

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.

Affordable Housing Corporation

NOTICE OF ADOPTION

Public Access to Corporation Records

I.D. No. AHC-43-08-00002-A

Filing No. 185

Filing Date: 2009-02-24

Effective Date: 2009-03-11

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

Action taken: Amendment of sections 2190.2 and 2190.7 of Title 21 NYCRR.

Statutory authority: Public Officers Law, section 87(b)

Subject: Public access to corporation records.

Purpose: To provide procedures by which records may be obtained from the corporation.

Text of final rule: Paragraph (1) of section 2190.2(b) is amended to read as follows:

(1) maintain an up-to-date subject matter list *updated not less than twice per year*;

Subdivision (g) of section 2190.7 is amended to read as follows:

(g) The person or body designated to hear appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to:

Committee on Open Government

Department of State

One Commerce Plaza [41 State Street]

99 Washington Avenue

Albany, New York 12231

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 2190.2(b)(1) and 2190.7(g).

Text of rule and any required statements and analyses may be obtained from: Jay M. Ticker, New York State Housing Finance Agency, 641 Lexington Avenue, New York, NY 10022, (212) 688-4000, email: jayt@nyhomes.org

Revised Regulatory Impact Statement

The non-substantive changes made in Sections 2190.2(b)(1) and 2190.7(g) of the proposed rule have absolutely no effect on the original RIS and therefore, a revised RIS is not required.

Revised Regulatory Flexibility Analysis

The non-substantive changes made in Sections 2190.2(b)(1) and 2190.7(g) of the proposed rule have absolutely no effect on the original RFA and therefore, a revised RFA is not required.

Revised Rural Area Flexibility Analysis

The non-substantive changes made in Sections 2190.2(b)(1) and 2190.7(g) of the proposed rule have absolutely no effect on the original RAFA and therefore, a revised RAFA is not required.

Revised Job Impact Statement

The non-substantive changes made in Sections 2190.2(b)(1) and 2190.7(g) of the proposed rule have no effect whatsoever on the original JIS and therefore, a revised JIS is not required.

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-10-09-00002-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of the Governor, Office of the State Inspector General," by adding thereto the position of Special Deputy Inspector General.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Job Impact Statement

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

Jurisdictional Classification

I.D. No. CVS-10-09-00003-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of the Governor, Moreland Act Commission," by decreasing the number of positions of Confidential Assistant from 8 to 7; and, in the Executive Department under the subheading "Division of the Budget," by increasing the number of positions of Confidential Assistant from 4 to 5.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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Rural Area Flexibility Analysis

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Job Impact Statement

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

Jurisdictional Classification

I.D. No. CVS-10-09-00004-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Banking Department, by increasing the number of positions of øFair Lending Specialist 1 from 2 to 3 and by adding thereto the position of øFair Lending Specialist 2 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

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Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

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

Jurisdictional Classification

I.D. No. CVS-10-09-00005-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Education Department, by adding thereto the positions of Research and Collections Technician (16).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

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

Jurisdictional Classification

I.D. No. CVS-10-09-00006-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State University of New York under the subheading "State University Colleges," by adding thereto the position of Secretary 2 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Job Impact Statement

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**State Commission of
Correction**

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

OCFS Secure Facilities

I.D. No. CMC-10-09-00001-P

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

Proposed Action: Addition of Subtitle AA, Chapter III to Title 9 NYCRR.

Statutory authority: Correction Law, sections 45(6-b) and 45(10)

Subject: OCFS secure facilities.

Purpose: To enact minimum standards and regulations for the management of secure facilities operated by OCFS.

Substance of proposed rule (Full text is posted at the following State website: www.scoc.state.ny.us): A new Chapter III of Subtitle AA of Title 9 is added to provide as follows:

CHAPTER III

Minimum Standards and Regulations for Management of Secure Facilities Operated by the Office of Children and Family Services.

Part 7401 (Legal Authority): Correction Law section 40(3) includes a secure facility operated by the Office of Children and Family Services (OCFS) within the definition of "correctional facility." Thus, all oversight and regulatory duties and responsibilities of the Commission of Correction (Commission) set forth in Article 3 of the Correction Law with regard to correctional facilities shall now pertain to such secure facilities.

Part 7402 (Classification): OCFS shall establish, implement, and maintain a formal and objective system for the consistent classification of all secure facility residents, which shall include an initial screening and assessment by the facility, the assignment to a facility living unit upon facility admission, and reassessment reviews.

Part 7403 (Admissions): OCFS shall ensure that all residents are admitted to secure facilities in accordance with law and in a manner which protects the safety of all persons and the security of the facility. Such admission shall include adequate identification procedures, necessary searches, a health screening, the issue of personal hygiene items and clothing, telephone calls and an orientation to facility rules and information.

Part 7404 (Security and Supervision): OCFS shall operate each secure facility in a manner that provides for the adequate supervision of residents and for a safe and secure environment. Adequate supervision shall include minimum supervision levels inside and outside resident living areas, the maintenance of supervisory records, and the conducting of formal resident population counts. Additionally, OCFS shall take measures to ensure fire-arms control, key control, tool and equipment control, perimeter control, and the inspection of locks and other securing devices.

Part 7405 (Discipline): OCFS shall establish and maintain a fair, impartial and consistent system of resident discipline designed to set standards of appropriate behavior and encourage self control. Such system shall include published rules of resident conduct, rule violation reports, necessary investigations, assistance to residents, hearing proceedings consistent with due process, appropriate disciplinary sanctions and appeal procedures.

Part 7406 (Reportable Incidents): In order to provide a mechanism by which secure facility operations, policies and procedures can be monitored, evaluated and improved, each secure facility shall internally review and assess all incidents of a serious or potentially problematic nature, and report such incidents to the Commission.

Part 7407 (Printed Material and Publications): Secure facility residents shall generally be entitled to receive printed material and publications suitable for minors, obtained from any approved vendor, including but not limited to bookstores or publishers.

Part 7410 (Health Services): Adequate health care and health care services shall be provided to all secure facility residents in order to promote their well being through the prevention, detection, treatment and management of disease and disability. Such services shall include the creation of an administrative health services authority and a clinical health services authority. Furthermore, arrangements must be made for the adequate provision of medical emergency, hospital, special diagnostic, therapeutic, radiology, and laboratory services.

Part 7414 (Mental Health Services): OCFS secure facility residents shall be provided uniform access to comprehensive mental health services, including mental health screening, and emergency and inpatient mental health services.

Part 7415 (Case Management and Counseling): All residents of OCFS secure facilities shall be provided case management and counseling services. Case management shall constitute a process which includes gathering information about and from residents, making assessments, setting goals, evaluating progress, documenting information, screening residents, making referrals and preparing appropriate forms and reports. Counseling shall include a structured intervention in an individual or group setting to assist residents to understand themselves and their interactions with their environment, to address their identified needs, to set personal goals, and to develop skills to achieve these goals.

Part 7416 (Educational Services for Residents): OCFS shall provide to secure facility residents all educational programs and services required the New York State Education Law, and all other applicable laws, statutes, and regulations.

Part 7417 (Food Services): OCFS shall maintain a facility food service program sufficient to satisfy the daily nutritional needs of each resident and compliant with both sanitation requirements and resident religious and medical needs.

Part 7418 (Exercise, Recreation and Leisure Activities): Each secure facility shall provide residents with at least two hours per day of exercise, recreation and leisure activities, forty-five (45) minutes of which shall generally be held in an outdoor recreation area.

Part 7419 (Resident Personal Hygiene): OCFS shall provide for and maintain standards of personal hygiene for residents, including the opportunity for daily showers and shaving, haircuts, and the provision of clothing, personal health care items, bedding and linen.

Part 7420 (Grievance Program): In order to provide an effective and impartial procedure for the timely resolution of resident complaints, OCFS shall establish, implement and maintain a formal resident grievance program at each secure facility. Such program shall include the availability of grievance forms and necessary assistance to residents.

Part 7421 (Access to Legal Services): OCFS secure facility residents shall generally be allowed access to legal services for the purpose of legal preparation with respect to any civil action or proceeding relating to the resident's conditions of confinement or criminal action or proceeding, and other necessary matters. Legal services shall include access to legal counsel, the Ombudsman and a notary public.

Part 7422 (Visitation): OCFS shall ensure that secure facility residents receive contact visitation by providing sufficient space for a visiting room, establishing and publishing a visitation schedule that allows for two (2) hours of weekly visitation per resident, and affording effective visitor identification and registration.

Part 7423 (Correspondence and Telephone): OCFS shall develop written policies and procedures that govern correspondence and telephone usage at each secure facility, including necessary assistance to residents in writing correspondence, the provision of writing materials and first class postage for at least two one ounce pieces of correspondence each week, and the collection and delivery of mail via to and from the United States Postal Service.

Part 7424 (Nondiscriminatory Treatment): OCFS shall develop written policies and procedures designed to prevent the unlawful discriminatory treatment of residents in any secure facility based upon race, religion, nationality, sex, sexual orientation, age or political beliefs. The areas addressed by such policies shall include, but shall not be limited to, educational, religious, and vocational programs, work assignments, classification, disciplinary and grievance decisions, and consideration for program participation.

Part 7425 (Religion): OCFS shall generally allow for religious observance at each secure facility in a manner that does not constitute a threat to the safety, security or good order of the facility, or the safety security or health of any person. Residents shall have a right to hold any religious belief, and to be affiliated with any religious faith, including participation in congregate religious activities, the celebration of religious holidays or festivals, and the possession and use of religious articles.

Part 7426 (Commissary): Commissary services provided by OCFS at secure facilities shall be in accordance with the requirements of section 517 of the Executive Law, and all other applicable laws, statutes and regulations.

Part 7427 (Access to Media): OCFS secure facility residents and the media will have reasonable access to each other subject only to limitations necessary to maintain the safety, security and good order of the facility, to protect a resident's rights and a resident's treatment and rehabilitation

program. OCFS shall protect each resident's right to privacy and guarantee the confidentiality of each resident under the care and custody of OCFS.

Part 7428 (Library Services): OCFS shall require that each secure facility provide all its residents with regular access to library services, which includes weekly access to materials which are current and responsive to the educational, vocational, informational and recreational interests and needs of the resident population at a variety of ability levels.

Part 7433 (Personnel Standards): In order to provide for the safety, security, and good order of all secure facilities, OCFS shall require that secure facility staff are oriented to safety and security policies and procedures and trained to perform their duties and responsibilities. To that end, all youth division aides and youth counselors must satisfactorily complete a basic training program certified by the Correction. Further, each secure facility shall provide a formal standardized orientation program for all staff new to a secure facility.

Part 7434 (Variances): The Commission recognizes the need to provide a mechanism by which the OCFS may apply for a variance to Commission regulations when situations exist or arise that would prevent or alter OCFS's ability to meet such requirement. The Commission shall grant such variances only under specified conditions and when doing so will not jeopardize the safety, security, or good order of a secure facility.

Part 7435 (Deathbed and Funeral Visits): Residents in secure facilities operated by OCFS shall be permitted to visit family members when the death of a family member is imminent or after death has occurred, subject to the expeditious review, assessment and approval of the facility director.

Part 7438 (Construction and Renovation): All plans and specifications for the construction or renovation of OCFS secure facilities shall be submitted to the Commission for review and approval. Such approval by the Commission shall be obtained before a construction or renovation project is advertised for bids. If a bidding procedure will not be followed, Commission approval must be obtained before any construction or renovation begins.

Part 7439 (Sanitation): OCFS shall develop and implement a system that insures sanitation in each secure facility, including provisions for general facility sanitation, food service sanitation, insect and rodent control, waste disposal, and the conducting of regular sanitation inspections.

Part 7440 (Fire Prevention and Safety): In order to safeguard the lives and property of all occupants within each OCFS secure facility, and to minimize the possibility of fire emergencies or other similar hazards, each OCFS secure facility shall practice proper fire prevention and safety measures, which shall include compliance with all applicable laws, codes, rules and regulations related to fire safety and prevention. Each facility shall undergo both weekly fire and safety inspections by staff, and an annual inspection by the agency having code enforcement authority thereto.

Part 7441 (Environmental Health and Safety): Environmental conditions significantly influence the overall effectiveness of secure facility operations. Standards for lighting, air quality, temperature and noise levels are designed to preserve the health and well-being of residents and staff members and to promote the good order and security of each secure facility. Each secure facility shall maintain compliance with all applicable laws, codes, rules and regulations governing lighting, water supply, plumbing, noise control, heating control, ventilation, heating and ventilation.

Part 7442 (Maximum Facility Capacity): In order to promote a safe, secure and healthy environment, there shall be a limit on the total number of residents confined at any given time within each secure facility operated by OCFS. Each individual occupancy unit shall contain at least sixty (60) square feet of floor space and contain one bed and mattress, one functioning toilet, one functioning sink, and have available at least one functioning shower for every fifteen (15) residents contained within a living area.

Text of proposed rule and any required statements and analyses may be obtained from: Brian M. Callahan, Office of Counsel, New York State Commission of Correction, 80 Wolf Road, 4th Floor, Albany, New York 12205, (518) 485-2346, email: Brian.Callahan@scoc.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.

Summary of Regulatory Impact Statement

1. Statutory authority:

Subdivision (6-b) of section 45 of the Correction Law authorizes the Commission to promulgate rules and regulations, in consultation with the Office of Children and Family Services (OCFS and formerly the Division for Youth), establishing minimum standards for the care, custody, rehabilitation, treatment, supervision, discipline and other programs for all secure facilities operated by OCFS.

Subdivision (16) of Correction Law section 45 further allows the Commission to “[a]dopt, amend or rescind such rules and regulation as may be necessary or convenient to the performance of the functions, powers and duties of the commission.”

2. Legislative objectives:

By vesting the Commission with this rulemaking authority, the Legislature gave specific mandate to the Commission to set minimum standards reflecting the Commission’s oversight and regulation of OCFS secure facilities.

3. Needs and Benefits:

Section 55 of Chapter 309 of the Laws of 1996 amended the definition of “correctional facility,” found in subdivision (3) of § 40 of the Correction Law, to include a secure facility operated by OCFS. This legislation also added a new subdivision (6-b) to § 45 of the Correction Law, regarding the Commission’s functions, powers, and duties, vesting the Commission with the responsibility of promulgating minimum standards for secure facilities. The result of these amendments is that the provisions of Article 3 of the Correction Law are now generally applicable to OCFS secure facilities.

OCFS secure facilities, like any other correctional facility, are given the monumental task of providing for the complete care and custody of its residents. Essential services to be provided residents are dictated by numerous sources, including the United States and New York State Constitutions, state and federal statutes and regulations, and state and federal caselaw. Equally extensive are the services and liberties to consider, including resident classification, admissions, security and supervision, resident discipline, health and mental health services, educational services, food services, exercise and recreation, resident personal hygiene, resident grievances, visitation, correspondence, religion and facility sanitation and capacity.

Besides the obvious need demonstrated by the Legislature’s enactment of Correction Law § 45(6-b), requiring the Commission to promulgate minimum standards for OCFS secure facilities, the Commission submits that the proposed body of regulations is consistent with the constitutional, statutory and regulatory requirements set forth above, and is thereby beneficial to both OCFS and its residents in providing rules for the safe, stable and humane operation of such facilities.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule:

Section 7410.5 requires OCFS to establish clinical health services authorities to govern direct health care delivery to residents of secure facilities. At a minimum, each authority shall consist of a medical director, registered professional nurse, and licensed health care professionals. Such regulations require a registered professional nurse be available 16 hours per day with continuous access. This requirement would require additional nursing staff at all of the facilities except Brookwood, resulting in an unbudgeted fiscal impact of \$405,000.00. Additionally, the requirement of section 7410.18 that facility radiology equipment be inspected on an annual basis will result in a budgeted fiscal impact of \$400.00 annually.

Section 7410.29 requires each secure facility to provide a formal orientation and training program for new health care staff, which shall include an orientation to the secure facility and OCFS policies and procedures for health services. OCFS would accomplish this mandate by using contracted trainers for on-site training at each of the facilities, resulting in an unbudgeted fiscal impact of \$75,000.00.

Part 7433 provides that all OCFS youth division aides (YDAs) and youth counselors must satisfactorily complete a basic training program certified by the Commission prior to employment at a secure facility. The training programs must be re-certified every five years. In order to be certified, all OCFS direct trainers (18 staff) and field instructors in secure facilities (75 staff) will be required to attend a 2 week Train-the-Trainer program provided by the Commission. Training for these 93 staff, including travel, per diems and staff relief costs are estimated to have an initial unbudgeted fiscal impact of \$362,000.00.

Part 7433 will further require the curriculum development for 5 new courses. Accomplished by a Senior Trainer Developer, the estimated cost involves 140 hours per course plus travel expenses to

conduct pilot training, resulting in an unbudgeted fiscal impact of \$78,000.00. Upon development of the curriculum, such training must be delivered to all existing YDAs and counselors. As youth supervision and coverage levels will need to be maintained while existing staff are in training, the resulting relief and overtime use will result in an estimated unbudgeted fiscal impact of \$173,000.00. Similarly, new staff would receive this training at their facility following return from the 5 week Basic Academy training. With staff turnover estimated at 25% on an annual basis, the resulting relief and overtime will result in an estimated unbudgeted fiscal impact of \$44,000.00. Lastly, development of a new, statistically valid and reliable instrument to measure for learning gain is estimated to result in an estimated unbudgeted fiscal impact of \$25,000.00.

Section 7404.5(b) requires that mechanical time recording devices be used to record the performance of supervisory visits (rounds) by staff. Each secure facility is currently using a device that, while antiquated, would sufficiently meet the requirements of such regulation. Nevertheless, OCFS has currently budgeted for capital costs to purchase and integrate a more sophisticated electronic time recording device, such capital costs estimated at \$1,365,000.00. Similarly, section 7404.13 requires secure facility staff to maintain keys in a secure manner, including a requirement that keys which could provide residents with a means of exit from any secure facility shall not be permitted in any area where residents may gain access to such keys. While compliance with this regulation could be accomplished with minimal cost by implementing strict facility policies regarding the control of existing keys, OCFS has planned and budgeted for a system of remote mechanical and electric door control, thus eliminating the need for employees to carry external door keys. Capital costs associated with this project are estimated at \$795,000.00.

While compliance with the requirements of the rule would otherwise incur costs not provided above, current OCFS policy and practice insures that secure facilities are already in compliance with a preponderance of the regulations. As such, any costs associated with OCFS’s preceding and continued compliance are not set forth herewith.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: Costs to OCFS are fully set forth in (a) above. Commission costs related to the evaluation and monitoring of secure facilities, including travel and per diems, is estimated to result in an unbudgeted fiscal impact of \$6,250.00.

c. This statement detailing the projected costs of the rule is based upon fiscal estimates provided by OCFS and the Commission’s oversight and experience relative to the operation and function of correctional facilities.

5. Local government mandates:

None. The proposed regulation applies only to secure facilities operated by the New York State Office of Children and Family Services.

6. Paperwork:

The rule will require OCFS and each secure facility to develop, implement and maintain record systems relative to personnel training and resident classification, discipline and grievances. Additionally, records must be created and maintained regarding resident admission and supervision, population counts, key and equipment control, and lock inspections. All plans and specifications for the construction or renovation of a secure facility, or any application to change the maximum facility capacity thereof, must be submitted to the Commission in writing. Any determination to censor incoming printed material or publications or limit a resident’s exercise, visitation or exercise of religious beliefs must be recorded in writing. Lastly, the results of all weekly inspections relative to fire, safety and environmental health must be recorded in writing.

7. Duplication:

To some extent, Part 7405 duplicates standards for resident behavior in OCFS secure facilities as set forth in 9 NYCRR Part 179. By way of reference, Part 7416 duplicates State requirements set forth in Education Law § 112 and 8 NYCRR Part 116. Part 7417 somewhat duplicates standards for food preparation in OCFS secure facilities as set forth in 9 NYCRR § 180.9(d)(5). Similarly, Part 7419 somewhat duplicates standards for resident behavior in OCFS secure facilities as set forth in 9 NYCRR Parts 171 and 180. Part 7424 duplicates

statutorily prohibited discrimination of the New York Human Rights Law, as set forth in Article 15 of the Executive Law. Part 7425 duplicates a few standards for resident religious beliefs in OCFS secure facilities, as set forth in 9 NYCRR § 171-1.7. By reference, Part 7426 duplicates the requirements for facility commissaries set forth in Executive Law § 517. To some extent, Part 7439 duplicates standards for sanitation in OCFS secure facilities as set forth in 9 NYCRR § 180.9(d)(5). By reference, Part 7441 duplicates all rules and regulations set forth in the *NY State Uniform Fire Prevention & Building Code*. Comparatively, Part 7442 duplicates facility requirements relative to necessary floor space and plumbing set forth in the *NY State Uniform Fire Prevention & Building Code*.

8. Alternatives:

The alternative, namely not promulgating minimum standards for the management of secure facilities operated by OCFS, was explored by the Commission. This alternative was rejected upon the Commission's finding, as set forth above, that section 55 of Chapter 309 of the Laws of 1996, specifically a new subdivision (6-b) to § 45 of the Correction Law, charges the Commission with the responsibility, in consultation with OCFS, of promulgating minimum standards for such facilities.

The proposed regulations were developed through regular meetings between Commission and OCFS staff, and subsequent negotiations between the administrations of both agencies, with supportive mediation provided by the Division of Criminal Justice Services. The Commission is confident that the resulting regulations sufficiently meet the mandate of Correction Law § 45(6-b) and provide OCFS with reasonable and useful minimum standards to insure the safe and stable operation of secure facilities.

9. Federal standards:

There are no applicable minimum standards of the federal government.

10. Compliance schedule:

Each OCFS secure facility is expected to be able to achieve compliance with the proposed rule immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required pursuant to subdivision three of section 202-b of the State Administrative Procedure Act because the rule does not impose an adverse economic impact on small businesses or local governments. The proposed rule seeks only to enact minimum standards and regulations regarding the management of secure facilities operated by the Office of Children and Family Services. Accordingly, it will not have an adverse impact on small businesses or local governments, nor impose any significant reporting, record keeping, or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required pursuant to subdivision four of section 202-bb of the State Administrative Procedure Act because the rule does not impose an adverse impact on rural areas. The proposed rule seeks only to enact minimum standards and regulations regarding the management of secure facilities operated by the Office of Children and Family Services. Accordingly, it will not impose an adverse economic impact on rural areas, nor impose any significant recordkeeping, reporting, or other compliance requirements on private or public entities in rural areas.

Job Impact Statement

A job impact statement is not required pursuant to subdivision two of section 201-a of the State Administrative Procedure Act because the rule will not have a substantial adverse impact on jobs and employment opportunities, as apparent from its nature and purpose. The proposed rule seeks only to enact minimum standards and regulations regarding the management of secure facilities operated by the Office of Children and Family Services (OCFS). Accordingly, while such rule may require OCFS to provide additional nursing staff at such facilities, there will be no substantial adverse impact on jobs and employment opportunities.

Department of Correctional Services

NOTICE OF ADOPTION

Clinton Correctional Facility

I.D. No. COR-52-08-00002-A

Filing No. 178

Filing Date: 2009-02-23

Effective Date: 2009-03-11

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

Action taken: Repeal of section 100.15(d) of Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Clinton Correctional Facility.

Purpose: To remove the reference to the Unit for Condemned Persons from the regulation consistent with NYS Court of Appeals decision.

Text or summary was published in the December 24, 2008 issue of the Register, I.D. No. COR-52-08-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, Department of Correctional Services, 1220 Washington Ave., Bldg. 2 - State Campus, Albany, NY 12226-2050, (518) 457-4951, email: Maureen.Boll@docs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Crime Victims Board

NOTICE OF ADOPTION

Loss of Earnings

I.D. No. CVB-50-08-00002-A

Filing No. 158

Filing Date: 2009-02-18

Effective Date: 2009-03-11

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

Action taken: Addition of sections 525.1(p), 525.2(e) and 525.12(i) to Title 9 NYCRR.

Statutory authority: Executive Law, section 631

Subject: Loss of earnings.

Purpose: To establish the process through which claimants may be reimbursed by the Board for loss of earnings.

Text or summary was published in the December 10, 2008 issue of the Register, I.D. No. CVB-50-08-00002-EP.

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

Text of rule and any required statements and analyses may be obtained from: John Watson, General Counsel, New York State Crime Victims Board, 1 Columbia Circle, Suite 200, Albany, New York 12203, (518) 457-8066, email: johnwatson@cvb.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Prohibited Disclosure of Personal Identifying Information

I.D. No. CVB-53-08-00001-A

Filing No. 159

Filing Date: 2009-02-18

Effective Date: 2009-03-11

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

Action taken: Addition of section 525.33 to Title 9 NYCRR.

Statutory authority: L. 2008, ch. 279

Subject: Prohibited disclosure of personal identifying information.

Purpose: To codify the Crime Victims Board's policy related to the disclosure of personal identifying information.

Text or summary was published in the December 31, 2008 issue of the Register, I.D. No. CVB-53-08-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: John Watson, General Counsel, New York State Crime Victims Board, One Columbia Circle, Suite 200, Albany, New York 12203, (518) 457-8066, email: johnwatson@cvb.state.ny.us

Assessment of Public Comment

The agency received no public comment.

State Board of Elections

NOTICE OF ADOPTION

Minimum Number of Voting Machines Required Per Polling Place and Maximum Number of Voters Per Machine

I.D. No. SBE-52-08-00003-A

Filing No. 160

Filing Date: 2009-02-18

Effective Date: 2009-03-11

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

Action taken: Amendment of Part 6210 of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-100; 7-203(2); 7-206

Subject: Minimum number of voting machines required per polling place and maximum number of voters per machine.

Purpose: Comply with section 703(2) and provide for accurate elections in New York State.

Text or summary was published in the December 24, 2008 issue of the Register, I.D. No. SBE-52-08-00003-P.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY
RULE MAKING

Physical Therapist Assistants and Occupational Therapy Assistants

I.D. No. HLT-50-08-00011-E

Filing No. 182

Filing Date: 2009-02-23

Effective Date: 2009-02-23

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

Action taken: Amendment of section 505.11 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 365-a

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

Specific reasons underlying the finding of necessity: We are proposing that this regulatory amendment be adopted on an emergency basis for the preservation of the public health as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Secretary of State.

This amendment is adopted as an emergency measure because time is of the essence and compliance with the proposal process would be contrary to the public interest. Title 18 NYCRR, Section 505.11 does not include physical therapist assistants or occupational therapy assistants in the list of qualified professionals that can provide physical therapy or occupational therapy services, as a billable service, to Medicaid recipients. However, provider organizations have demonstrated to the Department that without the continued employment of occupational therapy assistants and physical therapist assistants the Medicaid enrollee's access to rehabilitative care will be hampered. Therefore, the Department has decided to amend its regulations to specifically allow reimbursement for occupational and physical therapy services provided by occupational therapy assistants and physical therapist assistants. Also, the State Education Department has certified physical therapist assistants and occupational therapy assistants since 1981 and 1977, respectively. The current standard of practice is to allow these professionals to provide services to patients under the supervision of physical and occupational therapists. Making revisions to the regulations will allow Medicaid recipients continued access to physical and occupational therapy services utilizing occupational therapy assistants and physical therapist assistants as qualified professionals.

Subject: Physical Therapist Assistants and Occupational Therapy Assistants.

Purpose: To allow physical therapist assistants and occupational therapy assistants to provide services to Medicaid recipients.

Text of emergency rule: Paragraph (2) of subdivision (c) of Section 505.11 of Title 18 NYCRR is amended to read as follows:

(2) A qualified private practicing therapist, *therapist assistant* or speech pathologist.

Paragraph (1) of subdivision (d) of Section 505.11 is amended to read as follows:

(d) Definitions. (1) Qualified professional shall mean:

(i) occupational therapist, *occupational therapy assistant*, physical therapist, *physical therapist assistant* or speech pathologist who is licensed and currently registered with the New York State Education Department;

(ii) occupational therapist, *occupational therapy assistant*, [or] physical therapist or *physical therapist assistant* who possesses a limited permit and practice(s) under the supervision of the appropriate professional in accordance with requirements of the State Education Law;

(iii) speech pathologist who is in the process of obtaining a license and has on file a "Notification of approval of the Supervisory Plan" in accordance with requirements of the State Education Law; or

(iv) out-of-state occupational therapist, *occupational therapy assistant*, physical therapist, *physical therapist assistant* or speech pathologist meeting the certification requirements of the appropriate agency of the state in which they practice.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-50-08-00011-P, Issue of December 10, 2008. The emergency rule will expire April 23, 2009

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

Regulatory Impact Statement

Statutory Authority:

The authority for the amendment of this regulation is contained in section 201 of the Public Health Law and sections 363-a and 365-a (2) of the Social Services Law (SSL). Section 365-a (2) of the SSL states that "the department shall be responsible for furnishing medical assistance to eligible individuals" and that "medical assistance includes payment for all medically necessary medical, dental, and remedial care, services and supplies" authorized under Title 11 of Article 5 of the SSL and the Department regulations. Section 365-a (2) (h) of the SSL specifically includes within these definitions the provision of physical and occupational therapy services.

Legislative Objective:

Section 363-a of the SSL designates the Department as the single State agency responsible for implementing the Medicaid program in this State and authorizes the Department to promulgate regulations which are consistent with federal and state law. The objective of the proposed regulatory amendment is to allow physical therapist assistants and occupational therapy assistants to provide services to Medicaid recipients under the supervision of physical and occupational therapists respectively.

Needs and Benefits:

Section 505.11 of Title 18 NYCRR does not include physical therapist assistants or occupational therapy assistants in the list of qualified professionals who are allowed to provide rehabilitative services to Medicaid recipients. The regulations must be revised to ensure that Medicaid recipients will have adequate access to medically needed occupational and physical therapy services. These services can then be provided by occupational therapy assistants and physical therapist assistants under the supervision of occupational and physical therapists, respectively.

COSTS:

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

There would be no increased costs to the clinics or private practices that employ physical therapist assistants or occupational therapy assistants.

Costs to State Government:

There would be no increased costs to State government as a result of the proposed rule which will bring Medicaid regulations into conformity with current clinical standards of care. The State Education Department has certified physical therapist assistants and occupational therapy assistants since 1981 and 1977, respectively. It is accepted standard of care to have these professionals provide services to patients.

Costs to Local Government:

There will be no cost to the local government.

Local Government Mandates:

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

Paperwork:

This regulatory amendment will have no effect on paperwork for medical providers.

Duplication:

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

Alternatives:

No other alternatives were considered. Conforming 18NYCRR, Section 505.11 to current practice standards was necessary to insure that Medicaid enrollees continue to have access to quality care from qualified professionals.

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Housing Finance Agency

NOTICE OF ADOPTION

Public Access to Agency Records

I.D. No. HFA-43-08-00003-A

Filing No. 186

Filing Date: 2009-02-24

Effective Date: 2009-03-11

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

Action taken: Amendment of sections 2150.2 and 2150.7 of Title 21 NYCRR.

Statutory authority: Public Officers Law, section 87(b)

Subject: Public access to agency records.

Purpose: To provide procedures by which records may be obtained from the agency.

Text of final rule: Paragraph (1) of section 2150.2(b) is amended to read as follows:

(1) maintain an up-to-date subject matter list *updated not less than twice per year*;

Subdivision (g) of section 2150.7 is amended to read as follows:

(g) The person or body designated to hear appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to:

Committee on Open Government

Department of State

One Commerce Plaza [41 State Street]

99 Washington Avenue

Albany, New York 12231

Final rule as compared with last published rule: Nonsubstantial changes were made in 2150.2(b)(1) and 2150.7(g).

Text of rule and any required statements and analyses may be obtained from: Jay M. Ticker, New York State Housing Finance Agency, 641 Lexington Avenue, New York, NY 10022, (212) 688-4000, email: jayt@nyhomes.org

Revised Regulatory Impact Statements

The non-substantive changes made in Sections 2150.2(b)(1) and 2150.7(g) of the proposed rule have absolutely no effect on the original RIS and therefore, a revised RIS is not required.

Revised Regulatory Flexibility Analysis

The non-substantive changes made in Sections 2150.2(b)(1) and 2150.7(g) of the proposed rule have absolutely no effect on the original RFA and therefore, a revised RFA is not required.

Revised Rural Area Flexibility Analysis

The non-substantive changes made in Sections 2150.2(b)(1) and 2150.7(g) of the proposed rule have absolutely no effect on the original RAFA and therefore, a revised RAFA is not required.

Revised Job Impact Statement

The non-substantive changes made in Sections 2150.2(b)(1) and 2150.7(g) of the proposed rule have no effect whatsoever on the original JIS and therefore, a revised JIS is not required.

Assessment of Public Comment

The agency received no public comment.

Division of the Lottery

NOTICE OF ADOPTION

The Operation of Video Lottery Gaming

I.D. No. LTR-53-08-00015-A

Filing No. 157

Filing Date: 2009-02-18

Effective Date: 2009-03-11

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

Action taken: Amendment of Part 2836 of Title 21 NYCRR.

Statutory authority: New York Tax Law, section 1617-a

Subject: The operation of Video Lottery Gaming.

Purpose: To update 21 NYCRR Part 2836 relating to the operation of Video Lottery Gaming.

Substance of final rule: Chapter 383 of the Laws of 2001, as most recently amended by Chapters 18, 140 and 286 of the Laws of 2008, codified in Sections 1612 and 1617-a of the New York State Tax Law, authorized the Division of the Lottery (the "Lottery") to license the operation of Video Lottery Gaming ("VLG") at eligible racetracks in New York State. That legislation directed the Lottery to promulgate rules and regulations for the licensing and operation of VLG.

The Lottery recognizes that certain requirements must be clarified to reflect the knowledge and experience gained since the establishment of VLG. The amendments update the Lottery's regulations for the operation of VLG and reflect changes in the Tax Law. The Lottery shared these proposed amendments with licensed VLG agents and sought their comments. The Lottery incorporated some of those comments into the amendments.

The VLG regulations begin by setting forth the general provisions, construction and application of the rules, including definitions for terms that are used throughout the VLG regulations. Definitions in Section 2836-1 were revised, added and certain definitions were removed to more clearly describe terms and define terms that were previously undefined. Definitions were also updated to reflect changes in terminology since the initial adoption of the VLG regulations. For example, redundant definitions were removed that were already defined in the Lottery's general regulations codified at 21 NYCRR 2800.3. Additionally, terms were removed to reflect the deletion of related provisions of the regulations.

Section 2836-6 relating to VLG Key Employee and Employee licensing is reorganized for clarity and revised to simplify the licensing process for video lottery gaming non-key employees. This section is further revised to more clearly and succinctly describe criteria that may be the basis for the denial of a VLG license application or suspension or revocation of a VLG license.

Under the amendments, the license renewal process formerly covered by Section 2836-7 will no longer be required. The repeal of this section eliminates an administrative burden and conforms the VLG regulations to traditional lottery retailer licensing practices. The Lottery retains its discretionary authority to review any licensee's background or ask for additional documentation should any questions arise as to the licensee's suitability to retain a VLG license.

The amendments repeal former Section 2836-12 relating to non-gaming vendor licensing, because non-gaming vendors will no longer be required to obtain a non-gaming vendor license. New Section 2836-12 is now entitled "Requirements for Doing Business with Construction Contractors," and requires registration of certain construction contractors.

Section 2836-18 regulating the marketing allowance has been significantly revised to reflect changes adopted by Chapter 18 of the Laws of 2008 and to reflect recent changes in the Lottery's management of such allowance.

Section 2836-19 covering underage gaming, responsible gaming and undesirable persons has been revised to reflect changes in the self-exclusion program. An individual may now exclude himself or herself from a VLG facility for periods of one, three or five years. Excluded persons will no longer be able to petition for reinstatement prior to the expiration of the exclusionary periods.

Section 2836-20 describing the persons prohibited from playing VLG has been revised to more precisely reflect generally accepted gaming industry standards.

Section 2836-24 has been added to regulate the capital award program

that was established by Chapter 18 of the Laws of 2008 and amended by Chapter 140 of the Laws of 2008. This section describes the process required to obtain a capital award, including the submission of a capital improvement plan to the Lottery for approval and describing the payment process for such an award.

Technical amendments are also made throughout the VLG regulations.

Following publication of the Notice of Proposed Rulemaking on December 31, 2008, the Lottery made the following nonsubstantive changes to the proposed regulations:

(a) Former § 2836-7.1(f) was inadvertently deleted when Part 2836-7 was removed from the proposed regulations. Because the entire part regarding renewal of licenses is being repealed, this regulation is moved to part 2836-3, "General Provisions Regarding Licensing and Registration." By moving this provision to section 2836-3.20, no new duties, obligations, or restrictions are being imposed. An existing provision is simply being moved to a different part of the regulations.

(b) Section 2836-19.5 was revised to be consistent with Executive Law § 296 ("The Human Rights Law").

(c) Section 2836-20.1(f) was slightly revised to clarify the Lottery's amended restrictions regarding certain employees playing video lottery gaming.

Final rule as compared with last published rule: Nonsubstantial changes were made in sections 2836-3.20, 2836-7.1(f), 2836-19.5(b) and 2836-20.1(f)(3) and (7).

Text of rule and any required statements and analyses may be obtained from: Kent D. Vander Wal, New York Lottery, One Broadway Center, PO Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, email: nylrules@lottery.state.ny.us

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

The Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement included in the Notice of Proposed Rulemaking do not require revision as a result of the nonsubstantive changes in the final text of the Video Lottery Gaming regulations. The minor revisions made to the regulations do not contradict any statements made in the previously published Notice, nor do the changes raise any issues that need to be addressed.

Assessment of Public Comment

There were no public comments except that the management of the Empire City video lottery facility at Yonkers Raceway asked several questions about the proposed changes in the regulations, but offered no suggested revisions to the regulations. Therefore, the Lottery did not make any changes in response to public comments.

New York State Mortgage Agency

NOTICE OF ADOPTION

Public Access to Agency Records

I.D. No. MTG-43-08-00005-A

Filing No. 187

Filing Date: 2009-02-24

Effective Date: 2009-03-11

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

Action taken: Amendment of sections 2250.2 and 2250.7 of Title 21 NYCRR.

Statutory authority: Public Officers Law, section 87(b)

Subject: Public access to agency records.

Purpose: To provide procedures by which records may be obtained from the agency.

Text of final rule: Paragraph (1) of section 2250.2(b) is amended to read as follows:

(1) maintain an up-to-date subject matter list *updated not less than twice per year*;

Subdivision (f) of section 2250.7 is amended to read as follows:

(f) The person or body designated to hear appeals shall transmit to the

Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to:

Committee on Open Government
Department of State
One Commerce Plaza [41 State Street]
99 Washington Avenue
Albany, New York 12231

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 2250.2(b)(1) and 2250.7(f).

Text of rule and any required statements and analyses may be obtained from: Jay M. Ticker, New York State Housing Finance Agency, 641 Lexington Avenue, New York, NY 10022, (212) 688-4000, email: jayt@nyhomes.org

Revised Regulatory Impact Statement

The non-substantive changes made in Sections 2250.2(b)(1) and 2250.7(f) of the proposed rule have absolutely no effect on the original RIS and therefore, a revised RIS is not required.

Revised Regulatory Flexibility Analysis

The non-substantive changes made in Sections 2250.2(b)(1) and 2250.7(f) of the proposed rule have absolutely no effect on the original RFA and therefore, a revised RFA is not required.

Revised Rural Area Flexibility Analysis

The non-substantive changes made in Sections 2250.2(b)(1) and 2250.7(f) of the proposed rule have absolutely no effect on the original RAFA and therefore, a revised RAFA is not required.

Revised Job Impact Statement

The non-substantive changes made in Sections 2250.2(b)(1) and 2250.7(f) of the proposed rule have no effect whatsoever on the original JIS and therefore, a revised JIS is not required.

Assessment of Public Comment

The agency received no public comment.

Municipal Bond Bank Agency

NOTICE OF ADOPTION

Public Access to Agency Records

I.D. No. MBB-43-08-00004-A

Filing No. 188

Filing Date: 2009-02-24

Effective Date: 2009-03-11

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

Action taken: Amendment of sections 1990.2 and 1990.7 of Title 21 NYCRR.

Statutory authority: Public Officers Law, section 87(b)

Subject: Public access to agency records.

Purpose: To provide procedures by which records may be obtained from the agency.

Text of final rule: Paragraph (1) of section 1990.2(b) is amended to read as follows:

(1) maintain an up-to-date subject matter list *updated not less than twice per year*;

Subdivision (f) of section 1990.7 is amended to read as follows:

(f) The person or body designated to hear appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to:

Committee on Open Government
Department of State
One Commerce Plaza [41 State Street]
99 Washington Avenue
Albany, New York 12231

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 1990.2(b)(1) and 1990.7(f).

Text of rule and any required statements and analyses may be obtained from: Jay M. Ticker, New York State Housing Finance Agency, 641 Lexington Avenue, New York, NY 10022, (212) 688-4000, email: jayt@nyhomes.org

Revised Regulatory Impact Statements

The non-substantive changes made in sections 1990.2(b)(1) and 1990.7(f) of the proposed rule have absolutely no effect on the original RIS and therefore, a revised RIS is not required.

Revised Regulatory Flexibility Analysis

The non-substantive changes made in sections 1990.2(b)(1) and 1990.7(f) of the proposed rule have absolutely no effect on the original RFA and therefore, a revised RFA is not required.

Revised Rural Area Flexibility Analysis

The non-substantive changes made in sections 1990.2(b)(1) and 1990.7(f) of the proposed rule have absolutely no effect on the original RAFA and therefore, a revised RAFA is not required.

Revised Job Impact Statement

The non-substantive changes made in sections 1990.2(b)(1) and 1990.7(f) of the proposed rule have absolutely no effect on the original JIS and therefore, a revised JIS is not required.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

The Method of Cost Allocation and Cost Recovery for Non-Transmission Regulatory Backstop Projects

I.D. No. PSC-05-08-00026-A

Filing Date: 2009-02-18

Effective Date: 2009-02-18

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

Action taken: On February 12, 2009, the PSC adopted an order approving policies to guide the regulated reliability backstop project review and implementation process, and objections to the report's recommendations are denied.

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

Subject: The method of cost allocation and cost recovery for non-transmission regulatory backstop projects.

Purpose: To approve the method of cost allocation and cost recovery for non-transmission regulatory backstop projects.

Substance of final rule: The Commission, on February 12, 2009, adopted an order approving policies to guide the regulated reliability backstop project review and implementation process, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-E-1507SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-19-08-00011-A

Filing Date: 2009-02-23

Effective Date: 2009-02-23

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

Action taken: On January 15, 2009, the PSC adopted an order approving the petition of Riverstone Realty NE, LLC, to submeter electricity at One City Place, White Plains, 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 Riverstone Realty NE, LLC, to submeter electricity at One City Place, White Plains, New York.

Substance of final rule: The Commission, on January 15, 2009, adopted an order approving a petition by Riverstone Realty NE, LLC, to submeter electricity at One City Place, White Plains, 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-0389SA1)

NOTICE OF ADOPTION

Market Supply Charge

I.D. No. PSC-32-08-00008-A

Filing Date: 2009-02-20

Effective Date: 2009-02-20

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

Action taken: On February 12, 2009, the PSC adopted an order approving, with modifications, Consolidated Edison Company of New York Inc.'s revisions to its Market Supply Charge.

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

Subject: Market Supply Charge.

Purpose: To approve revisions, with modifications to the Market Supply Charge.

Substance of final rule: The Commission, on February 12, 2009, adopted an order approving, with modifications, Consolidated Edison Company of New York Inc.'s revisions to its Market Supply Charge, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-E-0523SA5)

NOTICE OF ADOPTION

Continuation of the Direct Load Control Programs Through December 2010

I.D. No. PSC-33-08-00006-A

Filing Date: 2009-02-23

Effective Date: 2009-02-23

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

Action taken: On February 12, 2009, the PSC adopted an order approving the petition of Consolidated Edison Company of New York, Inc. to continue its residential and small business central air conditioning direct load control programs through December 2010.

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

Subject: Continuation of the direct load control programs through December 2010.

Purpose: To approve the continuation of the direct load control programs through December 2010.

Substance of final rule: The Commission, on February 12, 2009, adopted an order approving the petition of Consolidated Edison Company of New York, Inc. to continue its direct load control program through December 2010, 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.

(00-E-2054SA37)

NOTICE OF ADOPTION

Filing of Certificate of Merger with New York Department of State

I.D. No. PSC-44-08-00012-A

Filing Date: 2009-02-18

Effective Date: 2009-02-18

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

Action taken: On 2/12/09, the PSC adopted an order approving the petition of TDS Telecommunications Corp., Oriskany Falls Telephone Corporation, and Oriskany Falls Merger Corporation for transfer of stock and corporate merger.

Statutory authority: Public Service Law, section 108

Subject: Filing of Certificate of Merger with New York Department of State.

Purpose: To approve the Certificate of Merger and transfer of stock.

Substance of final rule: The Commission, on February 12, 2009, adopted an order approving the petition of TDS Telecommunications Corp. (TDS), Oriskany Falls Telephone Corporation (Oriskany), and Oriskany Falls Merger Corporation for a Certificate of Merger and to transfer all issued and outstanding stock of Oriskany held by TDS, with Oriskany as the surviving entity, 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-C-1134SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-48-08-00006-A

Filing Date: 2009-02-23

Effective Date: 2009-02-23

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

Action taken: On February 12, 2009, the PSC adopted an order approving the petition of 808 Columbus, LLC, to submeter electricity at 808 Columbus Avenue, New York, 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 808 Columbus, LLC, to submeter electricity at 808 Columbus Avenue, New York, New York.

Substance of final rule: The Commission, on February 12, 2009, adopted an order approving a petition by 808 Columbus, LLC, to submeter electricity at 808 Columbus Avenue, New York, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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-1203SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-48-08-00007-A

Filing Date: 2009-02-23

Effective Date: 2009-02-23

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

Action taken: On February 12, 2009, the PSC adopted an order approving the petition of Toren Condominiums, to submeter electricity at 150 Myrtle Avenue, 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 Toren Condominiums, to submeter electricity at 150 Myrtle Avenue, Brooklyn, New York.

Substance of final rule: The Commission, on February 12, 2009, adopted an order approving a petition by Toren Condominiums, to submeter electricity at 150 Myrtle Avenue, 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-1131SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Request for Authorization to Defer the Incremental Gas Leak Repair Expenses Related to Gas Operations

I.D. No. PSC-10-09-00011-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition of Central Hudson Gas & Electric Corporation for authority to defer incremental gas leak repair expenses for the year ended 12/31/08.

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

Subject: Request for authorization to defer the incremental gas leak repair expenses related to gas operations.

Purpose: To allow the company to defer the incremental gas leak repair expenses incurred.

Substance of proposed rule: Central Hudson Gas & Electric Corporation (Company) has requested permission to defer certain gas leak repair expenses related to gas operations. The Company proposes to defer such

costs and associated deferred income taxes as a regulatory asset in Account 182.xx with associated deferred income taxes. In addition, the Company seeks authority to apply carrying charges on the deferred balance (net of tax) at the preauthorized rate of return established in case 05-G-0935. The Company requests future rate recovery of these costs. If the Commission approves this deferral, there is a reasonable assurance the Company will be allowed to recover these costs.

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_brillling@dps.state.ny.us

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (09-G-0139SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

United Water New York Inc. Proposes Accounting Rules to Retain a Portion of the Settlement Amount

I.D. No. PSC-10-09-00012-P

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

Proposed Action: The Commission is considering the petition of United Water New York Inc. to use special accounting treatment to retain a portion of a \$3.9 million settlement and to use a portion of the net proceeds to offset plant additions for forty years.

Statutory authority: Public Service Law, section 89-c

Subject: United Water New York Inc. proposes accounting rules to retain a portion of the settlement amount.

Purpose: To allow United Water New York Inc. to keep a portion of the net proceeds of the settlement amount.

Substance of proposed rule: United Water New York Inc. (United Water) has petitioned the Public Service Commission to use special accounting treatment to retain a portion of a \$3.9 million settlement and to use a portion of the net proceeds to offset plant additions for forty years.

United Water had taken part in litigation against the major gasoline manufacturers over the contamination of wells by Methyl Tertiary Butyl Ether (MTBE), a gasoline additive used to increase the oxygen level of gasoline. Because leaking or spilled gasoline can cause MTBE contamination of groundwater, the additive is no longer used in New York State. As its part of the settlement, United Water has received \$3.9 million, as well as a future commitment of compensation for future contamination. United Water has requested to record the entire \$3.9 million as income and return it to ratepayers through the funding of infrastructure improvements over a period of forty years.

The Public Service Commission will consider whether to accept, reject or modify, in whole or in part, the company's petition.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: 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_brillling@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-W-1139SA2)

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

Consideration of Utilities Compliance Filings**I.D. No.** PSC-10-09-00013-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 proposed plans filed by the distribution utilities to provide customers with secure, real-time remote access to their distribution utility account number.

Statutory authority: Public Service Law, section 66(1)

Subject: Consideration of utilities compliance filings.

Purpose: Consideration of utilities compliance filings.

Substance of proposed rule: On November 7, 2006 the Commission ordered that Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric, New York State Electric & Gas Corporation, Rochester Gas & Electric Corporation, National Grid, National Fuel Gas Corporation, KeySpan Energy Delivery of New York, and KeySpan Energy Delivery of Long Island submit plans, within 45 days, describing prior efforts and proposing plans to provide customers with secure, real-time remote access to their distribution utility account number (or Point of Delivery Identification Number if the distribution utility account number is not used for enrolling a customer with an ESCO). The filing was to include itemized cost estimates and a timetable for implementation, and was to discuss how the proposed plan would maintain the privacy and security of customer information. The Commission is considering the utility compliance filings as well as all matters related to those filings.

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_brillling@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.

(98-M-1343SA16)

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

Request Authorization to Defer Incremental Bad Debt Expense Resulting from Uncollectible Accounts for Gas & Electric Operations

I.D. No. PSC-10-09-00014-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition of Central Hudson Gas & Electric Corporation to defer incremental bad debt expense incurred by the Company for the year ended 12/31/08.

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

Subject: Request authorization to defer incremental bad debt expense resulting from uncollectible accounts for gas & electric operations.

Purpose: To allow the company to defer the incremental bad debt expense incurred.

Substance of proposed rule: Central Hudson Gas & Electric Corporation (Company) has requested permission to defer incremental bad debt expense related to electric and gas operations for year ending December

31, 2008. The Company proposes to defer the uncollectible expense as a regulatory asset in Account 182.xx with associated deferred income taxes. In addition, the Company seeks authority to apply carrying charges on the deferred balance (net of tax) at the preauthorized rate of return established in cases 05-E-0934, and 05-G-0935. The Company requests future rate recovery of these costs. If the Commission approves this deferral, there is a reasonable assurance the Company will be allowed to recover these costs.

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_brillling@dps.state.ny.us

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

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

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

(09-M-0140SA1)

Commission on Quality of Care and Advocacy for Persons with Disabilities

NOTICE OF ADOPTION

Procedures of the Surrogate Decision-Making Committee Program

I.D. No. QMD-53-08-00003-A**Filing No.** 183**Filing Date:** 2009-02-23**Effective Date:** 2009-03-11

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

Action taken: Amendment of Part 710 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 45.07 (j); L. 1985, ch. 354, section 4; L. 2008, ch. 262, sections 1 and 3

Subject: Procedures of the Surrogate Decision-Making Committee Program.

Purpose: To conform provisions with recent legislation and to make administrative updates.

Substance of final rule: • The regulations amend existing Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD) regulations regarding the Surrogate Decision-Making Committee Program (SDMC).

- Procedures and standards to implement Chapter 262 of the Laws of 2008 which amended the "Health Care Decisions Act" (HCDA), Surrogate's Court Procedure Act (SCPA) section 1750-b are added to provide for decisions to withhold or withdraw life-sustaining treatment for persons with mental retardation and developmental disabilities in accordance with SCPA section 1750-b.

- Non-substantive administrative changes including name and address changes of the CQCAPD are included.

- The regulations clarify eligibility for the SDMC program including any person who was previously eligible for SDMC as provided for by Chapter 198 of the Laws of 2008.

- The conflict of interest definition is amended to authorize a panel member who is a member of a board of visitor to serve on a panel concerning an individual served by the psychiatric center or developmental disabilities services office to which the panel member is assigned if the panel member has no close affiliation or affinity to the patient. A panel member may serve on a panel regarding a person served by another provider within

a health care network or parent organization as long as the panel member has no close affiliation or affinity.

- The major medical treatment definition is amended to clarify that any professional diagnosis or treatment which requires informed consent is within the definition absent specific exclusions that are set forth. Hospice and HIV testing are specifically included within the definition of major medical treatment. The adopted version The final regulations clarify and reference "pursuant to Article 40 of the Public Health Law" in the definition of hospice in response to public comment.

- The major medical treatment definition is amended to include the discontinuance of medical treatment which is sustaining life functions in accordance with SCPA section 1750-b for persons with mental retardation or developmental disabilities.

- The regulations provide for submission of information regarding a patient's lack of capacity for SCPA section 1750-b declarations by the attending physician.

- The regulations provide for submission of information regarding the risks and benefits of withholding or withdrawing life-sustaining treatment by two physicians including the attending physician for persons with mental retardation or developmental disabilities.

- The regulations authorize a podiatrist to submit a statement on behalf of a major medical treatment.

- They authorize notice of an SDMC hearing to interested parties by special mail service, or by first class mail when a record of deposit is maintained.

- The regulations conform its provisions with Chapter 312 of the Laws of 2007 to include persons receiving service coordination under the auspices of the Office of Mental Retardation and Developmental Disabilities (OMRDD) within the SDMC jurisdiction and to recognize surrogates authorized by the Office of Mental Health, Office of Alcohol and Substance Abuse Services or OMRDD regulations.

- The regulations incorporate administrative provisions regarding amendments and resubmissions of declarations.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 710.2(o).

Text of rule and any required statements and analyses may be obtained from: Patricia W. Johnson, Assistant Counsel, NYS Commission on Quality of Care and Advocacy for Persons, 401 State Street, Schenectady, New York 12305-2397, (518) 388-1270, email: pat.johnson@cqcqapd.state.ny.us

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

As the only change to the emergency proposed amendments is a non-substantive clarification of the definition of hospice to reference NYS Public Health Law provisions, a regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis, and a job impact statement are not submitted.

Assessment of Public Comment

Two written comments were received; one from the Mental Hygiene Legal Service (MHLS) and one from the Center for Disability Rights, Inc (Center).

Both commentators were supportive of the Surrogate Decision-Making Committee (SDMC) for decision-making for individuals with disability.

The MHLS commented on the definition of major medical treatment, section 710.2(o) by recommending legislative enactment of the inclusion of hospice admission but in any event that the definition conform to statutory definitions.

The final regulations reference "pursuant to Article 40 of the Public Health Law" in response to this recommendation.

MHLS noted that the statutes do not currently authorize the withdrawing of life-sustaining treatment for persons with mental illness by the SDMC.

The final regulations authorize an application for hospice admission for residents of mental hygiene facilities including persons with mental illness. The law and regulations governing the Surrogate Decision-Making Committee (SDMC) Program define major medical treatment within the SDMC Committee's jurisdiction as a medical intervention which involves any significant risk, among other things.

Hospice care comes within the ambit of this definition as it is defined as in-patient care that provides palliative care to meet the special needs, including the physical needs experienced during the final stages of illness. There are significant risks to an individual who is wrongfully denied a placement in hospice when hospice can provide the highest quality of care for that individual's needs. There is also a significant risk to the individual for whom hospice is proposed if another more aggressive medical intervention is appropriate.

Palliative care is defined as active care focusing on relief of distressing physical and psychosocial symptoms. Its goal is achieving the best quality of life for patients and families.

The SDMC definition of major medical treatment, MHL § 80.03 (a), excludes "routine care" as there is a general recognition that simple diagnostic and treatment practices do not warrant the formality of the informed consent practice. As 10 NYCRR § 793.6 specifically requires informed consent for hospice and, given the significant risk involved, hospice care should be considered as "major medical treatment" within the meaning of MHL § 80.03.

While SDMC may not take a case to withdraw a medical treatment that is sustaining life functions for persons with mental illness, it may take a case to consider whether to forgo a specific surgery or major medical treatment. At the same time, PHL § 4012-b states that the goal of hospice is achievement of the best quality of life for the patient and families. Hospice can, in appropriate cases, be the means to care for the SDMC patient in his/her community residence or other home, consistent with the requirements of the Supreme Court's decision in Olmstead, requiring that individuals with disabilities be afforded access to services in the most integrated setting appropriate to their needs.

In the event that the person's condition or needs change or new information becomes available, SDMC may receive an application for a different or more aggressive treatment and the person may be withdrawn from hospice.

While in hospice, the patient is expected to receive all appropriate treatments to enhance his/her comfort such as surgical interventions, nutrition and hydration, chemotherapy or radiation therapy.

MHLS observed that the OMRDD Client Placement Procedures may be implicated by an inpatient hospice admission.

We referred these comments to OMRDD.

MHLS commented on the definition of major medical treatment, section 710.2(o) by recommending legislative enactment of the inclusion of HIV testing in the definition.

The inclusion of HIV testing within the definition is a clarification as the procedures to safeguard this information and conform it to Public Health Law Article 27-F was incorporated in the regulations in 1990 after review with MHLS and the Department of Health. SDMC has already been hearing HIV cases for some time based on the need to obtain informed consent for the procedure, signed by the subject of the test who has capacity to consent or, when the subject lacks capacity to consent, by a person authorized pursuant to law to consent to health care PHL section 2781. Person is defined to include any natural person, partnership, association, joint venture, trust, and public or private corporation, or state or local government agency, PHL section 2780. The specific inclusion of HIV testing only clarifies the role of SDMC in making HIV decisions on behalf of persons who lack the ability to make their own decisions. The inclusion of HIV testing also reflects OSHA guidelines regarding exposure to blood borne pathogens which recommends that both the source and the recipient of exposure be tested.

SDMC regulations adopted in November 1990 provide for the completion of SDMC form 280-A as well as the Department of Health consent form that advises State law protects the confidentiality of test results and also protects test subjects from discrimination based on HIV status. Disclosure of HIV/AIDS information by the SDMC Program or Panel is accompanied by CQCAPD Form 240 that includes similar information.

The Center commented on the definition of best interests and provided a review and suggestions regarding the decision-making standards in the regulations. The Center noted that the standards were statutory.

The standards are statutorily provided by Mental Hygiene Law Article 80 and the Health Care Decision Act, Surrogate's Court Procedure Act section 1750-b. As applied by the SDMC panel the standards are not used singly but are applied as applicable on behalf of the individual person's needs in every case heard by the SDMC panel. In regard to the court review of the decisions made by guardians to date, the standards have been upheld as narrowly prescribed and protective of the individual Matter of M.B. 813 NYS2d 349 (2006). To the extent that decision-making by individuals pursuant to the Health Care Decision Act needs to be refined by amendments to the standards, these considerations may be better met by application to the Legislature for change.

For example, Article 80 of the Mental Hygiene Law enacting the SDMC program provides for consideration of the person's best interests as including consideration of the risks, benefits and alternatives to the life sustaining treatment, including consideration of improvement in the quality of the person's life with and without treatment and the preservation or restoration of functioning, relief of suffering, and consistency with the personal beliefs and values of the individual. The Health Care Decision Act adds that the guardian and the SDMC panel is to base all decisions solely and exclusively on the best interests of the person with intellectual disability which include respect for the dignity and uniqueness of the individual and the entire medical condition of the person. The SDMC panel is directed by statute to not be influenced in any way by a presumption that persons with intellectual disability are not entitled to the full and equal rights, equal protection, respect, medical care and dignity afforded to others. Financial

considerations are not to influence the SDMC panel. Each individual the subject of an SDMC decision is represented by the Mental Hygiene Legal Service that can enforce these standards and pursue appeals and temporary restraining orders as appropriate.

Both commentators had remarks regarding the immediate effective date of the SDMC determination, if any, to consent to the withholding or withdrawal of life-sustaining treatment.

The SDMC determination to withhold or withdraw life sustaining treatment is not subject to a delay of the effective date by the SDMC panel because there is an inherent delay pursuant to the Health Care Decision Act as implemented by the regulations. The SDMC determination will then be a trigger not for the withholding or withdrawal of treatment but for the attending physician to implement the notification process and waiting period provided by the Health Care Decision Act when the attending decides to implement an SDMC panel determination to withhold or withdraw life-sustaining treatment.

The Health Care Decision Act requires the physician or someone on the physician's behalf to notify the appropriate parties when the attending writes an order to withhold/withdraw life sustaining treatment. At the suggestion of the MHLS, the proposed regulations defer to the current process employed by the Health Care Decision Act without incorporating the SDMC notice as supporting the physician's notice requirements to MHLS and others. Therefore, the additional notice is not incumbent upon the SDMC and not included in the regulation for that reason. However, SDMC has created an administrative document that accompanies decisions to withhold or withdraw life sustaining treatment that reminds the physician of the physician notification requirements.

The MHLS noted that the provisions to authorize resubmissions of declarations may result in unintended adverse consequences because they open the door to SDMC determinations lacking any finality.

The provisions at 710.4(c) (9-10) are simply to allow for treatment if there is a decision not to agree to withhold or withdraw treatment or to provide for a subsequent review to withhold treatment when life sustaining treatment has been proposed but denied by the panel.

The MHLS commented on the amendment to the conflict of interest provision at section 710.4 (c) (8) and recommended that panel members be required to disclose potential conflicts of interest to the Commission on Quality of Care and Advocacy for Persons with Disabilities prior to their being empanelled and to the SDMC panel itself.

Panel members disclose their affiliations in the appointment process and are trained on the conflict of interests provisions by the Commission.

These provisions have been added to authorize Board of Visitors members to carry out their traditional role as advocates for high quality care for persons with disabilities and it has long been a clarification request by BOV members. Indeed this amendment was the subject of verbal comments received in recent SDMC trainings in support of the new regulations. In addition, in regard to providers of health services, in some geographic regions of the State, all providers of services may be under one parent corporation umbrella and the change is needed to avoid having many people disqualified from serving as a panel member in these areas.

The MHLS commented on the amendment providing for amendment of SDMC declarations, section 710.4(c) (8) recommending that such amendment be made upon notice to all interested parties, including the MHLS.

This provision codifies existing SDMC practice to modify the request at the hearing similar to amending the complaint in court. Usually this is done because everyone in the room has discussed alternative treatment that is related to the original treatment proposed or to bifurcate a consent.

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 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.

Department of State

EMERGENCY RULE MAKING

Qualifying Experience and Education for Real Estate Appraisers

I.D. No. DOS-10-09-00007-E

Filing No. 179

Filing Date: 2009-02-23

Effective Date: 2009-02-23

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

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 May 23, 2009.

Text of rule and any required statements and analyses may be obtained from: Linda D. Cleary, 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

EMERGENCY RULE MAKING

State University of New York Tuition and Fees Schedule

I.D. No. SUN-05-09-00011-E

Filing No. 180

Filing Date: 2009-02-23

Effective Date: 2009-02-23

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

Action taken: Amendment of section 302.1(b)-(i) of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: Due to fiscal conditions, there is an immediate need for tuition increases for students at SUNY to maintain program accessibility and quality. This amendment must proceed on an emergency basis because appropriate notice must be given to affected parties.

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

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

Text of emergency rule: Amendments to Section 302.1(b)-(i) of Title 8 NYCRR.

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

Tuition

(i) Students, New York State residents: [\$2,175] \$2,485 per semester or [\$1,450] \$1,657 per quarter.

(ii) Students, out-of-state residents: [\$5,305] \$6,435 per semester or [\$3,537] \$4,290 per quarter.

(iii) Special students, New York State residents: [\$181] \$207 per semester credit hour or [\$121] \$138 per quarter credit hour.

(iv) Special students, out-of-state residents: [\$442] \$536 per semester credit hour or [\$295] \$358 per quarter credit hour.

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

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

Tuition

(i) Students, New York State residents: [\$2,175] \$2,485 per semester or [\$1,450] \$1,657 per quarter.

(ii) Students, out-of-state residents: [\$5,305] \$6,435 per semester or [\$3,537] \$4,290 per quarter.

(iii) Special students, New York State residents: [\$181] \$207 per semester credit hour or [\$121] \$138 per quarter credit hour.

(iv) Special students, out-of-state residents: [\$442] \$536 per semester credit hour or [\$295] \$358 per quarter credit hour except that for non-matriculated students (as defined in section 145-2.4 of this Title), the president of a State-operated institution may establish a differing tuition rate(s), with the approval of the chancellor or designee, in accordance with guidelines to be issued by the chancellor, provided that such tuition rate(s) does not exceed the rate specified in this paragraph and is not lower than 15 percent above the rate in subparagraph (iii) of this paragraph. Tuition and fees charged to such non-matriculated students shall be set to cover total direct instructional costs for such students.

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

Tuition

(i) Students, New York State residents: [\$3,450] \$3,940 per semester or [\$2,300] \$2,627 per quarter.

(ii) Students, out-of-state residents: [\$5,460] \$6,625 per semester or [\$3,640] \$4,417 per quarter.

(iii) Special students, New York State residents: [\$288] \$328 per semester credit hour or [\$192] \$219 per quarter credit hour.

(iv) Special students, out-of-state residents: [\$455] \$552 per semester credit hour or [\$303] \$368 per quarter credit hour.

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

Tuition

(i) Students, New York State residents: [\$3,550] \$4,055 per semester or [\$2,367] \$2,703 per quarter.

(ii) Students, out-of-state residents: [\$5,670] \$6,880 per semester or [\$3,780] \$4,587 per quarter.

(iii) Special students, New York State residents: [\$296] \$338 per semester credit hour or [\$197] \$225 per quarter credit hour.

(iv) Special students, out-of-state residents: [\$473] \$573 per semester credit hour or [\$315] \$382 per quarter credit hour.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

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

Tuition

(1) Students, New York State residents: [\$6,850] \$7,825 per semester or [\$4,567] \$5,217 per quarter.

(2) Students, out-of-state residents: [\$11,850] \$14,375 per semester or [\$7,900] \$9,583 per quarter.

(3) Special students, New York State residents: [\$571] \$652 per semester credit hour or [\$381] \$435 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: [\$988] \$1,198 per semester credit hour or [\$658] \$799 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

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

Tuition

(1) Students, New York State residents: [\$6,600] \$7,535 per semester or [\$4,400] \$5,023 per quarter.

(2) Students, out-of-state residents: [\$10,000] \$12,130 per semester or [\$6,667] \$8,087 per quarter.

(3) Special students, New York State residents: [\$550] \$628 per semester credit hour or [\$367] \$419 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: [\$833] \$1,011 per semester credit hour or [\$556] \$674 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(f) Students enrolled in medicine programs.

Tuition

(1) Students, New York State residents: [\$9,400] \$10,735 per semester or [\$6,267] \$7,157 per quarter.

(2) Students, out-of-state residents: [\$16,750] \$20,320 per semester or [\$11,167] \$13,547 per quarter.

(3) Special students, New York State residents: [\$783] \$895 per semester credit hour or [\$522] \$596 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: [\$1,396] \$1,693 per semester credit hour or [\$931] \$1,129 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(g) Students enrolled in dentistry programs.

Tuition

(1) Students, New York State residents: [\$8,100] \$9,250 per semester or [\$5,400] \$6,167 per quarter.

(2) Students, out-of-state residents: [\$16,250] \$19,710 per semester or [\$10,833] \$13,140 per quarter.

(3) Special students, New York State residents: [\$675] \$771 per semester credit hour or [\$450] \$514 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: [\$1,354] \$1,643 per semester credit hour or [\$903] \$1,095 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

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

Tuition

(1) Students, New York State residents: [\$5,710] \$6,520 per semester or [\$3,807] \$4,347 per quarter.

(2) Students, out-of-state residents: [\$9,145] \$11,095 per semester or [\$6,097] \$7,397 per quarter.

(3) Special students, New York State residents: [\$476] \$543 per semester credit hour or [\$317] \$362 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: [\$762] \$925 per semester credit hour or [\$508] \$616 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(i) Students enrolled in optometry programs.

Tuition

(1) Students, New York State residents: [\$6,810] \$7,775 per semester or [\$4,540] \$5,183 per quarter.

(2) Students, out-of-state residents: [\$13,075] \$15,860 per semester or [\$8,717] \$10,573 per quarter.

(3) Special students, New York State residents: [\$568] \$648 per semester credit hour or [\$378] \$432 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: [\$1,090] \$1,322 per semester credit hour or [\$726] \$881 per quarter credit hour or equivalent.

The Chancellor shall determine the equivalent of a credit hour.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. SUN-05-09-00011-P, Issue of February 4, 2009. The emergency rule will expire April 23, 2009.

Text of rule and any required statements and analyses may be obtained from: Marti Anne Ellermann, State University of New York, State University Plaza, 353 Broadway, S-333, Albany, New York 12246, (518) 443-5400, email: Marti.Ellermann@SUNY.edu

Regulatory Impact Statement

1. Statutory Authority: Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to make and amend rules and regulations for the governance of the State University and institutions therein. Section 355(2)(h) authorizes the State

University Trustees to regulate the admission of students, tuition charges and other fees and charges, curricula and all other matters pertaining to the operation and administration of each State-operated institution of the University.

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

3. **Needs and Benefits:** The present measure establishes a series of tuition increases in the degree programs of the State University of New York as necessitated by the 2008-2009 SUNY Budget and thereafter. The amendment also is the first stage in implementing the State University Trustees' Rational Tuition Policy which will result in modest annual increases to tuition based on the Higher Education Price Index (HEPI).

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

This measure is needed in order to provide essential financial support for the State-operated campuses of the State University of New York. The present amendment will increase tuition for New York State residents enrolled in associate's degree programs to \$4,970 per year (\$12,870 for nonresidents); for baccalaureate degree students also to \$4,970 per year (\$12,870 for nonresidents); and for master's and doctoral degree students to \$7,880 (\$13,250 for nonresidents). For students enrolled in Master of Business Administration degree programs, a new tuition rate of \$8,110 (\$13,760 for nonresidents) is established.

Tuition increases at the professional schools within the State University of New York are also affected by this amendment. Tuition for New York State residents at the School of Law will increase to \$15,070 per year (\$24,260 nonresidents), and at the Pharmacy School to \$15,650 per year (\$28,750 nonresidents).

The measure also increases tuition by \$2,670 per year to \$21,470 for New York State residents and by \$7,140 to \$40,640 for nonresidents enrolled in the four medical schools of the State University of New York.

The amendment also increases tuition for students in the professional dental program (D.D.S.) at the Universities at Buffalo and Stony Brook. Under this measure, tuition will increase \$2,300 per year to \$18,500 for New York State residents and \$6,920 per year to \$39,420 for nonresidents. Tuition for students enrolled in the Professional Program of Optometry at the College of Optometry is increased by \$1,930 to \$15,550 for residents and by \$5,570 to \$31,720 for nonresidents.

Finally, the amendment increases tuition for students pursuing the terminal Professional Degree in Physical Therapy and the Doctorate in Nursing Practice. The new annual rate is \$13,040 for New York State residents and \$22,190 for nonresidents.

4. **Costs:** Students enrolled in these programs of the State University of New York will be required to pay additional tuition ranging from \$620 per year for baccalaureate degrees to \$7,140 for nonresident students at the Schools of Medicine. In view of the lack of an across-the-board tuition increase since 2003, these increases are two times HEPI for residents of New York and three times HEPI for non-residents, consistent with the Rational Tuition Policy. In-state undergraduate tuition would remain under the Tuition Assistance Program ("TAP") ceiling.

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

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

7. **Duplication:** None.

8. **Alternatives:** Delays in tuition increases as well as higher increases were considered, however, there is no acceptable alternative to the proposed increases. The revenue from these tuition increases is necessary in order for the University to maintain quality of instruction and essential services to students. Higher increases would have created additional financial hardships, particularly in light of the TAP ceiling. Students spoke at length at the November 18 Public Hearing before the Board of Trustees about the proposed increases and have had other opportunities for consultation about the decision.

9. **Federal Standards:** None.

10. **Compliance Schedule:** Compliance with the amendment is ongoing as the increases went into effect on November 24, 2008. Bills reflecting the increases have been sent out to registered students by the campuses

and payment on these bills is due in accordance with State University policy.

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-47-08-00006-A

Filing No. 190

Filing Date: 2009-02-24

Effective Date: 2009-02-24

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period January 1, 2009 through March 31, 2009.

Text or summary was published in the November 19, 2008 issue of the Register, I.D. No. TAF-47-08-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.state.ny.us

Revised Regulatory Impact Statement

A revised regulatory impact statement 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.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis 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.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis 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.

Revised Job Impact Statement

A revised job impact statement 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.

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.

NOTICE OF ADOPTION

Sales Tax on Hotel Occupancy

I.D. No. TAF-53-08-00006-A

Filing No. 191

Filing Date: 2009-02-24

Effective Date: 2009-03-11

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

Action taken: Amendment of section 527.9 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 1142(1) and (8); and 1250 (not subdivided)

Subject: Sales tax on hotel occupancy.

Purpose: To update the sales and compensating use tax regulations concerning the tax on rent received for hotel occupancy.

Text or summary was published in the December 31, 2008 issue of the Register, I.D. No. TAF-53-08-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.state.ny.us

Assessment of Public Comment

The agency received no public comment.

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

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-10-09-00009-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2009 through June 30, 2009.

Substance of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (liv) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(liii) January - March 2009					
16.0	24.0	41.1	16.0	24.0	39.35
(liv) April - June 2009					
12.8	20.8	37.9	15.4	23.4	38.75

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.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, 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.

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

Penalties and Forfeitures

I.D. No. TAF-10-09-00010-P

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

Proposed Action: This is a consensus rule making to amend section 6-3.1(c) and repeal Part 9 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First and 1096(a)

Subject: Penalties and Forfeitures.

Purpose: To eliminate unnecessary and obsolete regulations regarding penalties and forfeitures.

Text of proposed rule: Section 1. Subdivision (c) of section 6-3.1 of such regulations is amended to read as follows:

(c) If a taxpayer made payments treated as interest in the computation of its entire net income or minimum taxable income to shareholders, including subsidiaries of a corporate shareholder or members of the immediate family of an individual shareholder, beneficially owning, directly or indirectly, individually or in the aggregate, more than 50 percent of the issued capital stock of the taxpayer, such taxpayer must submit the following information:

- (1) name of each such shareholder;
- (2) social security number or employer identification number of each such shareholder;
- (3) amount of interest paid to each such shareholder;
- (4) total interest paid to such shareholders; and
- (5) amount of indebtedness to each such shareholder and whether or not there is written evidence of the indebtedness.

Members of the immediate family include brothers and sisters of the whole or half blood, spouse, ancestors and descendants. A penalty of \$500 will be added to the tax if a taxpayer fails to submit this information for the taxable year on or before the prescribed date for filing its report (determined with regard to any extension of time for filing) unless it is shown that such failure is due to reasonable cause and not due to willful neglect. (See section [9-1.5 of this Title] 1085(n) of the Tax Law, Failure to [submit] file report of information relating to certain interest payments.)

Section 2. Part 9 of such regulations is REPEALED.

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Building 9, W.A. Harriman Campus, Albany NY 12227, (518) 457-2254, email: tax_regulations@tax.state.ny.us

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

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

Consensus Rule Making Determination

The Department of Taxation and Finance has considered the proposed repeal of Part 9 of the Title 20 NYCRR and has determined that no person is likely to object to the rule as written because it is non-controversial.

The rule repeals unnecessary and obsolete regulations regarding penalties and forfeitures. Currently, Part 9 only reiterates some of the statutory provisions found in Tax Law section 1085 which addresses additions to tax and penalties. There have been statutory amendments to Tax Law section 1085 since the regulations were last published. Neither the current nor the past statutory provisions regarding penalties and forfeitures require or necessitate the Commissioner of Taxation and Finance to promulgate regulations. The repeal of these outdated regulatory provisions will provide taxpayers with more accurate policies and procedures.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse impact on jobs and employment opportunities. The purpose of the amendments is to eliminate unnecessary and obsolete regulations regarding penalties and forfeitures.

Tobacco Settlement Financing Corporation

NOTICE OF ADOPTION

Public Access to Corporation Records

I.D. No. TSF-43-08-00006-A

Filing No. 189

Filing Date: 2009-02-24

Effective Date: 2009-03-11

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

Action taken: Amendment of sections 2100.2 and 2100.7 of Title 21 NYCRR.

Statutory authority: Public Officers Law, section 87(b)

Subject: Public access to corporation records.

Purpose: To provide procedures by which records may be obtained from the corporation.

Text of final rule: Paragraph (1) of section 2100.2(b) is amended to read as follows:

(1) maintain an up-to-date subject matter list *updated not less than twice per year*;

Subdivision (f) of section 2100.7 is amended to read as follows:

(f) The person or body designated to hear appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to:

Committee on Open Government

Department of State

One Commerce Plaza [41 State Street]

99 Washington Avenue

Albany, New York 12231

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 2100.2(b)(1) and 2100.7(f).

Text of rule and any required statements and analyses may be obtained from: Jay M. Ticker, New York State Housing Finance Agency, 641 Lexington Avenue, New York, NY 10022, (212) 688-4000, email: jayt@nyhomes.org

Revised Regulatory Impact Statements

The non-substantive changes made in Sections 2100.2(b)(1) and 2100.7(f) of the proposed rule have absolutely no effect on the original RIS and therefore, a revised RIS is not required.

Revised Regulatory Flexibility Analysis

The non-substantive changes made in Sections 2100.2(b)(1) and 2100.7(f) of the proposed rule have absolutely no effect on the original RFA and therefore, a revised RFA is not required.

Revised Rural Area Flexibility Analysis

The non-substantive changes made in Sections 2100.2(b)(1) and 2100.7(f) of the proposed rule have absolutely no effect on the original RAFA and therefore, a revised RAFA is not required.

Revised Job Impact Statement

The non-substantive changes made in Sections 2100.2(b)(1) and 2100.7(f) of the proposed rule have absolutely no effect on the original JIS and therefore, a revised JIS is not required.

Assessment of Public Comment

The agency received no public comment.

Urban Development Corporation

EMERGENCY RULE MAKING

The Investment Opportunity Fund Program

I.D. No. UDC-10-09-00008-E

Filing No. 181

Filing Date: 2009-02-23

Effective Date: 2009-02-23

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

Action taken: Addition of Part 4246 to Title 21 NYCRR.

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

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 assistance to combat economic distress.

Subject: The Investment Opportunity Fund Program.

Purpose: To provide the basis for administration of the Investment Opportunity Fund including evaluation criteria and application process.

Text of emergency rule: INVESTMENT OPPORTUNITY FUND PROGRAM

Section 4246.1 General

These regulations set forth the types of available assistance, evaluation criteria, application and project process and related matters for the Investment Opportunity Fund (the "Program"). The Program was created pursuant to § 16-p of the New York State Urban Development Corporation Act, as added by Part QQ of Chapter 57 of the Laws of 2008, and promotes economic development by facilitating the creation and retention of jobs by increasing private investment and business activity in the State of New York.

Section 4246.2 Definitions

For the purposes of this Part 4246, the terms below should have the following meanings:

(a) "The Act" shall mean the New York State Urban Development Corporation Act Chapter 174 of the Laws of 1968 (as amended).

(b) "The Corporation" shall mean the New York State Urban Development Corporation.

(c) "Cost" as applied to a project or portion thereof financed under this Part, means all or any part of the cost of construction, remediation, renovation, and acquisition of all lands, structures, real or personal property, rights, air rights, rights-of-way, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved, the cost of machinery and equipment, interest prior to, during, and for a period after, completion of construction, remediation, renovation, or acquisition, as determined by the corporation; for extensions, enlargements, additions, replacements, renovations, and improvements; the cost of architectural, engineering, plans, specifications, estimates, and other expenses necessary or incidental to the construction, acquisition, and financing of any project, excluding lobbying and governmental relations expenses.

(d) "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.

(e) "Facilities" means real and personal property, structures, air rights, conveyances, equipment, thoroughfares, buildings, and supporting components thereof located in the state, that are directly related to the acquisition, construction, reconstruction, rehabilitation, remediation, or improvement of a project which will achieve the purposes of facilitating the creation or retention of jobs or increasing investment or business activ-

ity within a municipality or region of the state or academic research and development efforts that promote the development of life sciences and high technology initiatives including genomics and biotechnology research.

(f) "Financial assistance" in connection with a project, includes, but is not limited to, grants, loans, equity investments, loan forgiveness, loan guarantees, or any combination thereof.

(g) "Not-For-Profit Corporation" shall mean a corporation organized under the provisions of the Not-For-Profit Corporation Law.

(h) "Project" shall include but not be limited to designing, acquiring, planning, permitting, entitling, demolishing, removing, constructing, improving, extending, restoring, financing, remediating and generally developing facilities.

(i) "Sponsor" or "project sponsor" shall be the state or any political subdivision of the state or a municipality, including but not limited to any departments, agencies, public benefit corporations, or commissions. In addition, a sponsor or project sponsor may include not-for-profit corporations formed on behalf of a sponsor, special districts, assessment districts, tax increment financing units or districts, business improvement districts, regional and community development organizations, not-for-profit organizations, not-for-profit organizations or businesses organized to do business under the laws of, or doing business within the state, or any combination of the aforementioned entities that makes application to the corporation for financial assistance in connection with an investment opportunity fund project in a manner prescribed by the corporation.

Section 4246.3 Types of Assistance

The Corporation is authorized to provide Financial Assistance to Project Sponsors for Costs associated with a Project.

Section 4246.4 Eligibility

Project Sponsors shall be eligible for Financial Assistance for Projects provided, the Project:

(a) is consistent with any existing local or regional comprehensive plan. A municipality which is a Sponsor for a project or projects shall submit a resolution that has been adopted by the legislative body or bodies of the lead project sponsor that certifies that the proposed project is consistent with existing local or regional plans; the proposed financing is appropriate for the specific project; the project facilitates effective and efficient use of existing and future public resources so as to promote both economic development and appropriate use of natural resources; and the project develops or enhances infrastructure or other facilities in a manner that will attract, create, and sustain long-term investment and employment opportunities; and

(b) provides economic benefits to one or more regions of the state or, for projects that are not anticipated to have a regionally significant impact, provide economic benefits to localities that suffer from disproportionate levels of poverty, unemployment, population or job loss or other indicators of economic distress.

Section 4246.5 Evaluation Criteria

The Corporation shall give priority in granting assistance generally to those projects:

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

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

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

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

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

(f) located in distressed communities;

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

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

Section 4246.6 Application and project 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 Section 16-p of the Act.

(c) If the proposal satisfies the applicable requirements and initiative funding is available, 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. After approval by the Corporation and a public hearing, if required, 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, and the investment opportunity fund capital approval board ("CAB") created pursuant to Section 16-p(6) of the Act. Following directors' approval, PACB approval, if required, and approval by CAB, the legal documents will be drafted by the Corporation. Until such time as the CAB is formally constituted, approval by the PACB shall be considered approval by CAB upon consent of the Director of Budget. Notwithstanding the foregoing, no project shall be funded if sufficient Program monies are not received by the Corporation for such project.

(d) 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 4246.7 Confidentiality

(a) To the extent permitted by law, all information regarding the financial condition, marketing plans, manufacturing processes, production costs, customer lists, or other trade secrets and proprietary information of a person or entity requesting assistance from the 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 4246.8 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 one 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 one 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 4246.7 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 May 23, 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, as added by Chapter 174 of the Laws of 1968 (the Act) provides, in part, that the New York State Urban Development Corporation (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-p of Part QQ of Chapter 57 of the Laws of 2008 provides for the creation of investment opportunity fund. The corporation is authorized, within available appropriations, to provide financial assistance pursuant to this section.

2. Legislative Objectives: Section 16-p Act sets forth the Legislative intent of the Investment Opportunity Fund to provide financial assistance to eligible entities by supporting projects in New York State that focus on: projects causing the creation or retention of jobs, increasing investment or business activity within a municipality or region, or academic research and development efforts that promote the development of life sciences and high technology initiatives. It further states that a project sponsor shall be the state, any political subdivision of the state, a municipality, including departments, agencies, public benefit corporations, commissions, not-for-profit corporations, businesses or organizations, special districts, assessment districts, tax increment financing units or districts, business improvement districts, regional and community development organizations, or any combination of these entities.

The selection of projects shall be governed by rules and regulations to be created with public notice of the development objectives, the features of which shall be: minimum standards with respect to economic impact; consistency with existing local or regional comprehensive plans including adoption of local legislative resolutions; the proposed financing is appropriate for the specific project; effective and efficient use of existing and future public resources so as to promote both economic development and appropriate use of natural resources; and projects which develop or enhance infrastructure or other facilities in a manner that will attract, create, and sustain long-term investment and employment opportunities; assistance to projects that will provide economic benefits to one or more regions of the state or, for projects that are not anticipated to have a regionally significant impact, that will provide economic benefits to localities that suffer from disproportionate levels of poverty, unemployment, population or job loss or other indicators of economic distress. Each project shall be considered and reviewed by a five member investment opportunity fund capital approval board.

The Legislative intent of Section 16-p of the Act is to assist in the retention and creation of jobs and investment in the state through business development in a time of need.

The adoption of 21 NYCRR Part 4246 will further these goals by setting forth the types of available assistance, evaluation criteria, application and project process and related matters for the Investment Opportunity Fund.

3. Needs and Benefits: Chapter 53 of the Laws of 2008, page 882, lines 3 thru 21 allocates \$50 million in capital funds to the Investment Opportunity Fund (Fund) to support investment in projects that would promote local and regional economic development and revitalization. Projects in high growth/high tech to be financed with Fund assistance are expected to provide significant growth opportunities. Fund criteria for project selection will give preference to projects in localities with disproportionate levels of poverty, unemployment, or population and job loss.

The Fund allocation of \$50 million in new capital spending could support approximately 542 construction-related jobs, generating an additional \$28 million in personal income in distressed communities. 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. Implan® is used by a number of state and federal agencies to include the U.S. Forest Service and the U.S. Census Bureau. Over the past fifteen years, Implan® has grown to become the industry standard for determining the total economic outputs of an industry or specific project.

New York State may collect nearly \$1.8 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 882, lines 3 thru 21 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% of the total amount borrowed.

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. 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. However, if a private entity wishes to participate in this program, the projects must be sponsored by the state or any of its political subdivisions or municipalities, including not-for-profit corporations formed on behalf of a sponsor. Eligible projects require consistency with existing local government or regional comprehensive plans and must include adoption of a resolution by the legislative body to this effect.

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 (loans, loan guarantees, and grants), eligible applicants (municipalities, industrial development agencies, local development companies, public authorities and public benefit corporations, private developers or businesses, and other entities), and eligible uses (planning, sewer and water systems, energy facilities, transportation facilities and systems, pipelines, land acquisition, demolition and site clearing, etc.) Preference will be given to projects with significant financing, with a likely high return on public investment, with significant local support, in distressed areas, among other criteria.

The Fund criteria were developed through an extensive outreach process conducted by Upstate ESDC in Fall 2007. These seven, half-day regional blueprint sessions (1 in each Upstate economic development region designated as Western New York, Finger Lakes, Central New York, Southern Tier, North Country, Mohawk Valley, and Capital Region) gathered input from regional economic leaders across five categories: infrastructure, innovation, intellectual capital, international, and investment. Additional input for Downstate and the State overall was gathered in a report issued for the Corporation by A. T. Kearney, Delivering on the Promise of New York State, issued in mid-2007.

The following are two 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 4246.4, Part (a) provides that "the project facilitates effec-

tive and efficient use of existing and future public resources so as to promote both economic development and appropriate use of natural resources.”

2. 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 4246.6 “Application and project 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 NYS economy to determine how many small businesses could benefit from the Investment Opportunity 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 155,000 small businesses will be eligible for funding under the Investment Opportunity Fund.

In addition approximately 4,000 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 the projects funded through this program, 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 was designed to facilitate the provision of loans, loan guarantees, equity investments, grants and other economic development financing to public and private sector project sponsors. As such, positive impacts are anticipated. Local governments, when acting as lead project sponsor, must submit a resolution adopted by their legislative body indicating the project is consistent with local or regional plans, and certify other local project characteristics such as economic development leverage and infrastructure enhancement.

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 Investment Opportunity Fund and our response to the comment.

1. Regulations should clearly define “distressed communities” using specific, objective criteria.

Section 4246.2, Part (b) defines “Distressed Communities”

2. 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 4246.6 “Application and project 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.

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

Section 4246.5, Part (c) 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: Much of New York State is rural. According to the Executive Law § 481 (7), some 44 counties, all located in the ESD Upstate Region, are rural, defined as having a population less than 200,000. Portions of an additional 9 counties have certain townships with population densities of 150 persons or less per square mile. Only 10 counties - all Downstate - have no rural character, according to Executive Law.

We applied these criteria to ESD’s models of the NYS economy to determine how many rural businesses could benefit from the Investment Opportunity 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 20,000 rural businesses will be eligible for funding under the Investment Opportunity Fund. In addition approximately 4,000 municipalities and local economic development-oriented organizations will be eligible for funding.

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 Investment Opportunity Fund program is to maximize the economic benefit of new capital investment in areas in need of economic revitalization. The program requires that such investments coordinate with local area comprehensive development plans in order to maximize its effectiveness and minimize any negative impacts. It also requires that cost-benefit analyses be completed to demonstrate the effectiveness of projects undertaken and contribute to the assessment of overall impact.

5. Rural Area Participation: Under this rule all communities and businesses in rural areas of the state are eligible to apply for financial assistance. In addition, since many rural areas are also economically distressed places, this rule emphasizes projects in those areas as one of the criteria for selection. The extent of local government support and involvement for loan, loan guarantee, and grant project applicants are two of the criteria for project acceptance. A public hearing may also be required under the NYS Urban Development Corporation Act. To gauge rural and non-rural reaction to this rule the National Federation of Independent Business, the 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. Examples of questions that were received and the Corporation’s answers to these questions include the following:

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 4246.4, Part (a) provides that “the project facilitates effective and efficient use of existing and future public resources so as to promote both economic development and appropriate use of natural resources.”

2. 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 4246.6 “Application and project 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.

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 the state through strategic investments that facilitate the creation and retention of jobs by increasing private investment and business activity in the state.

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

Workers’ Compensation Board

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Workers’ Compensation Board publishes a new notice of proposed rule making in the *NYS Register*.

Pharmacy and Durable Medical Equipment Fee Schedules

I.D. No.	Proposed	Expiration Date
WCB-08-08-00010-P	February 20, 2008	February 19, 2009