

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

2009 Edition of National Institute of Standards and Technology (“NIST”) Handbook 44

I.D. No. AAM-08-09-00001-A
Filing No. 1059
Filing Date: 2009-09-08
Effective Date: 2009-09-23

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

Action taken: Amendment of section 220.2 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179

Subject: 2009 edition of National Institute of Standards and Technology (“NIST”) Handbook 44.

Purpose: To incorporate by reference in 1 NYCRR the 2009 edition of NIST Handbook 44.

Text or summary was published in the February 25, 2009 issue of the Register, I.D. No. AAM-08-09-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Ross Andersen, Director, Bureau of Weights and Measures, New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3146, email: ross.andersen@agmkt.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Economic Development

NOTICE OF ADOPTION

Minority and Women Business Enterprise Program

I.D. No. EDV-28-09-00013-A
Filing No. 1033
Filing Date: 2009-09-02
Effective Date: 2009-09-23

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

Action taken: Amendment of section 140.1 and addition of sections 140.9 and 140.10 to Title 5 NYCRR.

Statutory authority: Executive Law, section 314(2-a)[c]

Subject: Minority and Women Business Enterprise Program.

Purpose: Create procedure to accept federal certification verification for MWBE applicants w/o requiring state certification process.

Text or summary was published in the July 15, 2009 issue of the Register, I.D. No. EDV-28-09-00013-P.

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

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 30 S Pearl Street, Albany NY 12245, (518) 292-5123, email: tregan@empire.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Education Department

REVISED RULE MAKING NO HEARING(S) SCHEDULED

No Child Left Behind Act of 2001(NCLB) - School Accountability

I.D. No. EDU-26-09-00004-RP

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

Proposed Action: Amendment of sections 100.2(p), 120.2, 120.3 and 120.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 210 (not subdivided), 215 (not subdivided), 305(1), (2) and (20), 309 (not subdivided) and 3713(1) and (2)

Subject: No Child Left Behind Act of 2001(NCLB) - school accountability.

Purpose: To implement the NCLB Differentiated Accountability Pilot Program.

Substance of revised rule: The Board of Regents proposes to amend subdivision (p) of section 100.2 of the Regulations of the Commissioner

of Education, subdivisions (g)-(i) of section 120.2; subdivisions (a) and (g) of section 120.3; and subdivisions (b) and (f) of section 120.4 of the Regulations of the Commissioner of Education, effective December 10, 2009, to conform the Commissioner's Regulations with New York State's approval to participate in the No Child Left Behind (NCLB) Differentiated Accountability Pilot Program as granted by the United States Department of Education, particularly in terms of revising school accountability to increase the percentage of schools designated for Improvement that are able to make adequate yearly progress (AYP) for two consecutive years and be returned to Good Standing.

The substantive amendments to the regulations are as follows:

Section 100.2(p)(2)(ii)(a) is amended to replace the term "identified" with "designated" and to replace the phrase "school requiring academic progress" with "school in Improvement, Corrective Action or Restructuring."

Section 100.2(p)(5)(vii) is amended to replace the term "identified" with "designated" and to replace the phrase "a school requiring academic progress" with "a school in Improvement (year 1)."

The current paragraph 100.2(p)(6), School Requiring Academic Progress, is repealed and a new paragraph 100.2(p)(6), Differentiated Accountability for Schools, is added, beginning with the 2009-2010 school year. More specifically, the new paragraph 100.2(p)(6) will:

- (1) integrate federal and State accountability systems;
- (2) reduce the current number of school accountability categories by eliminating dual Title I and non-Title I streams of improvement;
- (3) collapse identifications for improvement into three simplified accountability phases; Improvement, Corrective Action and Restructuring, based upon the number of years that a school failed to make adequate yearly progress on an accountability performance criterion and/or accountability indicator;
- (4) further differentiate each phase into three categories of intervention: Basic, Focused and Comprehensive, based upon the number of accountability groups that failed to make adequate yearly progress in an accountability performance criterion and/or accountability indicator for which a school has been identified;
- (5) determine a school's accountability designation for the 2009-2010 school year based upon the school's accountability status for the 2008-2009 school year and the school's AYP for the 2007-2008 and 2008-2009 school years;
- (6) provide schools with diagnostic tools, planning strategies, and supports and interventions specific to that phase in the improvement process and the school's category of need;
- (7) allow for differentiation in the accountability process, permitting schools and districts to prepare and implement two-year school improvement/corrective action/restructuring plans that best match a school's designation;
- (8) better align the School Under Registration Review (SURR) and NCLB processes and ensure that schools with systemic and persistent failure fundamentally restructure or close;
- (9) maximize SED's limited resources and utilize the resources of the University of the State of New York (USNY) to assign School Quality Review Teams, Joint Intervention Teams, and Distinguished Educators to schools in improvement; strengthen the capacity of districts to assist schools to improve; and
- (10) empower parents by increasing combined participation in Public School Choice (PSC) and Supplemental Educational Services (SES) by providing for SES in the first year of a school's identification for improvement and PSC only after an identified school has failed to make AYP.

Section 100.2p(9) is amended to reference subparagraph 100.2(p)(5)(vi) rather than 100.2(p)(5)(vii) due to general reorganization of the section.

Section 100.2p(10) is amended to set forth the action that is to be taken when a school has been designated as Improvement, Corrective Action, or Restructuring and has been placed on registration review. More specifically, under the amended regulations, a school designated as Improvement (year 1) or Corrective Action (year 1) shall modify its plan to meet the requirements of a restructuring plan for implementation no later than the beginning of the next school year following the

year identified for registration review. The amended regulations also provide that a school designated as Restructuring (advanced) may be warned of revocation of registration unless an acceptable plan for closure or phase out has been submitted. In addition, a school identified for registration review may be identified for phase out or closure if after two full academic years of implementing a restructuring plan progress has not been demonstrated.

Section 100.2p(11) is amended to eliminate the provision allowing a board of education to replace a school under registration review with a redesigned school, and to provide for the phase out or closure of such.

Conforming amendments are also made to section 120.2(g), (h) and (i), section 120.3 (a) and (g) and section 120.4(b) and (f), for purposes of ensuring consistency with the above amendments to section 100.2(p).

Revised rule compared with proposed rule: Substantial revisions were made in section 100.2(p)(6)(iv).

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

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Senior Deputy Comm of Educ. P-16, State Education Department, State Education Building Annex Room 875, 89 Washington Avenue, Albany, NY 12234, (518) 474-5915, email: p16education@mail.nysed.gov

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

Since publication of the Notice of Proposed Rule Making in the State Register on July 1, 2009, the following revisions were made to the proposed rule:

In sections 100.2(p)(6)(iv)(a)(2)(i), 100.2(p)(6)(iv)(b)(2)(i) and 100.2(p)(6)(iv)(c)(2)(i), references that school improvement, corrective action, and school restructuring plans in New York City be approved by "both the New York City Board of Education and the community school board for schools under the jurisdiction of the community school district" were replaced with references to approval "by the Chancellor or the Chancellor's designee" in order to conform to the governance structure of the City School District of the City of New York, as provided in Chapter 345 of the Laws of 2009. Similar changes were also made in section 100.2(p)(10)(i) and (iii) and section 100.2(p)(11)(ii).

In section 100.2(p)(6)(iv)(a)(2)(v) and (vi), and in section 100.2(p)(6)(iv)(b)(2)(iv), references to 20 U.S.C. section 6316(b)(3)(A)(i-x) and to 20 U.S.C. section 6316(b)(7)(C)(iv)(I-VI), were updated to refer to the most recent United States Code edition available for such sections, as follows: "United States Code, 2006 Edition, Volume 13; Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001; 2008."

In section 100.2(p)(6)(v), references to "supplemental education services" was replaced with the correct term "supplemental educational services."

The above changes do not require any further changes to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Since publication of the Notice of Proposed Rule Making in the State Register on July 1, 2009, revisions were made to the proposed rule as described in the Statement Concerning the Regulatory Impact Statement.

The above revisions to the proposed rule do not require any revisions to the previously published Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

Since publication of the Notice of Proposed Rule Making in the State Register on July 1, 2009, revisions were made to the proposed rule as described in the Statement Concerning the Regulatory Impact Statement.

The above revisions to the proposed rule do not require any revisions to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of the Notice of Proposed Rule Making in the State Register on July 1, 2009, revisions were made to the proposed

rule as described in the Statement Concerning the Regulatory Impact Statement.

The proposed rule, as so revised, is necessary to conform the Commissioner's Regulations with New York State's approval to participate in the No Child Left Behind (NCLB) Differentiated Accountability Pilot Program as granted by the United States Department of Education. The proposed revised rule applies to school districts, boards of cooperative educational services (BOCES) and charter schools, and implements the NCLB Differentiated Accountability Pilot Program in order to increase the percentage of schools designated for Improvement that are able to make adequate yearly progress for two consecutive years and be returned to Good Standing. Local educational agencies, including school districts, BOCES and charter schools, are required to comply with the requirements of the NCLB as a condition to their receipt of federal funding under Title I of the Elementary and Secondary Education Act of 1965, as amended.

The proposed revised rule will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of Notice of Emergency Adoption and Proposed Rule Making in the State Register on July 1, 2009, the Department received the following comments on the proposed rule.

1. COMMENT:

Replace references in the proposed rule that school improvement, corrective action, and school restructuring plans in New York City be approved by "both the New York City Board of Education and the community school board for schools under the jurisdiction of the community school district" with references to approval "by the Chancellor or the Chancellor's designee(s)." In addition, revise similar references elsewhere in the proposed rule to provide for approval or action by "the Chancellor or Chancellor's designee."

DEPARTMENT RESPONSE:

The suggested changes are consistent with the New York City School District governance structure, as set forth in the recently enacted Chapter 345 of the Laws of 2009. Accordingly, the proposed rule has been revised, as further described in the Statement Concerning the Regulatory Impact Statement submitted herewith, to refer to the Chancellor or Chancellor's designee.

2. COMMENT:

Revise provision in section 100.2(p)(6)(iv)(a)(3) to provide that on-site reviews for schools designated as Improvement/Focused or Improvement/Comprehensive shall be "assisted" by school quality review teams, rather than "conducted" by a school quality review team.

DEPARTMENT RESPONSE:

The Department disagrees. The proposed rule is consistent with the Differentiated Accountability plan as approved by the United States Department of Education in January 2009, which provides: "This on-site SQR review is conducted by the SQR team focusing on the accountability measure(s) and student groups identified." Further, this rule was written to best ensure that on-site reviews are conducted in a like manner throughout the State. The on-site reviews result in recommendations that focus on the actions the identified schools must take to improve student achievement in the identified content areas and subgroups that failed to meet AYP.

3. COMMENT:

Revise provision in section 100.2(p)(6)(iv)(b)(1), relating to participation in curriculum audits by schools initially designated for the Corrective Action phase, to provide that such audits shall be in a form and content "approved" by the Commissioner, rather than "prescribed" by the Commissioner.

DEPARTMENT RESPONSE:

The Department disagrees. Once a school has reached the level of Corrective Action in Differentiated Accountability, the Department

believes the form and content of the curriculum audit must be prescribed by the commissioner in order to establish a consistent, uniform, State-wide process for conducting the audits and thereby ensure the alignment of instruction to the NY State Learning Standards and assessments for the accountability measures/student groups identified as failing to make adequate yearly progress (AYP) for four or more years.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Migratory Game Bird Hunting Regulations for the 2009-2010 Season

I.D. No. ENV-38-09-00004-EP

Filing No. 1054

Filing Date: 2009-09-04

Effective Date: 2009-09-04

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

Proposed Action: Amendment of section 2.30 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0307, 11-0903, 11-0905, 11-0909 and 11-0917

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

Specific reasons underlying the finding of necessity: The Department of Environmental Conservation (department) is adopting this rule by emergency rule making to conform State migratory game bird hunting regulations with the federal regulations for the 2009-2010 season and flyway guidelines for resource conservation. Migratory game bird population levels fluctuate annually in response to a variety of environmental factors, including weather conditions, predation, and human activities, such as land use changes and harvest. As a result, federal regulations pertaining to hunting of migratory birds are reviewed and adjusted annually. Environmental Conservation Law section 11-0307 requires that the department adjust state migratory game bird regulations to maintain consistency with federal regulations. The final federal regulations are adopted in late summer, thereby necessitating emergency adoption of state regulations in order to have them in place for the migratory game bird seasons that begin in September.

The promulgation of this regulation on an emergency basis is necessary to preserve the general welfare by implementing New York State's 2009-2010 waterfowl hunting regulations. Our regulations need to be amended to be in compliance with ECL section 11-0307, which requires state regulations to conform with federal regulations. In addition, law enforcement problems, public dissatisfaction, and adverse economic impacts would ensue if migratory game bird hunting regulations were not adjusted annually to conform with federal regulations and hunter preferences.

Subject: Migratory game bird hunting regulations for the 2009-2010 season.

Purpose: To change migratory game bird hunting regulations to conform to federal regulations.

Text of emergency/proposed rule: Title 6 of NYCRR, section 2.30, entitled "Migratory game birds," is amended as follows:

Amend existing paragraph 2.30 (b)(7) to read:

(7) by the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds, except that this prohibition shall not apply to the taking of crows or to the taking of snow geese or Ross' geese in any area of the State whenever all other waterfowl hunting seasons in that area are closed or during the special snow goose harvest program described in subparagraph 2.30 (e)(2)(vii);

Amend clauses 2.30(e)(1)(i)(b) through (e) to read:

- (i) ducks, coot and mergansers

- (b) Northeastern Zone Open for [10] *nine* consecutive days beginning on the first Saturday in October, and for [50] *51* consecutive days beginning on the *Friday just prior to the fourth Saturday* in October.
- (c) Lake Champlain Zone Open for [five] *four* consecutive days beginning on the [Wednesday after the first] *second Saturday* in October, and for [55] *56* consecutive days beginning on the fourth Saturday in October.
- (d) Southeastern Zone Open for nine consecutive days beginning on the second Saturday in October, and for 51 consecutive days beginning on the [second] *first Saturday* in November.
- (e) Long Island Zone Open for [60] *five* consecutive days beginning on the *Wednesday just prior to Thanksgiving Day (observed)*, and for *55 consecutive days* ending on the last Sunday in January.

Amend clauses 2.30(e)(1)(ii)(d), (e), (g) and (h) to read:

- (ii) Canada geese, cackling geese, and white-fronted geese
 - (d) East Central Goose Hunting Area Open for [21] *28* consecutive days beginning on the fourth Saturday in October, and for [24] *17* consecutive days beginning on the fourth Saturday in November.
 - (e) Hudson Valley Goose Hunting Area Open for [18] *28* consecutive days beginning on the fourth Saturday in October, and for [27] *17* consecutive days beginning on the [first] *Friday just prior to the third Saturday* in December.
 - (g) Western Long Island Goose Hunting Area Open for [76] *five* consecutive days beginning on the *Wednesday just prior to Thanksgiving Day (observed) and for 75 consecutive days ending on the second Sunday in February*.
 - (h) Central Long Island Goose Hunting Area Open for [70] *five* consecutive days beginning on the *Wednesday just prior to Thanksgiving Day (observed) and for 65 consecutive days beginning on the first Monday in December*.

Amend clauses 2.30(e)(1)(iii)(c) through (e) to read:

- (iii) snow geese and Ross' geese
 - (c) Lake Champlain Zone Open for [83] *90* consecutive days beginning on [the Wednesday after the first Saturday in] *October 1*.
 - (d) Southeastern Zone Open for [85] *97* consecutive days beginning on the [fourth] *second Saturday* in October, and [for 22 days ending on] *from March 1 through March 10*.
 - (e) Long Island Zone Open for 107 consecutive days ending on [February] *March 10*.

Amend clauses 2.30(e)(1)(iv)(a) through (e) to read:

- (iv) brant
 - (a) Western Zone Open for [60] *50* consecutive days beginning on the first Saturday in October.
 - (b) Northeastern Zone Open for [60] *50* consecutive days beginning on the first day of the regular duck season in the Northeastern Zone.
 - (c) Lake Champlain Zone Open for [60] *50* consecutive days beginning on the first day of the regular duck season in the Lake Champlain Zone.
 - (d) Southeastern Zone Open for [16] *50* consecutive days beginning on the [third Saturday in October and for 44 consecutive days beginning on the second Saturday in November] *first day of the regular duck season in the Southeastern Zone*.
 - (e) Long Island Zone Open the [same 60 days as] *first five days and the last 45 days of the regular duck season in the Long Island Zone*.

Amend clause 2.30(e)(2)(ii)(b) to read:

(b) in the Western Long Island, Central Long Island, and Eastern Long Island Hunting Areas, where hunters may take Canada geese from the [Saturday] *day* after Labor Day through September 30.

Amend subparagraph 2.30(e)(2)(iii) to read:

(iii) Hunters may take Canada geese in the Special Late Canada Goose Hunting Area from February [5th] *10th* through February [10th] *15th*.

Amend clause 2.30(e)(2)(v)(e) to read:

(e) Long Island Zone Saturday and Sunday of the [second] *first* full weekend in November.

Amend subparagraphs 2.30(g)(3)(i) and (v) to read:

Species	Times and/or places within seasons	Daily bag limit	Possession limit
(i) ducks	All times and places	6*	12*
(v) Brant	All times and places	[3] 2	[6] 4

* The daily bag limit for ducks includes mergansers, and may include no harlequin ducks[, no canvasbacks,] and no more than 4 mallards (no more than 2 hens), 1 black duck, 3 wood ducks, 1 pintail, *1 canvasback*, 2 redheads, [1] 2 scaup [(except during periods specified below, when 2 scaup may be taken daily)], 4 scoters or 2 hooded mergansers. [The daily limit for ducks may include 2 scaup per day during the following periods only in each waterfowl hunting zone: Western Zone - last 20 days of the regular duck season; Northeastern Zone - November 1 through November 20; Lake Champlain Zone - 20 consecutive days beginning on the fourth Saturday in October; Southeastern Zone - 20 consecutive days beginning on the fourth Saturday in November; and Long Island Zone - last 20 days of the regular duck season.] Possession limits for all duck species are twice the daily limit.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire December 2, 2009.

Text of rule and any required statements and analyses may be obtained from: Bryan L. Swift, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8885, email: wfseason@gw.dec.state.ny.us

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

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

Additional matter required by statute: A programmatic environmental impact statement has been prepared and is on file with the Department of Environmental Conservation.

Regulatory Impact Statement

1. Statutory Authority

Section 11-0303 of the Environmental Conservation Law (ECL) authorizes the Department of Environmental Conservation (DEC or department) to provide for the recreational harvest of wildlife giving due consideration to ecological factors, the natural maintenance of wildlife, public safety, and the protection of private property. Environmental Conservation Law sections 11-0303, 11-0307, 11-0903, 11-0905 and 11-0909 and 11-0917 authorize DEC to regulate the taking, possession, transportation and disposition of migratory game birds.

2. Legislative Objectives

The legislative objective of the above-cited laws is to ensure adoption of State migratory game bird hunting regulations that conform with federal regulations made under authority of the Migratory Bird Treaty Act (16 U.S.C. sections 703-711). Season dates and bag limits are used to achieve harvest objectives and equitably distribute hunting opportunity among as many hunters as possible. Regulations governing the manner of taking upgrade the quality of recreational activity, provide for a variety of harvest techniques, afford migratory game bird populations with additional protection, provide for public safety and protect private property.

3. Needs and Benefits

The primary purpose of this rule making is to adjust annual migratory game bird hunting regulations to conform with federal regulations, as required by ECL 11-0307, for the 2009-2010 season and flyway guidelines for resource conservation. This rule making also reflects preferences of migratory game bird hunters in New York.

Migratory game bird population levels fluctuate annually in response to a variety of environmental factors, including weather conditions, predation, and human activities, such as land use changes and harvest. As a result, federal regulations pertaining to hunting of migratory birds are

reviewed and adjusted annually. The department annually reviews and promulgates State regulations in order to maintain conformance with federal regulations, as required by ECL section 11-0307, and to address ecological considerations and user desires.

The department is proposing the following regulatory changes: season date adjustments for ducks, geese, brant and Youth Waterfowl Hunt Days in certain areas; changes in daily bag and possession limits for scaup, canvasback ducks and brant in all areas; and allowing the use of electronic calls for snow goose hunting whenever all other waterfowl hunting seasons are closed.

Season date adjustments contained in this rule making are intended to maximize hunting opportunities when they are most desired by hunters (for example, maximizing the number of weekend days open to hunting), within constraints established by the U.S. Fish and Wildlife Service (USFWS). The department provided considerable opportunity for public input, including recommendations from regional waterfowl hunter task forces, as part of the season selection process.

The daily bag limits for canvasback and scaup were both increased based on improved population status assessments and harvest strategies developed by USFWS and approved by the Atlantic Flyway Council. Similarly, the season length and bag limits for brant were reduced throughout the flyway, based on current population assessments and an approved harvest strategy for that species.

Season dates, bag limits and shooting hours for the Lake Champlain Zone are consistent with regulations established in adjoining areas of Vermont, in accordance with federal regulations and a long standing interstate agreement.

Use of electronic calls for snow goose hunting whenever all other waterfowl seasons are closed was authorized by USFWS in November 2008. Allowing this in New York will help increase harvest of snow geese, which are currently at record high levels and causing ecological damage in the Atlantic Flyway and northern Canada.

4. Costs

These revisions to 6 NYCRR section 2.30 will not result in any increased expenditures by State or local governments or the general public. Costs to DEC for implementing and administering this rule are continuing and annual in nature. These involve preparation and distribution of annual regulations brochures and news releases to inform the public of migratory game bird hunting regulations for the coming season.

5. Paperwork

The proposed revisions to 6 NYCRR section 2.30 do not require any new or additional paperwork from any regulated party.

6. Local Government Mandates

This amendment does not impose any program, service, duty or responsibility upon any county, city, town village, school district or fire district.

7. Duplication

Each year, the USFWS establishes "framework" regulations which specify allowable season lengths, dates, bag limits and shooting hours for various migratory game bird species based on their current population status. Within constraints of the federal framework, New York selects specific hunting season dates and bag limits for various migratory game birds, based primarily on hunter preferences. These selections are subsequently included in a final federal rule making (50 CFR Part 20 section 105), which appears annually in the Federal Register in September. However, section 11-0307 of the ECL specifies that the department's migratory game bird hunting seasons and bag limits conform with the federal regulations. This requires that section 2.30 be amended annually.

8. Alternatives

The principal alternative, which is no action, would result in State waterfowl hunting regulations that do not conform with federal guidelines which would be in conflict with ECL section 11-0307. Leaving season dates and bag limits unchanged would also result in a significant loss of hunting opportunity, public dissatisfaction, and adverse economic impacts because they would not reflect hunter preferences or alleviate goose damage through sport harvest to the extent possible.

9. Federal Standards

There are no federal environmental standards or criteria relevant to the subject matter of this rule making. However, there are federal regulations for migratory game birds. This rule making will conform State regulations to federal regulations, but will not establish any environmental standards or criteria.

10. Compliance Schedule

All waterfowl hunters must comply with this rule making during the 2009-2010 and subsequent hunting seasons.

Regulatory Flexibility Analysis

The purpose of this rule making is to amend migratory game bird hunting regulations. This rule will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local government. Therefore, a Regulatory Flexibility Analysis is not required.

All reporting or recordkeeping requirements associated with migratory bird hunting are administered by the New York State Department of Environmental Conservation (department) or the U.S. Fish and Wildlife Service (USFWS). Small businesses may, and town or village clerks do, sell hunting licenses, but this rule does not affect that activity. Thus, there will be no effect on reporting or recordkeeping requirements imposed on those entities.

The hunting activity resulting from this rule making will not require any new or additional reporting or recordkeeping by any small businesses or local governments. For these reasons, the department has concluded that this rule making does not require a Regulatory Flexibility Analysis.

Rural Area Flexibility Analysis

The purpose of this rule making is to amend migratory game bird hunting regulations. This rule will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, other than individual hunters. Therefore, a Rural Area Flexibility Analysis is not required.

All reporting or recordkeeping requirements associated with hunting are administered by the New York State Department of Environmental Conservation (department) or the U.S. Fish and Wildlife Service (USFWS). Small businesses may, and town or village clerks do, issue hunting licenses, but this rule making does not affect that activity.

The hunting activity associated with this rule making does not require any new or additional reporting or recordkeeping by entities in rural areas, and no professional services will be needed for people living in rural areas to comply with the proposed rule. Furthermore, this rule making is not expected to have any adverse impacts on any public or private interests in rural areas of New York State. For these reasons, the department has concluded that this rule making does not require a Rural Area Flexibility Analysis.

Job Impact Statement

The purpose of this rule making is to amend migratory game bird hunting regulations. The Department of Environmental Conservation (department) has historically made regular revisions to its migratory game bird hunting regulations. Based on the department's experience in promulgating those revisions and the familiarity of regional department staff with the specific areas of the state impacted by this proposed rule making, the department has determined that this rule making will not have a substantial adverse impact on jobs and employment opportunities. Few, if any, persons actually hunt migratory game birds as a means of employment. Moreover, this rule making is not expected to significantly change the number of participants or the frequency of participation in the regulated activities.

For these reasons, the department anticipates that this rule making will have no impact on jobs and employment opportunities. Therefore, the department has concluded that a job impact statement is not required.

Department of Health

EMERGENCY RULE MAKING

Drinking Water State Revolving Fund

I.D. No. HLT-38-09-00001-E

Filing No. 1034

Filing Date: 2009-09-03

Effective Date: 2009-09-03

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

Action taken: Amendment of Part 53 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 1161 and 1162

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

Specific reasons underlying the finding of necessity: The American Recovery and Reinvestment Act of 2009 (ARRA) was signed into law by President Obama on February 17, 2009. The goals of the ARRA applicable to this rulemaking include job preservation and creation, infrastructure investment and energy efficiency. ARRA will provide over 86.8 million dollars from the federal government (via the Environmental Protection Agency (EPA)) to New York State for distribution to public drinking water improvement projects.

The Drinking Water State Revolving Fund (DWSRF) was created

in 1996 as a result of State legislation and legislation enacted by the U.S. Congress. The DWSRF provides a significant financial incentive for municipally and privately owned drinking water systems to finance needed drinking water infrastructure improvements (e.g., treatment plants, distribution mains, storage facilities). The DWSRF is administered jointly by the Department and the New York State Environmental Facilities Corporation (EFC). The Bureau of Water Supply Protection represents the Department for the implementation of the DWSRF.

10 NYCRR Part 53, "Drinking Water State Revolving Fund," contains the Department rules implementing the DWSRF. Part 53 must be amended to accommodate new requirements from ARRA to distribute the funds allocated to the State. The amendments include eligible projects which address "green infrastructure" [see paragraph 53.5(c)(5) of the above Express Terms].

ARRA requires that project funding commence within 120 days from the date from enactment of the law (law enacted February 17, 2009; funding commences by June 7, 2009). For the State and Department to be granted the funds from the EPA, the present DWSRF program rules need to be amended to assure timely distribution of the funds to eligible local public water system DWSRF projects; consequently, an "emergency rulemaking" of Part 53 is required. An emergency rulemaking is also necessary for the preservation of public health in that projects for safe drinking water may be delayed or not built if this money is not available. A "regular rulemaking" is also being pursued at the same time to expedite the permanent amendment of Part 53.

Subject: Drinking Water State Revolving Fund.

Purpose: To accommodate new requirements from the Federal American Recovery and Reinvestment Act (ARRA) of 2009.

Text of emergency rule: Paragraph (1) of subdivision (a) of section 53.2 is amended to read as follows:

(1) Act means Title XIV of the Public Health Service Act (commonly known as the "Safe Drinking Water Act") 42 USC section 300-f et. seq[.]; and as supplemented by the American Recovery and Reinvestment Act of 2009 (ARRA).

A new Subdivision (e) is to be added to Section 53.4 and to read as follows:

(e) *Notwithstanding the foregoing, an eligible project or portion thereof listed in Category G, as identified in section 53.5(c)(5), shall be evaluated based upon criteria set forth in section 53.5(c)(5) of this part.*

Subdivision (a) of Section 53.5 is amended to read as follows:

(a) *With the exception of Category G projects, [All] all completed pre-applications received by the Department will be evaluated and assigned a score based on the priority ranking scoring system described in section 53.4 of this Part, provided, however, that:*

A new Paragraph (5) is to be added to Subdivision 53.5(c) and to read as follows:

(5) *Category G List: The Category G list shall include projects or portions thereof that address green infrastructure including, without limitation, water and energy efficiency improvements or other environmentally innovative activities or that qualify as a demonstration project of new green infrastructure technology as provided in the IUP. Such projects or portions thereof shall be determined based on an evaluation of benefits to the public and positive (or least negative) impacts on the environment and that shall include, without limitation: economic benefits generated; public health and safety; protection of water quality and the environment; demonstrated readiness; green energy production and/or reduction in energy consumption; regional distribution of projects, or water conservation as provided in the IUP.*

Paragraph (2) of Subdivision 53.5(e) is amended to read as follows:

(2) *No more than thirty percent (30%) of the annual federal capitalization funds shall be used to give loan subsidies to disadvantaged systems as determined by the Corporation[.], except a greater percent of the annual federal capitalization funds may be used to give additional subsidization to eligible recipients when required or authorized by federal laws or regulations. Such additional subsidization shall be provided in accordance with the Act and shall include forgiveness of principal, a negative interest loan or a grant.*

Paragraphs (2) and (3) of Subdivision 53.5(g) are amended to read as follows:

(2) *the applicant fails to fulfill expectations, perform duties, or conform to deadlines or conditions established in the project schedule or the applicant will not be able to satisfy any other conditions precedent to obtaining funding during the period specified in the IUP; [or]*

(3) *the applicant has reached the fifty percent (50%) annual Fund resources cap for fundable projects on the Project Readiness List. All projects of an applicant that would cause the applicant to exceed the fifty percent cap will be by-passed for that annual funding cycle[.]; or*

A new Paragraph (4) of Subdivision 53.5(g) is to be added and to read as follows:

(4) *the department determines that another project better addresses water savings/conservation, or energy efficiency improvements or other environmentally innovative activities that meet green infrastructure mandates of the ARRA.*

* * *

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 December 1, 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: regsna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

Public Health Law (PHL) Sections 1161 and 1162 authorize the Department of Health (Department) to revise 10 NYCRR Part 53 "Drinking Water State Revolving Fund (DWSRF)."

Legislative Objectives:

The legislative objective of PHL Sections 1161 and 1162 was to expand and enhance public drinking water supplies within New York State. This is in keeping with the objectives of the Public Health Law to protect public health.

The DWSRF was created in 1996 as a result of State legislation and legislation enacted by the U.S. Congress. The DWSRF provides a significant financial incentive for municipally and privately owned drinking water systems to finance needed drinking water infrastructure improvements. The DWSRF is administered jointly by the Department and the New York State Environmental Facilities Corporation (EFC). The Department's primary role is to provide technical review of proposed projects and to develop the "Readiness List" for the Intended Use Plan (IUP). The EFC administers the financial aspects of the DWSRF.

Projects eligible for DWSRF financing include investments to upgrade or replace infrastructure needed to achieve or maintain compliance with federal or state drinking water standards, prevent contamination, provide the public with safe affordable drinking water, etc. The American Recovery and Reinvestment Act of 2009 (ARRA) will provide additional funding to New York State via the DWSRF to finance drinking water infrastructure improvements.

ARRA was signed into law by President Obama on February 17, 2009. ARRA will provide over 86.8 million dollars from the federal government (via the Environmental Protection Agency (EPA)) to New York State for distribution to public drinking water improvement projects. ARRA also requires that fifty percent of the 86.8 million dollars be distributed as annual federal capitalization funds (e.g., grants) and that twenty percent be distributed for "green infrastructure" [see paragraph 53.5(c)(5) of the above Express Terms] projects.

Updating Part 53 to accommodate the receipt of additional funds from ARRA will significantly enhance the ability of New York State and the Department to protect public health and helps to assure that drinking water provided to the public meets Department drinking water standards.

Needs and Benefits:

Updating Part 53 to include ARRA funding is necessary for the Department to discharge its duties related to the fund and will significantly enhance and accelerate funding of projects on the Readiness List.

ness List. (The Readiness List is developed by the Department. Staff experts review proposed projects based on eligibility criteria, scoring and ranking.)

COSTS:

Costs to Regulated Parties:

No new additional costs will be imposed by these amendments.

Costs to State Government:

There will be no additional costs to the Department. Existing staff and department resources will be used to implement the project (e.g., reviewing projects, administrative support) which would have been used eventually in any event for selected Readiness List projects. Receipt of ARRA funds accelerates the funding of projects that would have had to wait their turn for several months or years if such funding had not been available over the next two years.

Costs to Local Government:

The amendment does not mandate new costs. Participation in the DWSRF by local government is voluntary. Local governments choosing to participate in the ARRA enhanced DWSRF subsidized loan program would be required to comply with existing DWSRF loan repayment terms (interest rate proposed to be two-thirds of market rate). The Department determines if a proposed local government project is eligible to participate in the ARRA program based on project data submitted under the present DWSRF program. Consequently there are no new additional costs to local government. The Department, and not a local government, evaluates whether a proposed project meets ARRA eligibility criteria. These criteria include that the project is "shovel ready" (i.e., projects to be funded must be under construction or contract according to the schedule in the Intended Use Plan and priority given to projects ready to start construction), reachable on the Readiness List and, in some circumstances, meet "green" standards.

Local Government Mandates:

Participation in the DWSRF by local government is voluntary. Local governments choosing to participate in the ARRA enhanced DWSRF program would be required to comply with existing DWSRF loan repayment terms. No new additional administrative requirements are mandated for local government. The proposed revisions to Part 53 do not impose new responsibilities on any county, city, town, village, school district, fire district or special district. Local governments choosing to participate will need to comply with additional federally mandated weekly EPA/ARRA reporting requirements, including construction progress reports, financial disbursements and contract statements.

Paperwork:

There are no new "paperwork" requirements imposed by these amendments. Participation in the DWSRF by local government is voluntary. Local governments choosing to participate in the ARRA enhanced DWSRF program would be required to comply with existing DWSRF reporting and recordkeeping requirements, such as regular construction inspection reports, submittal of payment records, change orders, etc. Participating local governments will also be required to comply with additional federally mandated weekly EPA/ARRA reporting requirements, including construction progress reports, financial disbursements and contract statements and also show that their project is shovel ready and, if applicable, "green." It is anticipated that the EPA and the Department will be providing guidance to local governments on the frequency and extent of this reporting requirement.

Duplication:

This regulation does not duplicate any existing federal, state or local regulation.

Alternatives:

One alternative to the proposed revisions is to take no action. In that case, however, the State would not be eligible for ARRA funds under the requirements of the ARRA law and the funds targeted for New York State would be distributed to other participating states.

Federal Standards:

Existing federal standards for implementation of the State's

DWSRF program must be complied with by the Department. These standards include a capitalization grant agreement, Intended Use Plan, payment schedule, State environmental review process, etc. The capitalization grant agreement must define the types of performance measures, reporting requirements (annual), and oversight responsibilities. Local governments participating in the ARRA enhanced funding program will be required, according to March 2, 2009 guidance from the EPA, to comply with additional weekly reporting requirements, including more frequent construction progress reports, financial disbursements and contract statements. It is anticipated that the EPA and the Department will be providing guidance to local governments on the frequency and extent of this reporting requirement.

Compliance Schedule:

The emergency regulation will be effective upon filing with the Department of State. Local projects that are funded need to comply with federal standards by submitting federally mandated weekly reports as mentioned above.

Regulatory Flexibility Analysis

Effect of Rule:

ARRA will provide over 86.8 million dollars from the federal government to New York State for distribution to public drinking water improvement projects. At the present time it is estimated that 16 to 25 projects will be funded with the recipients being villages, towns and communities.

Compliance Requirements:

There are no new compliance requirements. Participation in the Drinking Water State Revolving Fund (DWSRF) by local government is voluntary. Local governments choosing to participate in the American Recovery and Reinvestment Act (ARRA) enhanced DWSRF program would be required to comply with existing DWSRF loan repayment terms and requirements. Participating local governments will also be required to comply with additional federally mandated weekly EPA/ARRA reporting requirements, including construction progress reports, financial disbursements and contract statements.

Professional Services:

No new professional services will be required by this rule. Existing needs, under the present DWSRF program for professional involvement, such as cost accounting and construction oversight, will remain unchanged.

Costs:

Costs to Regulated Parties:

No new additional costs will be imposed by these amendments.

Costs to Local Government:

The amendment does not mandate new costs. Participation in the DWSRF by local government is voluntary. Local governments choosing to participate in the ARRA enhanced DWSRF subsidized loan program would be required to comply with existing DWSRF loan repayment terms (interest rate proposed to be two-thirds of market rate). The Department determines if a proposed local government project is eligible to participate in the ARRA program based on project data submitted under the present DWSRF program. Consequently there are no new additional costs to local government. The Department, and not a local government, evaluates whether a proposed project meets ARRA eligibility criteria. These criteria include that the project is "shovel ready" (i.e., projects to be funded must be under construction or contract according to the schedule in the Intended Use Plan and priority given to projects ready to start construction), reachable on the Readiness List and, in some circumstances, meet "green" standards.

Costs to State Government:

There will be no additional costs to the Department. Existing staff and department resources will be used to implement the project (e.g., reviewing projects, administrative support) which would have been used eventually anyway for selected Readiness List projects. ARRA funding accelerates the funding of projects that would have had to wait their turn for several months or years if the ARRA funding had not been available over the next two years.

Economic and Technological Feasibility:

Since this rule relies on existing Part 53 program requirements local governments and small businesses should be able to comply with existing DWSRF requirements with existing equipment and staff.

Minimizing Adverse Impact:

Federal requirements imposed by this proposal do not differentiate between the size of the municipality. We have adopted design rather than performance standards so that municipalities wishing to participate may do so.

Small Business and Local Government Participation:

There has been significant media coverage and public comments on ARRA. In addition the Department staff has met with local and county officials (e.g. Conference of Environmental Health Directors), presented at conferences (e.g., American Waterworks Association) attended by local government and small businesses, and met with the AWWA Regulatory Committee. There has also been extensive outreach to small businesses and local government by the Governor's Office, the Environmental Facilities Corporation (which co-administers the DWSRF with the Department), and the Environmental Protection Agency (EPA).

Rural Area Flexibility Analysis**Types and Estimated Number of Rural Areas:**

Many rural areas have access to public water and there are several hundred rural area water supplies on the New York State Drinking Water State Revolving Fund (DWSRF) Readiness List that would be eligible under the American Recovery and Reinvestment Act (ARRA) enhanced DWSRF program. At the present time it is estimated that 16 to 25 projects will be funded in villages, towns, communities and hamlets that come under the definition of a rural area.

Reporting and Recordkeeping:

The proposed amendments do not mandate new reporting and recordkeeping requirements. However, if a local government wishes to participate in the "enhanced" funding offered by these amendments, they will be required to comply with additional federally mandated weekly EPA/ARRA reporting requirements, including construction progress reports, financial disbursements and contract statements. It is anticipated that the United States Environmental Protection Agency and the Department will be providing guidance to local governments on the frequency and extent of this reporting requirement.

Other Compliance Requirements:

There are no additional compliance requirements other than those described in the Reporting and Recordkeeping section above.

Professional Services:

No new professional services will be required by this rule. Existing needs, under the present DWSRF program for professional involvement, such as cost accounting and construction oversight, will remain unchanged and should be able to be handled by existing staff located at the local level.

Costs:

Projected Costs of Compliance:

None.

Costs to Regulated Parties:

No new additional costs will be imposed by these amendments.

Costs to Local Government:

The amendment does not mandate new costs. Participation in the DWSRF by local government is voluntary. Local governments choosing to participate in the ARRA enhanced DWSRF subsidized loan program would be required to comply with existing DWSRF loan repayment terms (interest rate proposed to be two-thirds of market rate). The Department determines if a proposed local government project is eligible to participate in the ARRA program based on project data submitted under the present DWSRF program. Consequently there are no new additional costs to local government. The Department, and not a local government, evaluates whether a proposed project meets ARRA eligibility criteria. These criteria include that the project is "shovel ready" (i.e., projects to be funded must be under

construction or contract according to the schedule in the Intended Use Plan and priority given to projects ready to start construction), reachable on the Readiness List and, in some circumstances, meet "green" standards.

Costs to State Government:

There will be no additional costs to the Department. Existing staff and department resources will be used to implement the project (e.g., reviewing projects, administrative support) which would have been used eventually anyway for selected Readiness List projects. ARRA funding accelerates the funding of projects that would have had to wait their turn for several months or years if the ARRA funding had not been available over the next two years.

Minimizing Adverse Impact:

Federal requirements imposed by this proposal do not differentiate between the size of the municipality. We have adopted design rather than performance standards so that municipalities wishing to participate may do so.

Rural Area Participation:

There has been significant media coverage and public comments on ARRA. In addition the Department staff has met with local and county officials (e.g. Conference of Environmental Health Directors), presented at conferences (e.g., American Waterworks Association) attended by local government and small businesses, and met with the AWWA Regulatory Committee. There has also been extensive outreach to small businesses and local government by the Governor's Office, Environmental Facilities Corporation (which co-administers the DWSRF with the Department), and the Environmental Protection Agency (EPA).

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities. The significant additional funding for construction projects will in fact substantially increase employment opportunities, which is the prime objective of ARRA. It is believed that the infusion of several million dollars into the New York State Drinking Water State Revolving Fund (DWSRF) will preserve and create a significant number of jobs, primarily via funding for construction projects of public water supply improvement projects and the commensurate positive effect on preserving and creation of construction sector jobs. Small businesses comprise much of the water supply construction industry in New York State. These businesses include consultant/engineering firms, construction contractors, material and equipment suppliers, analytical laboratories, archaeology firms, etc. Until the number of projects to be funded has been determined it is not possible to precisely estimate the number of small businesses impacted or jobs created; however, at least a few hundred businesses will need to execute contracts to perform construction and affiliated activities necessary to assure completion of the projects. This will, in turn, provide an economic stimulus to localities, including creation and preservation of jobs, and additional tax revenues for local government.

Insurance Department

EMERGENCY RULE MAKING

Flexible Rating for Nonbusiness Automobile Insurance Policies

I.D. No. INS-33-09-00007-E

Filing No. 1057

Filing Date: 2009-09-08

Effective Date: 2009-09-08

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

Action taken: Repeal of Part 163 and addition of new Part 163 (Regulation 153) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2350 and art. 23

Finding of necessity for emergency rule: Preservation of general welfare.
Specific reasons underlying the finding of necessity: This regulation was previously promulgated on an emergency basis on December 24, 2008, March 16, 2009 and June 9, 2009. The emergency regulation will expire on September 8, 2009. Regulation No. 153 needs to remain effective for the general welfare.

Chapter 136 of the Laws of 2008, which became effective on January 1, 2009, enacts a new Section 2350 of the Insurance Law, which replaces the prior approval system, in effect since 2001 for nonbusiness motor vehicle insurance rates, with a flexible rating (flex-rating) system. Section 2350 requires the superintendent to promulgate rules and regulations implementing the new flexible rating system. Since insurers are authorized to use the new flexible rating system as of the effective date of the new law, January 1, 2009, it is essential that this regulation be promulgated on an emergency basis in order to have procedures in place that implement the provisions of the law. It also is essential that insurers be made aware of the rules and standards governing the notice requirements as soon as possible.

For the reasons cited above, this regulation is being promulgated on an emergency basis for the preservation of the general welfare.

Subject: Flexible Rating for Nonbusiness Automobile Insurance Policies.

Purpose: This rule re-establishes flexible rating for nonbusiness automobile insurance policies required by section 2350 of the Insurance Law.

Text of emergency rule: A new Part 163 is added to read as follows:

§ 163.0 Preamble.

On June 30, 2008, the Governor signed Chapter 136 of the Laws of 2008 into law to enhance competition in the nonbusiness motor vehicle market, by adding a new Insurance Law section 2350. Chapter 136 replaces the prior approval system, in effect since 2001 for nonbusiness motor vehicle insurance rates, with a flexible rating (flex-rating) system. The new system, which takes effect on January 1, 2009, is a blend of prior approval and competitive rating. The system allows periodic overall average rate changes up to five percent on a file and use basis, and requires the superintendent's prior approval of overall average rate increases above five percent in any twelve-month period. The new section 2350 requires the superintendent to promulgate rules and regulations implementing the new flex-rating system.

§ 163.1 Definitions.

For the purpose of this Part, the following definitions shall apply:

(a) Base rate means the dollar charge for a given coverage for one car year prior to the application of rating factors.

(b) Car year means insuring a motor vehicle for one year.

(c) Coverage means the following motor vehicle insurance coverages:

(1) no-fault (personal injury protection), residual bodily injury liability, property damage liability, statutory uninsured motorists, supplementary uninsured/underinsured motorists, comprehensive, and collision; and

(2) any other motor vehicle coverage.

(d) Current average rate for a given coverage means the weighted average of an insurer's latest filed base rates modified by the applicable rating factors for each motor vehicle for the given coverage with the weights proportional to the latest available number of car years associated with each rating factor, or any materially equivalent calculation.

(e) Current overall average rate means:

(1) the weighted average of the current average rate for:

(i) all coverages listed in paragraph (1) of subdivision (a) of this section; and

(ii) any other motor vehicle coverages not listed in paragraph (1) of subdivision (a) of this section, if the insurer proposes a change in the rate for that coverage, with the weights proportional to the latest available number of car years for the respective coverages; or

(2) any materially equivalent calculation.

(f) Effective date means the date a revised set of base rates or rating factors shall apply to all existing nonbusiness automobile insurance policies as such policies are renewed. If a filing only applies to new business, then the effective date means the date that an insurer may first write new business.

(g) File and use means the process by which an insurer files with the superintendent a proposed overall average rate change that is within the flex-band, and then uses the proposed overall average rate change without having to obtain the superintendent's prior approval.

(h) Flexibility band or flex-band means the range of overall average rate increase or decrease (up to +5%) within which an insurer may change its motor vehicle insurance rates without having to obtain the superintendent's prior approval.

(i) Motor vehicle has the meaning set forth in section 5102(f) of the Insurance Law.

(j) Nonbusiness automobile insurance policy means a contract of insurance covering losses or liabilities arising out of the ownership, operation or use of a motor vehicle that is predominately used for nonbusiness purposes, when a natural person is the named insured.

(k) Proposed average rate for a given coverage means the weighted average of an insurer's proposed base rates modified by the applicable rating factors for each motor vehicle for the given coverage with the weights proportional to the latest available number of car years associated with each rating factor, or any materially equivalent calculation.

(l) Proposed overall average rate means:

(1) the weighted average of the proposed average rate for:

(i) each coverage listed in paragraph (1) of subdivision (a) of this section regardless of whether the insurer is filing a change for that coverage; and

(ii) any other motor vehicle coverages not listed in paragraph (1) of subdivision (a) of this section if the insurer proposes a change in the rate for that coverage, with the weights proportional to the latest available number of car years for the respective coverages; or

(2) any materially equivalent calculation.

(m) Proposed overall average rate change means the percentage difference between the proposed overall average rate and the current overall average rate. For example, if the proposed overall average rate is \$1,200 and the current overall average rate is \$1,000, then the proposed overall average rate change is 20% $((1,200/1,000)-1) \times 100$.

(n) Rating factors means the various elements that are applied or added to the base rates to obtain the actual nonbusiness automobile insurance policy premiums. These include classification factors based on the age, sex, and marital status of the insured, territorial rating factors, merit rating factors based on the driving record of the insured, increased limit factors, motor vehicle symbol and model year rating factors, and multi-tier rating factors.

§ 163.2 Rules and standards governing proposed file and use overall average rate changes for nonbusiness automobile insurance policies.

(a) An insurer may implement a proposed overall average rate increase on a file and use basis provided that the change is within the five percent flex-band. If the proposed overall average rate increase exceeds the five percent flex-band, then the insurer shall obtain the superintendent's prior approval before implementing the change.

(b) During any twelve-month period, an insurer may implement no more than two overall average rate increases on a file and use basis provided that the cumulative effect of the increases shall be within the five percent flex-band. If a proposed overall average rate increase combined with a prior rate increase implemented within a twelve-month period of the proposed effective date of the request exceeds the five percent flex-band, then the insurer shall obtain the superintendent's prior approval before implementing the change. The cumulative effect of two or more rate changes in a twelve-month period is derived in a multiplicative manner. For example, if an insurer implements on a file and use basis a +2.9% overall average rate increase effective February 1, 2009 and a +2% overall average rate increase effective August 1, 2009, then the insurer may not implement another file and use overall average rate increase before February 1, 2010. However, at such time, the insurer may implement an overall average rate increase up to a maximum of +2.9%.

(c) An insurer may implement an overall average rate decrease on a file and use basis up to a maximum of five percent at any one time from the overall average rate currently in effect.

(d) Notwithstanding any provision of this Part, an insurer shall not implement an overall average rate increase on a file and use basis subsequent to an overall average rate increase greater than the five percent flex-band that the superintendent has already prior approved in the twelve-month period immediately preceding the effective date of the proposed increase.

§ 163.3 Rules and standards governing changes in rating factors.

(a) An insurer may adjust its rating factors as part of a file and use change. The insurer shall incorporate the rate impact of these adjustments in the overall average rate change. These changes shall be consistent with the rate change limitations for individual insureds contained in section 163.4 of this Part.

(b) An insurer may adjust its rating factors in separate and distinct filings independent of an overall average rate change. If these filings have no overall average rate impact, then the insurer may implement them on a file and use basis and the insurer shall not be precluded from implementing a file and use change for an overall average rate increase within the time periods specified in section 163.2(b) of this Part. For example, the introduction of a physical damage coverage's model year rating factor for a new model year that is consistent with an existing model year rating rule is not subject to prior approval. These filings shall be consistent with the rate change limitations for individual insureds contained in section 163.4 of this Part.

§ 163.4 Rules and standards governing nonbusiness automobile insur-

ance policy premium change limitations for individual insureds as a consequence of file and use filings.

(a) In any twelve-month period, the total premium on any nonbusiness automobile insurance policy shall not change by more than 30% as a consequence of file and use filings. An insurer shall meet this requirement by adjusting the base rates or rating factors in the file and use filing. An insurer shall not cap an individual insured's premium as a final step. If a filing produces an annual total premium change on an insurance policy that exceeds the 30% maximum, then the filing shall be subject to the superintendent's prior approval.

(b) Changes in the premium of a nonbusiness automobile insurance policy as a consequence of changes in an insured's rating characteristics or changes in the coverages or the amounts of coverage being purchased shall not be considered within the calculation of the individual insured premium limitation contained in subdivision (a) of this section. For example, if an insured has an accident during the prior year and incurs a 25% surcharge or uptier, then this 25% surcharge/uptier shall not be considered within the individual premium limitation. Similarly, if a change in the age of an insured results in the application of a different classification factor, the rate effect attributable to that classification change shall also not be considered within the individual premium limitation.

§ 163.5 Support for filings submitted on a file and use basis.

An insurer shall include support for all proposed changes specified in each filing submitted on a file and use basis. The support shall include the specific reasons for the proposed changes, and any other material information required by section 2304 of the Insurance Law (e.g., the underlying data upon which the change is based). Filings submitted on a file and use basis shall be subject to the superintendent's review in accordance with Article 23 of the Insurance Law.

§ 163.6 Support for filings subject to prior approval.

(a) An insurer shall include support for all proposed changes specified in each filing subject to the superintendent's prior approval. The support shall include the specific reasons for the proposed changes, and any other material information as required by section 2304 of the Insurance Law.

(b) Subject to all other requirements of this Part and article 23 of the Insurance Law, an insurer may adjust rating factors associated with territories or classifications as part of its file and use filing, provided that there are no changes to the underlying definitions which remain subject to the superintendent's prior approval pursuant to article 23 of the Insurance Law. Examples of rating classifications include discounts, surcharges, merit rating plans or multi-tier programs.

(c) If any one element of a filing is subject to prior approval, then the entire filing shall be subject to prior approval.

§ 163.7 Notification to insureds of rate changes.

(a) An insurer shall mail or deliver to every named insured affected by a rate increase due to a flex-band rate filing, at least 30 but not more than 60 days in advance of the end of the policy period, a notice of its intention to change the insured's rate. The notice shall set forth the specific reason or reasons for the rate change.

(b) An insurer shall not implement a rate increase due to a flex-band rate filing unless the insurer has mailed or delivered to the named insured affected by the rate increase the notice required by subdivision (a) of this section.

(c) An insurer shall submit a flex-band rate filing to the superintendent in a timely manner. An insurer shall not submit a flex-band rate filing to the superintendent after insureds have received notification pursuant to subdivision (a) of this section.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. INS-33-09-00007-P, Issue of August 19, 2009. The emergency rule will expire November 1, 2009.

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

Regulatory Impact Statement

1. Statutory authority: Sections 201, 301, and Article 23 of the Insurance Law (most specifically, section 2350).

These sections establish the superintendent's authority to promulgate regulations establishing standards for flexible rating systems providing nonbusiness automobile insurance policies. Sections 201 and 301 of the Insurance Law authorize the superintendent to effectuate any power accorded to him by the Insurance Law, and prescribe regulations interpreting the Insurance Law.

Article 23 promotes the public welfare by regulating insurance rates to the end that they not be excessive, inadequate or unfairly discriminatory, to promote price competition and competitive behavior among insurers.

Chapter 136 of the Laws of 2008 adds a new section 2350 to the Insurance Law, which reintroduces flexible rating for nonbusiness automobile insurance rates.

2. Legislative objectives: The stated purpose of Article 23 of the Insurance Law is to ensure the availability and reliability of insurance, and to promote public welfare, by regulating insurance rates to assure that they are not excessive, inadequate or unfairly discriminatory and are responsive to competitive market conditions. Chapter 136 of the Laws of 2008 reestablished flexible rating for nonbusiness automobile insurance. It should strengthen the high level of competition that already exists in this market. The nonbusiness automobile market can benefit from the additional competitive impetus of a flexible rating system.

3. Needs and benefits: Flexible rating, which is a hybrid system borrowing elements from open competition and prior approval, has been applicable to commercial risk, professional liability and public entity insurance since 1986. In those markets, flexible rating has proved successful in restoring stability, promoting fair competition, and providing a firm foundation for long-term thinking and strategic planning, not only on the part of the insurance industry, but for the benefit of businesses and consumers that must rely upon, and budget for, insurance protection.

The above benefits are pertinent to the application of flex rating for the nonbusiness automobile market. Competition and market forces have always been strong determinants of rates for nonbusiness automobile coverages, and flex rating should strengthen the high level of competition that already exists in this market.

Chapter 113 of the Laws of 1995 first introduced flex rating to non-business automobile insurance effective July 1, 1995 until it expired on August 2, 2001 and was replaced by prior approval requirements. However, section 13 of Chapter 136 of the Laws of 2008 adds a new section 2350 to the Insurance Law, which reintroduces flexible rating for nonbusiness automobile insurance rates. It permits insurers to place nonbusiness automobile insurance rates in effect without the superintendent's prior approval, provided that the overall average rate level does not result in an increase above five percent from the insurer's prior rate level in effect during the preceding 12 months. Section 2350 also limits the overall average rate level decreases without prior approval up to five percent from the insurer's current rate level regardless of when it went into effect. The prior regulation, which implemented the former flex rating system, is hereby being repealed pursuant to this new Part 163 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 153). In accordance with section 2350(c), Insurance Department Regulation No. 153 (11 NYCRR 163) is being promulgated to provide guidance to insurers in implementing the new law's requirements.

4. Costs: This rule imposes no compliance costs on state or local governments. There are no additional costs incurred by the Insurance Department. For regulated parties, the costs of submitting a flexible rate filing should be no different than the costs of submitting a rate filing under the prior law. Since insurers will be able to implement flexible rate changes without having to wait for the Insurance Department's formal approval, they will be able to respond more quickly to competitive forces in the marketplace. However, there is an additional requirement to provide notice to all policyholders affected by a rate increase due to a flexible rate filing. Compliance with this notice requirement of premium increases pursuant to the flexible rating regulation will have a minimal cost, since the notice language may be included along with the renewal policy information sent to insureds. In any event, the notice requirement is imposed by the statute, not the regulation.

5. Local government mandates: This amendment does not impose any program, service, duty or responsibility upon a city, town or village, or school or fire district.

6. Paperwork: While the paperwork associated with the submission and monitoring of a flexible rate filing is essentially the same as that associated with private passenger automobile insurance rate filings under the prior law, there is an additional requirement imposed by the statute to provide notice to all policyholders affected by a rate increase

due to a flexible rate filing. This notice language may be included along with the renewal policy information sent to insureds.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The Department performed outreach with three property/casualty insurer trade organizations (individually “insurer trade organization”) and two property/casualty insurance agents and brokers trade organizations (individually “agents and brokers trade organization”) and received comments from four out of the five organizations.

a. The legislative intent was for any rate change that results in an overall rate increase above 5% during a 12-month period to require prior approval. The alternative approach would be not to consider any rate increase that exceeds the 5% overall flex band limit that has been prior approved during the same 12-month period. While this approach would require newer data to support any flex rate filing made subsequent to a prior approved rate filing, it still seems to be clearly against the legislative intent to keep significant automobile rate increases occurring within a 12-month period to be subject to prior approval. For example, if an insurer received approval for a rate increase of 7% effective February 1, 2009, the insurer may not implement an additional increase to be effective before February 1, 2010 on a flexible rating basis.

b. The Department considered reducing the limitation from the prior regulation standard of a 30% maximum individual premium change as a consequence of file and use filings to 25%, with the understanding that such maximum policyholder change bears some relationship to the overall flex band (which has decreased from 7% in the prior flex rating statute to 5% in the new statute). However, in consideration of comments received, the Department agreed that the maximum individual premium change is not truly relevant to the overall average rate change resulting from a flexible rate filing made by an insurer. It is quite common for rate filings with little or no overall rate effect to still produce significant individual policyholder impacts.

c. An insurer trade organization objected to the provision of Section 163.4, which precludes an insurer from capping an individual insured’s premium to comply with the maximum individual premium change provision. This organization asserted that “capping” is a method that is considered acceptable in other states to achieve that result as opposed to making adjustments to base rates and factors for an entire class of policyholders. However, it has long been the Department’s view that the capping of individual policy premiums is unfairly discriminatory to new policyholders with the same characteristics as current policyholders whose rates have been capped and therefore contrary to Article 23.

d. An insurer trade organization inquired as to whether the cumulative effect of two flexible rate increases would be measured, by simple addition or by multiplication. In response to this comment, further clarification has been added to Section 163.2 of this regulation, stating that the cumulative effect is determined in a multiplicative manner and an example has been included.

e. Two insurer trade organizations commented that the regulation fails to specify the instances under which the superintendent may order an insurer to make a change in its rates filed under file and use basis. However, section 2320 of the Insurance Law provides procedures that must be followed by the superintendent and insurers in addressing issues related to rate filings that are not subject to prior approval. Thus, no change to the proposal was made in response to this comment.

f. An insurer trade organization and an agents and brokers trade organization suggested that the Department clarify that the maximum permitted increase for an individual insured’s premium should be applied to the full coverage or total premium of a nonbusiness automobile insurance policy. Consequently, the Department modified section 163.4(a) of the regulation to clarify that the provision applies to an insured’s total policy premium and not to a specific coverage.

g. Two insurer trade organizations and an agents and brokers trade organization requested a definition of the term “predominantly” with regard to the definition of “nonbusiness automobile insurance policy” and a revision to the definition of the term “effective date” with

regard to new business and renewals. However, the term “predominantly” is not unique to the flexible rating statute, and is used elsewhere in the Insurance Law, such as section 3425. In addition, the term “predominantly” has been previously clarified through opinions of the Department’s Office of General Counsel. Thus, the Department made no changes to the regulation in response to this comment. The Department considered the request for revision of the definition of the term “effective date” but determined that the current definition, contained in section 163.1 of the regulation, was appropriate.

h. An agents and brokers trade organization inquired if an insurer may increase the premium on a six month policy at each policy renewal. However, article 23 of the Insurance Law requires an insurer to use the rates in effect upon renewal of each policy, regardless of the rate filing system used to make the rate filing (i.e., regardless of whether the filing was made as file and use or in accordance with prior approval). Thus, the Department made no changes to the regulation in response to this comment.

i. An insurer trade organization commented on the fact that the regulation would allow an insurer to file multiple file and use rate reductions while being limited to only two file and use increases within any 12-month period. The flexible rating statute provides for a maximum of two file and use overall average rate increases within any 12-month period, up to an overall maximum increase of 5%. The statute does not, however, provide any restrictions on the number of file and use overall average rate decreases, provided that the overall average rate decrease does not exceed the 5% flex-band from the rate currently in effect. All rate filings must include support for the proposed changes as required by Article 23 of the Insurance Law, as the Department will monitor the cumulative effect of the decreases to ensure that the rates are not inadequate or otherwise in violation of the Insurance Law.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: Insurers should be able to comply with the requirements of this rule as soon as they are effective.

Regulatory Flexibility Analysis

1. Small businesses:

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at property/casualty insurance companies licensed to do business in New York State, none of which falls within the definition of “small business” as found in section 102(8) of the State Administrative Procedure Act. The Insurance Department has monitored Annual Statements and Reports on Examination of authorized property/casualty insurers subject to this rule, and believes that none of the insurers falls within the definition of “small business”, because there are none that are both independently owned and have fewer than one hundred employees.

2. Local governments:

The rule does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at property/casualty insurance companies, none of which are local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This regulation applies to all property/casualty insurance companies licensed to write insurance in New York State (specifically, those writing automobile insurance). Property/casualty insurance companies do business throughout New York State, including rural areas as defined under State Administrative Procedure Act Section 102(10).

2. Reporting, recordkeeping and other compliance requirements, and professional services: This regulation is not expected to impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This regulation re-establishes flexible rating for nonbusiness automobile insurance policies, as required by section 2350 of the Insurance law. While the paperwork

associated with the submission and monitoring of a flexible rate filing is essentially the same as that associated with private passenger automobile insurance rate filings under the prior law, there is an additional requirement imposed by the statute to provide notice to all policyholders affected by a rate increase due to a flexible rate filing. This notice language may be included together with the renewal policy information that is sent to insureds.

3. Costs: The costs to regulated parties of submitting a flexible rate filing should be no different than the costs for submitting a rate filing under the prior law. Since insurers will be able to implement flexible rate changes without having to wait for the Insurance Department's formal approval, they will be able to respond more quickly to competitive forces in the marketplace. However, there is an additional requirement to provide notice to all policyholders affected by a rate increase due to a flexible rate filing. Compliance with this notice requirement of premium increases pursuant to the flexible rating regulation will have a minimal cost, since the notice language may be included along with the renewal policy information sent to insureds. In any event, the notice requirement is imposed by the statute, not the regulation.

4. Minimizing adverse impact: The regulation does not impose any impact unique to rural areas.

5. Rural area participation: This regulation is required by statute.

Job Impact Statement

The Insurance Department finds that this rule will have no adverse impact on jobs and employment opportunities. It merely implements section 2350 of the Insurance Law, which directs the superintendent to establish standards for flexible rating systems providing nonbusiness automobile insurance policies. The number of insurance company personnel necessary to submit a flexible rating filing should be no different than submitting a rate filing under the prior law.

Public Service Commission

ERRATUM

A Notice of Proposed Rule Making, I.D. No. PSC-35-09-00012-P (09-E-0539SP1), pertaining to Approval of a Financing and a Transfer of Ownership Interest in two 79.9 MW Generation Facilities, published in the September 2, 2009 issue of the *State Register* contained an incorrect substance of proposed rule. Following is the correct substance.

Substance of proposed rule: The Public Service Commission is considering a petition from PPL Generation LLC (PPL) and J-POWER USA Generation, L.P. (J-POWER) requesting approval of a transfer of ownership interests, to J-POWER from PPL, in two 79.9 MW generation facilities, located in Brentwood and Shoreham, NY, respectively, and requesting approval of the issuance of debt in an amount of no more than \$100 million to finance the purchase and support letters of credit to counterparties, and for other statutory purposes. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

EMERGENCY RULE MAKING

Readoption of the Emergency Rule Staying the Commission Order in Case 08-E-0838 Issued November 21, 2008

I.D. No. PSC-09-09-00008-E

Filing Date: 2009-09-03

Effective Date: 2009-09-03

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

Action taken: On September 3, 2009, the Public Service Commission readopted the emergency rule staying its Order approving the submetering of electricity at Eastwood Apartments, 510-580 Main Street, Roosevelt Island, New York.

Statutory authority: Public Service Law, sections 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

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

Specific reasons underlying the finding of necessity: Compliance with the State Administrative Procedure Act is not possible because to do so could be detrimental to the health, safety and general welfare of tenants who are low income are elderly and/or are disabled. The petition for rehearing states that Eastwood Apartments contains a large number of low-income Section 8 tenants, individuals with disabilities and the elderly. It asserts that tenants of Eastwood Apartments are at serious risk for imminent harm. These allegations suggest that the Submetering Plan, as North Town Roosevelt, LLC apparently intends to implement, may jeopardize the tenants' health and safety where unpaid electric charges could be used to allege the non-payment of rent, and, as a result threaten the tenant with eviction. In light of the allegations, there is concern regarding the potential for imminent harm to the tenants of Eastwood Apartments and the potential violation(s) of Home Energy Fair Practices Act if action is not taken on an emergency basis pursuant to the State Administrative Procedure Act.

Subject: The readoption of the emergency rule staying the Commission Order in Case 08-E-0838 issued November 21, 2008.

Purpose: The readoption of the emergency rule staying the Commission Order in Case 08-E-0838 issued November 21, 2008.

Substance of emergency rule: On February 12, 2009, the Public Service Commission (Commission) adopted an emergency rule staying its Order approving the submetering of electricity at Eastwood Apartments, 510-580 Main Street, Roosevelt Island, New York, located in the service territory of Consolidated Edison Company of New York, Inc. On September 3, 2009 the Commission readopted for the third time the emergency rule staying its Order approving the submetering of electricity for an additional 60 days to allow Department of Public Service staff time to continue its investigation.

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. PSC-09-09-00008-EP, Issue of March 4, 2009. The emergency rule will expire November 1, 2009.

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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

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

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-0838SA5)

EMERGENCY RULE MAKING

The Readoption of the Emergency Rule Staying the Commission Order in Case 08-E-0836 Issued November 24, 2008

I.D. No. PSC-09-09-00009-E

Filing Date: 2009-09-03

Effective Date: 2009-09-03

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

Action taken: On September 3, 2009, the Public Service Commission readopted the emergency rule staying its Order approving the submetering of electricity at Schomburg Plaza, 1295 Fifth Avenue, 1309 Fifth Ave. and 1660 Madison Ave., New York, New York.

Statutory authority: Public Service Law, sections 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

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

Specific reasons underlying the finding of necessity: Compliance with the State Administrative Procedure Act is not possible because to do so could be detrimental to the health, safety and general welfare of tenants who are low income are elderly and/or are disabled. The petition for

rehearing states that Schomburg Plaza contains a large number of low-income Section 8 tenants, individuals with disabilities and the elderly. It asserts that tenants of Schomburg Plaza are at serious risk for imminent harm. These allegations suggest that the Submetering Plan, as Frawley Plaza, LLC apparently intends to implement, may jeopardize the tenants' health and safety where unpaid electric charges could be used to allege the non-payment of rent, and, as a result threaten the tenant with eviction. In light of the allegations, there is concern regarding the potential for imminent harm to the tenants of Schomburg Plaza and the potential violation(s) of Home Energy Fair Practices Act if action is not taken on an emergency basis pursuant to the State Administrative Procedure Act.

Subject: The readoption of the emergency rule staying the Commission Order in Case 08-E-0836 issued November 24, 2008.

Purpose: The readoption of the emergency rule staying the Commission Order in Case 08-E-0836 issued November 24, 2008.

Substance of emergency rule: On February 12, 2009, the Public Service Commission (Commission) adopted an emergency rule staying its Order approving the submetering of electricity at Schomburg Plaza, 1295 Fifth Avenue, 1309 Fifth Avenue and 1660 Madison Avenue, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. On September 3, 2009, the Commission readopted for the third time the emergency rule staying its Order approving the submetering of electricity for an additional 60 days to allow Department of Public Service staff time to continue its investigation.

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. PSC-09-09-00009-EP, Issue of March 4, 2009. The emergency rule will expire November 1, 2009.

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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

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

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-0836SA5)

EMERGENCY RULE MAKING

Readoption of the Emergency Rule Staying the Commission Order in Case 08-E-0837 Issued November 21, 2008

I.D. No. PSC-09-09-00010-E

Filing Date: 2009-09-03

Effective Date: 2009-09-03

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

Action taken: On September 3, 2009, the Public Service Commission readopted the emergency rule staying its Order approving the submetering of electricity at Metro North Apartments, 1940-1966 First Avenue and 420 East 102nd Street, New York, New York.

Statutory authority: Public Service Law, sections 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

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

Specific reasons underlying the finding of necessity: Compliance with the State Administrative Procedure Act is not possible because to do so could be detrimental to the health, safety and general welfare of tenants who are low income are elderly and/or are disabled. The petition for rehearing states that Metro North Apartments contains a large number of low-income Section 8 tenants, individuals with disabilities and the elderly. It asserts that tenants of Metro North Apartments are at serious risk for imminent harm. These allegations suggest that the Submetering Plan, as Metro North Owners, LLC apparently intends to implement, may jeopardize

the tenants' health and safety where unpaid electric charges could be used to allege the non-payment of rent, and, as a result threaten the tenant with eviction. In light of the allegations, there is concern regarding the potential for imminent harm to the tenants of Metro North Apartments and the potential violation(s) of Home Energy Fair Practices Act if action is not taken on an emergency basis pursuant to the State Administrative Procedure Act.

Subject: The readoption of the emergency rule staying the Commission Order in Case 08-E-0837 issued November 21, 2008.

Purpose: The readoption of the emergency rule staying the Commission Order in Case 08-E-0837 issued November 21, 2008.

Substance of emergency rule: On February 12, 2009, the Public Service Commission (Commission) adopted an emergency rule staying its Order approving the submetering of electricity at Metro North Apartments, 1940-1966 First Avenue and 420 East 102nd Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. On September 3, 2009, the Commission readopted for the third time the emergency rule staying its Order approving the submetering of electricity for an additional 60 days to allow Department of Public Service staff time to continue its investigation.

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. PSC-09-09-00010-EP, Issue of March 4, 2009. The emergency rule will expire November 1, 2009.

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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

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

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-0837SA5)

EMERGENCY RULE MAKING

The Readoption of the Emergency Rule Staying the Commission Order in Case 08-E-0839 Issued November 21, 2008

I.D. No. PSC-09-09-00011-E

Filing Date: 2009-09-03

Effective Date: 2009-09-03

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

Action taken: On September 3, 2009, the Public Service Commission readopted the emergency rule staying its Order approving the submetering of electricity at KNW Apartments, 1890 Lexington Avenue and 1990 Lexington Avenue, New York, New York.

Statutory authority: Public Service Law, sections 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

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

Specific reasons underlying the finding of necessity: Compliance with the State Administrative Procedure Act is not possible because to do so could be detrimental to the health, safety and general welfare of tenants who are low income are elderly and/or are disabled. The petition for rehearing states that KNW Apartments contains a large number of low-income Section 8 tenants, individuals with disabilities and the elderly. It asserts that tenants of KNW Apartments are at serious risk for imminent harm. These allegations suggest that the Submetering Plan, as KNW Apartments, LLC apparently intends to implement, may jeopardize the tenants' health and safety where unpaid electric charges could be used to allege the non-payment of rent, and, as a result threaten the tenant with eviction. In light of the allegations, there is concern regarding the potential for imminent harm to the tenants of KNW Apartments and the potential

violation(s) of Home Energy Fair Practices Act if action is not taken on an emergency basis pursuant to the State Administrative Procedure Act.

Subject: The readoption of the emergency rule staying the Commission Order in Case 08-E-0839 issued November 21, 2008.

Purpose: The readoption of the emergency rule staying the Commission Order in Case 08-E-0839 issued November 21, 2008.

Substance of emergency rule: On February 12, 2009, the Public Service Commission (Commission) adopted an emergency rule staying its Order approving the submetering of electricity at KNW Apartments, LLC, 1890 Lexington Avenue and 1990 Lexington Avenue, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. On September 3, 2009, the Commission readopted for the third time the emergency rule staying its Order approving the submetering of electricity for an additional 60 days to allow Department of Public Service staff time to continue its investigation.

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. PSC-09-09-00011-EP, Issue of March 4, 2009. The emergency rule will expire November 1, 2009.

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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

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

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-0839SA5)

NOTICE OF ADOPTION

Deferred Accounting Treatment and Rate Recovery of Unrecovered Property Tax Expenses

I.D. No. PSC-40-08-00017-A

Filing Date: 2009-09-03

Effective Date: 2009-09-03

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

Action taken: On 8/20/09, the PSC adopted an order approving the Petition of Consolidated Edison Company of New York, Inc. to use deferred accounting in relation to the assessed value increase for special franchise property in the amount of \$61.831 million.

Statutory authority: Public Service Law, section 66

Subject: Deferred accounting treatment and rate recovery of unrecovered property tax expenses.

Purpose: To approve a deferred accounting treatment and rate recovery of unrecovered property tax expenses.

Substance of final rule: The Commission, on August 20, 2009, adopted an order approving the Petition of Consolidated Edison Company of New York, Inc. to use deferred accounting in relation to the assessed value increase for special franchise property in the amount of \$61.831 million, 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-M-0901SA1)

NOTICE OF ADOPTION

Deferred Accounting Treatment and Rate Recovery of Property Tax Expenses

I.D. No. PSC-04-09-00007-A

Filing Date: 2009-09-03

Effective Date: 2009-09-03

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

Action taken: On 8/20/09, the PSC adopted an order denying the Petition of Consolidated Edison Company of New York, Inc. to defer \$14.558 million, as a result of New York City increasing its tax rates effective January 2009.

Statutory authority: Public Service Law, section 66

Subject: Deferred accounting treatment and rate recovery of property tax expenses.

Purpose: To deny a deferred accounting treatment and rate recovery of property tax expenses.

Substance of final rule: The Commission, on August 20, 2009, adopted an order denying the Petition of Consolidated Edison Company of New York, Inc. to defer \$14.558 million, as a result of New York City increasing its tax rates effective January 2009, 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-M-0901SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether the Proposed Provision of Water Service by Saratoga Water Services in the Town of Malta is in the Public Interest

I.D. No. PSC-38-09-00007-P

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

Proposed Action: The PSC is considering a petition by Saratoga Water Services, Inc. for the issuance of an Order waiving tariff provisions and approving terms of an agreement regarding the provision of water service in the Town of Malta, Saratoga County.

Statutory authority: Public Service Law, sections 4(1), 20(1) and 89-b

Subject: Whether the proposed provision of water service by Saratoga Water Services in the Town of Malta is in the public interest.

Purpose: Whether the Commission should issue an order approving the requested waiver and provision of water service.

Substance of proposed rule: The Commission is considering a Petition in which Saratoga Water Services, Inc. (Saratoga) seeks issuance of an Order (a) approving the terms and conditions of a certain "Agreement For The Provision of Water Service", dated November 7, 2007 (Agreement) as being in the public interest; (b) determining that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement, is in the public interest; (c) waiving Saratoga's tariff provisions to the extent they are inconsistent with the Agreement and (d) waiving the applicability of the provisions of 16 N.Y.C.R.R. Parts 501 and 502, to the extent they are inconsistent with the Agreement.

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, Secre-

tary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

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

(07-W-1445SP1)

Department of State

EMERGENCY RULE MAKING

Document Destruction Contractors

I.D. No. DOS-38-09-00002-E

Filing No. 1052

Filing Date: 2009-09-03

Effective Date: 2009-09-03

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

Action taken: Addition of Part 199 to Title 19 NYCRR.

Statutory authority: General Business Law, art. 39-G, section 899-bbb(12)(a)

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

Specific reasons underlying the finding of necessity: The legislature enacted statutory authority, with an effective date of October 1, 2008, for a new licensing category regarding contractors engaged in the business of document destruction. This law requires businesses that offer document destruction services to register with the Department of State, and enables the Secretary of State to promulgate such rules and regulations as are deemed necessary to effectuate its purposes. This law is necessary for the protection of the public to prevent the unlawful taking of personal identification information from documents disposed of by the public. The law limits the amount of documents containing sensitive personal information subject to misappropriation by ensuring the availability of qualified and reputable document destruction contractors. The law will work in concert with recently implemented federal disposal rules (16 CFR Part 682), and New York's Disposal Law (Chapter 65 of the Laws of 2006) which require businesses to take appropriate steps when disposing of personal information. In order to comply with these mandates, many businesses hire contractors that specialize in the destruction of records containing personal information. The new licensing category enacted by the NYS Legislature will ensure that information required to be destroyed under the federal Disposal Rule and New York's Disposal Law pursuant to a document destructions contract is disposed of properly by a contractor registered with the State of New York.

Subject: Document destruction contractors.

Purpose: To provide guidance regarding the process of applying for, and registering as, a document destruction contractor.

Text of emergency rule: Part 199 is added to 19 NYCRR to be entitled and read as follows:

19 NYCRR PART 199 Document Destruction Contractors

Section 199.1. Fingerprinting: principals and officers

(a) Applicants for registration as document destruction contractors must be fingerprinted, and the fingerprints must be taken by one of the following:

(1) an employee of the Department of State, Division of Licensing Services at designated locations and at appointed times, or at such other location designated by the Division of Licensing Services;

(2) a local police officer, a State police officer, a sheriff or deputy sheriff;

(3) a principal or officer of a document destruction contractor business; or

(4) a previously fingerprinted employee of security guard training school approved by the Division of Criminal Justice Services (Division).

(b) Each fingerprint card shall be signed and authenticated by the individual who took the fingerprints and shall state the individual's name along with his/her title of office or employment status.

(c) All fingerprints shall be taken on a form and in a manner approved by the Division of Criminal Justice Services.

Section 199.2. Investigation

Within five business days after receipt of an application, the Department of State (Department) shall transmit to the Division two sets of fingerprints and the fees required pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law, and amendments thereto, for the cost of the Division's full search and retain procedures. The results will be used to ascertain whether or not the applicant has been charged with or convicted of a serious offense and may cause to be conducted an investigation to verify the information contained in the application; provided, however, that the Department shall cause such investigation to be conducted for applicants whose application has not been submitted and verified pursuant to section eight hundred ninety-nine-bbb of General Business Law article 39-G. The Department, in consultation with the Division, may waive such background checks, investigations and fees if in its opinion, the applicant has been subject to previous background checks and investigation requirements which meet or exceed the requirements of this section. The Department, in consultation with the Division, may not be required to conduct background checks or investigations for applicants who are also employed as security guards or peace officers.

Section 199.3 Supervisory responsibility

A registrant/licensee has an affirmative duty to provide supervision of all employees and for all business activities. Such supervision shall consist of regular, frequent and consistent personal guidance, instruction, oversight and superintendence by the qualifying registration/license holder with respect to the general business conducted by the firm and all matters relating thereto.

Section 199.4 Business and employee records

(a) Each business licensed under this Part shall keep and maintain for a period of three years records of all transactions performed by the business.

(b) All records must be retained for longer periods, in the event there is any litigation pending concerning such records and/or employee. Litigation shall include investigation or administrative action by the Department of State, initiated by complaint from the general public or by the department.

(c) A business which is registered to conduct activities as a document destruction contractor must maintain employee and business records at a central location within New York State. This is applicable to all company and personnel records pertaining exclusively to the conduct of business in this State.

(d) Each registrant/licensee shall prepare and retain a statement of services and charges which has been agreed upon between the registrant/licensee and the consumer, a copy of which must be presented to the consumer. The consumer must be presented with a copy of any document signed by the registrant/licensee and consumer. Any agreement signed by a representative of the registrant/licensee and the consumer for services to be performed must be retained by the registrant/licensee in the business records of the firm.

(e) In conjunction with any transaction, each registrant/licensee shall identify any and all employees who conduct activities constituting document destruction services.

Section 199.5 Employee and employer responsibility

(a) Any person who is or has been an employee of a registered document destruction contractor shall not divulge to anyone other than his employer, except as may be required by law, any information acquired by him/her during such employment in respect to any of the work to which he/she shall have been assigned by such employer.

(b) It is the duty and obligation of an employer of any individual believed to have violated this section to divulge all known facts and circumstances to the Secretary of State or such person in the Department of State who may be designated.

Section 199.6 License revocation and suspension

Any person, firm, company, partnership, corporation or organization licensed under Article 39-G of the General Business Law which has its registration/license revoked or suspended by the Department of State shall be ineligible to employ other persons in any capacity to conduct document destruction services for the period of the revocation or suspension.

Section 199.7 Criminal convictions

Any applicant, principal or qualifier convicted of any felony or misdemeanor may be denied licensure or subjected to license revocation and suspension. Department of State discretion shall be exercised pursuant to the standards articulated in Article 23-A of the Correction Law.

Section 199.8 Notice of criminal conviction

Any registrant/licensee who is convicted of a crime as defined in the

Penal Law in this State or an offense which would constitute a crime if committed in New York in any other state or Federal or foreign jurisdiction, shall give notice of such conviction to the Department of State, Division of Licensing Services, at its Albany Office, by certified mail, return receipt requested, within 10 days from date of conviction. Such notice shall be given notwithstanding pendency of appeal.

Section 199.9 Advertising

All advertising placed by an individual or a business registered/licensed under this article must contain the following statement: "Registered with the N.Y.S. Department of State."

Section 199.10 Statement of licensure

All documents or receipts issued by an individual or business licensed pursuant to this article must contain the unique identification number issued to such individual or business and the phrase "Registered with the N.Y.S. Department of State."

Section 199.11 Contracts and agreements

(a) Consumers conducting business with an individual or firm licensed under this article shall receive a copy of any signed contract and/or agreement.

(b) All contracts and agreements used by an individual or firm licensed under this article shall include the following statement under the name of the business: "This business is registered with the New York Department of State, Division of Licensing Services."

Section 199.12 Enforcement

All principals, qualifiers and/or employees of the registered document destruction contractor shall be subject to the enforcement provisions contained in Article 39-G of the General Business Law. Service of process pursuant to said article, including but not limited to service of a notice of hearing to be conducted pursuant to the provisions of said article, shall be by certified mail sent to the last known registered or business address of the applicant or registered document destruction contractor.

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 December 1, 2009.

Text of rule and any required statements and analyses may be obtained from: Linda D. Cleary, Department of State, Division of Licensing Services, 80 South Swan St., 10th Fl., Albany NY 12201, (518) 473-2728, email: linda.cleary@dos.state.ny.us

Regulatory Impact Statement

1. Statutory Authority:

General Business Law Article 39-G, section 899-bbb (12)(a) authorizes the Secretary of State to promulgate such rules and regulations as are deemed necessary to effectuate the purposes of the article, which article contains new licensing/registration requirements for the discipline entitled "document destruction contractors".

2. Legislative Objectives:

General Business Law, Article 39-G, requires the Department of State to license and regulate document destruction contractors. The statute requires registrants/licenses to meet certain requirements in order to qualify and maintain registration as a document destruction contractor. The statutory intent behind Article 39-G is consumer protection.

3. Needs and Benefits:

The proposed rule making will protect consumers and meet the legislative intent in enacting Article 39-G. By setting forth specific regulations clarifying the procedures to be followed in obtaining approval from the Department of State to register and maintain registration as a document destruction contractor, registrants/licenses and prospective employees, as well as the public will be protected by ensuring that licensed document destruction contractors conduct their business in accordance with the principles set forth in General Business Law Article 39-G.

4. Costs:

a. Costs to regulated parties:

The rule making will not impose any new costs on document destruction contractors, beyond those imposed with their compliance with the statutory requirements of General Business Law Article 39-G. It is believed that there will be costs to the regulated public associated with obtaining the requisite NYS background check, estimated to be \$75. Regarding costs for fingerprints of principals, officers, or employees of the document destruction contractor, these are estimated to be approximately \$12 to \$30 for each set of fingerprints prepared and obtained pursuant to these rules and the statute. The regulated public will likely incur costs associated with record retention for those licensees who do not possess sufficient on-site storage for records. The cost of storage facilities varies depending on various factors such as location and size. It is estimated that the starting price for an off-site storage unit is approximately \$40.00 per month. It is not anticipated that the regulated public will incur any other costs.

b. Costs to the Department of State:

The Department of State does not anticipate any additional costs to the agency to implement and continue to administer the rule's requirements. The Department of State currently licenses and regulates in excess of twenty-eight different occupations. The Department did not hire additional staff to assist with the implementation and administration of the new document destruction contractor licensing requirements. Existing staff will also absorb the functions necessary to support the program and 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 clarifies the already mandated statutory requirement that all applications for licensure be accompanied by two sets of fingerprint cards for all principals and officers; prospective registrants/licenses are already required to satisfactorily complete applications for registration, with accompanying documentation. The rule delineates and specifies the paperwork and record keeping requirements imposed on licensees by General Business Law Article 39-G. The statute mandates, in part, that document destruction contractors be subject to investigation and supply documentation upon request, and this rule clarifies the requirements for document retention. The rule also requires that advertisements and certain business records contain the license number and/or a statement that the licensee is licensed by the Department of State.

7. Duplication:

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

8. Alternatives:

The Department of State considered not proposing any regulations, however, since subpart 12 of § 899-bbb requires that the Secretary of State shall promulgate such rules and regulations as are deemed necessary to effectuate the purposes of the legislation, it was deemed appropriate and necessary that the Department of State propose regulations to clarify the legislation. It was decided that not having any regulations would disadvantage both the regulated public and the Department of State insofar as certain vague statutory provisions would remain undefined and result in confusion and difficulties with enforcement. As a result, the Department of State is only proposing those regulations deemed necessary at this point in time, and has determined to hold in abeyance the possible need to file additional regulations to clarify and/or define other statutory issues.

9. Federal Standards:

There are no federal standards regulating the registration of document destruction contractors, although there are federal standards regulating the disposal of personal information found in a federal Disposal Rule (16 CPF Part 682), and New York has a Disposal Law (Chapter 65 of the Laws of 2006), which comports with the federal requirements. The proposed rulemaking does not exceed any existing federal standard.

10. Compliance Schedule:

The rule making will be effective as of the date of adoption. Prospective registrants/licenses are already required to register pursuant to the statutory provisions of Article 39-G, on or before October 1, 2008, and are on notice of the Secretary's power to enact regulations in concert therewith, and will therefore be able to comply with this rule as of its effective date.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed rulemaking creates a framework for the successful process of businesses registering for approval to act as document destruction contractors, and to employ qualified workers to conduct services related thereto, as well as to allow for the continued qualifications for renewal of same, and the responsibilities of these companies for document preparation and retention, for ensuring the qualifications of workers, and for the standards by which such businesses shall operate.

The rule does not apply to local governments.

2. Compliance requirements:

The business of document destruction is now being regulated under the auspices of the Department of State (DOS), and any companies or persons meeting the criteria for registration must do so. The proposed rules are intended to amplify the legislation, and to clarify specific requirements for registration. Further, pursuant to the statute, the Department is required to publish and make available a list of registered document destruction contractors who have properly qualified and registered with the Department. By statute, the list of registered document destruction contractors is to be made available to any interested party by way of online viewing on the Department's website, and also by permitting an interested party to obtain a copy thereof, at a cost to be determined by the Department, which the rules now clarify to be a minimal amount. The proposed rule provides the mechanism for compliance.

3. Professional services:

Small businesses will not need professional services in order to comply with this rule.

4. Compliance costs:

Registrant licensees will not incur any significant compliance costs associated with these rules, although there will be compliance costs associated with obtaining the requisite fingerprints of the principals, officers and/or qualifiers for the registrant contractors, and for producing the proper identification cards. The rules do not mandate that any businesses will incur significant expense beyond the expenses made necessary in order to comply with the statutory requirements.

5. Economic and technological feasibility:

Small businesses will not incur any additional costs or require technical expertise as a result of the implementation of these rules, beyond the requirements already placed upon small businesses which are required to comply with the statute.

6. Minimizing adverse economic impact:

DOS did not identify any alternatives which would provide relief for registrant contractors and at the same time be less restrictive and less burdensome on them in terms of compliance. This rule clarifies compliance requirements.

7. Small business and local government participation:

No comment has been received to the enacted legislation, and no comment has yet been received from the anticipated registrant pool, or the public. Simultaneously with the adopting of the rulemaking as an emergency adoption, the proposed rulemaking has been posted on the Department's website in an attempt to alert any interested parties and to seek public comment.

Rural Area Flexibility Analysis

This rule does not impose any adverse impact on rural areas. The rule complements the statutory adoption of the new licensing category of document destruction contractors, such that the procedures for obtaining and renewing registration in this area of business employment will be clear and readily apparent to the public. The Department of State has not received any objection to these procedures from approved providers.

Job Impact Statement

The proposed rule will not have a substantial adverse affect on jobs and employment opportunities for licensed document destruction contractors insofar as Article 39-G of the General Business Law already requires that such qualifying companies register with the Secretary of State. This rule making merely codifies the procedure to obtain Department of State approval to offer and provide services as a registered document destruction contractor.

EMERGENCY RULE MAKING

Firefighter Training

I.D. No. DOS-38-09-00005-E

Filing No. 1053

Filing Date: 2009-09-03

Effective Date: 2009-09-03

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

Action taken: Addition of Part 438 to Title 19 NYCRR.

Statutory authority: Executive Law, section 156(6); L. 2006, ch. 615

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

Specific reasons underlying the finding of necessity: Chapter 615 of the Laws of 2006 required that regulations regarding firefighter training be adopted by February 12, 2007. Regulations have been adopted on an emergency basis and this rule keeps the regulations in effect until a permanent rule is adopted.

Subject: Firefighter training.

Purpose: To set forth standards concerning the state firefighter training program.

Substance of emergency rule: PART 438

MINIMUM STANDARDS REGARDING OUTREACH FIRE TRAINING PROGRAM

Section 438.1 Purpose. The purpose of this rule is to implement the requirements of subdivision 6 of section 156 of the Executive Law, as enacted by Chapter 615 of the Laws of 2006. This subdivision empowers the State Fire Administrator to plan, coordinate, and provide training related to fire and arson prevention and control for paid and volunteer firefighters and governmental officers and employees. Subdivision 6 also directs the Office of Fire Prevention and Control (OFPC) to adopt rules and regulations relating to training, including training standards, the al-

location of training hours to counties and the establishment of a uniform procedure for counties to request and OFPC to provide additional training hours.

Section 438.2 contains definitions of terms used in Part 438.

Section 438.3 describes training standards to guide OFPC in its implementation of the rule including instructor and student qualifications, live fire training requirements, and a listing of the standards, manuals, statutes, and regulations which will be used to provide the training authorized by subdivision 6 of section 156 of the Executive Law.

Section 438.4 deals with firefighter training hours, course allocations and scheduling procedures delivered through the Outreach Training Program.

Section 438.5 deals with the requirements and restrictions associated with creating and maintaining a supplemental firefighter training program.

Section 438.6 deals with the requirements and restrictions associated with creating and maintaining a municipal training program.

Section 438.7 deals with the requirements and restrictions associated with creating and maintaining a fire brigade training program.

Section 438.8 deals with firefighter training course allocations and scheduling procedures delivered through the Regional Training Program and Residential Training Program.

Section 438.9 deals with restrictions relating to the state fire training programs.

Section 438.10 deals with the State Fire Administrator's ability to suspend and/or terminate authorization to deliver state fire training courses if an officer, instructor or program violates one or more of the provisions of this Part.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires December 1, 2009.

Text of rule and any required statements and analyses may be obtained from: Elisha S. Tomko, Esq., Department of State, 99 Washington Avenue, Albany, NY 12231, (518) 474-6740

Regulatory Impact Statement

1. STATUTORY AUTHORITY

Section 156(6) of the Executive Law requires that the Office of Fire Prevention and Control of the Department of State (OFPC) provide fire and arson prevention and control training to firefighters and related governmental officers and employees. This section requires OFPC to adopt rules related to such training. These rules must include statements concerning training standards used by OFPC, the process by which OFPC allocates training hours to counties, and a uniform procedure for counties to request and OFPC to provide additional training hours.

2. LEGISLATIVE OBJECTIVES

The legislative objectives behind section 156(6) are to make the state training program more transparent, addressing the following processes: allocation of training hours to counties; the uniform procedure for counties to request and OFPC to provide additional training hours; and the training standards which OFPC and its representatives will follow when it delivers training. This rule fulfills the legislative objectives.

3. NEEDS AND BENEFITS

Section 156(6) of the Executive Law requires that OFPC adopt a rule related to firefighter training. Adoption of this rule would add transparency to the process by which firefighter training hours are allocated to counties, describe the training standards which will be followed by OFPC when it delivers training, establish the qualifications of instructors delivering state fire training courses and prescribe a uniform procedure for counties to request and OFPC to provide additional training hours.

4. COSTS

a. Cost to regulated parties for the implementation of and continuing compliance with the proposed rule.

Fire departments would experience no additional out-of-pocket costs if the rule is adopted. The equipment and facilities required by the training provided for in this rule are already in the possession of these departments.

b. Costs to the Agency, the State and Local Governments for the Implementation and Continuation of the Rule.

This rule would not impose any additional costs on the State or local governments. The Department of State is currently appropriated approximately \$1,500,000 per year for outreach firefighter training.

County participation in the Supplemental Training Program element of this rule is completely voluntary. Furthermore, each county chooses its level of participation in the supplemental program. Since county participation in the supplemental program is purely voluntary, attendant costs would be voluntarily incurred. Approximately 10 counties currently participate in the Supplemental Training Program and incur training costs for a county fire instructor at an estimated rate of between \$20 and \$22 per hour.

5. LOCAL GOVERNMENT MANDATES

This rule making will not impose any program, service, duty or responsibility upon counties, cities, towns, villages, school districts, fire

districts or other special districts. Participation in the firefighter training provided for in this rule is voluntary.

6. PAPERWORK

Several new forms would be required as a result of the rule:

County fire coordinators desiring that training be provided to fire departments within their jurisdiction will be required to answer a survey related to such training and submit a proposed training schedule.

If this rule is adopted, state fire instructors, municipal fire instructors, and county fire instructors would be required to complete student attendance cards.

7. DUPLICATION

No rules or other legal requirements of either the state or federal government exist at the present time which duplicate, overlap, or conflict with the proposed rule.

8. ALTERNATIVES

Section 156(6) of the Executive Law requires that OPFC adopt a rule which deals with firefighter training. This section requires that the rule describe the process by which firefighter training hours are allocated to counties, the training standards which will be followed by OFPC when it delivers such training, and prescribe a uniform procedure for counties to request and OFPC to provide additional training hours.

The Department of State considered several alternatives to this rule but established this rule to ensure public safety and compliance with the current federal regulations related to training. For instance, the Department of State considered assigning less state fire instructors per county, but needed to assign 4 instructors per county based on safety concerns, workload and the National Fire Protection Association standard for a required number of instructors based on student enrollment for certain firefighter training, such as live fire. The Department of State also considered using only full-time staff to conduct firefighter training statewide, but it would be cost prohibitive to consider that alternative. Another example of an alternative that was given consideration was the idea of removing pre-requisites which are required for training courses, but based on the hazardous nature of firefighting and the need for skills progression, such an alternative was not advisable.

9. FEDERAL STANDARDS

No standards have been set by the federal government for the same or similar subject areas addressed by this proposed rule.

10. COMPLIANCE SCHEDULE

Fire departments interested in receiving the training which is provided for in this proposed rule can comply immediately with the requirements of the rule.

Regulatory Flexibility Analysis

1. Effect of rule

The proposed rule potentially would affect all of the counties and all of the approximately 1850 fire departments located in New York State. The proposed rule would not affect small businesses located in New York State.

2. Compliance requirements

Counties and fire departments wishing to avail themselves of the training offered by the proposed rule would be required to submit a proposed fire training schedule to the Office of Fire Prevention and Control of the Department of State.

3. Professional services

Counties and fire departments will not need any additional professional services in order to comply with the proposed rule.

4. Compliance costs

Fire departments would experience no additional out-of-pocket costs if the rule is adopted. The equipment and facilities required by the training provided for in this rule are already in the possession of these departments.

This rule would not impose any additional costs on local governments. The Department of State is currently appropriated approximately \$1,500,000 per year for outreach firefighter training.

County participation in the Supplemental Training Program element of this rule is completely voluntary. Furthermore, each county chooses its level of participation in the supplemental program. Since county participation in the supplemental program is purely voluntary, attendant costs would be voluntarily incurred. Approximately 10 counties currently participate in the Supplemental Training Program and incur training costs for a county fire instructor at an estimated rate of between \$20 and \$22 per hour.

5. Economic and technological feasibility

The proposed rule sets forth a voluntary process whereby counties and fire departments may make requests for firefighter training. The only requirement that the rule imposes on these counties and fire departments is that they make requests for this training. It is therefore economically and technologically feasible for these counties and fire departments to comply with this rule.

6. Minimizing adverse impact

The proposed rule sets forth a voluntary process whereby counties and

fire departments may make requests for firefighter training. Since the rule would regulate the administration of a state program rather than the activities of counties and fire departments, engaging in this voluntary process would not have any adverse economic impact on these entities.

7. Small business and local government participation

Representatives of fire departments and local governments participated in legislative hearings at which they urged the implementation of a more transparent process for the allocation of firefighter training resources. This resulted in the passage of Chapter 615 of the Laws of 2006, which requires the promulgation of these rules.

OFPC has reached out to the regulated parties, including County Fire Coordinators, State Fire Instructors, Regional Fire Administrators and Municipal Training Officers to provide them with the processes and procedures OFPC will be following and requiring with respect to the state fire training program. OFPC has provided copies of the rulemaking to the regulated parties. In addition, this rule has been discussed at the instructor's conferences, the regional state fire administrators conference, county fire coordinators conferences, Association of State Fire Chiefs conference and it has been posted on the Office of Fire Prevention of Control's website. To date, the Department of State has not received any feedback based on its outreach.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas

The proposed rule would apply throughout New York State. All of the counties and all of the approximately 1850 fire departments in New York State, including those located in rural areas as that term is defined in section 102(10) of the State Administrative Procedure Act ("SAPA"), would potentially be affected by the rule.

The proposed rule would not regulate any activities of private entities in rural areas of the State.

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

Counties wishing to avail themselves of the training offered by the proposed rule would be required to submit a proposed fire training schedule to the Office of Fire Prevention and Control of the Department of State. Counties and fire departments located in rural areas will not need any additional professional services in order to comply with the proposed rule.

3. Costs

Fire departments would experience no additional out-of-pocket costs if the rule is adopted. The equipment and facilities required by the training provided for in this rule are already in the possession of these departments.

This rule would not impose any additional costs on local governments. The Department of State is currently appropriated approximately \$1,500,000 per year for outreach firefighter training.

County participation in the Supplemental Training Program element of this rule is completely voluntary. Furthermore, each county chooses its level of participation in the supplemental program. Since county participation in the supplemental program is purely voluntary, attendant costs would be voluntarily incurred. Approximately 10 counties currently participate in the Supplemental Training Program and incur training costs for a county fire instructor at an estimated rate of between \$20 and \$22 per hour.

4. Minimizing adverse impact

The proposed rule sets forth a voluntary process whereby counties may make requests for firefighter training. The rule would regulate the administration of a state program rather than the activities of public or private entities located in rural areas. Since this process is voluntary, it would not have any adverse economic impact on rural areas of New York State.

5. Rural area participation

Representatives of rural areas participated in legislative hearings at which they urged the implementation of a more transparent process for the allocation of firefighter training resources. This resulted in the passage of Chapter 615 of the Laws of 2006.

OFPC has reached out to the regulated parties, including County Fire Coordinators, State Fire Instructors, Regional Fire Administrators and Municipal Training Officers to provide them with the processes and procedures OFPC will be following and requiring with respect to the state fire training program. OFPC has provided copies of the rulemaking to the regulated parties. In addition, this rule has been discussed at the instructor's conferences, the regional state fire administrators conference, county fire coordinators conferences, Association of State Fire Chiefs conference and it has been posted on the Office of Fire Prevention of Control's website. To date, the Department of State has not received any feedback based on its outreach.

Job Impact Statement

This rule will not have any substantial adverse impact on jobs and employment opportunities. In fact, this rule may result in the employment of sev-

eral additional Office of Fire Prevention and Control fire protection specialists and temporary part-time instructors by the Department of State.

Urban Development Corporation

EMERGENCY RULE MAKING

Economic Development and Job Creation Throughout New York State and Preservation of Public Health and Public Safety

I.D. No. UDC-38-09-00006-E

Filing No. 1058

Filing Date: 2009-09-04

Effective Date: 2009-09-04

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

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

Statutory authority: Urban Development Corporation Act, L. 2006, ch. 109, section 5(4); L. 1968, ch. 174

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

Specific reasons underlying the finding of necessity: Effective provision of economic development assistance in accordance with the enabling legislation (including recent amendments thereto) requires the creation of the Rule to address dangers posed by vacant, abandoned, surplus or condemned buildings.

Subject: Economic development and job creation throughout New York State and preservation of public health and public safety.

Purpose: The Rule provides the framework for administration of the Restore New York's Communities Initiative.

Text of emergency rule: RESTORE NEW YORK'S COMMUNITIES INITIATIVE

Section 4245.1 Purpose

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

Section 4245.2 Definitions

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

(a) "deconstruction" shall mean the careful disassembly of buildings of architectural or historic significance with the intent to rehabilitate, reconstruct the building or salvage the material disassembled from the building;

(b) "economically distressed community" shall mean communities determined by the Commissioner of Economic Development based on criteria that are indicative of economic distress including numbers of persons receiving public assistance, poverty rates, unemployment rates, rate of employment decline, population loss, per capita income change, decline in economic activity and private investment to the extent that they are measurable at the municipal level and such other criteria indicators as the Commissioner deems appropriate to be in need of economic assistance;

(c) "municipality" shall mean a municipal subdivision that is a city, town, or village;

(d) "property assessment list" shall mean a list (in such form as the Corporation may require) compiled by a municipality containing description (location, size and residential or commercial nature of each building, and whether the building is proposed to be demolished, deconstructed, rehabilitated or reconstructed) and an assessment of whether each building is vacant, abandoned, surplus or condemned within its jurisdiction;

(e) "reconstruction" shall mean the construction of a new building which is similar in architecture, size and purpose to a previously existing building at such location, provided, however, to the extent possible, all

such reconstruction program real property shall be architecturally consistent with nearby and adjacent properties or in a manner consistent with a local revitalization or urban development plan;

(f) "rehabilitation" shall mean structural repairs, mechanical systems repair or replacement, repairs related to deferred maintenance, emergency repairs, energy efficiency upgrades, accessibility improvements, mitigation of lead based paint hazards, and other repairs which result in a significant improvement to the property, provided, however, to the extent possible, all such rehabilitation program real property shall be architecturally consistent with nearby and adjacent properties or in a manner consistent with a local revitalization or urban development plan;

Section 4245.3 Request for Proposals

The Corporation may, within available appropriations, issue requests for proposals to municipalities at least once per fiscal year to provide grants to municipalities, for demolition, deconstruction, reconstruction, and rehabilitation projects set forth in a property assessment list submitted by the municipality.

Section 4245.4 Eligibility

(a) To be eligible for the demolition and deconstruction program or rehabilitation and reconstruction program assistance, as described in sections 4245.5 and 4245.6 of this Part, municipalities must conduct an assessment of vacant, abandoned, surplus or condemned buildings in communities within their jurisdiction. Such real property may include both residential and commercial real properties. Such properties shall be selected for the purpose of revitalizing urban centers, encouraging commercial investment and adding value to the municipal housing stock. Such information shall be set forth in the property assessment list. Such properties shall be published in a local daily newspaper for no less than three consecutive days. Additionally, the municipality shall conduct a public hearing in the municipality where the buildings identified on the property assessment list are located. Such public hearing shall be held before the Corporation accepts an application.

(b) 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 4245.5 Demolition and Deconstruction Projects

Demolition and deconstruction projects for real property in need of demolition or deconstruction on the property assessment list may receive grants of up to twenty thousand dollars per residential real property. The Corporation shall determine the cost of demolition and deconstruction of commercial properties on a per-square foot basis and establish maximum grant awards accordingly, and such costs and maximum grant award amounts shall be made available to eligible municipalities. The Corporation shall also consider geographic differences in the cost of demolition and deconstruction in the establishment of maximum grant awards.

Section 4245.6 Rehabilitation and Reconstruction Projects

Rehabilitation and reconstruction projects for real property in need of rehabilitation or reconstruction on the property assessment list may receive grants of up to one hundred thousand dollars per residential real property. The Corporation shall determine the cost of rehabilitation and reconstruction of commercial properties on a per-square foot basis and establish maximum grant awards accordingly, and such costs and maximum grant award amounts shall be made available to eligible municipalities. The Corporation shall also consider geographic differences in the cost of rehabilitation and reconstruction in the establishment of maximum grant awards. Provided, however, to the extent possible, all such rehabilitation and reconstruction projects real property shall be rehabilitated or reconstructed in a manner that is architecturally consistent with nearby and adjacent properties or consistent with a local revitalization or urban development plan. Provided, further, such grants may be used for site development needs including but not limited to water, sewer and parking as specified in the grant agreement entered into between the Corporation and the municipality.

Section 4245.7 Required Considerations and Priorities

In considering the awarding of initiative grant assistance, the Corporation:

(a) shall review all qualified applications to determine the awards to be made pursuant to sections 4245.5 and 4245.6 of this Part and shall, to the fullest extent possible, provide such assistance in a geographically proportionate manner throughout the State based on the qualified applications received pursuant to this section.

(b) shall give priority in granting such assistance to eligible properties that have approved applications or are receiving grants pursuant to other state or federal redevelopment, remediation or planning programs including, but not limited to, the brownfield opportunity areas program adopted pursuant to section 970-r of the General Municipal Law or empire zone development plans pursuant to article 18-B of the General Municipal Law.

(c) shall give priority to properties in economically distressed communities.

Section 4245.8 Required Matching Contribution

A municipality that is granted an award or awards under this section shall provide a matching contribution of no less than ten percent of the aggregated award or awards amount. Such matching contribution may be in the form of a financial and/or in kind contribution by the municipality, a government entity, or a private entity. In establishing the matching contribution, a municipality's financial contribution may include grants from federal, state and local entities. In kind contributions may include but shall not be limited to the efforts of municipalities to conduct an inventory and assessment of vacant, abandoned, surplus, condemned, and deteriorated properties and to manage and administer grants pursuant to sections 4245.5 and 4245.6 of this Part.

Section 4245.9 Application and Approval Process

(a) Promptly after receipt of the application, including the property assessment list, the Corporation shall review the application for eligibility, completeness, and conformance with the applicable requirements of the Act and this Part. Applications shall be processed in full compliance with the applicable provisions of section 16-n of the Act as it may be in effect from time to time.

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

Section 4245.10 Confidentiality

To the extent permitted by law and regulations, 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 initiative assistance from the Corporation, which is submitted by or on behalf of such person or entity to the Corporation in connection with an application for initiative assistance, shall be confidential and exempt from public disclosures.

Section 4245.11 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 15-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 December 6, 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:

Chapter 109, Laws of 2006 (Unconsolidated Laws, section 6266-n. Another Unconsolidated Laws section 6266-n was added by another act) authorized the Urban Development Corporation, d/b/a Empire State Development Corporation (the "Corporation") to implement the Restore New York's Communities Initiative (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers municipalities assistance for the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities. Section 5(4) of the New York State Urban Development Corporation (UDC) Act (Unconsolidated Laws, section 6255(4)), which was originally enacted as Chapter 174 of the Laws of 1968, authorizes the Corporation to make rules and regulations with respect to its projects, operations, properties and facilities, in accordance with section 102 of the Executive Law.

2. Legislative Objective:

The objective of the statute authorizing the Program is to revitalize urban areas and stabilize neighborhoods to attract industry and people to urban areas thereby improving municipal finances, giving municipal governments the wherewithal to grow their tax and resource base and attract individuals, families, industry and commercial enterprises, and lessen distressed municipalities' reliance on state aid, achieving stable and diverse economies and vibrant communities.

3. Need and Benefits:

The Program's legislation assists the revitalization of urban areas and stabilization of neighborhoods throughout the State by providing the following types of assistance:

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

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

c) Demolition and Deconstruction Grants and Rehabilitation and Reconstruction Grants for commercial properties. The Corporation shall determine the cost of demolition/deconstruction and rehabilitation/reconstruction of commercial properties on a per-square foot basis and establish maximum grant awards accordingly. The Corporation shall also consider geographic differences in the establishment of maximum grant awards.

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

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

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

(i) that the proposed project would promote the economic health of the State by facilitating the revitalization of urban areas and the stabilization of neighborhoods within a political subdivision or region of the State or would enhance or help to maintain the economic viability the State;

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

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

3. Costs:

The funding source is appropriation funds (2006-07 Supplemental Bill (S8470/A12044) page 227, lines 8-14). \$150,000,000 is available for 2008. Discussions regarding funds were conducted by Ray Richardson on behalf of the Corporation and Andrew Kennedy on behalf of the Division of Budget.

4. Local Government Mandates:

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

5. Paperwork:

As instructed by the legislation, a Request for Proposal was developed for this program.

6. Duplication:

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

7. Federal Standards:

There are no applicable federal government standards which apply.

8. Alternatives:

The Corporation considered the alternative of not promulgating this rule. However, this rulemaking was necessary in order to complete aspects of the Program that were not addressed by the enacting legislation.

9. Compliance Schedule:

No significant time will be needed for compliance.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The proposed Rule will provide the framework for administration of the Restore New York's Communities Initiative (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers municipalities assistance for the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities.

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

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

The Program emphasizes the effective provision of economic development throughout New York State. Program funds are available only to municipalities. Small business will benefit from the aid to municipalities provided for this economic development. Therefore, the effect of the Rule on small business and local government will be beneficial.

2. Compliance Requirement:

No affirmative acts will be needed to comply.

3. Professional Services:

No professional services will be needed to comply.

4. Compliance Costs:

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

5. Economic Feasibility:

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

6. Minimizing Adverse Impact:

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

7. Small Business and Local Participation:

Program funds are available only to municipalities. Comments were received from applicants under the Program including Albany, Syracuse, Yonkers, Buffalo, Utica, Watervliet, Rochester, Binghamton, Elmira, Wappingers Falls and Amherst. The response was overwhelmingly positive. There were some requests to reduce the requirements of the application process. However, given that the Rule's application requirements are prescribed by the enabling legislation, the corporation has determined that this is not possible.

There were also requests to expand the types of property covered and the types of entities eligible for assistance. However these are legislative matters beyond the scope of the corporation's powers.

Rural Area Flexibility Analysis

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

Job Impact Statement

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