initial audit; and uniform standards used to determine when further auditing is required.

9. Federal Standards:

There are no federal standards pertaining to manual audits of voter verifiable audit records.

10. Compliance Schedules:

Compliance can be achieved in conjunction with the first election conducted by the county board of elections immediately after adoption. The State Board is currently formulating and developing instructional tools and a training schedule for county board commissioners and their staff.

Regulatory Flexibility Analysis

1. Effect of Rule:

There are 58 local boards of elections which must meet these requirements. This does not have any effect on small businesses.

2. Compliance Requirements:

County boards of elections are required to manually audit voter verifiable audit records pursuant to a new requirement (NYS Election Law Section 9-211 added by Chapter 181 / Laws of 2005) and these regulations. The Election Law requires county boards of elections to manually audit the voter verifiable audit records utilized by new voting systems within fifteen days after each general election or special election, and within seven days after every primary or village election conducted by the board of elections.

These regulations set forth the requirements (notice requirements, reporting requirements, and discrepancy thresholds for escalating audits; etc.) that must be complied with to complete an audit. The amendment provides the procedures that must be utilized to actually conduct such audits and contains various safeguards built into the process both to ensure that the audit is conducted in an objective and forthright manner and is done to ensure the accuracy of the results generated by the voting system.

County boards of elections will need to prepare a reconciliation report that reports and compares the manual and electronic vote tabulations for each audited candidate, contest and/or question or proposal from each machine or system subject to the audit; along with any discrepancies and a description of the actions taken for the resolution of discrepancies, if any.

These regulations do not have any impact on small businesses.

3. Professional Services:

The county boards of elections and/or their designated staff will be able to develop and implement the audit requirements of the NYS Election Law and these regulations.

4. Compliance Costs:

Post-election manual audits of voter verifiable audit records are now required pursuant to NYS Election Law Section 9-211. These regulations govern when such audit results should trigger a larger audit. Costs to counties will depend upon the salaries of the employees responsible for such manual audits; the numbers of election districts and voting machines or systems in use in elections conducted by the board of elections; the number of audit teams which will conduct such audits; the total number of voter verifiable audit records to be counted; and any overtime hours that may accrue. Initial costs will include developing county-specific policies and procedures; training county-designated personnel; and preparing new audit tracking documents. Ongoing costs will include expenses associated with randomly selected voting systems to be audited; manually auditing the voter verifiable audit records; and such audit tracking documents in use by such jurisdiction.

Costs of this process will vary depending upon the ballot size on which the audit is being conducted and the number of election districts covered therein. Small contests in a very small county would have minimal costs, while contests in which the initial audit detects discrepancies that require significant escalation (which could lead to a full hand count) would be quite substantial. These are statutorily prescribed audit requirements that contain significant time constraints for completion. These time constraints may also add to a cost escalation in that they may require additional staffing, staff overtime, etc.

There are many issues that vary greatly from county-to-county and election-to-election. Therefore, it is impossible to truly make an actual calculation of the costs due these changing variables which include the total number of voters; voting systems; election districts; different ballot styles; number of candidates and contests.

There will be minimal costs to the State Board of Elections to establish uniform policies, procedures and forms, the development and implementation of training for county board of election commissioners and designated staff members, and to provide ongoing compliance supervision.

5. Economic and Technological Feasibility:

Post-election manual audits of voter verifiable audit records are required

pursuant to NYS Election Law Section 9-211. These regulations govern when such audit results should trigger a larger audit. County boards of elections currently perform routine election canvassing and recanvassing responsibilities, which will be expanded to include auditing of voter verifiable audit records. It is anticipated that no new or advanced technology is required to comply with the amendment to the regulation and that the initial 3% audit of these voting systems will verify election security and the most advanced and costly procedures will not be required to be used. As such, the regulation will not be cost prohibitive.

6. Minimizing Adverse Impact:

A significant effort has been made to take a very complex auditing function and make it as basic and non-labor intensive to comply with as possible. Input has been solicited and considered from outside auditing professionals and staffs from the county boards of elections. When an expanded audit is required for a contest pursuant to these regulations due to the detection of unresolved discrepancies, the regulation provides for an incremental escalation from the initial three percent statutory requirements, to an audit of an additional five percent of the voting systems used. If a further audit escalation is required, an audit is completed on an additional twelve percent of the voting systems used. The final audit escalation will require a complete audit.

Public trust in our elections is fundamental to governmental effectiveness. Uniform manual audit standards help ensure that public confidence in the fairness and accuracy of elections continues to be maintained. These draft proposed regulations have been prepared while taking into considerations the statutory objections and balancing the impact of the statute and these regulations on county boards of elections against the need for the constant affirmation of accuracy in order to maintain voter confidence.

7. Small Business and Local Government Participation:

The State Board has participated in several conference sessions and discussions with county boards of elections commissioners to obtain their opinions and suggestions during the preparation of these draft regulations. Copies of proposed draft regulations were also posted on our agency website during 2008 and 2009.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

There are 44 county boards of elections which meet the definition of 'rural areas' as defined in the Executive Law § 481(7).

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

The statutory and regulatory requirement to complete manual audits of voter verifiable audit records require that elections conducted by county boards of elections from jurisdiction(s) in rural areas of this state will be governed by these uniform statewide standards determine when initial audit results should trigger an audit escalation.

County boards of elections, including those in rural areas, are required to manually audit voter verifiable audit records pursuant to NYS Election Law Section 9-211 and these regulations. They must prepare a reconciliation report that reports and compares the manual and electronic vote tabulations for each audited candidate, contest and/or question or proposal from each machine or system subject to the audit; along with any discrepancies and a description of the actions taken for the resolution of discrepancies, if any. It is anticipated that such county boards of elections and/or their designated staff will be able to develop and implement the audit requirements of the NYS Election Law and these regulations.

3. Costs:

Post-election manual audits of voter verifiable audit records are now required pursuant to NYS Election Law Section 9-211. These regulations govern when such audit results should trigger a larger audit. Costs to counties, including those in rural areas, will depend upon the salaries of the employees responsible for such manual audits; the numbers of election districts and voting machines or systems in use in elections conducted by the board of elections; the number of audit teams which will conduct such audits; the total number of voter verifiable audit records to be counted; and any overtime hours that may accrue. Initial costs will include developing county-specific policies and procedures; training county-designated personnel; and preparing new audit tracking documents. Ongoing costs will include expenses associated with randomly selected voting systems to be audited; manually auditing the voter verifiable audit records; and such audit tracking documents in use by such jurisdiction.

Costs of this process will vary depending upon the ballot size on which the audit is being conducted and the number of election districts covered therein. Small contests in a very small rural county would have minimal costs, while contests in which the initial audit detects discrepancies that require significant escalation (which could lead to a full hand count) would be quite substantial. These are statutorily prescribed audit requirements that contain significant time constraints for completion. These time constraints may also add to a cost escalation in that they may require additional staffing, staff overtime, etc.

There are many issues that vary greatly from county-to-county and election-to-election. Therefore, it is impossible to truly make an actual calculation of the costs due these changing variables which include the total number of: voters; voting systems; election districts; different ballot styles; number of candidates and contests.

There will be minimal costs to the State Board of Elections to establish uniform policies, procedures and forms, the development and implementation of training for county board of election commissioners and designated staff members, and to provide ongoing compliance supervision.

4. Minimizing adverse impact:

Election Law Section 9-211 requires that regulations be promulgated by the New York State Board of Elections to set uniform statewide standards to be used by boards of elections to determine when a discrepancy between the manual audit tallies and the voting machine or system tallies shall require a further audit escalation. The statute provides for the minimum number of voting systems to be manually audited, the time period to complete the audit, and the notice and reporting requirements that must be completed.

A significant effort has been made to take a very complex auditing function and make it as basic and non-labor intensive to comply with as possible. Input has been solicited and considered from outside auditing professionals and staffs from the county boards of elections from jurisdiction(s) in rural areas of this state.

When, due to the detection of an unresolved discrepancy, an expanded audit is required for a contest pursuant to these regulations, a provision is included for an incremental escalation from the initial three percent statutory requirements, to an audit of an additional five percent of the voting systems used. If a further audit escalation is required, an audit is completed on an additional twelve percent of the voting systems used. The final audit escalation will require a complete audit.

Public trust in our elections is fundamental to governmental effectiveness. Uniform manual audit standards help ensure that public confidence in the fairness and accuracy of elections continues to be maintained. These draft proposed regulations have been prepared while taking into considerations the statutory objections and balancing the impact of the statute and these regulations on county boards of elections, including those in rural areas, against the need for the constant affirmation of accuracy in order to maintain voter confidence.

5. Rural area participation:

The State Board has participated in several conference sessions, which were held in rural counties, and had discussions with county boards of elections commissioners to obtain their opinions and suggestions during the preparation of these draft regulations.

Job Impact Statement

It is evident from the nature and purpose of the rule that these regulations neither create nor eliminate employment positions and/or opportunities, and therefore, have no adverse impact on employment opportunities in New York State.

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Lakeview and Black Pond Wildlife Management Areas

I.D. No. ENV-23-09-00001-P

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

Proposed Action: Amendment of Part 79 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 11-2101

Subject: Lakeview and Black Pond Wildlife Management Areas.

Purpose: To regulate public use of the Lakeview and Black Pond Wildlife Management Areas.

Text of proposed rule: Repeal Title 6 NYCRR Part 79 and adopt new 6 NYCRR Part 79 as follows:

Part 79

PUBLIC USE OF THAT PORTION OF LAKEVIEW AND BLACK POND WILDLIFE MANAGEMENT AREAS DESIGNATED AS BARRIER BEACH

79.0 Applicability.

The provisions of this Part, in conjunction with Part 51 - Public Use of State Wildlife Management Areas, apply to the barrier beach portion of the Lakeview Wildlife Management Area and Black Pond Wildlife Management Area in Jefferson County. These areas are described as follows:

(a) Lakeview barrier beach. That tract of land comprising a barrier beach approximately 4.5 miles long, bounded by a continuous line extending from a point at the southwest corner of lands of Southwick Beach State Park, southerly along the mean low water level of Lake Ontario to the northwest corner of lands now or formerly owned by J.T. Robey; thence N88°44'E along the boundary of said lands of J.T. Robey 409.76 feet to a point, and continuing N88°44'E approximately 250 feet to the westerly edge of Lakeview Marsh; thence northerly along the edge of Lakeview Marsh to the south boundary of Southwick Beach State Park; thence N86°34'W along said Southwick Beach State Park boundary 450 +/- feet to the point of beginning.

(b) Black Pond barrier beach. That tract of land comprising a barrier beach approximately 4250 +/- feet, bounded by a continuous line extending from a point at the southwest corner of lands of The Nature Conservancy, southerly along the mean low water level of Lake Ontario to the northwestern corner of cottage lots known as North Jefferson Park; thence N87°56'50"E approximately 330 feet along the north boundary of said North Jefferson Park to the northeast corner of said lands; thence continuing N87°56'50"E approximately 200 feet to the edge of the Black Pond wetlands; thence northerly along the edge of said Black Pond wetlands to the south boundary of The Nature Conservancy; thence westerly along The Nature Conservancy south boundary to the point of beginning.

79.1 Definitions.

(a) "Barrier beach" is the zone including both beach and dune.

(b) "Beach" is the area extending landward from the mean low-water line to the toe of a dune.

(c) "Dune" is a ridge or hill of loose, windblown soil the principle component of which is sand.

(d) "Mean low water" is the approximate average low water level for a given body of water at a given location, determined by reference to hydrological information.

(e) "Dune access trail" is a footpath or walkway developed to provide access over dunes to the beach.

79.2 Allowed activity.

Public access to the Lakeview and Black Pond beaches and the associated dune access trails is permitted only between sunrise and 10 PM, unless specified otherwise by official posted notice.

79.3 Prohibited activity.

The following activities are prohibited:

(a) All public access to the dune portion of the barrier beaches, except by permit from the department;

(b) erecting or posting any sign or notice except as permitted by the Department of Environmental Conservation;

(c) building, maintaining, or using a fire;

(d) using devices to create sound, excluding personal electronics that produce sound audible only to the primary user;

(e) erecting or maintaining a camp, tent, or structure of any kind;

(f) defacing, disturbing or damaging any structure, sign, equipment, or other property;

(g) removing, injuring or destroying any plants;

(h) removing any rocks, minerals, soil, or sand;

(i) walking or riding any hoofed animals including, but not limited to horses;

(j) use of any off-road vehicle including, but not limited to trail bikes, motorcycles, snowmobiles, and all terrain vehicles;

(k) engaging in any activity or behavior which may endanger the safety of persons or property;

(l) failure to keep household pets, including but not limited to dogs, caged or leashed (6' or less) and under control at all times; and

(m) possession of alcoholic beverages with intent to consume.

79.4 Noncompliance provision.

Noncompliance with any prohibited act of this Part may result in immediate eviction as well as the right to future use of the Area.

Text of proposed rule and any required statements and analyses may be obtained from: William Gordon, New York State Department of Environmental Conservation, 317 Washington Street, Watertown, NY 13601, (315) 785-2261, email: whgordon@gw.dec.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.

Additional matter required by statute: A Programmatic Environmental Impact Statement is on file with the Department of Environmental Conservation.

Regulatory Impact Statement

1. Statutory authority:

The Department of Environmental Conservation (DEC or the depart-

ment) is responsible for the efficient management of the fish and wildlife resources of the state under section 11-0303 of the Environmental Conservation Law (ECL). Pursuant to ECL section 11-2101 the department may promulgate regulations governing public use of state-owned public hunting, trapping, and fishing grounds wildlife management areas (WMAs).

2. Legislative objectives:

The general purpose of the authority contained in ECL section 11-2101 enables efficient management of state-owned (WMAs). Environmental Conservation Law 11-0303 stipulates that the department shall maintain and improve "such resources as natural resources" and that this should include promoting the natural propagation and maintenance of desirable species in ecological balance, and observe sound management practices for such propagation and maintenance on lands and waters of the State. Moreover, the Legislature has directed the department to take into account ecological factors, the importance of fish and wildlife for recreational purposes, and to provide for public safety. The proposed rule making balances the need to protect the environment from long-term harm, while providing for acceptable public use in balance with ecological considerations.

3. Needs and benefits:

The department proposes to repeal the existing regulations pertaining to public use of the "natural beach" portion of the Lakeview WMA and adopt a new Part 79, "PUBLIC USE OF THAT PORTION OF LAKEVIEW AND BLACK POND WILDLIFE MANAGEMENT AREAS DESIGNATED AS BARRIER BEACH."

The eastern shoreline of Lake Ontario features a barrier system of sandy beaches, dunes, embayments, and wetlands. This system extends approximately 17 miles from the Salmon River (Oswego County) north to Black Pond (Jefferson County). The Lakeview and Black Pond WMAs are located within this barrier system in southern Jefferson County. Lakeshore barrier beach and wetland complexes such as these are rare in New York State (NYS). Consequently, the area has been recognized by NYS Department of State as a significant coastal fish and wildlife habitat, and the barrier beach complex on the Lakeview WMA has been designated by the U.S. Department of Interior/National Park Service as a National Natural Landmark. In 1998, both WMAs were designated Bird Conservation Areas (BCAs) as part of the Eastern Lake Ontario Marshes BCA. Most recently, in October 2007, both WMAs have been recommended as a Natural Heritage Area (NHA), as part of a larger Eastern Lake Ontario Dune and Wetland Complex. This NHA recommendation, which is based on the Complex's wide-range of significant ecological communities that provide habitat for a variety of endangered, threatened and rare plants and animals, is expected to be finalized soon.

The barrier beach located on the Lakeview WMA is the largest, least disturbed portion of the barrier system remaining on Lake Ontario. About one mile of undisturbed barrier beach also exists on the Black Pond WMA.

The department's proposal is needed to clarify allowable public uses, and to facilitate effective law enforcement. Since Part 79 was adopted and first amended (1970, 1972), the department has acquired additional barrier beach as part of the Black Pond WMA. The proposed rule making will provide additional protection to this portion of barrier beach.

The specific changes that are proposed are as follows:

(1) Definition of important terms associated with the barrier beach, including: "Barrier Beach," "Beach," "Dune," and "Mean low water."

(2) A description of property boundaries of the Black Pond barrier beach. The existing regulatory language describing the boundaries of the Lakeview barrier beach would be retained.

(3) The department proposes prohibited uses, as follows--

- Possession of alcoholic beverages with intent to consume is prohibited.
- Walking or riding any hoofed animals including, but not limited to horses will be prohibited. Horseback riding has become a serious environmental issue on the barrier beaches. Their presence on the dune/beach areas cause sand compaction and erosion, both of which harm these ecologically fragile communities.
- Failure to keep household pets, including but not limited to dogs, caged or on a short leash (six feet or less in length, maximum) and under control at all times. Black Pond, in particular, has acquired a reputation as a public beach where dogs may "run free". Consequently, public safety is jeopardized, as those that do not wish to be near free ranging dogs feel threatened. Also, the barrier beach/dune areas provide important habitats for several shore bird species and other wildlife. Unleashed dogs are a threat to these habitats and wildlife associated with these rare habitats.
- Engaging in any activity or behavior which may endanger the safety of persons or property. Beach areas, Black Pond in particular, have become very popular with the public. This prohibition promotes public safety on the beach and allows for more effective law enforcement to accomplish the same result.
- Building, maintaining, or using a fire. Fires on beach at Black Pond

are now common, and often result in dune trespass to collect firewood; littering; and the burning of DEC installed sign-posts and dune protection snow-fence.

- Using devices to create sound, excluding personal electronics that produce sound audible only to the primary user.
- Defacing, disturbing or damaging any structure, sign, fence, equipment, or other property thereon.
- Use of any off-road vehicles including, but not limited to trail bikes, motorcycles, snowmobiles, and all terrain vehicles.
- Swimming or bathing, as long as it occurs on beach areas open for public access, does not pose a threat to the barrier beach areas and their intended purposes. Given the omission of swimming from the revised Part 79 list, it will still be a prohibited act, however, "unless otherwise posted," based on general WMA regulations, 6 NYCRR subdivision 51.6(b).

The department is also proposing to allow picnicking under conditions that do not pose a threat to the ecological integrity of the barrier beaches. The department also proposes to add clear language to allow Environmental Conservation Officers or other enforcement personnel (e.g., NYS Forest Rangers) to evict persons who violate provisions of this Part. Additionally, the department proposes to restrict, via news release and posted notice, barrier beach public access hours as a means to reduce impacts of over-use or abuse of the barrier beach/dunes area. This would mainly apply to Black Pond where "trespassing" on the barrier beach currently is prohibited between 10 PM and dawn via posted notice pursuant to 6 NYCRR subdivision 51.6(e), to prevent after dark beach parties.

4. Costs:

Enactment of this regulation will not result in increased expenditures by the State, its local governments, or regulated parties. The cost of the administration of WMAs is covered under existing operational budgets of fish and wildlife programs. Additional costs are not anticipated.

5. Local government mandates:

This regulation does not impose any program, service, duty, or responsibility on any local government.

6. Paperwork:

This regulation does not impose any application forms, record keeping or reporting requirements on regulated parties.

7. Duplication:

Public use of State WMAs is also regulated by Title 6 NYCRR Part 51. Prohibitions listed in Part 51 apply to all portions of a WMA. New Part 79 is specific to the barrier beach portions of the Lakeview and Black Pond WMAs. Prohibitions listed in Part 79, although similar in nature, are more restrictive to further protect sensitive, undisturbed barrier beach habitat found on these WMAs.

There are no other state and federal requirements regulating public use opportunities on these WMAs.

8. Alternatives:

One alternative would be to take no action and retain the existing Part 79. This regulation has prohibitions which are either unnecessary or redundant. This regulation will continue to impede efficient administration of public use activities on the Lakeview WMAs. Additionally, the sensitive, undisturbed portion of barrier beach on the Black Pond WMA will not be afforded additional protection. The department has rejected this alternative.

A second alternative would be to prepare and implement a special regulation specifically for the barrier beach on the Black Pond WMA. This approach is unnecessary and would result in a duplicate regulation differing in name only. The sensitive, undisturbed barrier beach habitat is essentially the same on both WMAs and can be afforded additional protection with one regulation. Although this approach is acceptable, it is not preferred to new Part 79.

9. Federal standards:

The proposed rule making does not exceed any minimum standards established by the federal government. Special use regulations on state owned WMAs do not involve standards of the federal government.

10. Compliance schedule:

The regulation will be enforced once promulgated.

Regulatory Flexibility Analysis

The Department of Environmental Conservation has determined that this regulation will not impose any reporting, record keeping, costs or other compliance requirements on small businesses or local governments. The purpose of this regulation is to facilitate the administration of public use activities and enforcement of regulations on existing state owned lands. This regulation applies only to the barrier beach portions of the Lakeview and Black Pond Wildlife Management Areas. Small businesses and local governments are not affected in any way by this regulation. Therefore, a full regulatory flexibility analysis is not needed.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that no adverse impact will occur to this rural area as a result of the proposed

regulation. The purpose of this regulation is to facilitate the administration of public use activities and enforcement of regulations on the barrier beach portions of the Lakeview and Black Pond Wildlife Management Areas. This regulation will not impose any reporting, record keeping, costs or require any professional services by any public or private entity. Therefore, a full rural area flexibility analysis is not needed.

Job Impact Statement

The purpose of this regulation is to facilitate the administration of public use activities and enforcement of regulations on existing state owned lands. This regulation applies only to the barrier beach portions of the Lakeview and Black Pond Wildlife Management Areas. The Department of Environmental Conservation has determined that this regulation will have no effect on any private or public sector jobs or employment opportunities. The sole purpose of the regulation is to protect the ecology of these areas. Therefore, a full job impact statement is not needed.

Higher Education Services Corporation

NOTICE OF ADOPTION

Veterans Tuition Awards Program

I.D. No. ESC-12-09-00005-A

Filing No. 586

Filing Date: 2009-05-20

Effective Date: 2009-06-10

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

Action taken: Repeal of section 2201.3 of Title 8 NYCRR.

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

Subject: Veterans Tuition Awards Program.

Purpose: The rule conforms existing regulation with amendments to Education Law section 669-a.

Text or summary was published in the March 25, 2009 issue of the Register, I.D. No. ESC-12-09-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: George M. Kazanjian, Senior Attorney, NYS Higher Education Services Corporation, 99 Washington Avenue, Albany, New York 12255, (518) 473-1581, email: regcomments@hesc.com

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Federal Family Education Loan Program "Federal Default Fee"

I.D. No. ESC-12-09-00006-A

Filing No. 585

Filing Date: 2009-05-20

Effective Date: 2009-06-10

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

Action taken: Amendment of section 2101.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 680

Subject: Federal Family Education Loan Program "federal default fee."

Purpose: The rule amends existing 8 NYCRR section 2101.5 consistent with amendments to federal law.

Text or summary was published in the March 25, 2009 issue of the Register, I.D. No. ESC-12-09-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: George M. Kazanjian, Senior Attorney, NYS Higher Education Services Corporation, 99 Washington Avenue, Room #1350, Albany, New York 12255, (518) 473-1581, email: regcomments@hesc.com

Assessment of Public Comment

The agency received no public comment.

Power Authority of the State of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rates for the Sale of Power and Energy

I.D. No. PAS-23-09-00010-P

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

Proposed Action: Update Service Tariff No. 40, which is applicable to the Power Authority's utilities customers receiving service from the Blenheim-Gilboa Pumped Storage Power Project.

Statutory authority: Public Authorities Law, sections 1001 and 1005(6)

Subject: Rates for the sale of power and energy.

Purpose: Update Service Tariff No. 40 to streamline and clarify it and include additional required information.

Substance of proposed rule: Pursuant to the New York Public Authorities Law, Sections 1001 and 1005(6), the Power Authority of the State of New York (the "Authority") proposes to amend its Service Tariff No. 40, which is applicable to its utilities customers receiving service from the Authority's Blenheim-Gilboa Pumped Storage Power Project.

The Authority proposes to reformat the service tariff for easier reading and improved organization, clarify the nature of the production service offered by deleting obsolete provisions and including certain contractual provisions, include certain standard provisions now applicable to all Authority service tariffs and add abbreviations and terms.

Written comments on the proposed tariffs will be accepted through Monday, July 27, 2009, at the address below. For further information, contact:

POWER AUTHORITY OF THE STATE OF NEW YORK

Karen Delince, Corporate Secretary

123 Main Street, 15M

White Plains, New York 10601

(914) 390-8085

(914) 681-6949 (fax)

secretarys.office@nypa.gov

Text of proposed rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street, 15-M, White Plains, New York 10601, (914) 390-8085, email: secretarys.office@nypa.gov

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

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

Regulatory Impact Statement, 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.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-26-08-00019-P	June 25, 2008
PSC-52-08-00011-P	December 24, 2008

NOTICE OF ADOPTION

Water Rates and Charges

I.D. No. PSC-22-08-00009-A

Filing Date: 2009-05-21

Effective Date: 2009-05-21

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

Action taken: On 5/14/09, the PSC approved a request filed by Knolls Water Co., Inc. to make changes in the rates and charges contained in its tariff schedule P.S.C. No. 3—Water, to become effective May 29, 2009.

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 annual operating revenues by \$3,990, or 6.79%.

Substance of final rule: The Commission, on May 14, 2009, adopted an order approving the request of Knolls Water Co., Inc. to increase its base rates to provide additional annual revenues of \$3,990, or 6.79%, effective May 29, 2009, and to modify its existing escrow account for major renovations by increasing the quarterly surcharge from \$25 to \$50 per customer, and denied the company's request for an automatic annual rate increase mechanism, beginning January 1, 2010, based on the greater of 5% or the Consumer Price Index of Greater New York, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (08-W-0523SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-04-09-00005-A

Filing Date: 2009-05-21

Effective Date: 2009-05-21

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

Action taken: On May 14, 2009, the PSC adopted an order approving the petition of Wheaton/TMW Fourth Avenue, Limited Partnership, to submeter electricity at 251 7th Street, Brooklyn, New York.

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 Wheaton/TMW Fourth Avenue, Limited Partnership, to submeter electricity at 251 7th St., Brooklyn, NY.

Substance of final rule: The Commission, on May 14, 2009, adopted an order approving a petition of Wheaton/TMW Fourth Avenue, Limited Partnership, to submeter electricity at 251 7th Street, Brooklyn, New York located in the territory of Consolidated Edison Company of New York, Inc.

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

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

Assessment of Public Comment

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

(08-E-1405SA1)

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED****Major Gas Rate Filing****I.D. No.** PSC-23-09-00008-P

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

Proposed Action: The Commission is considering a proposal filed by Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its Schedule for Gas Service—P.S.C. No. 4.**Statutory authority:** Public Service Law, section 66(12)**Subject:** Major gas rate filing.**Purpose:** To consider a proposal to increase annual gas revenues by approximately \$17.9 million or 7.4%.**Public hearing(s) will be held at:** 8:00 p.m. to 10:00 p.m., June 11, 2009* at Ramapo Town Hall, 237 Rte. 59, Suffern, NY*On occasion there are requests to reschedule or postpone public statement hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS Web Site (www.dps.state.ny.us) under Case 08-G-1398.**Interpreter Service:** Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.**Substance of proposed rule:** The Commission is considering a proposal filed by Orange and Rockland Utilities, Inc. (Orange and Rockland) to increase its annual gas operating revenues by approximately \$17.9 million or 7.4% (increase to delivery rates would be approximately 19.2%). The statutory suspension period for the proposed filing runs through October 24, 2009. The Commission may adopt in whole or in part or reject terms set forth in Orange and Rockland's proposal.**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us**Public comment will be received until:** 45 days after publication of this notice.**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

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

(08-G-1398SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Water Rates and Charges****I.D. No.** PSC-23-09-00009-P

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

Proposed Action: The PSC is reconsidering whether to approve or reject, in whole or in part, or modify, the complaint of Home Depot, USA, Inc. and Linens 'n Things against Independent Water Works, Inc., requesting an 80% reduction in water rates.**Statutory authority:** Public Service Law, sections 89-c(4), 89-j and 114**Subject:** Water Rates and Charges.**Purpose:** To reconsider the complaint of Home Depot U.S.A., Inc., and Linens 'n Things against Independent Water Works, Inc.**Substance of proposed rule:** In light of court action, the Commission is reconsidering its determination on the Complaint of Home Depot U.S.A., Inc. et al., against Independent Water Works, Inc. requesting an 80% reduction in the rates charged by Independent Water Works, Inc., the implementation of temporary rates and a refund of overcharges, in its Order Dismissing Complaint and Order to Show Cause (issued September 11, 2006). The New York State Supreme Court, Appellate Division, remitted this determination to the Commission for further proceedings consistent with the court's decision (*See Matter of Home Depot U.S.A., Inc., et al., v. New York State Public Service Commission, et al.*, 55 A.D.3d 1111 (3rd Dept 2008)). In particular, the court remitted the matter to the Commission for full reconsideration of two questions: (1) whether petitioners' water rates should be reduced prospectively based upon a double recovery of construction costs, taking into account all relevant agreements among the parties; and (2) whether the \$525,142 that the PSC previously confirmed was utilized to construct the water system should be deducted from the rate base.**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us**Public comment will be received until:** 45 days after publication of this notice.**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

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

(05-W-0707SP2)

Department of State

**EMERGENCY
RULE MAKING****Qualifying Experience and Education for Real Estate Appraisers****I.D. No.** DOS-23-09-00003-E**Filing No.** 592**Filing Date:** 2009-05-22**Effective Date:** 2009-05-22

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

Action taken: Amendment of sections 1103.1, 1103.3, 1103.7, 1103.8, 1103.10, 1103.12(a), 1103.21, 1103.22(f), 1107.2, 1107.4(b)-(d), 1107.5 and 1107.9, repeal of sections 1103.9, 1105.1, 1105.2, 1105.3, 1105.4, 1105.5, 1105.6, 1105.7 and 1105.8, and addition of new sections 1103.9, 1105.1, 1105.2, 1105.3, 1105.4, 1105.5, 1105.6 and 1105.7 to Title 19 NYCRR.**Statutory authority:** Executive Law, section 160-d**Finding of necessity for emergency rule:** Preservation of general welfare.**Specific reasons underlying the finding of necessity:** The Federal Appraisal Qualifications Board (AQB), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), establishes the minimum education, experience and examination requirements for real property appraisers to obtain state certification. States are required to implement appraiser certification requirements that are no less stringent than those issued by the AQB.

In 2004, the AQB adopted significant revisions to the education requirements for real estate appraisers. States were required to adopt these requirements by January 1, 2008. A failure to do would have resulted in the State losing Federal recognition of the State program. Legislation was therefore passed permitting the Department of State to adopt the required revisions by rule making. The Department has adopted emergency rules

which have been in place since January 1, 2008 so that New York's appraiser program would not lose federal recognition.

If New York were to lose Federal recognition of its appraiser program, federal financial institutions and many State financial institutions would be prohibited from accepting appraisals from New York real estate appraisers. This would include virtually all mortgage and refinance transactions. Appraisers licensed or certified by the State of New York would be prohibited from preparing an appraisal for any such transaction and New York consumers would be forced to go out of state in order to obtain an appraisal. The hardship and disruption for the State's financial community, as well as for buyers and sellers of real estate within the State would be significant.

Subject: Qualifying experience and education for real estate appraisers.

Purpose: To amend current regulations in order to conform said regulations with recent statutory amendments.

Substance of emergency rule: Section 1103.1 of Title 19 NYCRR is amended to specify the course work and education required for licensure as an appraiser assistant, licensed real estate appraiser and certified real estate appraiser.

Section 1103.3(f) of Title 19 NYCRR is amended to specify that course waivers may only be granted in 15 hour segments.

Section 1103.7 of Title 19 NYCRR is amended to permit the Department of State to approve courses of study for appraiser assistants.

Section 1103.8 of Title 19 NYCRR is repealed and a new section 1103.8 is added to specify the course content and hours of study required for licensure as an appraiser assistant, licensed and certified real estate appraiser.

Section 1103.9 of Title 19 NYCRR is repealed and a new section 1103.9 is added to specify the course content and hours of study required for general real estate appraiser certification.

Section 1103.10 of Title 19 NYCRR is amended to specify the educational requirements for the 15 hour National USPAP course.

Section 1103.12(a) of Title 19 NYCRR is amended to provide that students must physically attend 90 percent of each course offering in order to satisfactorily complete said course.

Sections 1103.21 and 1103.22(f) of Title 19 NYCRR is amended to set forth the registration fees for schools and instructors.

Section 1105.1 of Title 19 NYCRR is repealed and a new section 1105.1 is adopted to permit test providers who are approved by the Appraiser Qualifications Board to administer appraiser examinations in New York State.

Section 1105.2 of Title 19 NYCRR is repealed and a new section 1105.2 is adopted to set forth the procedure for test providers to obtain approval from the Department of State to administer appraiser examinations in New York State.

Section 1105.3 of Title 19 NYCRR is repealed and a new section 1103 is adopted to set forth the procedure and requirements for registering and scheduling exam candidates for appraiser examinations.

Section 1105.4 of Title 19 NYCRR is repealed and a new section 1105.4 is adopted to permit the Department to prescribe New York State specific examination questions.

Section 1105.5 of Title 19 NYCRR is repealed and a new section 1105.5 is adopted to require exam providers to report examination results to the Department of State in such form and manner as prescribed by the Department of State.

Section 1105.6 of Title 19 NYCRR is repealed and a new section 1105.6 is adopted to set forth the procedures associated with suspension and denials of approval to offer appraiser examinations.

Section 1105.7 of Title 19 NYCRR is repealed and a new section 1105.7 is adopted to require test providers to copy the Department of State on any reports sent to the Appraisal Qualifications Board.

Section 1105.8 of Title 19 NYCRR is repealed.

Section 1107.2 of Title 19 NYCRR is amended to specify that licensees must complete 28 hours of approved continuing education every two years, including the 7 hour National USPAP update course in order to renew their license or certification.

Section 1107.4(b)-(d) of Title 19 NYCRR is amended to specify that no more than 14 hours of continuing education credit may be offered for authorship of an appraisal course of study or publication.

Section 1107.5 of Title 19 NYCRR is amended to specify that licensees must complete 28 hours of approved continuing education every two years, including the 7 hour National USPAP update course in order to renew their license or certification.

Section 1107.9 Title 19 NYCRR is amended to remove a dated provision that, for all licenses and certifications expiring on or before December 31, 2003, licensees were required to complete the 15 hour Ethics and Professional Practice Program or a course prescribed by subdivision b of section 1107.9.

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 August 19, 2009.

Text of rule and any required statements and analyses may be obtained from: Whitney A. Clark, Esq., NYS Department of State, Division of Licensing Services, 80 South Swan Street, P.O. Box 22001, Albany, NY 12231, (518) 473-2728.

Regulatory Impact Statement

1. Statutory authority:

Executive Law section 160-d authorizes the New York State Board of Real Estate Appraisal to adopt regulations in aid or furtherance of the statute. One of the purposes of Article 6-E is to ensure that licensed and certified real estate appraisers meet certain minimum requirements for licensure. To meet this purpose, the Department of State, in conjunction with the New York State Board of Real Estate Appraisal, has issued rules and regulations which are found at Parts 1103, 1105 and 1107 of Title 19 NYCRR and is proposing this rule making.

2. Legislative objectives:

Executive Law, Article 6-E, requires the Department of State to license and regulate real estate appraisers. The statute requires prospective licensees to meet certain minimum requirements for licensure, including completion of approved qualifying education. These statutory requirements were changed during the 2007 Legislative Session in order to require the Department of State to implement such minimum requirements for licensure as are imposed on the State by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee required States to enact such minimum standards for licensure and/or certification. The rule making advances the legislative objective by conforming the education regulations with the requirements of the Appraisal Subcommittee in accordance with the 2007 statutory amendment.

3. Needs and benefits:

The Federal Appraisal Qualifications Board (AQB), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), establishes the minimum education, experience and examination requirements for real property appraisers to obtain state certification. States are required to implement appraiser certification requirements that are no less stringent than those issued by the AQB.

In 2004, the AQB adopted significant revisions to the education requirements for real estate appraisers. States were required to adopt these requirements by January 1, 2008. A failure to have done so would have resulted in the State losing Federal recognition of the State program.

During the 2007 legislative session, a bill was passed to require the Department of State to adopt education requirements that are no less stringent than those required by the AQB. In response to this bill, the Department has adopted emergency rules which have been in effect since January 1, 2008. If the Department had failed to adopt these requirements, the New York appraisal program would have lost Federal recognition. This would have resulted in federal financial institutions and many State financial institutions being prohibited from accepting appraisals from New York real estate appraisers. This would include virtually all mortgage and refinance transactions. Appraisers licensed or certified by the State of New York would have been prohibited from preparing an appraisal for any such transaction and New York consumers would have been forced to go out of state in order to obtain an appraisal. The hardship and disruption for the State's financial community, as well as for buyers and sellers of real estate within the State would have been significant.

To ensure that the AQB mandate is met, and to conform the existing education regulations with the statutory amendments, this rule making is necessary.

4. Costs:

a. Costs to regulated parties:

The Department of State currently licenses and certifies 7,311 real estate appraisers. Prospective licensees will face increased education costs due to a greater number of required course hours. Currently, each appraiser course costs approximately \$300 resulting in an anticipated cost of \$2,100 for the assistant appraiser courses, \$3,000 for the certified residential courses and \$3,300 for the certified general courses. The costs for continuing education are not expected to increase as a result of this rule making.

b. Costs to the Department of State:

The rule does not impose any costs to the agency, the state or local government for the implementation and continuation of the rule.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The rule does not impose any new paperwork requirements. Insofar as prospective licensees are already required to satisfactorily complete

qualifying education, conforming the regulations with the recent statutory amendments will not result in additional paperwork requirements.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department of State discussed the need to adopt the rule making at several meetings of the New York State Appraisal Board. Few comments were received that suggested alternatives to the current proposal. General comments were received, including the expressed concern that increasing the educational hours required for certification and licensure would make it more difficult to become licensed and certified. Because the Department is required to propose this rule making by Federal mandate, the hour requirements as set forth in the rule making could not be reduced.

One alternative that is being considered is a legislative amendment to permit on-line qualifying education. While this would not decrease the hours of education required for certification and licensure, it would provide an educational option and flexibility to prospective students.

9. Federal standards:

Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 establishes the Appraisal Qualifications Board (AQB) which establishes the minimum education, experience and examination requirements for real property appraisers to obtain state certification. States are required to implement appraiser certification requirements that are no less stringent than those issued by the AQB. This rule making conforms the education regulations with the required federal standard.

10. Compliance schedule:

Prospective licensees were required to comply with the rule on January 1, 2008. Insofar as the AQB conducted outreach to the regulated public about the relevant changes effected by this rule making, licensees and prospective licensees were notified about the changes and have been able to comply with the rule on the effective dates found in previous emergency adoptions of the rule.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule will apply to prospective real estate appraisers who are applying for licensure pursuant to Article 6-E of the Executive Law after January 1, 2008. During the 2007 legislative session, a bill was passed to amend Article 6-E of the Executive Law to require the Department of State to enact such education and experience requirements for licensure or certification as a real estate appraiser that are no less stringent than those requirements imposed on States by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee required States to enact certain minimum requirements for licensure and/or certification as a real estate appraiser. The rule making merely conforms existing education regulations to the new statutory amendment and requirements of the Appraisal Subcommittee. The rule making will not have any foreseeable impact on jobs or employment opportunities for real estate appraisers.

The rule does not apply to local governments.

2. Compliance requirements:

Insofar as the existing statute and regulations already require minimum education and experience requirements for licensure, the rule making will not add any new reporting, record-keeping or other compliance requirements.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

Licensees will not need to rely on any new professional services in order to comply with the rule. Licensees are already required to satisfy minimum education and experience qualifications pursuant to Article 6-E of the Executive Law. Insofar as licensees must already attend and complete approved education courses, conforming the regulations with the statute will not result in the need to rely on any new professional services. The Department expects existing education providers to begin offering new approved courses in accordance with the amended statute and the rule making.

The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

The rule making will not result in any new compliance costs. Prospective licensees are already required to complete, and pay for, qualifying education pursuant to Article 6-E of the Executive Law. Insofar as licensees must already complete and pay for approved education courses, conforming the education regulations with the recent statutory amendments will not result in any new compliance costs.

The rule does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

Since the rule does not provide any new record keeping requirements on prospective licensees, it will be technologically feasible for these persons to comply with the rule.

6. Minimizing adverse impact:

The Department of State has not identified any adverse economic impact of this rule. The rule does not impose any additional reporting or record keeping requirements on licensees and does not require prospective licensees to take any affirmative acts to comply with the rule other than those acts that are already required pursuant to Executive Law, Article 6-E.

7. Small business participation:

Prior to proposing the rule, the Department discussed the proposal at numerous public meetings of the New York State Real Estate Appraisal Board, the minutes of which were posted on the Department's website. The public was given an opportunity to issue comments during the public comment period of these meetings. In addition, the Notice of Proposed Rule Making will be published by the Department of State in the State Register. The publication of the rule in the State Register will provide notice to local governments and additional notice to small businesses of the proposed rule making. Additional comments will be received and entertained.

Rural Area Flexibility Analysis

A rural flexibility analysis is not required because this rule does not impose any adverse impact on rural areas, and the rule does not impose any new reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Article 6-E of the Executive Law was amended during the 2007 legislative session, to, in relevant part, require the Department of State to enact such education and experience requirements for licensure or certification as a real estate appraiser that are no less stringent than those requirements imposed on States by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee required States to enact certain minimum requirements for licensure and/or certification as a real estate appraiser. The rule making merely conforms existing education regulations to the new statutory amendment and requirements of the Appraisal Subcommittee. Insofar as the existing statute and regulations already require minimum education and experience requirements for licensure, the rule making will not add any new reporting, record-keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A job impact statement is not required because this rule will not have any substantial impact on jobs or employment opportunities for licensed or certified real estate appraisers.

During the 2007 legislative session, a bill was passed to amend Article 6-E of the Executive Law. In pertinent part, the bill required the Department of State to enact such education and experience requirements for licensure or certification as a real estate appraiser that are no less stringent than those requirements imposed on States by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee required States to enact certain minimum requirements for licensure and/or certification as a real estate appraiser. This rule making merely conforms existing education regulations to the new statutory amendment and requirements of the Appraisal Subcommittee. The rule making will not have any foreseeable impact on jobs or employment opportunities for real estate appraisers.

State University of New York

NOTICE OF ADOPTION

Amendment to the Regulations of the Board of Trustees Relating to the Rules for the Maintenance of Public Order

I.D. No. SUN-07-09-00019-A

Filing No. 587

Filing Date: 2009-05-20

Effective Date: 2009-06-10

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

Action taken: Amendment of section 535.3(a) of Title 8 NYCRR.

Statutory authority: Education Law, sections 355(2)(b), (p) and 356(3)(g)

Subject: Amendment to the regulations of the Board of Trustees relating to the Rules for the Maintenance of Public Order.

Purpose: Amends 8 NYCRR 535.3(a) to broaden a category of prohibited conduct relating to actions that cause physical injury or threats.

Text or summary was published in the February 18, 2009 issue of the Register, I.D. No. SUN-07-09-00019-P.

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

Text of rule and any required statements and analyses may be obtained from: Penelope D. Ploughman, Esq., State University of New York, University Plaza, S-323, Albany, New York 12246, (518) 443-5400, email: Penelope.Ploughman@SUNY.edu

Assessment of Public Comment

The agency received no public comment.

Urban Development Corporation

EMERGENCY RULE MAKING

Downstate Revitalization Fund Program

I.D. No. UDC-23-09-00002-E

Filing No. 591

Filing Date: 2009-05-22

Effective Date: 2009-05-22

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

Action taken: Addition of Part 4249 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); L. 1968, ch. 174; L. 2008, ch. 57, part QQ, section 16-r

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

Subject: The Downstate Revitalization Fund Program.

Purpose: Provide the basis for administration of The Downstate Revitalization Fund including evaluation criteria and application process.

Text of emergency rule: DOWNSTATE REVITALIZATION FUND PROGRAM

Section 4249.1 General

These regulations set forth the types of available assistance, evaluation criteria, application and project process and related matters for the Downstate Revitalization Fund (the "Program"). The Program was created pursuant to § 16-r of the New York State Urban Development Corporation Act, as added by Chapter 57 of the Laws of 2008 (the "Act") for the purposes of supporting investment in distressed communities in the downstate region and in support of projects that focus on encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

Section 4249.2 Definitions

For purposes of these regulations, the terms below will have the following meanings:

(a) "Corporation" shall mean the New York State Urban Development Corporation doing business as Empire State Development Corporation.

(b) "Distressed communities" shall mean areas as determined by the Corporation meeting criteria indicative of economic distress, including land value, employment rate; rate of employment change; private investment; economic activity, percentages and numbers of low income persons; per capita income and per capita real property wealth; and such other indicators of distress as the Corporation shall determine.

(c) "Downstate" shall mean the geographical area defined by the Corporation. The defined geographical area will be disseminated to eligible parties by the Corporation.

Section 4249.3 Types of Assistance

The Program offers assistance in the form loans and/or grants to for-profit businesses, not-for-profit corporations, public benefit corporations,

municipalities, and research and academic institutions, for activities including, but not limited to, the following:

(a) support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including, but not limited to, smart growth and energy efficiency initiative; intellectual capital capacity building;

(b) support for the attraction or expansion of a business including, but not limited to, those primarily engaged in activities identified as a strategic industry and minority-owned and women-owned business enterprises as defined by subdivisions (c) and (g) of section nine hundred fifty-seven of the general municipal law;

(c) support for land acquisition and/or the construction, acquisition or expansion of buildings, machinery and equipment associated with a project; and

(d) support for projects located in an investment zone as defined by paragraph (i) of subdivision (d) of section 957 of the General Municipal Law.

4249.4 Eligibility

(a) Eligible applicants shall include, but not be limited to, business improvement districts, local development corporations, economic development organizations, for profit businesses, not-for-profit corporations, public benefit corporations, municipalities, counties, research and academic institutions, incubators, technology parks, private firms, regional planning councils, tourist attractions and community facilities.

(b) The Corporation shall be eligible for assistance in the form of loans, grants, or monies contributing to projects for which the Corporation or a subsidiary act as developer.

(1) The Corporation may act as developer in the acquisition, renovation, construction, leasing or sale of development projects authorized pursuant to this Program in order to stimulate private sector investment within the affected community.

(2) In acting as a developer, the Corporation may borrow for purposes of this subdivision for approved projects in which the lender's recourse is solely to the assets of the project, an may make such arrangements and agreements with community-based organizations and local development corporations as may be required to carry out the purposes of this section.

(3) Prior to developing and such project, the Corporation shall secure a firm commitment from entities, independent of the Corporation, for the purchase or lease of such project. Such firm commitment shall be evidenced by a memorandum of understanding or other document describing the intent of the parties.

(4) Projects authorized under this subdivision whether developed by the Corporation or a private developer, must be located in distressed communities, for which there is demonstrated demand within the particular community.

(c) No full-time employee of the state or full-time employee of any agency, department, authority or public benefit corporation (or any subsidiary of a public benefit corporation) of the state shall be eligible to receive assistance under this initiative, nor shall any business, the majority ownership interest of which is beneficially controlled by any such employee, be eligible for assistance under this initiative.

Section 4249.5 Evaluation criteria

(a) The Corporation shall give priority in granting assistance to those projects:

(1) with significant private financing or matching funds through other public entities;

(2) likely to produce a high return on public investment;

(3) with existence of significant support from the local business community, local government, community organizations, academic institutions and other regional parties;

(4) deemed likely to increase the community's economic and social viability;

(5) with cost benefit analysis that demonstrates increased economic activity, sustainable job creation and investments;

(6) located in distressed communities;

(7) whose application is submitted by multiple entities, both public and private; or

(8) such other requirements as determined by the Corporation as are necessary to implement the provisions of the Program.

Section 4249.6 Application and Approval Process

(a) The Corporation may, at its discretion and within available appropriations, issue requests for proposals and may at other times accept direct applications for program assistance.

(b) Promptly after receipt of the application, the Corporation shall review the application for eligibility, completeness, and conformance with the applicable requirements of the Act and this Rule. Applications shall be processed in full compliance with the applicable provisions of the Act's 16-r.

(c) If the proposal satisfies the applicable requirements and initiative

funding is available, the proposal may be presented to the Corporation's directors for adoption consideration in accordance with applicable law and regulations. The directors normally meet once a month. If the project is approved for funding and if it involves the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of any property, the Corporation will schedule a public hearing in accordance with the Act and will take such further action as may be required by the Act and applicable law and regulations. After approval by the Corporation and a public hearing the project may then be reviewed by the State Public Authorities Control Board ("PACB"), which also generally meets once a month, in accordance with PACB requirements and policies. Following directors' approval, and PACB approval, if required, documentation will be prepared by the Corporation. Notwithstanding the foregoing, no initiative project shall be funded if sufficient initiative monies are not received by the Corporation for such project.

Section 4249.7 Confidentiality

(1) To the extent permitted by law, all information regarding the financial condition, marketing plans, manufacturing processes, production costs, customer lists, or other trade secrets and proprietary information of a person or entity requesting assistance from the Corporation, which is submitted by such person or entity to the Corporation in connection with an application for assistance, shall be confidential and exempt from public disclosures.

Section 4249.8 Expenses

(a) An application fee of \$250 must be paid to the Corporation for projects that involve acquisition, construction, reconstruction, rehabilitation alteration or improvement of real property, the financing of machinery and equipment and working capital loans and loan guarantees before final review of an application can be completed. This fee will be refunded in the event the application is withdrawn or rejected.

(b) The Corporation will assess a commitment fee of up to two percent of the amount of any Program loan involving projects for acquisition, construction, reconstruction, rehabilitation, alteration or improvement of real property, the financing of machinery and equipment and working capital payable upon acceptance of commitment with up to 1 percent rebated at closing. No portion of the commitment fee will be repaid if the commitment lapses and the project does not close. The Corporation will assess a fee of up to 1 percent, payable at closing, of the amount of any Program grant involving the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of real property or the financing of machinery and equipment or any loan guarantee.

(c) The applicant will be obligated to pay for expenses incurred by the Corporation in connection with the project, including, but not limited to, expenses related to attorney, appraisals, surveys, title insurance, credit searches, filing fees, public hearing expenses and other requirements deemed appropriate by the Corporation.

Section 4249.9 Affirmative action and non-discrimination

Program applications shall be reviewed by the Corporation's affirmative action department, which shall, in consultation with the applicant and/or proposed recipient of the program assistance and any other relevant involved parties, develop appropriate goals, in compliance with applicable law (including section 2879 of the public authorities law, article fifteen-A of the executive law and section 6254(11) of the unconsolidated laws) and the Corporation's policy, for participation in the proposed project by minority group members and women. Compliance with laws and the Corporation's policy prohibiting discrimination in employment on the basis of age, race, creed, color, national origin, gender, sexual preference, disability or marital status shall be required.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 19, 2009.

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

Regulatory Impact Statement

1. Statutory Authority: Section 9-c of the New York State Urban Development Corporation Act Chapter 174 of the Laws of 1968, as amended (the "Act"), provides, in part, that the corporation shall, assisted by the commissioner of economic development and in consultation with the department of economic development, promulgate rules and regulations in accordance with the state administrative procedure act.

Section 12 of the Act provides that the corporation shall have the right to exercise and perform its powers and functions through one or more subsidiary corporations.

Section 16-r of the Act provides for the creation of the downstate revitalization fund. The corporation is authorized, within available appropriations, to provide financial, project development, or other assistance from such fund to eligible entities as set forth in this subdivision for the purposes of supporting investment in distressed communities in the

downstate region, and in support of such projects that focus on: encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

2. Legislative Objectives: Section 16-r of the Act sets forth the Legislative intent of the Downstate Revitalization Fund to provide financial assistance to eligible entities in New York with particular emphasis on: supporting investment in distressed communities in the downstate region, and in support of projects that focus on encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation, and small business growth.

It further states such activities include but are not limited to: support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including, but not limited to, smart growth and energy efficiency initiatives, intellectual capital capacity building; support for the attraction or expansion of a business including, but not limited to, those primarily engaged in activities identified as a strategic industry and minority-owned and women-owned business enterprises as defined by subdivisions (c) and (g) of section nine hundred fifty-seven of the general municipal law; support for land acquisition and/or the construction, acquisition or expansion of buildings, machinery, and equipment associated with a project; and support for projects located in an investment zone as defined by paragraph (i) of subdivision (d) of section 957 of the general municipal law.

The Legislative intent of Section 16-r of the Act is to assist business in downstate New York in a time of need and to promote the retention and creation of jobs and investment in the region.

The adoption of 21 NYCRR Part 4249 will further these goals by setting forth the types of available assistance, evaluation criteria, application and project process and related matters for the Downstate Revitalization Fund.

3. Needs and Benefits: Chapter 53 of the Laws of 2008, page 884, lines 5 thru 15 allocated \$35 million to support investment in projects that would promote the revitalization of distressed areas in the downstate region. As envisioned, the program would focus new investments on business, community and technology-based development. While the downstate region has experienced relatively strong growth in recent years, there still remain a significant number of areas that demonstrate high levels of economic distress. As measured by the poverty rate, the Bronx, at over 30%, ranks as the poorest urban county in the U.S. Brooklyn (Kings County) continues to rank among the top ten counties with the highest poverty rates in the country (22.6%). Overall, the poverty rate in New York City is just over 20%. The Community Service Society study, Poverty in New York City, 2004: Recovery?, concluded that if the number of New York City residents who live in poverty resided in their own municipality, they would constitute the 5th largest city in the U.S. Beyond the New York metro area in the Hudson Valley, the poverty rate exceeds 9%. Disproportionate levels of unemployment, population and job loss have left significant areas of the downstate region with shrinking revenue bases and opportunities for economic revitalization.

If it is assumed that at least half of the \$35 million allocation to the Fund is used for new capital investment, this would support approximately 160 construction-related jobs, generating an additional \$10 million in personal income in downstate distressed areas. The Corporation used the Implan® regional economic analysis system to model employment and personal income multipliers for construction spending to estimate the direct, indirect and induced jobs related to the Fund amounts assumed to be devoted to capital spending on infrastructure and construction-related activity.

New York State may collect approximately \$0.66 million in personal income tax and sales tax on income spending. To estimate the personal income tax revenues generated by this spending, the Corporation assumed the tax calculation for single or married filing separately on taxable income over \$20,000, using the standard deduction and 6.85% on income over \$20,000. Sales tax was estimated on taxable disposable income earned by wage earners. The Corporation assumed that 75% of gross income is disposable income and 40% of that is taxable.

This level of capital spending (assumed to be primarily on site development, infrastructure, building rehabilitation and new construction) will provide the basis for further investment in a broad range of economic activity.

4. Costs: The Fund as identified in Chapter 53 of the Laws of 2008, page 884, lines 17 thru 27 will be funded through the issuance of Personal Income Tax bonds. In addition to the interest costs, it is expected that fees and costs associated with issuing bonds, including the Corporation's fee, underwriting, banking and legal fees, will be approximately 1.6%.

The costs to municipalities and other regulated parties involved would depend on the extent to which they participate in and support the proposed projects. For municipalities, this may involve matching funds or the com-

mitment of other public resources for project development. Participation is voluntary and would be considered on a case-by-case basis depending on the location of the municipality involved.

5. Local Government Mandates: The Fund imposes no mandates - program, service, duty, or responsibility - upon any city, county, town, village, school district or other special district. To the contrary, the Fund offers local governments potentially enhanced resources, either directly or indirectly, to encourage economic and employment opportunities for their citizens. Participation in the program is optional; local governments who do not wish to be considered for funding do not need to apply.

6. Paperwork: There are no additional reporting or paperwork requirements as a result of this rule on regulated parties. Standard applications used for most other Corporation assistance will be employed keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients. The rule provides that the Corporation may, however, require applicants to submit materials prior to submission of a formal application to determine if a proposal meets eligible criteria for Fund assistance.

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

8. Alternatives: The Fund proposed regulations provide for a variety of potential program outcomes, by type of assistance, eligible applicants, and eligible uses. These program criteria were informed through an extensive strategic planning process managed for Downstate ESDC by the management consultant A. T. Kearney. Their report, *Delivering on the Promise of New York State*, developed a strategy for the State to capitalize on its rich and diverse assets to encourage the growth of the Innovation Economy. The following are three examples of alternatives that were provided during the outreach portion of the rulemaking process. All of the suggestions offered were from members of the small business community and local governments who responded to the Corporations request for input. All of the suggestions were included in the rules and regulations submitted with this Regulatory Impact Statement.

1. Regulations should be drafted to give priority to projects in developed areas that use smart growth principles, and that promote energy efficiency and conservation.

Section 4249.3, Part (a) provides for "support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including but not limited to, smart growth and energy efficiency initiatives."

2. Regulations should clearly define "distressed communities" using specific, objective criteria.

Section 4249.2, Part (a) defines "Distressed Communities"

3. A streamlined application and reporting process is important to encourage small business participation.

ESDC uses one standard application for this, and many other economic development programs. The information required under Section 4249.6 "Application and approval process" from all applicants is needed for the corporation to make sound investment decisions. Private financing institutions request similar, if not more robust information from their applicants.

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

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

Regulatory Flexibility Analysis

1. Effects of Rule: "Small business" is defined by the State Economic Development law to be an enterprise with 100 or fewer employees. The vast majority - roughly 98 percent - of New York State businesses are small businesses.

We applied this criterion to ESD's models of the Downstate economy to determine how many small businesses could benefit from the Downstate Revitalization Fund. We limited the analysis to industries that are likely to have eligible businesses: manufacturing, transportation and warehousing, information, finance and insurance, professional and technical services, management of companies and enterprises, and arts, entertainment and recreation.

Across these 7 broad sectors our analysis indicates that approximately 115,000 small businesses will be eligible for funding under the Downstate Revitalization Fund.

In addition approximately 2,000 municipalities and local economic development-oriented organizations will be eligible for funding.

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

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

4. Compliance Costs: To the extent that there are existing capabilities at the local level to administer projects involving Downstate Revitalization Fund investments, there should be relatively little, if any additional administration costs.

5. Economic and Technological Feasibility: Compliance with these regulations should be economically and technologically feasible for small businesses and local governments.

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide financing for joint discretionary and competitive economic development projects for distressed communities. In addition the rule specifies that project evaluation criteria include significant support from the local business community, local government, community organizations, academic institutions, and other regional parties. Because this program is open to for-profit businesses confidentiality features are included in the application process.

7. Small Business and Local Government Participation: The National Federation of Independent Business, New York Farm Bureau, and the New York Conference of Mayors were consulted during this rulemaking and comments requested. In addition, 17 rural organizations, cooperatives, and agricultural groups and 10 local government associations were also notified.

ESDC received 10 responses to its outreach to interested parties on the proposed regulations. Much of the responses received consisted of general supporting statements for the programs or critique of the enabling legislation.

Listed are several comments received on the proposed rules related to the Downstate Revitalization Fund and our response to the comment.

1. Regulations should be drafted to give priority to projects in developed areas that use smart growth principles, and that promote energy efficiency and conservation.

Section 4249.3, Part (a) provides for "support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including but not limited to, smart growth and energy efficiency initiatives."

2. Regulations should clearly define "distressed communities" using specific, objective criteria.

Section 4249.2, Part (a) defines "Distressed Communities"

3. A streamlined application and reporting process is important to encourage small business participation.

ESDC uses one standard application for this, and many other economic development programs. The information required under Section 4249.6 "Application and approval process" from all applicants is needed for the corporation to make sound investment decisions. Private financing institutions request similar, if not more robust information from their applicants.

4. Regulations should allow for municipal comments when the applicant is not a municipality.

Section 4249.5, Part 3 gives preference to projects with the "existence of significant support from the local business community, local government, community organizations, academic institutions and other regional parties."

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: The ESD Downstate region is almost non-rural character. Of the 44 counties defined as rural by the Executive Law § 481(7), none are in the Downstate region. Of the 9 counties that have certain townships with population densities of 150 persons or less per square mile, only two counties - Dutchess and Orange - are in the Downstate region.

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

3. Costs: The costs to municipalities and other regulated parties involved would depend on the extent to which they participate in and support the proposed projects. For municipalities, this may involve matching funds or the commitment of other public resources for project development.

4. Minimizing Adverse Impact: The purpose of the Downstate Revitalization Fund Program is to maximize the economic benefit of new capital investment in distressed areas of the downstate region. The statute stipulates that projects must be located in distressed communities for which there is a demonstrated demand. This suggests that cooperation among state, local, and private development entities will seek to maximize the Program's effectiveness and minimize any negative impacts.

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those only in urban areas or only in rural areas, except for the requirement that applicants must be in downstate counties and be in distressed communities. The extent of local government support for a project is a significant criteria for project acceptance. A public hearing may also be required under the NYS Urban Development Corporation Act. The National Federation of Independent Business, New York Farm Bureau, and the New York Conference of Mayors were consulted during this rulemaking and comments requested. In addition, 17

rural organizations, cooperatives, and agricultural groups and 10 local government associations were also asked for their review and comment.

Job Impact Statement

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of Downstate New York through strategic investments to support investments in distressed communities in downstate regions and to support projects that focus on encourage responsible development.

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

NOTICE OF ADOPTION

Upstate Regional Blueprint Fund Program

I.D. No. UDC-13-09-00001-A

Filing No. 595

Filing Date: 2009-05-26

Effective Date: 2009-06-10

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

Action taken: Addition of Part 4247 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); L. 1968, ch. 174; L. 2008, ch. 57, part QQ, section 16-q

Subject: The Upstate Regional Blueprint Fund Program.

Purpose: To set forth the available assistance, evaluation criteria, application and project process.

Text or summary was published in the April 1, 2009 issue of the Register, I.D. No. UDC-13-09-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Stephen Gawlik, Urban Development Corp. d/b/a Empire State Development Corp., 95 Perry Street, Suite 500, Buffalo, New York 14203, (716) 846-8257, email: sgawlik@empire.state.ny.us

Assessment of Public Comment

The agency received no public comment.