

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.

Banking Department

EMERGENCY RULE MAKING

The Business Conduct of Mortgage Loan Servicers

I.D. No. BNK-33-10-00001-E

Filing No. 778

Filing Date: 2010-07-30

Effective Date: 2010-10-01

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

Action taken: Addition of Part 419 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: The legislature required the registration of mortgage loan servicers as part of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the “Mortgage Lending Reform Law”) to help address the existing foreclosure crisis in the state. By registering servicers and requiring that servicers engage in the business of mortgage loan servicing in compliance with rules and regulations adopted by the Banking Board or Superintendent, the legislature intended to help ensure that servicers conduct their business in a manner acceptable to the Department. However, since the passage of the Mortgage Lending Reform Law, foreclosures continue to pose a significant threat to New York homeowners. The Department continues to receive complaints from homeowners and housing advocates that mortgage loan servicers’ response to delinquencies and their efforts at loss mitigation are inadequate. These rules are intended to provide clear guidance to mortgage loan servicers as to the procedures and standards they should

follow with respect to loan delinquencies. The rules impose a duty of fair dealing on loan servicers in their communications, transactions and other dealings with borrowers. In addition, the rule sets standards with respect to the handling of loan delinquencies and loss mitigation. The rule further requires specific reporting on the status of delinquent loans with the Department so that it has the information necessary to assess loan servicers’ performance.

In addition to addressing the pressing issue of mortgage loan delinquencies and loss mitigation, the rule addresses other areas of significant concern to homeowners, including the handling of borrower complaints and inquiries, the payment of taxes and insurance, crediting of payments and handling of late payments, payoff balances and servicer fees. The rule also sets forth prohibited practices such as engaging in deceptive practices or placing homeowners’ insurance on property when the servicer has reason to know that the homeowner has an effective policy for such insurance.

Subject: The business conduct of mortgage loan servicers.

Purpose: To implement the purpose and provisions of the Mortgage Lending Reform Law of 2008 with respect to mortgage loan servicers.

Substance of emergency rule: Section 419.1 contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including “Servicer”, “Qualified Written Request” and “Loan Modification”.

Section 419.2 establishes a duty of fair dealing for Servicers in connection with their transactions with borrowers, which includes a duty to pursue loss mitigation with the borrower as set forth in Section 419.11.

Section 419.3 requires compliance with other State and Federal laws relating to mortgage loan servicing, including Banking Law Article 12-D, RESPA, and the Truth-in-Lending Act.

Section 419.4 describes the requirements and procedures for handling to consumer complaints and inquiries.

Section 419.5 describes the requirements for a servicer making payments of taxes or insurance premiums for borrowers.

Section 419.6 describes requirements for crediting payments from borrowers and handling late payments.

Section 419.7 describes the requirements of an annual account statement which must be provided to borrowers in plain language showing the unpaid principal balance at the end of the preceding 12-month period, the interest paid during that period and the amounts deposited into and disbursed from escrow. The section also describes the Servicer’s obligations with respect to providing a payment history when requested by the borrower or borrower’s representative.

Section 419.8 requires a late payment notice be sent to a borrower no later than 17 days after the payment remains unpaid.

Section 419.9 describes the required provision of a payoff statement that contains a clear, understandable and accurate statement of the total amount that is required to pay off the mortgage loan as of a specified date.

Section 419.10 sets forth the requirements relating to fees permitted to be collected by Servicers and also requires Servicers to maintain and update at least semi-annually a schedule of standard or common fees on their website.

Section 419.11 sets forth the Servicer’s obligations with respect to handling of loan delinquencies and loss mitigation, including an obligation to make reasonable and good faith efforts to pursue appropriate loss mitigation options, including loan modifications. This Section includes requirements relating to procedures and protocols for

handling loss mitigation, providing borrowers with information regarding the Servicer's loss mitigation process, decision-making and available counseling programs and resources.

Section 419.12 describes the quarterly reports that the Superintendent may require Servicers to submit to the Superintendent, including information relating to the aggregate number of mortgages serviced by the Servicer, the number of mortgages in default, information relating to loss mitigation activities, and information relating to mortgage modifications.

Section 419.13 describes the books and records that Servicers are required to maintain as well as other reports the Superintendent may require Servicers to file in order to determine whether the Servicer is complying with applicable laws and regulations. These include books and records regarding loan payments received, communications with borrowers, financial reports and audited financial statements.

Section 419.14 sets forth the activities prohibited by the regulation, including engaging in misrepresentations or material omissions and placing insurance on a mortgage property without written notice when the Servicer has reason to know the homeowner has an effective policy in place.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires October 27, 2010.

Text of rule and any required statements and analyses may be obtained from: Jane M. Azia, NYS Banking Department, 1 State Street, New York, NY 10004, (212) 709-3503, email: jane.azia@banking.state.ny.us

Regulatory Impact Statement

1. Statutory Authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2)(b-1) and 595-b.)

Subsection (1) of Section 590 of the Banking Law was amended by the Mortgage Lending Reform Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i).)

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent. The registration requirements do not apply to an "exempt organization," licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations.

New Paragraph (d) was added to Subsection (5) of Section 590 by the Mortgage Lending Reform Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be promulgated by the Banking Board or prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Mortgage Lending Reform Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Mortgage Lending Reform Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Mortgage Lending Reform Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Mortgage Lending Reform Law to extend the Superintendent's examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Mortgage Lending Reform Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Mortgage Lending Reform Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for mortgage loan servicer registration and branch applications are established in accordance with Banking Law Section 18-a.

2. Legislative Objectives.

The Mortgage Lending Reform Law was intended to address various problems related to residential mortgage loans in this State. The law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there has heretofore been no general regulation of servicers by the state or the Federal government.

The Mortgage Lending Reform Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The new law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Banking Board and the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Banking Board and the superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, addresses the first component of the mortgage servicing statute by setting standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as setting financial responsibility standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. This part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices.

Collectively, the provisions of Part 418 and 419 implement the

intent of the Legislature to register and supervise mortgage loan servicers.

3. Needs and Benefits.

Governor Paterson reported in early 2008 that there were more than 52,000 foreclosure filings in 2007, or approximately 1,000 per week. That number increased in 2008, averaging approximately 1,100 per week in the first quarter. While there was some drop in foreclosure filings in 2009 to just over 50,000, the crisis continues and the problems that have affected so many have been found to implicate not only the origination of residential mortgage loans, but also their servicing and foreclosure. The Mortgage Lending Reform Law adopted a multifaceted approach to the problem. It addressed a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Until July 1, 2009, when the mortgage loan servicer registration provisions first became effective, the Department regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also act as agents for owners of mortgages in negotiations relating to loss mitigation when a mortgage becomes delinquent. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; erroneously force-placing insurance when borrowers already have insurance; and failing to engage in prompt and appropriate loss mitigation efforts.

More than 2,000,000 loans on residential one-to-four family properties are being serviced in New York. Of these over 8% were seriously delinquent as of the fourth quarter of 2009. Despite various initiatives adopted at the state level and the creation federal programs such as Making Home Affordable to encourage loan modifications and help at risk homeowners, the number of loans modified have not kept pace with the number of foreclosures. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

As noted above, Part 418, initially adopted on an emergency basis on July 1 2009, relates to the first component of the mortgage servicing statute - the registration of mortgage loan servicers. It was intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers. It also provided for the suspension, revocation and termination of licenses involved in wrongdoing and establishes minimum financial standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers and establishes certain consumer protections for homeowners whose residential mortgage loans are being serviced. These regulations provide standards and procedures for servicers to follow in their course of dealings with borrowers, including the handling of borrower complaints and inquiries, payment of taxes and insurance premiums, crediting of borrower payments, provision of annual statements of the borrower's account, authorized fees, late charges and handling of loan delinquencies and loss mitigation. Part 419 also identifies practices that are prohibited and imposes certain reporting and record-keeping requirements to enable the Superintendent to determine the servicer's

compliance with applicable laws, its financial condition and the status of its servicing portfolio.

Since the adoption of Part 418, 45 entities have pending applications or been approved for registration and nearly 180 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements.

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and will be required to comply with the conduct of business and consumer protection rules applicable to mortgage loan servicers.

These regulations will improve accountability and the quality of service in the mortgage loan industry and will help promote alternatives to foreclosure in the state.

4. Costs.

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC and OTS publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. The State Foreclosure Working Group, consisting of thirteen state Attorneys General and three state Banking regulators, including New York, collects and reports on similar data from the largest subprime mortgage servicers. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and should assist in decreasing the number of foreclosures in this state.

The regulations will not result in any fiscal implications to the State. The Banking Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local Government Mandates.

None.

6. Paperwork.

Part 419 requires mortgage loan servicers to keep books and re-

cords related to its servicing for a period of three years and to produce quarterly reports and financial statements as well as annual and other reports requested by the Superintendent. It is anticipated that the quarterly reporting relating to mortgage loan servicing will be done electronically and would therefore be virtually paperless. The other recordkeeping and reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations. The various federal laws that touch upon aspects of mortgage loan servicing are noted in Section 9 "Federal Standards" below.

8. Alternatives.

The Mortgage Lending Reform Law required the registration of mortgage loan servicers and empowered the Superintendent to prescribe rules and regulations to guide the business of mortgage servicing. The purpose of the regulation is to carry out this statutory mandate to register mortgage loan servicers and regulate the manner in which they conduct business. The Department circulated a proposed draft of Part 419 and received comments from and met with industry and consumer groups. The current Part 419 reflects the input received. The alternative to these regulations is to do nothing or to wait for the newly created federal bureau of consumer protection to promulgate national rules, which could take years, may not happen at all or may not address all the practices covered by the rule. Thus, neither of those alternatives would effectuate the intent of the legislature to address the current foreclosure crisis, help at-risk homeowners vis-à-vis their loan servicers and ensure that mortgage loan servicers engage in fair and appropriate servicing practices.

9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies, and there are no comprehensive federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan. While the newly created Bureau of Consumer Financial Protection established by the Dodd-Frank Act may propose additional regulations for mortgage loan servicers, there is no certainty that it will do so or to what extent.

10. Compliance Schedule.

The regulations will become effective on October 1, 2010.

Regulatory Flexibility Analysis

1. Effect of Rule:

The rule will not have any impact on local governments. The Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") requires all mortgage loan servicers, whether registered or exempt from registration under the law, to service mortgage loans in accordance with the rules and regulations promulgated by the Banking Board or Superintendent. Of the 45 entities which have pending applications or have been approved for registration to date and the nearly 180 entities which have indicated that they are exempt from the registration requirements, it is estimated that very few are small businesses.

2. Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Banking Department of servicers who are not a

bank, mortgage banker, mortgage broker or other exempt organizations (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "Mortgage Loan Servicer Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, sets for the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting of borrower payments, late payments, account statements, delinquencies and loss mitigation, fees and recordkeeping.

3. Professional Services:

None.

4. Compliance Costs:

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC and OTS publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. The State Foreclosure Working Group, consisting of thirteen state Attorneys General and three state Banking regulators, including New York, collects and reports on similar data from the largest subprime mortgage servicers. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

Compliance with the rule should improve the servicing of residen-

tial mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

5. Economic and Technological Feasibility:

For the reasons noted in Section 4 above, the rule should impose no adverse economic or technological burden on mortgage loan servicers that are small businesses.

6. Minimizing Adverse Impact:

As noted in Section 1 above, most servicers are not small businesses. Many of the requirements contained in the rule derive from federal or state laws, existing servicer guidelines utilized by Fannie Mae and Freddie Mac and best industry practices.

Moreover, the ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, help borrowers at risk of foreclosure and decrease the number of foreclosures in this state.

7. Small Business and Local Government Participation:

The Banking Department distributed a draft of proposed Part 419 to industry representatives, received industry comments on the proposed rule and met with industry representatives in person. The Department likewise distributed a draft of proposed Part 419 to consumer groups, received their comments on the proposed rule and met with consumer representatives to discuss the proposed rule in person. The rule as finally proposed reflects the input received from both industry and consumer groups.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas. Since the adoption of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), which required mortgage loan servicers to be registered with the Department unless exempted under the law, 45 entities have pending applications or have been approved for registration and nearly 180 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements. Only one of the non-exempt entities applying for registration is located in New York and operating in a rural area. Of the exempt organizations, all of which are required to comply with the conduct of business contained in Part 419, approximately 100 are located in New York, including several in rural areas. However, the overwhelming majority of exempt organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

Compliance Requirements. The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Banking Department of servicers that are not a bank, mortgage banker, mortgage broker or other exempt organization (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2010, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule

sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Costs. The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from federal or state laws, current federal loan modification programs, servicing guidelines utilized by Fannie Mae and Freddie Mac or servicers' own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Of the 45 entities that have pending applications or have been approved for registration, only one is located in a rural area of New York State. Of the few exempt organizations located in rural areas of New York, virtually all are banks or credit unions. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

Minimizing Adverse Impacts. As noted in the "Costs" section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas.

In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loans servicers that service not more than 12 mortgage loans or more than \$5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

Rural Area Participation. The Department issued a draft of Part 419 in December 2009 and held meetings with and received comments from industry and consumer groups following the release of the draft rule. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers and its work in the area of foreclosure prevention. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the application, exemption and approval procedures for registration as a mortgage loan servicer, as well as financial responsibility requirements for applicants, registrants and exempted persons.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling

of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Compliance with Part 419 is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. The vast majority of mortgage loan servicers are sophisticated financial entities that service millions, if not billions, of dollars in loans and have the experience, resources and systems to comply with the requirements of the rule. Moreover, many of the requirements of the rule reflect derive from federal or state laws and reflect existing best industry practices.

New York State Canal Corporation

NOTICE OF ADOPTION

Public Access to Canal Corporation Records

I.D. No. NCC-21-10-00004-A

Filing No. 800

Filing Date: 2010-08-02

Effective Date: 2010-08-18

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

Action taken: Addition of Part 157 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 382(7); Public Officers Law, sections 87 and 89

Subject: Public access to Canal Corporation records.

Purpose: To add Canal Corporation FOIL regulations, as required by art. 6 of the Public Officers Law.

Text or summary was published in the May 26, 2010 issue of the Register, I.D. No. NCC-21-10-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Marcy Pavone, Thruway Authority, Legal Department, 200 Southern Blvd., Albany, NY 12209, (518) 436-2860, email: marcy_pavone@thruway.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-33-10-00012-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Homeland Security," by increasing the number of positions of Special Assistant from 6 to 7.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-33-10-00013-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Mental Retardation and Developmental Disabilities," by adding thereto the position of Information Security Officer (1).

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

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

Jurisdictional Classification

I.D. No. CVS-33-10-00014-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by deleting therefrom the position of Assistant Commissioner and by adding thereto the position of Legislative Coordinator.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

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

Jurisdictional Classification

I.D. No. CVS-33-10-00015-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Taxation and Finance, by increasing the number of positions of associate Attorney (Tax Enforcement) from 9 to 14.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Education Department

**EMERGENCY
RULE MAKING**

Annual Professional Performance Reviews for Teachers in the Classroom Teaching Service

I.D. No. EDU-18-10-00015-E

Filing No. 777

Filing Date: 2010-07-29

Effective Date: 2010-07-29

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

Action taken: Amendment of section 100.2(o) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided) and 305(4)

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

Specific reasons underlying the finding of necessity: The proposed amendment relates to annual professional performance reviews of teachers in the classroom teaching service.

As part of the current Annual Professional Performance Review ("APPR") set forth in section 100.2 of the Commissioner's regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the current requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The proposed amendment defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The proposed amendment requires school districts and BOCES to include in their professional performance review plan a description of how it will provide timely and constructive feedback to its teachers on all criteria evaluated, including data on student growth for each of their students, the class and the

school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

Following the Board of Regents adoption of the proposed amendment by emergency action at its April 2010 meeting, the Legislature and the Governor enacted Chapter 103 of the Laws of 2010. This new law establishes a new comprehensive annual evaluation system for teachers and principals based on multiple measures of effectiveness, including student achievement measures, which will result in a single composite effectiveness score for every teacher and principal. It also provides for the establishment of an advisory committee comprised of representatives of teachers, principals and other stakeholders that will make recommendations to the Commissioner and Regents prior to the adoption of implementing regulations and the use of a value-added growth model in evaluations. Department staff are conducting a review of the provisions of the statute and evaluating its impact on the existing APPR regulation. When the Department's review and the work of the advisory committee is complete, we anticipate making further revisions to the proposed amendment. Pursuant to section 202 of the State Administrative Procedure Act, these revisions may not be adopted until publication of a Notice of Revised Rule Making in the State Register and expiration of a 30-day public comment period. However, the emergency rule adopted at the April 2010 Regents meeting will expire on July 29, 2010. A lapse in the emergency rule will cause disruptions in the administration of annual professional performance reviews of teachers.

Emergency action is necessary at the July 2010 Board of Regents meeting in order to ensure that the rule remains continuously in effect until such time as it can be revised to conform to Chapter 103 of the Laws of 2010 and adopted as a permanent rule, after expiration of the 30-day public comment period for revised rule makings prescribed in the State Administrative Procedure Act, and thereby avoid disruption in the annual professional performance reviews of teachers.

Subject: Annual professional performance reviews for teachers in the classroom teaching service.

Purpose: To require school districts and BOCES to provide timely and constructive feedback to teachers as part of their annual evaluation.

Substance of emergency rule: The Commissioner of Education proposes to amend section 100.2(o) of the Commissioner's regulations, relating to the Annual Professional Performance Review (APPR) for teachers in New York State. The following is a summary of the substance of the proposed amendment.

Annual Professional Performance Review for Teachers

Section 100.2(o) will be repealed effective May 1, 2010.

A new subdivision 100.2(o) will be added, effective May 1, 2010.

A new paragraph (1) of subdivision (o) of section 100.2 shall be added and shall apply for school years commencing on or after July 1, 2000 and ending prior to June 30, 2001. This paragraph shall contain the same provisions as the prior version of 100.2(o) that expires on May 1, 2010, except the requirement that school districts and BOCES report on an annual basis information related to the school district's efforts to address the performance of teachers whose performance is unsatisfactory has been eliminated.

A new paragraph (2) of subdivision (o) shall be added for school years commencing on or after July 1, 2011. The requirements for the annual professional performance reviews of teachers shall be the same as in paragraph (1) of this subdivision, except for the following changes:

Section 100.2(o)(2)(b) will add a new definition of "teacher providing instructional services" to be a teacher in the classroom teaching service as defined in section 80-1.1 of the Commissioner's regulations.

Section 100.2(o)(2)(iii) creates four quality rating categories/criteria to be used in the annual professional performance review of teachers (Highly Effective, Effective, Developing and Ineffective) and defines each of these categories.

Section 100.2(o)(2)(iii)(a) defines a teacher rated as Highly Effective being a teacher who is performing at a higher level than is typically expected based on the evaluation criteria listed in the subdivision, including acceptable rates of student growth.

Section 100.2(o)(2)(iii)(b) defines a teacher rated as Effective being a teacher who is performing at a level that is typically expected of a teacher based on the evaluation criteria listed in the subdivision, including acceptable rates of student growth.

Section 100.2(o)(2)(iii)(c) defines a teacher rated as Developing as one who is not performing at a level that is typically expected of a teacher based on the evaluation criteria listed in the subdivision, including less than acceptable rates of student growth.

Section 100.2(o)(2)(iii)(d) defines a teacher rated as Ineffective as one

whose performance is unacceptable based on the evaluation criteria listed in the subdivision, including unacceptable or minimal rates of student growth.

Professional Performance Review Plan

Section 100.2(o)(2)(iv)(a)(1) requires the governing body of each school and BOCES to adopt a professional performance review plan of its teachers by September 1, 2011.

Content of the Plan

Section 100.2(o)(2)(iv)(b)(1)(vii) adds student growth as a new evaluation criteria. This item defines student growth as follows: the teacher shall demonstrate a positive change in student achievement for his or her students between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities and/or disabilities of each student, including English language learners. Student achievement is defined as a student's scores on State assessments for tested grades and subjects and other measures of student learning, including student scores on pre-tests and end-of-course tests, student performance on English language proficiency assessments and other measures of student achievement determined by the school district or BOCES to be rigorous and comparable across classrooms.

Section 100.2(o)(2)(iv)(b)(4) requires the APPR plan to describe how the new rating categories (Highly Effective, Effective, Developing and Ineffective) are used to differentiate professional development, compensation, and promotion for teachers providing instructional services. The procedures for implementation of the rating categories shall be consistent with the requirements of article 14 of the Civil Service Law.

Section 100.2(o)(2)(iv)(b)(5) requires the plan to describe how the school district or BOCES will provide timely and constructive feedback to teachers on all criteria evaluated as part of their annual evaluation, including providing teachers with data on student growth for each of their students, the class and the school as a whole. The plan must also describe how the school or BOCES will provide feedback and training on how the teacher can use such data to improve instruction.

Section 100.2(o)(2)(iv)(b)(6) requires the plan to describe how the school district or BOCES addresses the performance of teachers whose performance is evaluated as ineffective, and shall require a teacher improvement plan for teachers so evaluated or documentation of a prior teacher improvement plan, which shall be developed by the district or BOCES in consultation with such teacher.

Variance

Section 100.2(o)(2)(vii)(a) grants a variance from the requirements of this paragraph, upon a finding by the commissioner that a school district or BOCES has executed prior to May 1, 2010 an agreement negotiated pursuant to article 14 of Civil Service Law whose terms continue to effect and are inconsistent with such requirement.

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. EDU-18-10-00015-P, Issue of May 5, 2010. The emergency rule will expire September 26, 2010.

Text of rule and any required statements and analyses may be obtained from: Christine Moore, New York State Education Department, 89 Washington Avenue, Room 148 EB, Albany, NY 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statute by requiring school districts and BOCES to provide timely and constructive feedback to teachers as part of their annual evaluations; implementing uniform designated rating categories for the evaluation of teachers, and requiring that school districts and BOCES include a ninth evaluation criteria, i.e., student growth, in the evaluation of their teachers.

3. NEEDS AND BENEFITS:

As part of the current Annual Professional Performance Review ("APPR") set forth in section 100.2 of the Commissioner's regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the current requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The proposed amendment defines student growth as a positive

change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The proposed amendment requires school districts and BOCES to include in their professional performance review plan a description of how it will provide timely and constructive feedback to its teachers on all criteria evaluated, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Where the Commissioner finds that a collective bargaining agreement was executed by a school district or BOCES pursuant to Article 14 of the Civil Service Law prior to the effective date of this regulation and whose terms are inconsistent with the new provisions of this regulation the Commissioner will grant a variance from that portion of the regulation for the duration of the existing collective bargaining agreement.

Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

4. COSTS:

(a) Costs to State government: The proposed amendment will not impose any additional costs on State government, including the State Education Department.

(b) Costs to local governments: The proposed amendment will not impose any additional costs on local governments, including school districts and BOCES.

(c) Costs to private regulated parties: In general, the proposed amendment does not impose any additional compliance costs on school districts and BOCES. The Annual Performance Review already requires teachers to measure student's progress in learning based on the analysis of available student performance data. Secondly, the proposed amendment requires districts and BOCES to utilize four designated quality rating categories/criteria. The addition of such rating categories should not impose any additional costs.

Finally, the proposed amendment requires the district/BOCES to provide timely and constructive feedback to teachers as part of their annual evaluation. This feedback should already be provided to teachers to guide their analysis of student progress. If teacher training is necessary, all districts are already required to provide professional development to improve the quality of teaching within the district. Therefore, providing training to teachers to interpret and use student growth data to improve instruction should be incorporated into their current professional development plan, thus avoiding any additional training costs.

(d) Costs to regulating agency for implementing and continued administration of the rule: As stated above in "Costs to State Government," the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment applies to both school districts and boards of cooperative educational services. Therefore, the mandates in Section 3 apply to school districts and BOCES. The State Education Department has determined that uniform requirements are necessary to ensure the quality of the State's teaching workforce and consistency in the evaluations of teachers in the classroom teaching service across the State.

6. PAPERWORK:

The proposed amendment requires school districts and BOCES to include in their professional performance plan a description of how it will provide timely and constructive feedback to its teachers, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment establishes the evaluation criteria for teachers employed in the classroom teaching service in school districts and BOCES. Because these requirements apply to teachers, school districts and BOCES located in all areas of the State, no viable alternatives were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that establish procedures for the evaluation of teachers.

10. COMPLIANCE SCHEDULE:

School districts and BOCES will be required to comply with the proposed amendments by the 2011-2012 school year.

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed amendment applies to school districts and boards of cooperative educational services (BOCES) and relates to the annual professional performance reviews for teachers in the classroom teaching service. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

The proposed amendment relates to the criteria for the evaluation of teachers in the classroom teaching service in school districts and BOCES across New York State.

1. EFFECT OF RULE:

The proposed amendment applies to school districts and BOCES located in New York State and relates to the evaluation of teachers in the classroom teaching service.

2. COMPLIANCE REQUIREMENTS:

As part of the current Annual Professional Performance Review ("APPR") set forth in section 100.2 of the Commissioner's regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the current requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The proposed amendment defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The proposed amendment requires school districts and BOCES to include in their professional performance review plan a description of how it will provide timely and constructive feedback to its teachers on all criteria evaluated, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Where the Commissioner finds that a collective bargaining agreement was executed by a school district or BOCES pursuant to Article 14 of the Civil Service Law prior to the effective date of this regulation and whose terms are inconsistent with the new provisions of this regulation the Commissioner will grant a variance from that portion of the regulation for the duration of the existing collective bargaining agreement.

Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

3. PROFESSIONAL SERVICES:

The proposed amendment does not mandate that school districts or BOCES contract for additional professional services to comply.

4. COMPLIANCE COSTS:

In general, the proposed amendment does not impose any additional compliance costs on school districts and BOCES. The Annual Performance Review already requires teachers to measure student's progress in learning based on the analysis of available student performance data.

Secondly, the proposed amendment requires districts and BOCES to utilize four designated quality rating categories/criteria. The addition of such rating categories should not impose any additional costs.

Finally, the proposed amendment requires the district/BOCES to provide timely and constructive feedback to teachers as part of their annual evaluation. This feedback should already be provided to teachers to guide their analysis of student progress. If teacher training is necessary, all districts are already required to provide professional development to improve the quality of teaching within the district. Therefore, providing training to teachers to interpret and use student growth data to improve instruction should be incorporated into their current professional development plan, thus avoiding any additional training costs.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements. Economic feasibility is addressed under the Compliance Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment applies to school districts and BOCES and relates to the criteria for the evaluation of teachers in the classroom teaching service. The State Education Department has determined that uniform annual professional performance review standards are necessary to ensure the quality of the State's teaching workforce across the State for teachers in the classroom teaching service. Therefore, no exemption from these requirements has been provided for local governments. However, the Department has eliminated the current reporting requirement which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated unsatisfactory.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES across the State. Comments on the proposed rule were also solicited from the BOCES District Superintendents, New York State Council of School Superintendents, New York State United Teachers, New York State School Boards Association, School Administrators Association of New York State, and New York State Association of School Personnel Administrators.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment will affect teachers in school districts and boards of cooperative services in all areas of New York State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

As part of the current Annual Professional Performance Review ("APPR") set forth in section 100.2 of the Commissioner's regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the current requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The proposed amendment defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The proposed amendment requires school districts and BOCES to include in their professional performance review plan a description of how it will provide timely and constructive feedback to its teachers on all criteria evaluated, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Where the Commissioner finds that a collective bargaining agreement was executed by a school district or BOCES pursuant to Article 14 of the Civil Service Law prior to the effective date of this regulation and whose terms are inconsistent with the new provisions of this regulation the Commissioner will grant a variance from that portion of the regulation for the duration of the existing collective bargaining agreement. Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment establishes uniform evaluation standards for teachers employed in the classroom teaching service in school districts and BOCES across the State. The State Education Department has determined that uniform standards for the evaluation of teachers should be applied across the State. Therefore, no exemption has been provided from these requirements for school districts and BOCES located in rural areas

of the State. However, the Department has eliminated the current reporting requirement which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated unsatisfactory.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES located in rural areas of New York State. Comments on the proposed rule were also solicited from the District Superintendents, New York State Council of School Superintendents, New York State United Teachers, New York State School Boards Association, School Administrators Association of New York State, and New York State Association of School Personnel Administrators, the constituencies of which include those from rural areas.

Job Impact Statement

The purpose of the proposed amendment is to require school districts and BOCES to provide timely and constructive feedback to teachers as part of their annual evaluations; designate uniform quality rating categories/criteria for the evaluation of teachers; and mandate that a ninth evaluation criteria, i.e., student growth be utilized in the evaluation of teachers. Because it is evident from the nature of this regulation that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Students with Disabilities

I.D. No. EDU-33-10-00004-P

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

Proposed Action: Amendment of sections 200.2, 200.4, 200.5, 200.6, 200.9, 200., 200.10, 200.11, 200.13, 200.20, 201.2 and 201.11 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), (2), (20), 3214(3), 4402 (not subdivided), 4403(3), 4410(13); and L. 1978, ch. 410

Subject: Students with disabilities.

Purpose: Mandate relief to schools in certain areas of special education that exceed federal requirements, and to make technical changes.

Public hearing(s) will be held at: 2:00 p.m.-5:00 p.m., Sept. 15, 2010 at Genesee Valley BOCES, Leroy Center, 80 Munson St., Conference Rm.*, Leroy, NY, Room Capacity: 50 (approx.), Directions: <http://www.gvbooces.org/directions.cfm>; 2:00 p.m.-5:00 p.m., Sept. 15, 2010 at VESID - Adult Vocational Rehabilitation Services, Albany District Office, 80 Wolf Rd., Suite 200, Second Fl., Albany, NY, Room Capacity: 50 (approx.), Directions: <http://www.vesid.nysed.gov/albany/directions.htm>; 2:00 p.m.-5:00 p.m., Sept. 16, 2010 at VESID - Adult Vocational Rehabilitation Services, Manhattan District Office, 116 W. 32nd St., 5th Fl., Conference Rm.*, New York, NY, Room Capacity: 50 (approx.), Directions: <http://www.vesid.nysed.gov/manhattan/directions.htm>

* The Leroy and New York City public hearings will be conducted by videoconference.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

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

Substance of proposed rule (Full text is posted at the following State website: <http://www.emsc.nysed.gov/special/timely.htm>): The Commissioner of Education proposes to amend sections 200.2, 200.4, 200.5, 200.6, 200.9, 200.10, 200.11, 200.13, 200.20, 201.2 and 201.11 of the Commissioner's Regulations, effective December 8, 2010, relating to the provision of special education to students with disabilities. The following is a summary of the substance of the proposed amendments.

Section 200.2, as amended, corrects cross citations relating to apportionment of public monies; makes technical amendments to update

Federal law citations and to change the address where a copy of federal regulations may be obtained within the New York State Education Department; and amends the section to conform to section 3602(8) of the Education Law, relating to requirements for district plans of service.

Section 200.4, as amended, makes technical amendments to update Federal law citations and to change the address where a copy of federal regulations may be obtained within the New York State Education Department and amends the section to conform to a recent statutory change of the name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities.

Section 200.5, as amended, conforms State regulations to federal requirements relating to meeting notice and parent participation in CSE meetings; corrects a cross citation relating to appeal to a State review officer; and makes technical amendments to update citations to Federal law and to change the address where a copy of federal regulations may be obtained within the New York State Education Department; to conform to a recent statutory change of the name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities; and to change the address where a State complaint would be submitted.

Section 200.6, as amended, repeals the minimum service delivery requirements for speech and language; authorizes school districts to add up to two additional students to integrated co-teaching classes; and corrects cross citations relating to apportionment of public monies.

Section 200.9, as amended, makes a technical amendment relating to the procedures during the close-down period of an approved private program.

Section 200.10, as amended, makes a technical amendment relating to reimbursement to certain State-operated and State-supported schools for blind, deaf and severely disabled students.

Section 200.11, as amended, makes technical amendments to conform to a recent statutory change of the name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities.

Section 200.13, as amended, repeals the requirement that each student with autism receive instructional services a minimum of 30 minutes daily in groups not to exceed two, or 60 minutes daily in groups not to exceed six to meet his/her individual language needs.

Section 200.20, as amended, makes technical amendments to repeal the name of the office within the State Education Department office that must conduct a fiscal or program review of a preschool program applying for approval and to make a correction to the referencing of a cross citation.

Section 201.2, as amended, makes technical amendments to update Federal law citations and to change the address where a copy of Controlled Substance Act may be obtained within the New York State Education Department.

Section 201.11, as amended, makes a technical amendment to the name of the State Education Department office where copies of expedited hearing decisions would be sent.

Text of 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 Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: James P. DeLorenzo, Statewide Coordinator of Special Educ., State Education Department, Office of Special Education, One Commerce Plaza, Room 1624, Albany, NY 12234, (518) 402-3353, email: spedpubliccomment@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 207 empowers the Regents and Commissioner of Education to adopt rules and regulations to carry out State education laws and functions and duties conferred on the Education Department by law.

Education Law section 305(1) and (2) provide the Commissioner, as chief executive officer of the State education system, with general supervision over schools and institutions subject to the provisions of education law, and responsibility for executing Regents policies. Section 305(20) authorizes the Commissioner with such powers and duties as are charged by the Regents.

Education Law section 3214(3) establishes the procedural protections for students with disabilities subject to discipline.

Education Law section 4402 establishes school district duties for the education of students with disabilities.

Education Law section 4403 establishes Department and school district responsibilities concerning education programs and services to students with disabilities. Section 4403(3) authorizes the Department to adopt rules and regulations as the Commissioner deems in their best interests.

Education Law section 4410 establishes requirements for education services and programs for preschool children with disabilities. Section 4410(13) authorizes the Commissioner to adopt regulations.

Chapter 410 of the Laws of 1978 authorizes the Commissioner to develop separate and appropriate regulations regarding the classroom instruction of students with autism.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives in the aforementioned statutes to ensure that students with disabilities are provided a free appropriate public education consistent with federal law and regulations.

3. NEEDS AND BENEFITS:

The proposed amendment will provide mandate relief to schools in certain areas of special education that exceed federal requirements; conform the Commissioner's Regulations to the federal regulations (34 CFR Part 300) that implement the Individuals with Disabilities Education Act (IDEA) and State law; and make certain technical amendments, including correction of cross citations.

The proposed amendment will provide mandate relief and appropriate flexibility for committees on special education (CSE) to make special education recommendations based on students' individual needs by repealing minimum level of service requirements for speech and language related services and for instruction to address the individual language needs of students with autism, and by authorizing the addition of up to two additional students in an integrated co-teaching class when it is necessary to do so to address the unique needs of students in that class. To conform to federal and state requirements, the proposed rule will also ensure that the State regulations use language consistent with federal regulations for CSE meeting notices and State statute for district plans of service for special education; and will make other technical amendments.

4. COSTS:

a. Costs to State government: None.

b. Costs to local governments: None.

c. Costs to regulated parties: None.

d. Costs to the State Education Department of implementation and continuing compliance: None.

The proposed amendment will reduce costs to school districts by providing mandate relief and appropriate flexibility for committees on special education (CSE) to make special education recommendations based on students' individual needs. Specifically, the proposed amendment will repeal minimum level of service requirements for speech and language related services and for instruction to address the individual language needs of students with autism, and authorize the addition of up to two additional students in an integrated co-teaching class when it is necessary to do so to address the unique needs of students in that class.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment will provide school districts with mandate relief and appropriate flexibility to address individual student needs, and does not impose any additional program, service, duty or responsibility upon local governments beyond those imposed by federal and State statutes and regulations.

Section 200.2, as amended, corrects cross citations relating to apportionment of public monies; makes technical amendments to update Federal law citations and change the address where a copy of federal regulations may be obtained within the New York State Education Department; and to conform State regulations to section 3602(8) of the Education Law relating to requirements for district plans of service.

Section 200.4, as amended, makes technical amendments to update Federal law citations and change the address where a copy of federal regulations may be obtained within the New York State Education Department and to conform to a recent statutory change of name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities (OPWDD).

Section 200.5, as amended, conforms State regulations to federal requirements relating to meeting notice and parent participation in CSE meetings; corrects a cross citation relating to appeal to a State review officer; and makes technical amendments to update Federal law citations and change the address where a copy of federal regulations may be obtained within the New York State Education Department; to conform to a recent statutory change of the name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities; and to change the address where a State complaint would be submitted.

Section 200.6, as amended, repeals the minimum service delivery requirements for speech and language; authorizes school districts to add up to two additional students to integrated co-teaching classes; and corrects cross citations relating to apportionment of public monies.

Section 200.9, as amended, makes a technical amendment relating to the procedures during the close-down period of an approved private program.

Section 200.10, as amended, makes a technical amendment relating to reimbursement to certain State-operated and State-supported schools for blind, deaf and severely disabled students.

Section 200.11, as amended, makes technical amendments to conform to a recent statutory change of the name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities.

Section 200.13, as amended, repeals the requirement that each student with autism receive instructional services a minimum of 30 minutes daily in groups not to exceed two, or 60 minutes daily in groups not to exceed six to meet his/her individual language needs.

Section 200.20, as amended, makes technical amendments to repeal the name of the office within the State Education Department office that must conduct a fiscal or program review of a preschool program applying for approval and to make a correction to the referencing of a cross citation.

Section 201.2, as amended, makes technical amendments to update Federal law citations and change the address where a copy of Controlled Substance Act may be obtained within the New York State Education Department.

Section 201.11, as amended, makes a technical amendment to the name of the State Education Department office where copies of expedited hearing decisions would be sent.

6. PAPERWORK:

The proposed amendment would require school districts to provide written notice to the Department to temporarily increase the number of students with disabilities in an integrated co-teaching services class up to a maximum of 13 students for the remainder of the school year, and to submit an application and documented educational justification to the commissioner for approval to enroll a second student in the same class.

7. DUPLICATION:

The amendment will not duplicate, overlap or conflict with any other State or federal statute or regulation.

8. ALTERNATIVES:

The Department considered retaining the current minimum level of service requirements for speech and language and for instructional services to address the language needs of students with autism, but decided that any minimum level of service requirement for such services would limit individual decision making by the CSE to make service recommendations in consideration of unique needs of the student; could result in students receiving more services than needed; could add unnecessary costs to the school district; and could exacerbate the shortage of personnel available to provide speech and language as a related service. The Department also considered providing relief from the minimum level of service requirement only after a student had received speech and language therapy as a related service for a number of years, but, in response to public comment, decided that it would be confusing to school districts and parents to do so.

For integrated co-teaching classes, the Department considered retaining its current maximum of 12 students with disabilities in an integrated co-teaching class, providing a waiver upon approval of the Department, and providing a waiver by notification. The Department decided that there could be extenuating and unanticipated situations (e.g., a student currently enrolled in an integrated co-teaching class is identified as a student with a disability after the start of the school year or a student with a disability moves into a school district after the start of the school year and needs the general education class being provided through co-teaching). Therefore, so as not to negatively impact such students' education programs, the Department determined that allowing a variance to the maximum number of students with disabilities would be appropriate when there is educational justification.

9. FEDERAL STANDARDS:

The proposed amendment does not add any requirements that would exceed any minimum federal standards. The proposed amendment will provide mandate relief to schools by amending certain areas of special education that exceed federal requirements; conform the Commissioner's Regulations to the federal IDEA regulations and State law; and correct certain cross-citations.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment will provide mandate relief to schools in certain areas of special education that exceed federal requirements; conform the Commissioner's Regulations to the federal regulations (34 CFR Part 300) that implement the Individuals with Disabilities Education Act (IDEA) and State law; and make certain technical amendments, including correction of cross citations. The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small

businesses, no affirmative steps are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

The proposed amendment applies to all public school districts, boards of cooperative educational services (BOCES), State-operated and State-supported schools and approved private schools in the State.

1. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements beyond those imposed by federal statutes and regulations and State law. The proposed amendment will provide mandate relief to schools in certain areas of special education that exceed federal requirements; conform the Commissioner's Regulations to the federal regulations (34 CFR Part 300) that implement the Individuals with Disabilities Education Act (IDEA) and State law; and make certain technical amendments, including correction of cross citations.

Section 200.2, as amended, corrects cross citations relating to apportionment of public monies; makes technical amendments to update Federal law citations and change the address where a copy of federal regulations may be obtained within the New York State Education Department; and to conform State regulations to section 3602(8) of the Education Law relating to requirements for district plans of service.

Section 200.4, as amended, makes technical amendments to update Federal law citations and change the address where a copy of federal regulations may be obtained within the New York State Education Department and to conform to a recent statutory change of the name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities.

Section 200.5, as amended, conforms State regulations to federal requirements relating to meeting notice and parent participation in CSE meetings; corrects a cross citation relating to appeal to a State review officer; and makes technical amendments to update Federal law citations and change the address where a copy of federal regulations may be obtained within the New York State Education Department; to a recent statutory change of the name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities; and to change the address where a State complaint would be submitted.

Section 200.6, as amended, repeals the minimum service delivery requirements for speech and language; authorizes school districts to add up to two additional students to integrated co-teaching classes; and corrects cross citations relating to apportionment of public monies. The proposed amendment requires school districts to provide written notice to the Department to temporarily increase the number of students with disabilities in an integrated co-teaching services class up to a maximum of 13 students for the remainder of the school year, and to submit an application and documented educational justification to the commissioner for approval to enroll a second student in the same class.

Section 200.9, as amended, makes a technical amendment relating to the procedures during the close-down period of an approved private program.

Section 200.10, as amended, makes a technical amendment relating to reimbursement to certain State-operated and State-supported schools for blind, deaf and severely disabled students.

Section 200.11, as amended, makes technical amendments to conform to a recent statutory change of the name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities.

Section 200.13, as amended, repeals the requirement that each student with autism receive instructional services a minimum of 30 minutes daily in groups not to exceed two, or 60 minutes daily in groups not to exceed six to meet his/her individual language needs.

Section 200.20, as amended, makes technical amendments to repeal the name of the office within the State Education Department office that must conduct a fiscal or program review of a preschool program applying for approval and to make a correction to the referencing of a cross citation.

Section 201.2, as amended, makes a technical amendment to update Federal law citations and change the address where a copy of Controlled Substance Act may be obtained within the New York State Education Department.

Section 201.11, as amended, makes a technical amendment to the name of the State Education Department office where copies of expedited hearing decisions would be sent.

2. PROFESSIONAL SERVICES:

The proposed amendment will provide mandate relief to school districts by amending certain areas of special education that exceed federal requirements; conform the Commissioner's Regulations to the federal IDEA regulations and State law; and correct certain cross-citations. The proposed rule does not impose any additional professional service requirements on local governments beyond those imposed by such federal statutes and regulations and State statutes.

3. COMPLIANCE COSTS:

School districts and other local educational agencies (LEAs) are required to comply with IDEA as a condition to their receipt of federal funding. The proposed amendment does not impose any additional costs beyond those imposed by such federal statutes and regulations and State statutes. The proposed amendment will reduce costs to school districts by providing mandate relief and appropriate flexibility for committees on special education (CSE) to make special education recommendations based on students' individual needs. Specifically, the proposed amendment will repeal minimum level of service requirements for speech and language related services and for instruction to address the individual language needs of students with autism, and authorize the addition of up to two additional students in an integrated co-teaching class when it is necessary to do so to address the unique needs of students in that class.

4. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements. Economic feasibility is addressed above under compliance costs.

5. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs, beyond those imposed by such federal statutes and regulations and State statutes. The proposed amendment will reduce costs to school districts by providing mandate relief and appropriate flexibility for committees on special education (CSE) to make special education recommendations based on students' individual needs. Specifically, the proposed amendment will repeal minimum level of service requirements for speech and language related services and for instruction to address the individual language needs of students with autism, and authorize the addition of up to two additional students in an integrated co-teaching class when it is necessary to do so to address the unique needs of students in that class.

School districts and other LEAs are required to comply with IDEA statutes and regulations as a condition to their receipt of federal funding. The proposed conforming amendments have been carefully drafted to meet federal statutory and regulatory requirements and do not impose any additional costs or compliance requirements on these entities beyond those imposed by federal law and regulations and State statutes.

6. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment. The State Education Department will be conducting public hearings in September 2010 on the proposed rule.

Rural Area Flexibility Analysis**1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:**

The proposed amendment will apply to all public school districts, boards of cooperative educational services (BOCES), State-operated and State-supported schools and approved private schools in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with population density of 150 per square miles or less.

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

The proposed amendment does not impose any additional compliance requirements on rural areas beyond those imposed by federal statutes and regulations and State law. The proposed amendment will provide mandate relief to schools in certain areas of special education that exceed federal requirements; conform the Commissioner's Regulations to the federal regulations (34 CFR Part 300) that implement the Individuals with Disabilities Education Act (IDEA) and State law; and make certain technical amendments, including correction of cross citations. The proposed rule does not impose any additional compliance requirements upon rural areas beyond those imposed by federal statutes and regulations and State law.

Section 200.2, as amended, corrects cross citations relating to apportionment of public monies; makes technical amendments to update Federal law citations and change the address where a copy of federal regulations may be obtained within the New York State Education Department; and to conform State regulations to section 3602(8) of the Education Law relating to requirements for district plans of service.

Section 200.4, as amended, makes technical amendments update Federal law citations and change the address where a copy of federal regulations may be obtained within the New York State Education Department and to conform to a recent statutory change of the name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities.

Section 200.5, as amended, conforms State regulations to federal requirements relating to meeting notice and parent participation in CSE meetings; corrects a cross citation relating to appeal to a State review officer; and makes technical amendments to a change in address where a copy of federal regulations may be obtained within the New York State

Education Department; to conform to a recent statutory change of the name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities; and to change the address where a State complaint would be submitted.

Section 200.6, as amended, repeals the minimum service delivery requirements for speech and language; authorizes school districts to add up to two additional students to integrated co-teaching classes; and corrects cross citations relating to apportionment of public monies. The proposed amendment requires school districts to provide written notice to the Department to temporarily increase the number of students with disabilities in an integrated co-teaching services class up to a maximum of 13 students for the remainder of the school year, and to submit an application and documented educational justification to the commissioner for approval to enroll a second student in the same class.

Section 200.9, as amended, makes a technical amendment relating to the procedures during the close-down period of an approved private program.

Section 200.10, as amended, makes a technical amendment relating to reimbursement to certain State-operated and State-supported schools for blind, deaf and severely disabled students.

Section 200.11, as amended, makes technical amendments to conform to a recent statutory change of the name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities.

Section 200.13, as amended, repeals the requirement that each student with autism receive instructional services a minimum of 30 minutes daily in groups not to exceed two, or 60 minutes daily in groups not to exceed six to meet his/her individual language needs.

Section 200.20, as amended, makes technical amendments to repeal the name of the office within the State Education Department office that must conduct a fiscal or program review of a preschool program applying for approval and to make a correction to the referencing of a cross citation.

Section 201.2, as amended, makes technical amendments to update Federal law citations and change the address where a copy of Controlled Substance Act may be obtained within the New York State Education Department.

Section 201.11, as amended, makes a technical amendment to the name of the State Education Department office where copies of expedited hearing decisions would be sent.

The amendments do not impose any additional professional service requirements on rural areas, beyond those imposed by such federal statutes and regulations and State statutes.

3. COSTS:

School districts and other local educational agencies (LEAs) are required to comply with IDEA as a condition to their receipt of federal funding. The proposed amendment does not impose any additional costs beyond those imposed by such federal statutes and regulations and State statutes.

The proposed amendment will reduce costs to school districts by providing mandate relief and appropriate flexibility for committees on special education (CSE) to make special education recommendations based on students' individual needs. Specifically, the proposed amendment will repeal minimum level of service requirements for speech and language related services and for instruction to address the individual language needs of students with autism, and authorize the addition of up to two additional students in an integrated co-teaching class when it is necessary to do so to address the unique needs of students in that class.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs, beyond those imposed by such federal statutes and regulations and State statutes. The proposed amendment will reduce costs to school districts by providing mandate relief and appropriate flexibility for committees on special education (CSE) to make special education recommendations based on students' individual needs. Specifically, the proposed amendment will repeal minimum level of service requirements for speech and language related services and for instruction to address the individual language needs of students with autism, and by authorizing the addition of up to two additional students in an integrated co-teaching class when it is necessary to do so to address the unique needs of students in that class.

School districts and other LEAs are required to comply with IDEA statutes and regulations as a condition to their receipt of federal funding. The proposed conforming amendments have been carefully drafted to meet federal statutory and regulatory requirements and do not impose any additional costs or compliance requirements on these entities beyond those imposed by federal law and regulations and State statutes. Since these requirements apply to all school districts in the State, it is not possible to adopt different standards for school districts in rural areas.

5. RURAL AREA PARTICIPATION:

The proposed amendment was submitted for discussion and comment

to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas. The State Education Department will be conducting public hearings in September 2010 on the proposed rule.

Job Impact Statement

The proposed amendment will provide mandate relief to schools in certain areas of special education that exceed federal requirements; conform the Commissioner's Regulations to the federal regulations (34 CFR Part 300) that implement the Individuals with Disabilities Education Act (IDEA) and State Law; and make certain technical amendments, including correction of cross citations. The proposed amendment will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Migratory Game Bird Hunting, and Game Harvest Reporting

I.D. No. ENV-33-10-00005-P

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

Proposed Action: Amendment of sections 2.30 and 180.10 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0307, 11-0903, 11-0905, 11-0909, 11-0911 and 11-0917

Subject: Migratory game bird hunting, and game harvest reporting.

Purpose: To conform migratory game bird hunting regulations to recent changes in law, and to update game harvest reporting regulations.

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

Amend paragraphs 2.30(b)(1), (2), (4) and (7) to read:

(1) with a trap, snare, net, crossbow, rifle, pistol, swivel gun, shotgun larger than 10-gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance, except that crows may be taken with a rifle;

(2) with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells, except that this prohibition shall not apply to the taking of crows or to the taking of snow geese or Ross' geese during the special snow goose harvest program described in [sub]paragraph 2.30(e)[(2)(vii)];

(4) from or by means, aid or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and [single or double amputees of the] *persons missing one or both legs* may, with a permit issued by the Department of Environmental Conservation (department), take migratory game birds from any stationary motor vehicle or *stationary* motor-driven land conveyance;

(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 [sub]paragraph 2.30(e)[(2)(vii)];

Repeal paragraph 2.30(e)(1) and adopt new paragraph (e)(1) to read:

(1) *Season dates for migratory game birds except crows. Open season dates for migratory game birds, except crows, shall be those dates fixed annually by Federal regulation, as published annually in*

the Federal Register by the U.S. Department of the Interior, unless indicated otherwise below.

(i) *Youth Waterfowl Hunt Days. In addition to open seasons specified above, licensed junior hunters (12-15 years of age), accompanied as provided by subdivision 1 of Section 11-0929 of the Environmental Conservation Law, may take ducks, coot, mergansers, Canada geese, and brant on special Youth Waterfowl Hunt Days, as published annually in the Federal Register by the U.S. Department of the Interior. The adult companion shall not shoot any migratory game birds on those special days unless the respective seasons are open. The adult companion shall possess a valid Federal migratory bird hunting and conservation stamp, and have a current Harvest Information Program (HIP) confirmation number on those special days.*

(ii) *Special Snow Goose Harvest Program. Any person who has migratory game bird hunting privileges in New York, including a valid Harvest Information Program (HIP) confirmation number, may take "light geese" (snow geese and Ross' geese) in the Western, Northeastern, Southeastern, and Lake Champlain Zones from March 11 through April 15 annually, in addition to seasons published annually in the Federal Register. All migratory game bird hunting regulations and requirements shall apply to the taking of snow geese or Ross' geese during this period, except that use of recorded or electrically amplified calls or sounds is allowed and use of shotguns capable of holding more than three shells is allowed. Any person who participates in the special snow goose harvest program must provide accurate and timely information on their activity and harvest upon request from the department.*

Repeal paragraph 2.30(e)(2) and adopt new paragraph (e)(2) to read:

(2) *Season dates for crows. Crows may be taken statewide on any Friday, Saturday, Sunday or Monday falling on or between September 1 through March 31 annually.*

Repeal paragraphs 2.30(g)(3) through (5) and adopt new paragraphs (g)(3) and (4) to read:

(3) *Bag limits for migratory game birds except crows. Daily bag and possession limits for migratory game birds, except crows, shall be those limits fixed annually by Federal regulation, as published annually in the Federal Register by the U.S. Department of the Interior, unless indicated otherwise below.*

(i) *Daily bag and possession limits for Canada geese are aggregate daily bag and possession limits for Canada geese, cackling geese, and greater and lesser white-fronted geese in all areas.*

(ii) *Daily bag and possession limits for "light geese" are aggregate daily bag and possession limits for snow geese and Ross' geese in all areas.*

(4) *Bag limits for crows. No daily bag or possession limits.*

Amend subparagraph 2.30(g)(1)(v) to read:

(v) *Aggregate possession limit means the maximum number of migratory game birds of a single species or combination of species taken in the United States permitted to be possessed by any one person when taking and possession occurs in more than one specified geographic area for which a possession limit is prescribed. The aggregate possession limit is equal to, but shall not exceed, the largest possession limit prescribed for any one of the species or specific geographic areas in which taking and possession occurs.*

Adopt new subdivision (s) to read:

(s) *Publication of regulations. Public notice of open seasons and bag limits for migratory game birds shall be provided by department press release and any other means that the department determines to be appropriate and effective, including posting on the department's public website. Also, the department's annual syllabus of fish and wildlife laws and regulations shall include information advising migratory game bird hunters where they can obtain information regarding open seasons, bag limits, and other hunting regulations.*

Title 6 of NYCRR, section 180.10, entitled "Game species reporting regulations under the Department of Environmental Conservation Automated Licensing System (DECALS)," is amended as follows:

Repeal existing section 180.10 and adopt new section 180.10 to read:

Section 180.10 Game species reporting

(a) "Applicability." This section applies to reporting the harvest of deer, bear, and wild turkey.

(b) "Deer, bear, and wild turkey." A hunter who has taken a deer, bear, or wild turkey shall, within 7 days of taking the animal, report the harvest via one of the following methods:

(1) By telephone, calling the number advertised on the department's web-site and published in the current *Hunting and Trapping Law and Regulations Guide*;

(2) By internet via a web-site designated by the department;

(3) By any other means as described in the current *Hunting and Trapping Law and Regulations Guide*.

Text of proposed rule and any required statements and analyses may be obtained from: Gordon R. Batcheller, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8885, email: wildliferegs@gw.dec.state.ny.us

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

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

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

Regulatory Impact Statement

1. Statutory Authority.

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. ECL section 11-0307 was amended in May 2010 to specify that open seasons and bag limits for migratory game birds shall be those published annually in the Federal Register by the U.S. Department of the Interior, unless DEC adopts regulations pursuant to provisions of the ECL. Environmental Conservation Law 11-0911 provides for establishing deer and bear harvest reporting requirements by regulation.

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. The specific objectives of amendments to 11-0307 in May 2010 were to eliminate the need for annual rule making by the department to simply adjust season dates and bag limits, and to specify measures that the department shall use to advise hunters where they can obtain information regarding migratory game bird hunting regulations. The purpose of game harvest reporting is to annually estimate the take of species to enable subsequent management decisions.

3. Needs and Benefits.

This rule making implements provisions of the May 2010 amendments to ECL 11-0307, by removing specific season dates and bag limits for most migratory game bird hunting seasons from 6 NYCRR section 2.30 and insert language stating that those regulations shall be as published annually in the Federal Register by the U.S. Department of the Interior. This rule-making also specifies that the department will effectively inform migratory game bird hunters where they can obtain information regarding season dates and bag limits. This rule making also corrects several typographical errors that were noted during a review of all regulations in 6 NYCRR section 2.30.

Migratory game bird population levels fluctuate annually in re-

sponse 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 selects season dates and bag limits that must conform with Federal regulations, as required by ECL section 11-0307, and to address ecological considerations and user desires. In selecting annual season dates and bag limits, the department provides substantial opportunity for and considers public input as expressed through DEC-appointed waterfowl hunter task forces and other written correspondence received by mail or e-mail.

The department also proposes to amend the reporting requirements for game harvest. Persons who harvest beaver and coyote will no longer be required to report their harvest. Instead, hunters and trappers will be surveyed to estimate the harvest of these species. This will save money and provide greater convenience to the regulated community. Also, the department proposes to extend the reporting period for a harvested deer or bear from 48 hours to 7 days. Many hunters hunt in remote areas that lack cell phone coverage or internet access or both, and they often stay in those locations for a week or more during the hunting season. The department's proposal provides greater flexibility for reporting the harvest of these species, while continuing to mandate those reports to enable the accurate compilation of annual take.

4. Costs.

These revisions will not result in any increased expenditures by State or local governments or the general public. By allowing season dates and bag limits to be those published in the Federal Register, the recent amendment of ECL 11-0307 should reduce the need for annual rule-making by the department, and reduce associated administrative costs.

5. Paperwork.

The proposed revisions do not require any new or additional paperwork from any regulated party.

6. Local Government Mandates.

These amendments do not impose any program, service, duty or responsibility upon any county, city, town village, school district or fire district.

7. Duplication.

Each year, the U.S. Fish and Wildlife Service 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. Prior to amendment in May 2010, section 11-0307 of the ECL required that section 2.30 be amended annually to include current season dates and bag limits. The recent amendments have eliminated this duplication of Federal and State regulations.

8. Alternatives.

The principal alternative, which is no action, would result in State waterfowl hunting seasons and bag limits from 2009-10 remaining in 6 NYCRR section 2.30, but these would not conform with Federal regulations for 2010-11 and would not reflect desired season selections based on public input received. Leaving season dates and bag limits unchanged or inconsistent with annual Federal regulations would result in a significant public dissatisfaction or confusion, and could complicate enforcement of migratory game bird hunting regulations.

In considering changes to the required reporting period for game harvest, a five day requirement was considered. However, the department decided that a 7 day or "one week" reporting requirement would be easier for hunters to remember, and thereby potentially improve reporting and compliance.

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 2010-2011 and subsequent hunting seasons. Hunters will be able to report game harvest using the 7 day time period as soon as the final regulation is adopted.

Regulatory Flexibility Analysis

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

All reporting or record-keeping requirements associated with hunting are administered by the New York State Department of Environmental Conservation (department) or the U.S. Fish and Wildlife Service (for migratory game birds). No reporting or record-keeping requirements are being imposed on small businesses or local governments.

The hunting activity resulting from this rule making will not require any new or additional reporting or record-keeping 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, and the regulation on reporting game harvest. This rule will not impose any reporting, record-keeping, or other compliance requirements on rural communities. Therefore, a Rural Area Flexibility Analysis is not required.

All reporting or record-keeping requirements associated with hunting are administered by the New York State Department of Environmental Conservation (department) or the U.S. Fish and Wildlife Service (for migratory game birds). No reporting or record-keeping requirements are being imposed on rural areas.

The hunting activity associated with this rule making does not require any new or additional reporting or record-keeping 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, and the regulation on reporting game harvest. Based on the department's experience in promulgating prior revisions to hunting regulations, 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. Finally, the proposed changes in reporting game harvest are largely administrative in nature, with no significant consequences associated with employment opportunities.

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Certified Home Health Agency Program

I.D. No. HLT-33-10-00006-P

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

Proposed Action: This is a consensus rule making to amend section 505.23 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 363-a(2)

Subject: Certified Home Health Agency Program.

Purpose: To repeal provisions of the Department's home health services regulations that are obsolete due to expired statutory authority.

Text of proposed rule: Paragraph (1) of subdivision (a) of Section 505.23 is amended to read as follows:

(1) It is the policy of the department to pay for home health services under the medical assistance (MA) program only when:

(i) the services are medically necessary; and

(ii) the services can maintain the recipient's health and safety in his or her own home, as determined by the certified home health agency in accordance with the regulations of the Department of Health [; and] .

[(iii) services are reasonably expected to be authorized for more than 60 continuous days, either:

(a) the average monthly cost of providing home health services is equal to or less than 90 percent of the average monthly cost, as determined by the department, for 12 months of residential health care facility (RHCf) services in the social services district that is fiscally responsible for the recipient, as determined under this section; or

(b) the average monthly cost of providing home health services exceeds 90 percent of the average monthly cost, as determined by the department, for 12 months of RHCf services in the social services district that is fiscally responsible for the recipient; and the recipient either:

(1) meets at least one exception criterion; or

(2) is continuing to receive home health services while awaiting the availability of other appropriate long-term care services.]

Paragraph (2) of subdivision (a) of Section 505.23 is REPEALED.

Paragraph (3) of subdivision (a) of Section 505.23 is renumbered as paragraph (2) of such subdivision.

Paragraph (1) of subdivision (b) of Section 505.23 is amended to read as follows:

(1) A certified home health agency must provide home health services in accordance with applicable provisions of the regulations of the Department of Health (article 7 of Subchapter C of Chapter V of Title 10 NYCRR) and with federal regulations governing home health services (42 CFR 440.70 and Part 484). [(42 CFR part 430 to end, revised as of October 1, 1991, is published by the Office of the Federal Register, National Archives and Records Administration, and is available for public use and inspection at the Department of Social Services, 40 North Pearl St., Albany, NY 12243)]

Paragraph (2) of subdivision (b) of Section 505.23 is REPEALED.

Paragraph (3) of subdivision (b) of Section 505.23 is renumbered as paragraph (2) of such subdivision and subparagraphs (ii) and (v) of such paragraph (2) are amended to read as follows:

(ii) whether the recipient can be served appropriately and more cost-effectively by home health services provided under a [patient managed home care] *consumer directed personal assistance* program authorized in accordance with section 365-f of the Social Services Law;

(v) whether a recipient who requires only personal care services or an appropriate substitute and who does not, as a part of a routine plan of care, require part-time or intermittent nursing or other therapeutic services, except for [services expected to be required for fewer than 60 continuous days or] nursing services provided to a medically stable recipient, can be served appropriately and more cost-effectively through the provision of personal care services available in the district in accordance with section 505.14 of this Part;

Paragraph (4) of subdivision (b) of Section 505.23 is renumbered as paragraph (3) of such subdivision and amended to read as follows:

(3) If a certified home health agency determines that the recipient can be served appropriately and more cost-effectively through the provision of services which are described in subparagraphs [(3)(ii) through (viii)] (2)(ii) through (viii) of this subdivision and the certified home health agency

determines that such services are available in the social services district, the certified home health agency must first consider the use of such services in developing the recipient's plan of care. The recipient must use such services rather than home health services to achieve the maximum reduction in his or her need for home health services or other long-term care services.

Paragraph (5) of subdivision (b) of Section 505.23 is REPEALED.

Paragraph (6) of subdivision (b) of Section 505.23 is renumbered as paragraph (4) of such subdivision.

Subdivisions (c) and (d) of Section 505.23 are REPEALED.

Subdivision (e) of Section 505.23 is relettered as subdivision (c) of such section and paragraph (1) of such subdivision (c) is amended to read as follows:

(1) The department will pay providers of home health services for home health services provided under this section at rates established by the Commissioner of Health and approved by the Director of the Budget; however, no payment will be made unless the claim for payment is supported by documentation of the time spent providing services to each recipient. [When a recipient is awaiting referral to other appropriate long-term care services and such appropriate long-term care services become available to the recipient, no payment will be made for any home health services that are provided to the recipient after the date that such other appropriate long-term care services become available to the recipient.]

Paragraph (3) of the relettered subdivision (c) of Section 505.23 is REPEALED.

Paragraph (4) of the relettered subdivision (c) of Section 505.23 is renumbered as paragraph (3) of such relettered subdivision.

Subdivision (f) of Section 505.23 is relettered as subdivision (d) of such section.

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

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

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

Consensus Rule Making Determination

Statutory Authority:

Social Services Law ("SSL") § 363-a(1) provides that the Department is the "single state agency" responsible for supervising the administration of the State's medical assistance ("Medicaid") plan. As such, the Department is responsible for adopting such regulations, not inconsistent with law, as may be necessary to implement SSL Article 5, Title 11, entitled "Medical Assistance for Needy Persons" [SSL § 363-a(2)]. Section 201(1)(v) of the Public Health Law is in accord, providing that the Department, as the Medicaid "single state agency," shall adopt such regulations as may be necessary to implement the State's Medicaid plan.

Pursuant to SSL § 365-a(2)(d), the State's Medicaid program includes home health services.

Basis:

The proposed regulations repeal obsolete provisions of the Department's home health services regulations at 18 NYCRR § 505.23. The repealed provisions are obsolete due to expired statutory authority relating to fiscal assessments of home health services applicants and recipients, which were formerly authorized pursuant to SSL § 367-j, and the home care assessment instrument, which was formerly authorized pursuant to SSL § 367-o.

The proposed regulations repeal all references to fiscal assessments of home health services applicants and recipients. These provisions, which are primarily located in Section 505.23(c), have been obsolete since July 1, 1999, when the statutory authority for fiscal assessments expired. [SSL § 367-j, added by L. 1991, c. 165, § 22; amended by L. 1992, c. 41, §§ 68 to 70; expired and deemed repealed July 1, 1999, pursuant to L. 1991, c. 165, § 62(g), as amended by L. 1997, c. 433, § 16]. The Department has previously advised social services districts that the fiscal assessment provisions of State law had expired and that they should discontinue all fiscal assessment activities. (See GIS 99 MA/016 and GIS 01 MA/002, as listed in the Medicaid Library of Official Documents on the Department's website at www.health.state.ny.us)

The proposed regulations also repeal all references to the home care assessment instrument. These provisions, which are primarily located in Section 505.23(b)(2), have been obsolete since July 1, 1997, when the statutory authority for this assessment instrument expired. [SSL § 367-o, added by L. 1992, c. 41, § 78; expired and deemed repealed July 1, 1997, pursuant to L. 1992, c. 41, § 165(w), as amended by L. 1997, c. 433, § 17].

The proposed regulations retain the full text of the Revised Catanzano Implementation Plan, currently set forth at Section 505.23(f). The Department adopted this court-ordered plan pursuant to Judge David G. Larimer's March 20, 1996, order in *Catanzano v. Dowling*, 89 CV 1127L. [See, e.g.,

Catanzano v. Dowling, 847 F.Supp. 1070 (W.D.N.Y. 1994), aff'd 60 F.3d 113 (2d Cir. 1995); *Catanzano v. Dowling*, 900 F. Supp. 650 (W.D.N.Y. 1995), aff'd and remanded, 103 F.3d 223 (2d Cir. 1996); *Catanzano v. Wing*, 277 F.3d 99 (2d Cir. 2001).]

The Plan contains procedures for effectuating Catanzano class members notice and fair hearing rights when certified home health agencies and social services districts propose, contrary to physicians' orders, to take certain adverse action with respect to Medicaid recipients' home health services. The proposed regulations would repeal Section 505.23(d) which limited recipients' due process rights and has been superseded by the Plan's provisions. Certified home health agencies and social services districts have been required to follow the Plan's procedures since 1996. Although the fiscal assessment provisions of the Plan are obsolete, other Plan provisions – such as those governing adverse actions based on health and safety – are not obsolete. However, the Department is unable to delete the fiscal assessment provisions from the Plan absent a court order to that effect. Accordingly, the provisions of the Plan currently set forth at Section 505.23(f) are retained in their entirety, although relettered as Section 505.23(d).

This amendment to Section 505.23 is proposed as a consensus regulation because the Department has determined, pursuant to SAPA § 102(11) that no person is likely to object to this regulation because it merely repeals regulatory provisions that are no longer applicable to any person. The Department reached this determination because the statutory authority for the provisions in question has expired and the State no longer assumes the authority to regulate the subject matter.

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. This consensus rule merely repeals provisions of 18 NYCRR § 505.23 that have been obsolete for more than ten (10) years because of the expiration of statutory authority for those regulations in 1997 and 1999.

Insurance Department

EMERGENCY RULE MAKING

Standards for the Management of the New York State Retirement Systems

I.D. No. INS-11-10-00002-E

Filing No. 776

Filing Date: 2010-07-29

Effective Date: 2010-07-29

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

Action taken: Amendment of Part 136 (Regulation 85) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 314, 7401(a) and 7402(n)

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

Specific reasons underlying the finding of necessity: The Second Amendment to Regulation 85 (11 NYCRR 136), effective November 19, 2008, established new standards of behavior with regard to investment of the Common Retirement Fund's assets, conflicts of interest, and procurement. In addition, it created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Insurance Department.

Nevertheless, recent events surrounding how placement agents conduct business on behalf of their clients with regard to the Fund compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. Rather, only an immediate ban on the use of placement agents will ensure sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

This regulation was previously promulgated on an emergency basis on June 18, 2009, September 16, 2009, January 5, 2010, April 2, 2010, and May 28, 2010. A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Regulation No. 85 needs to remain effective for the general welfare.

Subject: Standards for the management of the New York State Retirement Systems.

Purpose: To ban the use of placement agents by investment advisors engaged by the state employees retirement system.

Text of emergency rule: Section 136-2.2 is amended to read as follows:
§ 136-2.2 Definitions.

The following words and phrases, as used in this Subpart, unless a different meaning is plainly required by the context, shall have the following meanings:

[(a) Retirement system shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.]

[(b) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law, which holds the assets of the retirement system.]

[(c)(a) Comptroller shall mean the Comptroller of the State of New York in his capacity as administrative head of the Retirement System and the sole trustee of the [fund] Fund

[(d) OSC shall mean the Office of the State Comptroller.]

[(e)(b) Consultant or advisor shall mean any person (other than an OSC employee) or entity retained by the [fund] Fund to provide technical or professional services to the [fund] Fund relating to investments by the [fund] Fund, including outside investment counsel and litigation counsel, custodians, administrators, broker-dealers, and persons or entities that identify investment objectives and risks, assist in the selection of [money] investment managers, securities, or other investments, or monitor investment performance.

(c) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.

(d) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law ("RSSL"), which holds the assets of the Retirement System.

[f] (e) Investment manager shall mean any person (other than an OSC employee) or entity engaged by the Fund in the management of part or all of an investment portfolio of the [fund] Fund. "Management" shall include, but is not limited to, analysis of portfolio holdings, and the purchase, sale, and lending thereof. For the purposes hereof, any investment made by the Fund pursuant to RSSL § 177(7) shall be deemed to be the investment of the Fund in such investment entity (rather than in the assets of such investment entity).

(f) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the Fund.

(g) OSC shall mean the Office of the State Comptroller.

[(g)] (h) Placement agent or intermediary shall mean any person or entity, including registered lobbyists, directly or indirectly engaged and compensated by an investment manager (other than [an] a regular employee of the investment manager) to promote investments to or solicit investment by [assist the investment manager in obtaining investments by the fund, or otherwise doing business with] the [fund] Fund, whether compensated on a flat fee, a contingent fee, or any other basis. Regular employees of an investment manager are excluded from this definition unless they are employed principally for the purpose of securing or influencing the decision to secure a particular transaction or investment by the Fund. [obtaining investments or providing other intermediary services with respect to the fund.] For purpose of this paragraph, the term "employee" shall include any person who would qualify as an employee under the federal Internal

Revenue Code of 1986, as amended, but shall not include a person hired, retained or engaged by an investment manager to secure or influence the decision to secure a particular transaction or investment by the Fund.

[(h) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the fund.]

[(i) Third party administrator shall mean any person or entity that contractually provides administrative services to the retirement system, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administrative services do not include services provided to the fund relating to fund investments.]

(i) Retirement System shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.

(j) Third party administrator shall mean any person or entity that contractually provides administrative services to the Retirement System, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits, paying benefits or maintaining any other Retirement System records. "Administrative services" do not include services provided to the Fund relating to Fund investments.

[(j)] (k) Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller, (2) an officer or employee of OSC, (3) an individual or entity doing business with OSC or the [fund] Fund, or (4) an individual or entity that has a substantial financial interest in an entity doing business with OSC or the [fund] Fund. For the purpose of this paragraph, the term "substantial financial interest" shall mean the control of the entity, whereby "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of such entity.

[(k) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.]

Section 136-2.4(d) is amended to read as follows:

(d) Placement agents or intermediaries: In order to preserve the independence and integrity of the [fund] Fund, to [address] preclude potential conflicts of interest, and to assist the Comptroller in fulfilling his or her duties as a fiduciary to the [fund] Fund, [the Comptroller shall maintain a reporting and review system that must be followed whenever the fund] the Fund shall not [engages, hires, invests with, or commits] engage, hire, invest with or commit to[,] an outside investment manager who is using the services of a placement agent or intermediary to assist the investment manager in obtaining investments by the [fund] Fund. [, or otherwise doing business with the fund. The Comptroller shall require investment managers to disclose to the Comptroller and to his or her designee payments made to any such placement agent or intermediary. The reporting and review system shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.]

Section 136-2.5(g) is amended to read as follows:

(g) The Comptroller shall:

(1) file with the superintendent an annual statement in the format prescribed by Section 307 of the Insurance Law, including the [retirement system's] Retirement System's financial statement, together with an opinion of an independent certified public accountant on the financial statement;

(2) file with the superintendent the Comprehensive Annual Financial Report within the time prescribed by law, but no later than the time it is published on the OSC public website;

(3) disclose on the OSC public website, on at least an annual basis, all fees paid by the [fund] *Fund* to investment managers, consultants or advisors, and third party administrators;

[(4)] disclose on the OSC public website, on at least an annual basis, instances where an investment manager has paid a fee to a placement agent or intermediary;

[(5)](4) disclose on the OSC public website the [fund's] *Fund's* investment policies and procedures; and

[(6)](5) require fiduciary and conflict of interest reviews of the [fund] *Fund* every three years by a qualified unaffiliated person.

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. INS-11-10-00002-P, Issue of March 17, 2010. The emergency rule will expire September 26, 2010.

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

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 201, 301, 314, 7401(a), and 7402(n) of the Insurance Law.

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

Section 314 vests the Superintendent with the authority to promulgate standards with respect to administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial soundness of the public retirement and pension systems of the State of New York, and to make an examination into the affairs of every system at least once every five years in accordance with sections 310, 311 and 312 of the Insurance Law. The implementation of the standards is necessarily through the promulgation of regulations.

As confirmed by the Court of Appeals in *Matter of Dinallo v. DiNapoli*, 9 N.Y. 3d 94 (2007), the Superintendent functions in two distinct capacities. The first is as regulator of the insurance industry. The second is as a statutory receiver of financially distressed insurance entities. Article 74 of the Insurance Law sets forth the Superintendent's role and responsibilities in this latter capacity. Section 7401(a) sets forth the entities, including the public retirement systems, to which Article 74 applies.

Section 7402(n) provides that it is a ground for rehabilitation if an entity subject to Article 74 has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the Superintendent has found, after appropriate notice and hearing, to be a dishonest or untrustworthy person.

2. Legislative objectives: Section 314 of the Insurance Law authorizes the Superintendent to promulgate and amend, after consultation with the respective administrative heads of public retirement and pension systems and after a public hearing, standards with respect to the public retirement and pension systems of the State of New York.

This amendment, which in effect bans the use of an investment tool that has been found to be untrustworthy, is consistent with the public policy objectives that the Legislature sought to advance in enacting Section 314, which provides the Superintendent with the powers to promulgate standards to protect the New York State Common Retirement Fund (the "Fund").

3. Needs and benefits: The Second Amendment to Regulation 85 (11 NYCRR 136), effective November 19, 2008, established new standards with regard to investment of the assets of the New York State Common Retirement Fund ("the Fund"), conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Insurance Department.

Nevertheless, recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to

investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund's members and beneficiaries, and safeguard the integrity of the Fund's investments. Further, the amendment defines "placement agent or intermediary" in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

4. Costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this amendment. There are no costs to the Insurance Department or other state government agencies or local governments. Investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

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

6. Paperwork: No additional paperwork should result from the prohibition imposed by the amendment.

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

8. Alternatives: The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining "placement agent" in more general terms.

In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department. These entities agreed with the concerns expressed by the Department and intend to explore remedies most appropriate to the pension funds that they represent.

Initially, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments. The proposed rule was published in the State Register on March 17, 2010. A Public Hearing was held on April 28, 2010. The following comments were received:

Blackstone Group, a global investment manager and financial advisor, wrote to oppose the proposed ban on the use of placement agents by investment advisors engaged by the New York State Common Retirement Fund ("The Fund"). It stated that the rule would lessen the number of investment opportunities brought before the Fund, adversely affect small, medium-sized and women- and minority-owned investment firms seeking to do business with the Fund, and adversely affect a number of New York-headquartered financial institutions doing business as placement agents.

Blackstone suggested the inclusion of the following provisions in the rule instead:

- A ban on political contributions by any employee of any placement agent seeking to do business with the fund;
- A requirement that any placement agent seeking to do business with the Fund be registered as a broker dealer with the SEC and ensure that its professionals have passed the appropriate Series qualifications administered by Financial Industry Regulatory Authority ("FINRA");
- A requirement that any placement agent seeking to do business in New York register with the Insurance Department; and
- A requirement that any placement agent representing an investment manager before the Fund fully disclose the contractual arrangement between it and the manager, including the fee arrangement and the scope of services to be provided.

The Securities Industry and Financial Markets Association (“SIFMA”), representing hundreds of securities firms, banks, and asset managers, commented that the proposed rule (1) inadvertently limits the access of smaller fund managers to the Fund; (2) restricts the number and types of advisers that could be utilized by the Fund; (3) creates an inherent conflict between federal and state law that would make it impossible to do business with the Fund while complying with both; and (4) adds duplicative regulation in an area already substantially regulated at the state level and that is primed for further federal regulation through the imminent imposition of a federal pay-to-play regime on all registered broker-dealers acting as placement agents. In addition, SIFMA provided language that it believes would be consistent with the existing federal requirements on the use of placement agents. SIFMA requested that the Department either exclude from the proposed rule those placement agents who are registered as broker-dealers under the Securities Exchange Act of 1934 or delay the enactment of the proposed rule until the federal and state placement agent initiatives are finalized.

The Department does not have jurisdiction over placement agents, which makes it difficult to implement and enforce requirements on them. The Superintendent did consider other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining “placement agent” in more general terms. At the time, the Superintendent concluded that only an immediate, total ban on the use of placement agents could provide sufficient protection of the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments.

9. Federal standards: The Securities and Exchange Commission issued a “Pay-To-Play” regulation for financial advisors on July 1, 2010, which may have an impact on the issues addressed in the proposed rule.

10. Compliance schedule: The emergency adoption of this regulation on June 18, 2009 ensured that the ban would become enforceable immediately. The ban needs to remain in effect on an emergency basis until such time as the amended regulation can be made permanent.

Regulatory Flexibility Analysis

1. Effect of the rule: This amendment strengthens standards for the management of the New York State and Local Employees’ Retirement System and New York State and Local Police and Fire Retirement System (collectively, “the Retirement System”), and the New York State Common Retirement Fund (“the Fund”). The Second Amendment to Regulation 85 (11 NYCRR 136), effective November 19, 2008, established new standards with regard to investment of the assets of the New York State Common Retirement Fund (“the Fund”), conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Insurance Department.

Nevertheless, recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund’s control environment is insufficient to protect the integrity of the state employees’ retirement systems. The Third Amendment to Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund’s members and beneficiaries, and safeguard the integrity of the Fund’s investments. Further, the amendment defines “placement agent or intermediary” in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund), are consistent with the principles specified in the rule. Most among all affected parties, the State Comptroller, as a fiduciary whose responsibilities are clarified and broadened, is impacted

by the amendment. The State Comptroller is not a “small business” as defined in section 102(8) of the State Administrative Procedure Act.

This amendment will affect investment managers and other intermediaries (other than OSC employees) who provide technical or professional services to the Fund related to Fund investments. The proposal will prohibit investment managers from using the services of a placement agent unless such agent is a regular employee of the investment manager and is acting in a broader capacity than just providing specific investment advice to the Fund. In addition, the amendment is also directed to placement agents, who as a result of this proposal, will no longer be engaged directly or indirectly by investment managers that do business with the Fund. Some investment managers and placement agents may come within the definition of “small business” set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

The amendment bans the use of placement agents in connection with investments by the Fund. This may adversely affect the business of placement agents, who will lose opportunities to earn profits in connection with investments by the Fund. Nevertheless, as a result of recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund’s members and beneficiaries and to safeguard the integrity of the Fund’s investments.

This amendment will not impose any adverse compliance requirements or result in any adverse impacts on local governments. The basis for this finding is that this amendment is directed at the State Comptroller; employees of the Office of State Comptroller; and investment managers, placement agents, consultant or advisors - none of which are local governments.

2. Compliance requirements: None.

3. Professional services: Investment managers, consultants and advisors who provide services to the fund, and are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may need to employ other professional services.

4. Compliance costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this amendment. There are no costs to the Insurance Department or other state government agencies or local governments. However, investment managers, consultants and advisors who provide services to the fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Economic and technological feasibility: The rule does not impose any economic and technological requirements on affected parties, except for placement agents who will lose the opportunity to earn profits in connection with investments by the Fund.

6. Minimizing adverse impact: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund. The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. But in the end, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments.

7. Small business and local government participation: In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor’s Office, Comptroller’s Office and Finance Department.

A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Investment managers, placement agents, consultants or advisors that do business in rural areas as defined under State Administrative Procedure Act Section 102(13) will be affected by this proposal. The amendment bans the use of placement agents in connection with investments by the New York State Common Retirement Fund (“the Fund”), which may adversely affect the business of placement agents and of other entities that utilize placement agents and are involved in Fund investments.

2. Reporting, recordkeeping and other compliance requirements, and professional services: This amendment will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, with the exception of requiring investment managers, consultants and advisors who provide services to the fund to discontinue the use of placement agents.

3. Costs: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund.

4. Minimizing adverse impact: The amendment does not adversely impact rural areas.

5. Rural area participation: A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Job Impact Statement

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. The amendment bans investment managers from using placement agents in connection with investments by the New York State Common Retirement Fund (“the Fund”). The amendment may adversely affect the business of placement agents, who could lose the opportunity to earn profits in connection with investments by the Fund. Nevertheless, in view of recent events about how placement agents conduct business on behalf of their clients with regard to the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund’s members and beneficiaries, and to safeguard the integrity of the Fund’s investments.

Assessment of Public Comment

Comments that were received as a result of the Public Hearing held on April 28, 2010:

Blackstone Group, a global investment manager and financial advisor, wrote to oppose the proposed ban on the use of placement agents by investment advisors engaged by the New York State Common Retirement Fund (“The Fund”). It stated that the rule would lessen the number of investment opportunities brought before the Fund, adversely affect small, medium-sized and women- and minority-owned investment firms seeking to do business with the Fund, and adversely affect a number of New York-headquartered financial institutions doing business as placement agents.

Blackstone suggested the inclusion of the following provisions in the rule instead:

- A ban on political contributions by any employee of any placement agent seeking to do business with the fund;
- A requirement that any placement agent seeking to do business with the Fund be registered as a broker dealer with the SEC and ensure that its professionals have passed the appropriate Series qualifications administered by Financial Industry Regulatory Authority (“FINRA”);
- A requirement that any placement agent seeking to do business in New York register with the Insurance Department; and
- A requirement that any placement agent representing an investment manager before the Fund fully disclose the contractual arrangement between it and the manager, including the fee arrangement and the scope of services to be provided.

The Securities Industry and Financial Markets Association (“SIFMA”), representing hundreds of securities firms, banks, and as-

set managers, commented that the proposed rule (1) inadvertently limits the access of smaller fund managers to the Fund; (2) restricts the number and types of advisers that could be utilized by the Fund; (3) creates an inherent conflict between federal and state law that would make it impossible to do business with the Fund while complying with both; and (4) adds duplicative regulation in an area already substantially regulated at the state level and that is primed for further federal regulation through the imminent imposition of a federal pay-to-play regime on all registered broker-dealers acting as placement agents. In addition, SIFMA provided language that it believes would be consistent with the existing federal requirements on the use of placement agents. SIFMA requested that the Department either exclude from the proposed rule those placement agents who are registered as broker-dealers under the Securities Exchange Act of 1934 or delay the enactment of the proposed rule until the federal and state placement agent initiatives are finalized.

The Department does not have jurisdiction over placement agents, which makes it difficult to implement and enforce requirements on them. The Superintendent did consider other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining “placement agent” in more general terms. At the time, the Superintendent concluded that only an immediate, total ban on the use of placement agents could provide sufficient protection of the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments.

The Department met with representatives from SIFMA on June 28th to gain further understanding of some of the issues raised in opposition to the proposed rule. We subsequently requested additional information from SIFMA which we have not received. The Department will continue to assess the comments that have been received and any others that may be submitted.

In addition, the Securities and Exchange Commission issued a “Pay-To-Play” regulation for financial advisors on July 1, 2010, which may have an impact on the issues addressed in the proposed rule. We are carefully reviewing the federal regulation before any further action will be taken with regards to the proposed rule.

EMERGENCY RULE MAKING

Workers’ Compensation Insurance Rates: Reserves for Special Disability Fund Claims

I.D. No. INS-33-10-00011-E

Filing No. 807

Filing Date: 2010-08-03

Effective Date: 2010-08-03

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

Action taken: Amendment of Part 151 (Regulation 119) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1303 and 4117; Workers’ Compensation Law, section 32

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

Specific reasons underlying the finding of necessity: Workers’ Compensation Law (“WCL”) Section 32 permits the chair of the Workers’ Compensation Board to procure one or more private entities to assume the liability for, and management, administration or settlement of all or a portion of the claims in the Special Disability Fund (“SDF”). Furthermore, no insurer, self-insured employer, or the State Insurance Fund (“SIF”) may assume the liability for, management, administration or settlement of any claims on which it holds reserves, beyond such reserves as are permitted by regulation of the Superintendent of Insurance. The law mandates the Superintendent to set a reserve standard specific to transactions authorized by WCL Section 32. This regulation establishes the required reserve standards.

Presently, the SDF reimburses carriers for all payments properly paid in accordance with Workers’ Compensation Law Sections 15(8)

and 14(6). Specifically, where an employee with a “permanent physical impairment” incurs a subsequent disability as a result of a work-related injury or occupational disease that results in a permanent disability caused by both conditions combined, to a degree greater than what would have resulted from the second injury or occupational disease alone, the employer or carrier is reimbursed from the SDF for all benefits incurred after the first 260 weeks of disability. If the employee suffered the second injury before August 1, 1994, then the employer or carrier is reimbursed from the SDF for all benefits incurred after the first 104 weeks of the second injury. Further, if the second injury results in the employee’s death, which would not have occurred except for the pre-existing permanent physical impairment, the employer or carrier is entitled to be reimbursed from the SDF for all benefits payable in excess of 260 weeks (or 104 weeks for accidents or disablements before August 1, 1994).

The SDF funds its operations and claims payments by making annual assessments on private insurance carriers, self-insured employers (including political sub-divisions), group self-insurers, and SIF. The combination of increasing requests for reimbursement from the SDF, as well as the SDF’s assessment funding mechanism, has resulted in a burden on New York State insurers and employers. In fact, assessments on insurers have increased by nearly 160% from 1999 to 2008, resulting in increased premium charges to employers.

The Legislature enacted Chapter 6 of the Laws of 2007, which amended Section 15(8)(h) of the Workers’ Compensation Law, in order to close the SDF to claims for reimbursement for injuries or illnesses occurring on or after July 1, 2007, and to mandate that all claims for reimbursement be filed with the SDF prior to July 10, 2010. The legislation also amends Section 32(i) of the Workers’ Compensation Law to permit the chair of the New York State Workers’ Compensation Board to procure one or more private entities to assume the liability for, and management, administration or settlement of all or a portion of the claims in the SDF. Furthermore, Section 32(i)(5) mandates that no carrier, self insured employer, or SIF may assume the liability for, management, administration or settlement of any claims on which it holds reserves, beyond such reserves as are permitted by regulation of the Superintendent. This regulation ensures that insurers, self-insured employers, and SIF do not over-reserve for claims if they voluntarily assume the liability for, or management, administration or settlement of any claims.

The Waiver Agreement Management Office (WAMO), acting on behalf of the Workers’ Compensation Board, will enter into waiver agreements with insurers, self-insured employers, and SIF whereby those parties agree to assume the liability for, management, administration or settlement of claims. In consideration of the assumption of those obligations, the insurer, self-insured employer, or SIF will receive a lump-sum payment from WAMO. WAMO will also negotiate and execute other waiver agreements (i.e., the retail/individual waiver agreements) contemplated by the regulation.

The New York State Dormitory Authority will be issuing tax exempt revenue bonds beginning in November, 2009, to fund the waiver agreements to be entered into by WAMO. This regulation must be in place before that time so that insurers (one of the parties to wholesale waiver agreements) will be able to enter into waiver agreements with WAMO. Nor will self-insured employers or the SIF be in a position to execute waiver agreements with WAMO until such time as this regulation is in place.

The rapid depopulation of the SDF through the waiver agreements will lead to a decrease the SDF assessments that New York State insurers and employers must pay. This regulation was previously promulgated on an emergency basis on November 18, 2009, February 10, 2010 and May 7, 2010. For the reasons stated above, the rule must be kept in effect on an emergency basis for the furtherance of the general welfare.

Subject: Workers’ Compensation Insurance Rates: Reserves for Special Disability Fund Claims.

Purpose: This regulation requires reserves to be established for those claims subject to reimbursement by the Special Disability Fund.

Text of emergency rule: A new subpart 151-4 is added to read as follows:

Section 151-4.1 Preamble.

The Special Disability Fund (“SDF”) reimburses carriers and self-insured employers for all payments properly paid in accordance with Workers’ Compensation Law Sections 15(8) and 14(6). Specifically, where an employee with a “permanent physical impairment” incurs a subsequent disability as a result of a work-related injury or occupational disease that results in a permanent disability caused by both conditions combined, to a degree greater than what would have resulted from the second injury or occupational disease alone, the employer or carrier is reimbursed from the SDF for all benefits incurred after the first 260 weeks of disability. If the employee suffered the second injury before August 1, 1994, then the employer or carrier is reimbursed from the SDF for all benefits incurred after the first 104 weeks of the second injury. Further, if the second injury results in the employee’s death, which would not have occurred except for the pre-existing permanent physical impairment, the employer or carrier is entitled to be reimbursed from the SDF for all benefits payable in excess of 260 weeks (or 104 weeks for accidents or disablements before August 1, 1994).

The SDF funds its operations and claims payments by making annual assessments on insurers writing workers compensation insurance in New York, self-insured employers (including political sub-divisions), group self-insurers, and the State Insurance Fund. The combination of increasing requests for reimbursement from SDF, as well as the SDF’s assessment funding mechanism, has resulted in a burden on New York State insurers and employers. In fact, assessments on insurers have increased by nearly 160% from 1999 to 2008, resulting in increased premium charges to employers.

The Legislature enacted Chapter 6 of the Laws of 2007, which amended Workers’ Compensation Law Section 15(8)(h), in order to close the SDF to claims for reimbursement for injuries or illnesses occurring on or after July 1, 2007, and to mandate that all claims for reimbursement be filed with the SDF prior to July 10, 2010. The legislation also amends Workers’ Compensation Law section 32(i) to permit the chair of the Workers’ Compensation Board to procure one or more private entities to assume the liability for, and management, administration or settlement of all or a portion of the claims in the special disability fund. Furthermore, Workers’ Compensation Law section 32(i)(5) mandates that no carrier, self insured employer, or the State Insurance Fund may assume the liability for, management, administration or settlement of any claims on which it holds reserves, beyond such reserves as are permitted by regulation of the Superintendent of Insurance. This purpose of this subpart is to ensure that an insurer, self-insured employer, or State Insurance Fund does not over-reserve for claims if it voluntarily assumes the liability for, or management, administration or settlement.

Section 151-4.2 Definitions.

Waiver agreement, in this subpart, means any agreement entered into between an insurer, self-insured employer, or the State Insurance Fund and the New York State Workers’ Compensation Board pursuant to Workers’ Compensation Law sections 32(i)(2) and (3).

Section 151-4.3 Reserve Amounts.

(a) An insurer other than the State Insurance Fund that enters into a waiver agreement shall establish reserves for those claims in accordance with Insurance Law sections 1303 and 4117(d).

(b) The State Insurance Fund or a self-insured employer holding reserves that enters into a waiver agreement shall establish reserves for those claims in accordance with the principles set forth in Insurance Law sections 1303 and 4117(d).

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 October 31, 2010.

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

Regulatory Impact Statement

1. Statutory authority: The Superintendent’s authority for the promulgation of Part 151-4 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation

No. 119) derives from Sections 201, 301, 1303, and 4117 of the Insurance Law, Section 32 of the Workers' Compensation Law ("WCL"), and Chapter 6 of the Laws of 2007. These provisions establish the Superintendent's authority to establish the amount of reserves an insurer, self-insured employer, or the State Insurance Fund ("SIF") may hold for claims for which the entity has waived its right to reimbursement from the Special Disability Fund ("SDF"), and for which it has assumed the liability, management, administration, or settlement.

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

Section 1303 of the Insurance Law requires every insurer to maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses or claims incurred on or prior to the date of statement, whether reported or unreported, which are unpaid as of such date and for which such insurer may be liable, and also reserves in an amount estimated to provide for the expenses of adjustment or settlement of such losses or claims.

Section 4117(d) of the Insurance Law sets forth the minimum reserves for outstanding losses and loss expenses under policies of workers' compensation insurance.

Section 32 of the Workers' Compensation Law permits the chair of the workers' compensation board to procure one or more private entities to assume the liability for, and management, administration or settlement of all or a portion of the claims in the SDF. Furthermore, no carrier, self insured employer, or the State Insurance Fund ("SIF") may assume the liability for, management, administration or settlement of any claims on which it holds reserves, beyond such reserves as are permitted by regulation of the Superintendent.

Section 80 of Chapter 6 of the Laws of 2007, gives the Superintendent the authority, in consultation with the chair of the workers' compensation board, to promulgate regulations relating to the standards to be followed in the approval of forms and procedural requirements needed to implement the provisions of this act.

2. Legislative objectives: The SDF reimburses carriers for all payments properly paid in accordance with Workers' Compensation Law Sections 15(8) and 14(6). Specifically, where an employee with a "permanent physical impairment" incurs a subsequent disability as a result of a work-related injury or occupational disease that results in a permanent disability caused by both conditions combined, to a degree greater than what would have resulted from the second injury or occupational disease alone, the employer or carrier is reimbursed from the SDF for all benefits incurred after the first 260 weeks of disability. If the employee suffered the second injury before August 1, 1994, then the employer or carrier is reimbursed from the SDF for all benefits incurred after the first 104 weeks of the second injury. Further, if the second injury results in the employee's death, which would not have occurred except for the pre-existing permanent physical impairment, the employer or carrier is entitled to be reimbursed from the SDF for all benefits payable in excess of 260 weeks (or 104 weeks for accidents or disablements before August 1, 1994).

The SDF funds its operations and claims payments by making annual assessments on private insurance carriers, self-insured employers (including political sub-divisions), group self-insurers, and SIF. The combination of increasing requests for reimbursement from the SDF, as well as the SDF's assessment funding mechanism, has resulted in a burden on New York State insurers and employers. In fact, assessments on insurers have increased by nearly 160% from 1999 to 2008, resulting in increased premium charges to employers.

As a result, the Legislature enacted Chapter 6 of the Laws of 2007, which amended Section 15(8)(h) of the Workers' Compensation Law, in order to close the SDF to claims for reimbursement for injuries or illnesses occurring on or after July 1, 2007, and to mandate that all claims for reimbursement be filed with the SDF prior to July 10, 2010. The legislation also amended Section 32(i) of the Workers' Compensation Law to permit the chair of the Workers' Compensation Board to procure one or more private entities to assume the liability for, and management, administration or settlement of all or a portion of the claims in the special disability fund. Furthermore, Section 32(i)(5)

mandates that no carrier, self insured employer, or SIF may assume the liability for, management, administration or settlement of any claims on which it holds reserves, beyond such reserves as are permitted by regulation of the Superintendent. This regulation ensures that insurers, self-insured employers, and SIF do not over-reserve for claims if they voluntarily assume the liability for, or management, administration or settlement of any claims.

3. Needs and benefits: This regulation requires an insurer, self-insured employer, or SIF to establish reserves for those claims subject to reimbursement by the SDF in accordance with Insurance Law Sections 1303 and 4117(d), thereby ensuring that insurers, self-insured employers, or SIF do not over-reserve for claims for which they have directly assumed the liability, management, administration, or settlement. Insurance Law Section 1303 states that all insurers must maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses or claims incurred on or prior to the date of the statement, whether reported or unreported, which are unpaid as of such date and for which such insurer may be liable, and also reserves in an amount estimated to provide for the expenses of adjustment or settlement of such losses or claims. In turn, Insurance Law Section 4117(d) sets forth the minimum reserves for outstanding losses and loss expenses under policies of workers' compensation insurance.

4. Costs: Participation in the program is voluntary. If an insurer, self-insured employer, or SIF chooses to assume the liability for, or management, administration or settlement of any claims for which they were previously reimbursed by the SDF, there will be costs associated with the undertaking. However, in consideration of the undertaking, the insurer, self-insured employers, or SIF will receive a lump-sum payment from the Waiver Agreement Management Office. Consequently, there will be no adverse cost impact on those entities that do choose to participate in the program.

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

6. Paperwork: This regulation requires no new paperwork. Insurers, self-insured employers and SIF already administer the claims for second injuries. However, by assuming the liability, management, administration, and settlement directly, these insurers, self-insured employers, or SIF would no longer be reimbursed by the SDF, and thereby reduce their paperwork.

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

8. Alternatives: The law mandates the Superintendent to set a reserve standard specific to transactions authorized by WCL Section 32(i)(5). Reserving in accordance with Insurance Law Sections 1303 and 4117(d) will ensure that insurers that assume the liability, management, administration, and settlement of claims for which they were previously reimbursed by the SDF do not over-reserve for those claims. Nor would reserving in accordance with these sections result in inadequate reserves for those claims.

Section 80 of Chapter 6 of the Laws of 2007, gives the Superintendent the authority, in consultation with the chair of the workers' compensation board, to promulgate regulations relating to the standards to be followed in the approval of forms and procedural requirements needed to implement the provisions of WCL Section 32(i)(5). Participation in the program is voluntary. If an insurer, self-insured employer, or SIF chooses to assume the liability for, or management, administration or settlement of any claims for which they were previously reimbursed by the SDF, it must maintain reserves as required by regulation of the Superintendent.

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

10. Compliance schedule: Insurers, self-insured employers, or SIF, if they choose to assume the liability for, or management, administration or settlement of any claims, will be expected to demonstrate compliance with the reserve standards established by this regulation immediately upon entering into a waiver agreement.

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.

This regulation applies to all workers' compensation insurers authorized to do business in New York State, self-insureds, and the State Insurance Fund ("SIF"). This regulation ensures that insurers, self-insured employers, and SIF do not over-reserve for claims if they voluntarily assume the liability for, or management, administration or settlement of those claims from the Workers' Compensation Special Disability Fund ("SDF") by requiring those entities to reserve in accordance with Insurance Law Sections 1303 and 4117(d).

The basis for this finding is that this rule is directed at workers' compensation insurers authorized 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 ("SAPA"). The Insurance Department has monitored Annual Statements and Reports on Examination of authorized workers' compensation 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. Nor does SIF, which is also effected by the regulation, come within the definition of "small business" found in SAPA Section 102(8).

The prerequisites maintained by the Workers' Compensation Board for an employer to be self-insured make it highly unlikely that any small businesses, as defined by SAPA Section 102(8), are in fact self-insured. All of the currently self-insured employers have high credit scores and payrolls equal to or greater than \$732,000. Moreover, all self-insured employers must post a security deposit with the Workers' Compensation Board of at least \$935,000 or provide a letter of credit for the required amount of security. These qualifications, among others, preclude the overwhelming majority of small employers from becoming self-insured.

In any event, this rule is applicable only if a workers' compensation insurer, self-insured employer, or SIF voluntarily chooses to enter into waiver agreement. If an insurer, self-insured employer, or SIF chooses to assume the liability for, or management, administration or settlement of any claims for which they were previously reimbursed by the SDF, there will be costs associated with the undertaking. However, in consideration of the undertaking, the insurer, self-insured employers, or SIF will receive a lump-sum payment from the Waiver Agreement Management Office. Consequently, there will be no adverse impact on those entities that do choose to participate in the program.

2. Local governments:

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

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This regulation applies to all workers' compensation insurers authorized to do business in New York State, self-insureds, and the State Insurance Fund ("SIF"). These entities do business throughout New York State, including rural areas as defined under State Administrative Procedure Act ("SAPA") 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. Insurers, self-insured employers, and SIF already administer the claims from a claims management perspective. If anything, they would have a reduction in paperwork because the reimbursement process would no longer be necessary.

3. Costs:

To insurers: Participation in the program is voluntary. If a carrier, self-insured employer or SIF chooses to assume the liability for, or management, administration or settlement of any claims for which they were previously reimbursed by the SDF, there will be costs associated with the undertaking. However, in consideration of the

undertaking, the insurer, self-insured employers, or SIF will receive a lump-sum payment from the Waiver Agreement Management Office. Consequently, there will be no adverse cost impact on those entities that do choose to participate in the program.

4. Minimizing adverse impact:

Participation in the program is voluntary. If a carrier, self-insured employer, or SIF chooses to assume the liability for, or management, administration or settlement of any claims for which they were previously reimbursed by the SDF, there will be costs associated with the undertaking. However, in consideration of the undertaking, the insurer, self-insured employers, or SIF will receive a lump-sum payment from the Waiver Agreement Management Office. Consequently, there will be no adverse impact on those entities that do choose to participate in the program.

5. Rural area participation:

The legislature in 2007 amended Workers' Compensation Law Section 32(i)(5) was amended to mandate that an insurer, self insured employer, or SIF may not assume the liability for, management, administration or settlement of any claims on which it holds reserves, beyond such reserves as are permitted by regulation of the Superintendent of Insurance. In order for the mechanism contemplated by the statute to operate, the Superintendent must promulgate a regulation establishing reserve standards.

The entities covered by this regulation - workers' compensation insurers authorized to do business in New York State, self-insured employers, and SIF - do business in every county in this state, including rural areas as defined under SAPA Section 102(10). This regulation mandates that insurers should set reserves in accordance with Insurance Law Sections 1303 and 4117(d), and that self-insureds and SIF should set reserves in accordance with the principles set forth in Insurance Law Sections 1303 and 4117(d). The regulation contains no provisions that create impacts unique to rural areas of the state.

Job Impact Statement

This rule will not adversely impact job or employment opportunities in New York. The rule mandates that insurers must set reserves in accordance with Insurance Law Sections 1303 and 4117(d), and that self-insureds and the State Insurance Fund should set reserves in accordance with the principles set forth in Insurance Law Sections 1303 and 4117(d). The insurer's existing personnel should be able to perform this task. There should be no region in New York which would experience an adverse impact on jobs and employment opportunities. This regulation should not have a measurable impact on self-employment opportunities.

Long Island Power Authority

NOTICE OF WITHDRAWAL

Economic Development Program Under the Tariff for Electric Service

I.D. No. LPA-29-10-00002-W

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

Action taken: Notice of proposed rule making, I.D. No. LPA-29-10-00002-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on July 21, 2010.

Subject: The economic development program under the Tariff for Electric Service.

Reason(s) for withdrawal of the proposed rule: The Authority has added an additional tariff leaf to the proposal and will republish the entire rulemaking proposal.

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

Economic Development Program Under the Tariff for Electric Service

I.D. No. LPA-33-10-00002-P

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

Proposed Action: The Long Island Power Authority (“Authority”) is considering a proposal to modify its Tariff for Electric Service relating to LIPA’s economic development program to adjust standardized discounts downward and expand eligibility criteria.

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

Subject: Economic development program under the Tariff for Electric Service.

Purpose: To modify the Tariff for Electric Service with regard to LIPA’s economic development program.

Public hearing(s) will be held at: 10:00 a.m., Oct. 7, 2010 at H. Lee Denison Bldg., 100 Veterans Memorial Hwy., Hauppague, NY; 2:00 p.m., Oct. 7, 2010 at Long Island Power Authority, 333 Earle Ovington Blvd., 2nd Fl., Uniondale, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

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

Substance of proposed rule: The Long Island Power Authority (“Authority”) is considering a proposal to adopt modifications to its Tariff for Electric Service relating to LIPA’s economic development program, including: (1) to adjust downward the standardized discounts for eligible businesses to reflect LIPA’s current cost to serve; and (2) to expand the eligibility criteria to allow existing commercial customers to access modified time of use rates. The Authority may approve, modify, or reject, in whole or part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553, (516) 222-7700, email: amccabe@lipower.org

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

Public comment will be received until: Five days after the last scheduled public hearing.

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

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

**Office for People with
Developmental Disabilities**

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

HCBS Waiver Community Habilitation Services

I.D. No. PDD-33-10-00010-P

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

Proposed Action: Amendment of Subparts 635-10, 635-12, and sections 635-99.1 and 686.99 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 43.02

Subject: HCBS Waiver Community Habilitation Services.

Purpose: To establish Community Habilitation as a new type of HCBS waiver service.

Substance of proposed rule (Full text is posted at the following State website: www.omr.state.ny.us): • Effective November 1, 2010, the proposed regulations establish Community Habilitation (CH), a new type of Home and Community Based (HCBS) Waiver service in the OPWDD system.

- Allowable CH services include all of the allowable services specified for HCBS waiver residential habilitation and HCBS waiver day habilitation.

- All existing HCBS Waiver At Home Residential Habilitation (AHRH) services are converted to become CH services on November 1, 2010.

- Rules for CH services are generally the same as the rules for AHRH services. Significant changes from AHRH rules are as follows:

- In order to be billable, AHRH services are required to be delivered at the individual’s home, or be initiated or concluded there. This requirement is not included in the proposed regulations for CH services.

- AHRH services are billable on an individual basis, or for groups of 2, 3, or 4 or more individuals per staff person. CH services are not billable for more than 4 individuals per staff person.

- Billable CH services may not be delivered at a site certified by OPWDD or at a site operated by OPWDD which would be required to be certified if it were operated by another provider. An exception is made for Article 16 clinic sites. Regulations for AHRH do not include this restriction.

- The proposed regulations specifically state that CH services are not billable while the individual is in a hospital, nursing home, rehabilitation facility, or ICF/DD. Services are billable on the day of admission or day of discharge from these facilities, so long as the services are not provided at the facility site. Although this issue was not specifically addressed in the AHRH regulations, AHRH services were subject to the same restrictions (excepting the restriction on the location of service delivery).

- Reimbursement for AHRH is contingent upon the prior approval of OPWDD. CH regulations add standards for this prior approval.

- The proposed regulations include provisions for self-directed and family-directed CH services which parallel provisions for self-directed and family-directed AHRH services.

- The proposed regulations establish that prior to August 1, 2011, an Individualized Service Plan (ISP) that identifies AHRH services is deemed to include CH services. In addition, prior to August 1, 2011 the provider is allowed to deliver CH services in accordance with the AHRH Plan in lieu of the CH Plan.

- The fees for CH effective November 1, 2010 are the same as the fees for AHRH that are in effect on October 31, 2010.

- Providers are eligible for transitional hourly fees for CH for November and December 2010 if they met the criteria for receipt of the transitional hourly fee for 2010 for the AHRH services converted to CH.

- CH fees will be trended if there is a trend factor. Fees are not appealable.

- The Liability for Services regulations in 14 NYCRR Subpart 635-12 are affected as follows:

- The proposed regulations amend Subpart 635-12 to include CH.

- The Liability for Services regulations define “preexisting services” and contain different requirements for “preexisting services” as opposed to “other than preexisting services.” The conversion of AHRH to CH on November 1, 2010 by itself will not change whether the services are considered “preexisting services” or “other than preexisting services.” Individuals who were receiving preexisting AHRH services prior to the conversion will be receiving preexisting CH services after the conversion if no other changes occurred that would affect the status.

- AHRH is maintained in the regulations. This means that for AHRH services that were delivered prior to the conversion, compliance is still required for activities such as payment, billing, and collection.

Text of proposed rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office For People With Developmental Disabilities (OPWDD), 44 Holland Avenue, Albany, New York 12229, (518) 474-1830, email: barbara.brundage@omr.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: Pursuant to the requirements of the State Environmental Quality Review Act, OMRDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory Authority:

a. The New York State Office For People With Developmental Disabilities’ (OPWDD) statutory responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and

developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

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

c. OPWDD's responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates and fees for services in facilities licensed or operated by OPWDD.

2. Legislative Objectives: These proposed amendments further the legislative objectives embodied in sections 13.07, 13.09, and 43.02 of the Mental Hygiene Law by making revisions to the regulations governing Home and Community-Based (HCBS) Waiver services. The proposed amendments will establish standards for provision and funding, under the HCBS Waiver, of Community Habilitation (CH) services and will allow for a self-directed and family-directed option in CH.

3. Needs and Benefits: HCBS Waiver Community Habilitation services offer another option to participants and families who wish to have their habilitation services available in a variety of everyday community settings. The service, which was approved by the Federal Centers for Medicare and Medicaid Services (CMS) in the HCBS Waiver renewal effective 10/1/09, is designed to promote independence and community integration by offering skills training and supports which take place only in non-certified settings.

To achieve the desired flexibility, the proposed regulations will replace the existing At Home Residential Habilitation (AHRH) service with the new Community Habilitation (CH) service. CH will provide enhanced flexibility and a more individualized approach than what was possible under the parameters of AHRH by removing the restriction that services start, stop, or be fully delivered in an individual's home and by limiting the staff to individual service delivery ratio to small group activities of no more than one to four. It is anticipated that these changes will offer participants increased flexibility in service design, will allow for increased community interaction, and will promote cost effective community integration.

Finally, to promote individual choice and greater flexibility, as with AHRH, these regulations include a self-directed and family-directed option within CH for those individuals who want to choose and manage CH staff (either personally or through a parent, guardian, family member or other adult).

4. Costs:

a. Costs to the Agency and to the State and its local governments: Since the restructuring in this proposal neither increases nor reduces the services or changes the cost of services, the amendments will have no fiscal effect on the overall costs of service provision, either for the State or for the Medicaid program. There will also be no new costs to local governments as a result of the proposed amendments.

b. Costs to private regulated parties: There are no initial capital investment costs and only minimal non-capital expenses. The only additional costs associated with implementation and continued compliance with the amendments are due to the fact that CH services will not be billable for individual to staff ratios of greater than 4:1. In rare instances, AHRH services may be currently delivered with individual to staff ratios greater than 4:1.

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

6. Paperwork: There may be some reduction in paperwork as a result of the proposed amendments. The removal of the restriction that services start, stop, or be delivered in an individual's home will eliminate the need for some documentation requirements.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to the above cited services for persons with developmental disabilities.

8. Alternatives: OPWDD had considered the conversion of existing Individual Day Habilitation Services to become Community Habilitation Services. However, OPWDD decided to defer this conversion to some future point due to the additional complexities involved.

9. Federal Standards: Current Federal requirements for Medicaid and HCBS Waiver programs, which contain general documentation requirements, apply to HCBS Waiver habilitation services. The proposed regulations include documentation requirements that are consistent with applicable Federal standards.

10. Compliance Schedule: OPWDD expects to adopt the proposed amendments effective November 1, 2010. Currently, agencies are providing and are familiar with At Home Residential Habilitation (AHRH). CH will subsume the provision of AHRH with the effective date of these amendments, and the significant changes to the requirements of the service are that services will not have to be delivered, initiated or concluded at the individual's home and that services are not billable for individual to staff ratios of greater than 4:1. The first change removes a requirement

and will not affect the cost of service delivery. The second change will have minimal impact, since individual to staff ratios may rarely exceed 4:1 for AHRH services. Therefore, it is reasonable to assume that providers of CH services will have no difficulties in complying with the amendments. The proposed regulations also incorporate a 9 month phase-in period to make changes to Individualized Service Plans (ISPs) and Habilitation Plans. For CH services converted from AHRH on November 1, 2010, the ISP may continue to reference AHRH instead of CH and the AHRH Plan may be used in lieu of a CH Plan until August 1, 2011. Since ISPs must be reviewed every 6 months, the necessary changes can therefore be made as a part of the normal ISP review.

OPWDD will provide all necessary information, training, and guidance to providers regarding the new requirements before they become effective.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments: These proposed regulatory amendments will apply to agencies which provide HCBS Waiver Community Habilitation (CH) services to persons with developmental disabilities. Most CH services are expected to be delivered by voluntary provider agencies which employ more than 100 people overall and would therefore not be classified as small businesses. Some smaller agencies do, however, employ fewer than 100 employees overall and would, therefore, be considered to be small businesses. As of July 2010, OPWDD estimates that approximately 89 provider agencies employ fewer than 100 employees and are small businesses.

The proposed amendments have been reviewed by OPWDD in light of their impact on these small businesses and on local governments. OPWDD has determined that these amendments will not have any negative effects on these small business providers of HCBS Waiver CH services, and that they will continue to provide appropriate funding for the delivery of such services.

HCBS Waiver Community Habilitation services offer another option to participants and families who wish to have their habilitation services available in a variety of everyday community settings. The service is designed to promote independence and community integration by offering skills training and supports which take place only in non-certified settings.

To achieve the desired flexibility, the proposed regulations will replace the existing At Home Residential Habilitation (AHRH) service with the new Community Habilitation (CH) service. CH will provide enhanced flexibility and a more individualized approach than what was possible under the parameters of AHRH by removing the restriction that services start, stop, or be fully delivered in an individual's home and by limiting the staff to individual service delivery ratio to no more than one to four. It is anticipated that these changes will offer participants increased flexibility in service design, will allow for increased community interaction, and will promote cost effective community integration.

Finally, to promote individual choice and greater flexibility, as with AHRH, these regulations include a self-directed and family-directed option within CH for those individuals who want to choose and manage CH staff (either personally or through a parent, guardian, family member or other adult).

Since services are not being increased or reduced by this proposal, the amendments will have no fiscal effect on the overall costs of service provision. The amendments will, therefore, have no effect on local governments.

2. Compliance requirements: As discussed in the Regulatory Impact Statement, agencies are currently providing and are familiar with At Home Residential Habilitation (AHRH) services. Since CH will subsume the provision of AHRH with the effective date of these amendments, and there are only two changes to the program requirements of the service which have minimal effect on the cost of service, it is reasonable to assume that providers of CH services should have no difficulties in complying with the amendments. The proposed regulations also incorporate a 9 month phase-in period to make changes to Individualized Service Plans (ISPs) and Habilitation Plans. For CH services converted from AHRH on November 1, 2010, the ISP may continue to reference AHRH instead of CH and the AHRH Plan may be used in lieu of a CH Plan until August 1, 2011. Since ISPs must be reviewed every 6 months, the necessary changes can therefore be made as a part of the normal ISP review.

Finally, there may be some reduction in paperwork as a result of the proposed amendments. The removal of the restriction that services start, stop, or be delivered in an individual's home will eliminate the need for some documentation requirements.

OPWDD has carefully considered the desirability of a small business regulation guide to assist provider agencies with these regulations, as provided for by section 102-a of the State Administrative Procedure Act. However, OPWDD has already developed and maintains guidance documents addressing the provision of various HCBS Waiver services. OPWDD will issue new guidance documents, as necessary, to implement CH services and the requirements contained in the proposed regulations.

3. Professional services: In accordance with existing practice, providers

are required to submit annual cost reports by certified accountants. The proposed amendments do not alter this requirement. Therefore, no additional professional services are required as a result of these amendments. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There are no additional compliance costs to small business regulated parties or local governments associated with the implementation of, and continued compliance with, these proposed amendments.

5. Economic and technological feasibility: The proposed amendments are concerned with fiscal and administrative issues, and do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse impact: The amendments should result in minimal adverse economic impacts. As stated in the Regulatory Impact Statement, the proposed regulations also incorporate a 9 month phase-in period to make changes to ISPs and Habilitation Plans. For CH services converted from AHRH on November 1, 2010, the Individualized Service Plan (ISP) may continue to reference AHRH instead of CH and the AHRH Plan may be used in lieu of a CH Plan until August 1, 2011. Since ISPs must be reviewed every 6 months, the necessary changes can therefore be made as a part of the normal ISP review.

7. Small business and local government participation: The provider community, with representatives from providers, provider associations, and other stakeholders including self-advocates and families, collaborated with OPWDD's waiver renewal planning committees. The waiver renewal planning committees were established in 2008 to plan for the 2009 OPWDD HCBS Waiver Renewal by reviewing existing programs and to identify areas requiring additional supports; to ensure full stakeholder representation, the committees included representatives from OPWDD's Central Office, regional Developmental Disabilities Service Offices, service providers, individuals receiving services, self-advocates, advocates, and family members of people receiving services. During this process, the need for more flexible community integration options was identified and the basic structure of the Community Habilitation service was designed as a result.

Community Habilitation design elements were discussed with numerous provider representatives, constituent organizations, self-advocacy groups, family and parent groups, and other stakeholder groups. Presentations, forums and communications with self-advocates, parent and family representatives, provider groups, and many others occurred throughout 2009 and early 2010. These groups included: the Self-Advocacy Association of New York State; the Family Support Services Council; the Emerging and Multicultural Provider Association; the Commissioner's Advisory Council and the Conference of Local Mental Hygiene Directors. In addition, presentations were made to providers and their representatives at meetings of the Provider Associations (most recently on June 21, 2010) and in various meetings of providers convened by DDSOs. Feedback on the elements of Community Habilitation was collected and considered, which formed the basis for this proposed rule making. Small business providers and local governments have therefore been extensively consulted, and have had ample opportunity for input in the development of the proposed rule making.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not submitted because the amendments will not impose any adverse impact or significant reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This is based on the fact that the amendments are concerned with establishing Community Habilitation (CH) as a new type of HCBS Waiver service. OPWDD expects that adoption of the amendments will not have any adverse economic impact on regulated parties in rural areas because the reimbursement methodologies contain three regional fees that have been developed to reflect variations in cost and reimbursement which could be attributable to urban/rural and other geographic and demographic factors.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial impact on jobs and/or employment opportunities. This finding is based on the fact that the amendments are concerned with establishing Community Habilitation (CH) as a new type of HCBS Waiver service. The subject of the amendments does not concern matters related to employment, and the amendments are not expected to have a significant economic impact on providers of services. Therefore, it is reasonable to expect that the amendments will not have any adverse impacts on jobs or employment opportunities in New York State.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-04-00-00019-P	January 26, 2000
PSC-07-00-00020-P	February 16, 2000
PSC-21-00-00006-P	May 24, 2000
PSC-37-00-00007-P	September 13, 2000
PSC-37-00-00009-P	September 13, 2000
PSC-40-00-00005-P	October 4, 2000
PSC-41-00-00015-P	October 11, 2000
PSC-42-00-00007-P	October 18, 2000
PSC-42-00-00008-P	October 18, 2000
PSC-43-00-00015-P	October 25, 2000
PSC-43-00-00018-P	October 25, 2000
PSC-49-00-00014-P	December 6, 2000
PSC-50-00-00009-P	December 13, 2000
PSC-47-09-00007-P	November 25, 2009
PSC-06-10-00012-P	February 10, 2010
PSC-06-10-00024-P	February 10, 2010
PSC-09-10-00009-P	March 3, 2010
PSC-11-10-00006-P	March 17, 2010
PSC-11-10-00007-P	March 17, 2010
PSC-11-10-00008-P	March 17, 2010
PSC-14-10-00011-P	April 7, 2010
PSC-16-10-00002-P	April 21, 2010
PSC-16-10-00003-P	April 21, 2010
PSC-16-10-00008-P	April 21, 2010
PSC-16-10-00016-P	April 21, 2010
PSC-16-10-00017-P	April 21, 2010
PSC-16-10-00018-P	April 21, 2010
PSC-17-10-00007-P	April 28, 2010
PSC-17-10-00010-P	April 28, 2010

NOTICE OF ADOPTION

To Permit the Use of a New Metering Product

I.D. No. PSC-50-09-00009-A

Filing Date: 2010-07-28

Effective Date: 2010-07-28

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

Action taken: On 7/15/10, the PSC adopted an order approving the petition of Landis+Gyr for use of the FOCUS AX product line for revenue metering and billing applications in New York State.

Statutory authority: Public Service Law, section 67(1)

Subject: To permit the use of a new metering product.

Purpose: To approve the petition of Landis+Gyr for use of the FOCUS AX product line for revenue metering and billing applications in NYS.

Substance of final rule: The Commission, on July 15, 2010, adopted an order approving the petition of Landis+Gyr for use of the FOCUS AX product line for revenue metering and billing applications in New York State.

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.

(09-E-0831SA1)

NOTICE OF ADOPTION**To Approve the Use of the Mercury TCI Electronic Temperature Compensator****I.D. No.** PSC-16-10-00009-A**Filing Date:** 2010-07-28**Effective Date:** 2010-07-28

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

Action taken: On 7/15/10, the PSC adopted an order approving the petition of National Grid to use the Mercury TCI Electronic Temperature Compensator for revenue metering and billing applications for commercial and industrial installations in New York State.

Statutory authority: Public Service Law, section 67(1)

Subject: To approve the use of the Mercury TCI Electronic Temperature Compensator.

Purpose: To approve the use of the Mercury TCI Electronic Temperature Compensator.

Substance of final rule: The Commission, on July 15, 2010, adopted an order approving the petition of National Grid to use the Mercury TCI Electronic Temperature Compensator for revenue metering and billing applications for commercial and industrial installations in New York State.

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.

(10-G-0090SA1)

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED****Major Electric Rate Filing****I.D. No.** PSC-33-10-00008-P

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

Proposed Action: The Commission is considering a proposal filed by Niagara Mohawk Power Corporation d/b/a National Grid to make various changes in the rates, charges, rules and regulations contained in its Schedules for Electric Service — P.S.C. Nos. 214 and 220.

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

Subject: Major electric rate filing.

Purpose: To consider a proposal to increase annual electric revenues by approximately \$391 million or 12.5% in aggregate revenues.

Public hearing(s) will be held at: 10:30 a.m. (Evidentiary Hearing)*, September 1, 2010 and continuing daily as needed at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.

*On occasion, there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.state.ny.us) under Case 10-E-0050.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

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

Substance of proposed rule: The Commission is considering a proposal filed by Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) which would increase its annual electric revenues by about

\$391 million for 2011 (a 12.5% increase in aggregate revenues), an additional \$32 million (total of \$423 million) for 2012, with a reduction in revenues of \$31 million (total of \$392 million) for 2013. The statutory suspension period for the proposed filing runs through December 28, 2010. The Commission may adopt in whole or in part, modify or reject terms set forth in Niagara Mohawk's proposal, a multi-year rate plan, and/or other negotiated proposals.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

(10-E-0050SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Waiver of 16 NYCRR Sections 894.1 through 894.4(b)(2)****I.D. No.** PSC-33-10-00007-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 whether to approve or reject, in whole or in part, a petition by the Town of Denning (Ulster County) for a waiver of 16 NYCRR sections 894.1 through 894.4(b)(2) pertaining the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR sections 894.1 through 894.4(b)(2).

Purpose: To allow the Town of Denning to waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Town of Denning (Ulster County) for a waiver of 16 NYCRR Part 894.1 through 894.4(b)(2) pertaining to the franchising process.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

(10-V-0348SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Whether to Permit the Use of BB Optical Metering Unit (OMU) for Use in Industrial Substation Applications****I.D. No.** PSC-33-10-00009-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by ABB Incorporated for the approval to use the ABB Optical Metering Unit (OMU) for use in 362kV substation applications.

Statutory authority: Public Service Law, section 67(1)

Subject: Whether to permit the use of BB Optical Metering Unit (OMU) for use in industrial substation applications.

Purpose: Pursuant to 16 NYCRR Part 93, is necessary to permit electric utilities in New York State to use the ABB Optical Metering Unit.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by ABB Incorporated, to use the Optical Metering Unit (OMU) transformer for use in 362kV (kilovolt) substation applications.

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, Three Empire State Plaza, Albany, New York 10007, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Three Empire State Plaza, Albany, NY 10007, (518) 474-6530, email: Secretary@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.

(10-E-0351SP1)

Department of State

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rule Making

I.D. No. DOS-33-10-00003-P

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

Proposed Action: This is a consensus rule making to amend Parts 260, 261 and 263 of Title 19 NYCRR.

Statutory authority: Executive Law, sections 91, 102(2) and 146(6)

Subject: Rule Making.

Purpose: To remove outdated regulations and add reference to E-file process for rule making.

Text of proposed rule: The opening paragraph of section 260.1 is amended as follows:

260.1 Notices to be published in the State Register.

The notices to be published in the State Register in relation to rule making actions under the provisions of the State Administrative Procedure Act, *notices required by other statute* and *any other types of notices published at the discretion of the Secretary of State* include, but are not limited to, the following:

Section 260.2(a)-(b) are amended as follows:

(a) Notices submitted shall contain such information as is prescribed in the State Administrative Procedure Act, [in a form as near as practicable to the model notices prescribed by the Secretary of State and] *utilizing the forms and formats* published on the Department of State's [web site at "<http://www.dos.state.ny.us>". The model notices are also available from the Division of Administrative Rules of the Department of State. The Department of State may, from time to time, revise the models] *website*.

(b) The department may, at its own discretion, accept a notice(s) for publication in the State Register in a format other than that prescribed by the Secretary of State.

Section 260.2(d)-(f) are repealed and new subdivision (d) is added as follows:

(d) *Typing text attachments. Minimal formatting is to be used. Text attachments should include only one font and one type size.*

Section 260.2(g) is re-lettered 260.2(e)

Section 260.4 is amended as follows:

(a) In all instances, an agency must submit the proper notice with applicable attachments. [Attachments must be typed in scannable format. The original signature of the preparer must be on the form. Submit the original form plus one additional copy.]

(b) [Incomplete forms and nonscannable text attachments will be cause for rejection of the notice.] *Rule making notices should be e-filed via the department's website.*

(c) [Notices] *Non rule making notices* may be e-mailed, hand-delivered or mailed.

(1) Hand-delivered or mailed notices [or express mail] must be delivered to the Division of Administrative Rules, NYS Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, NY 12231-0001.

(2) Notices submitted by mail must be addressed to the Division of Administrative Rules, NYS Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, NY 12231-0001.]

Section 260.6(c) and (d) are amended as follows:

(c) When submitting a regulatory agenda to the State Register for publication, a State agency must use the proper format as prescribed by the Secretary of State and published on the Department of State's [web site at "<http://www.dos.state.ny.us>."] *website*. This format is also available from the Division of Administrative Rules of the Department of State.

(d) The deadlines for submitting regulatory agendas for publication in the State Register will be the Tuesday 15 days prior to the Wednesday publication date. Deadline dates will be published on the Department of State's [web site at <http://www.dos.state.ny.us>] *website* and also will be provided upon request by the Division of Administrative Rules of the Department of State.

The title of Part 261 is amended as follows:

Requirements for filing *adopted* rules

Section 261.1 is amended as follows:

[Rules submitted for filing may be hand-delivered or mailed.

(a)] Hand-delivered or mailed [rules or rules delivered by express mail] *documents* must be delivered to the Division of Administrative Rules, NYS Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, NY 12231-0001.

(b) Rules submitted by mail must be addressed to the Division of Administrative Rules, NYS Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, NY 12231-0001.]

Section 261.2 is repealed and a new section 261.2 is added as follows:

(a) *When e-filing adopted rules, attach to the rule making form a scanned image of the signed certification prepared on your agency's letterhead in accordance with section 261.3 of this Part along with the text of the rule. If applicable, submit two copies of the referenced material prepared in accordance with section 261.6 of this Part.*

(b) *Hard copy, prepared on agency letterhead, may be submitted in lieu of the scanned certification.*

Section 261.6(c)(1) is amended as follows:

(c)(1) An agency may submit photocopies or similar reproductions on paper of the referenced material in lieu of the original publication. However, the Secretary of State requires, as a condition to filing such copies, that the agency compile, prepare and certify, in a manner acceptable to the Secretary, that such copies are true copies and that their reproduction has not violated any copyright. Incorporation by Reference certification forms are on the Department of State's website [at "<http://www.dos.state.ny.us>"] and are also available from the Division of Administrative Rules of the Department of State.

Section 263.1 is repealed.

Section 263.2(b) is amended as follows:

(b) [Material submitted for publication in the State Register may be hand-delivered or mailed.] *Rule making notices should be E-filed using the application available through the department's website.*

(c) Any other notice or material that is required by statute to be published in the State Register should be submitted via e-mail to the department's Register mailbox. Instructions are maintained on the department's website.

([1]d) Hand-delivered or mailed material [or material delivered by express mail] must be delivered to the Division of Administrative Rules, NYS Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, NY 12231-0001.

[(2) Material submitted by mail must be addressed to the Division of Administrative Rules, NYS Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, NY 12231-0001.]

Text of proposed rule and any required statements and analyses may be obtained from: Dave Treacy, Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, (518) 474-6740

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

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

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

Consensus Rule Making Determination

The intent of the amendment to Title 19, Chapter IX is to remove outdated procedures and add reference to the e-file process for rule making. The Department has considered the proposed amendments to Chapter IX and has determined that this rule making is a consensus rule making within the meaning of section 102(11) of the State Administrative Procedure Act (SAPA), in that no person is likely to object to its adoption because it merely repeals regulatory provisions which are no longer applicable to the rule making process and updates existing practices. The amendments add the flexibility to submit agency certifications electronically or continue to submit hard copy certifications.

Job Impact Statement

The proposed amendment to Title 19, Chapter IX (Rule making) will not have a substantial adverse impact on jobs or employment opportunities. There will be no impact on jobs or employment opportunities as the proposed amendments only impact procedures that state agencies follow to submit rule makings. The intent of the amendments is to remove outdated procedures and add references to the e-file process for rule making.

New York State Thruway Authority

NOTICE OF ADOPTION

Public Access to Authority Records

I.D. No. THR-21-10-00003-A

Filing No. 801

Filing Date: 2010-08-02

Effective Date: 2010-08-18

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

Action taken: Amendment of Part 108 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 354(5) and 387; Public Officers Law, sections 87 and 89

Subject: Public access to authority records.

Purpose: To bring the Thruway Authority's FOIL regulations into compliance with the updated FOIL statutes.

Text or summary was published in the May 26, 2010 issue of the Register, I.D. No. THR-21-10-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Marcy Pavone, Thruway Authority, 200 Southern Blvd., Albany, NY 12209, (518) 436-2860, email: marcy_pavone@thruway.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Urban Development Corporation

EMERGENCY RULE MAKING

Downstate Revitalization Fund Program

I.D. No. UDC-33-10-00016-E

Filing No. 808

Filing Date: 2010-08-03

Effective Date: 2010-08-03

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

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

Statutory authority: Urban Development Corporation Act, section 5(4); L. 2008, ch. 57, Part QQ, section 16-r; 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 requires the creation of the Rule. Program assistance will address the dangers to public health, safety and welfare by providing financial, project development, or other assistance for the purposes of supporting investment in distressed communities in the downstate region, and in support of such projects that focus on: encouraging business, community and technology-based development and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

Subject: The Downstate Revitalization Fund Program.

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

Text of emergency rule: DOWNSTATE REVITALIZATION FUND PROGRAM

Section 4249.1 General

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

Section 4249.2 Definitions

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

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

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

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

Section 4249.3 Types of Assistance

The Program offers assistance in the form loans and/or grants to for-profit businesses, not-for-profit corporations, public benefit corporations, municipalities, and research and academic institutions, for activities including, but not limited to, the following:

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

(b) support for the attraction or expansion of a business including, but not limited to, those primarily engaged in activities identified as a strategic industry and minority-owned and women-owned business enterprises

as defined by subdivisions (c) and (g) of section nine hundred fifty-seven of the general municipal law;

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

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

4249.4 Eligibility

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

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

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

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

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

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

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

Section 4249.5 Evaluation criteria

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

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

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

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

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

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

(6) located in distressed communities;

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

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

Section 4249.6 Application and Approval Process

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

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

(c) If the proposal satisfies the applicable requirements and initiative funding is available, the proposal may be presented to the Corporation's directors for adoption consideration in accordance with applicable law and regulations. The directors normally meet once a month. If the project is approved for funding and if it involves the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of any property, the Corporation will schedule a public hearing in accordance with the Act and will take such further action as may be required by the Act and applicable law and regulations. After approval by the Corporation and a public hearing the project may then be reviewed by the State Public

Authorities Control Board ("PACB"), which also generally meets once a month, in accordance with PACB requirements and policies. Following directors' approval, and PACB approval, if required, documentation will be prepared by the Corporation. Notwithstanding the foregoing, no initiative project shall be funded if sufficient initiative monies are not received by the Corporation for such project.

Section 4249.7 Confidentiality

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

Section 4249.8 Expenses

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

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

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

Section 4249.9 Affirmative action and non-discrimination

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires October 31, 2010.

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

Regulatory Impact Statement

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

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

Section 16-r of the Act provides for the creation of the downstate revitalization fund. The corporation is authorized, within available appropriations, to provide financial, project development, or other assistance from such fund to eligible entities as set forth in this subdivision for the purposes of supporting investment in distressed communities in the downstate region, and in support of such projects that focus on: encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

2. Legislative Objectives: Section 16-r of the Act sets forth the Legislative intent of the Downstate Revitalization Fund to provide financial assistance to eligible entities in New York with particular emphasis on: supporting investment in distressed communities in the downstate region, and in support of projects that focus on encouraging business, community, and

technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation, and small business growth.

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

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

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

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

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

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

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

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

The costs to municipalities and other regulated parties involved would depend on the extent to which they participate in and support the proposed projects. For municipalities, this may involve matching funds or the commitment of other public resources for project development. Participation is voluntary and would be considered on a case-by-case basis depending on the location of the municipality involved.

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

submission of a formal application to determine if a proposal meets eligible criteria for Fund assistance.

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

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

8. Alternatives: The Fund proposed regulations provide for a variety of potential program outcomes, by type of assistance, eligible applicants, and eligible uses.

These program criteria were informed through an extensive strategic planning process managed for Downstate ESDC by the management consultant A. T. Kearney. Their report, *Delivering on the Promise of New York State*, developed a strategy for the State to capitalize on its rich and diverse assets to encourage the growth of the Innovation Economy.

The following are three examples of alternatives that were provided during the outreach portion of the rulemaking process. All of the suggestions offered were from members of the small business community and local governments who responded to the Corporation's request for input. All of the suggestions were included in the rules and regulations submitted with this Regulatory Impact Statement.

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

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

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

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

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

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

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

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

Regulatory Flexibility Analysis

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

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

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

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

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

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

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

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

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide financing for joint discretionary and competitive economic development projects for distressed communities. In addition the rule specifies that project evaluation criteria include significant support from the local busi-

ness community, local government, community organizations, academic institutions, and other regional parties. Because this program is open to for-profit businesses confidentiality features are included in the application process.

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

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

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

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

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

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

Section 4249.2, Part (a) defines “Distressed Communities”

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

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

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

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

Rural Area Flexibility Analysis

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

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

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

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

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those only in urban areas or only in rural areas, except for the requirement that applicants must be in downstate counties and be in distressed communities. The extent of local government support for a project is a significant criteria for project acceptance. A public hearing may also be required under the NYS Urban Development Corporation Act. The National Federation of Independent Business, New York Farm Bureau, and the New York Conference of Mayors were consulted during this rulemaking and comments requested. In addition, 17 rural organizations, cooperatives, and agricultural groups and 10 local government associations were also asked for their review and comment.

Job Impact Statement

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

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