

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Agriculture and Markets publishes a new notice of proposed rule making in the *NYS Register*.

Incorporation by Reference in 1 NYCRR of the 2010 Edition of National Institute of Standards and Technology (“NIST”) Handbook 44

I.D. No.	Proposed	Expiration Date
AAM-29-10-00003-P	July 21, 2010	July 21, 2011

Banking Department

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. BNK-32-11-00006-E
Filing No. 689
Filing Date: 2011-07-22
Effective Date: 2011-07-27

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: 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 19, 2011.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, NYS Banking Department, 1 State Street, New York, NY 10004, (212) 709-1658, email: sam.abram@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 services' 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 records 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 the 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 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.

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 Impacts:

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. 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 servicers' 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.

Department of Corrections and Community Supervision

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Minimum Provision for Health and Morale

I.D. No. CCS-32-11-00007-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 sections 1704.5(b)(1) and 1704.8(c) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 112 and 137

Subject: Minimum Provision for Health and Morale.

Purpose: To remove an employee title that no longer exists and to update an employee job title.

Text of proposed rule: Amend paragraph 1704.5(b)(1) as indicated below:
(b) Reissue.

(1) The items listed in subdivision (a) of this section will be replenished on an as-needed basis, the frequency to be determined by a reasonable period of time for consumption of the item and subject to review by the [block captain or] issuing officer.

Amend subdivision 1704.8(c) as indicated below:

Section 1704.8. Food.

(a) Food must be nourishing and palatable, of a sufficient caloric intake as recommended by the Director of Nutritional Services.

(b) Variety in the weekly menu must be afforded.

(c) Inmates may refrain from eating those food items served to the general population which are contrary to their religious beliefs. An inmate may petition the directors of ministerial, *family and volunteer*, and nutritional services for provision of a nutritionally adequate alternative diet consistent with his or her religious beliefs.

Text of proposed rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, The Harri-man State Campus - Building 2, 1220 Washington Avenue, Albany, NY 12226-2050, (518) 457-4951, email: Rules@Docs.state.ny.us

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

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

Consensus Rule Making Determination

The Department of Corrections and Community Supervision has determined that no person is likely to object to the proposed action. The amendments to Part 1704 remove the reference to an archaic term that no longer applies to any staff and update an employee job title. As such, the Department considers these changes to be technical or non-controversial in nature. See SAPA section 102(11)(c).

The Department's authority resides in section 112 of Correction Law, which authorizes the Commissioner to promulgate rules and regulations for the management and control of the Department's cor-rectional facilities. See Correction Law § 112(1).

Job Impact Statement

A job impact statement is not submitted because this proposed rulemaking is removing the reference to an outdated term that no longer applies to any staff and updates an employee job title. Therefore, it has no adverse impact on jobs or employment opportunities.

Education Department

NOTICE OF ADOPTION

Amend Advisory Committee on Long-Term Clinical Clerkships, for Placement of Students from Dual-Campus Internal Medical School

I.D. No. EDU-17-11-00013-A

Filing No. 690

Filing Date: 2011-07-26

Effective Date: 2011-08-11

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

Action taken: Amendment of sections 3.2 and 60.2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6506(4), 6507(2), (4) and 6508(1)

Subject: Amend Advisory Committee on Long-Term Clinical Clerkships, for placement of students from dual-campus internal medical school.

Purpose: Establishes an Advisory Committee on Long-Term Clinical Clerkships, responsible to review and amend the standards for placement of students.

Text or summary was published in the April 27, 2011 issue of the Register, I.D. No. EDU-17-11-00013-EP.

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

Text of rule and any required statements and analyses may be obtained from: Christine Moore, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on April 27, 2011, the State Education Department received the following comments.

COMMENT: One comment requested that section 60.2(f)(2)(viii) of the proposed regulations be amended to specifically state that at least one hospital representative be from a hospital that is affiliated with an approved international medical school. The comment suggests that the proposed regulation be revised to read as follows:

(viii) two representatives of hospitals that serve as sites for clinical clerkships in New York State, at least one of which is a hospital affiliated with an approved international medical school that trains students from international medical schools in such clerkships.

The comment states that it is essential for at least one of the hospital representatives on the Committee to be an institution that actually works with approved international medical students in such clerkships, and that including at least one hospital with first-hand experience would allow for direct input and informed discussion regarding pertinent medical education, training and patient care issues.

RESPONSE: The proposed regulation provides for two representatives from "approved" international medical schools and two representatives of hospitals that serve as sites for clinical clerkships. Such representation will ensure that the advisory committee will have input from persons who are engaged in providing clinical clerkship programs and are familiar with pertinent aspects of the implementation of a clinical clerkship program. Moreover, the selection of representatives for each category mentioned in the regulation will be guided by the recognition that the advisory committee must reflect a broad range of perspectives and experiences, including experience with the implementation of a long-term clinical clerkship program.

NOTICE OF ADOPTION

District-Wide School Safety Plans and Building-Level School Safety Plans

I.D. No. EDU-20-11-00001-A

Filing No. 691

Filing Date: 2011-07-26

Effective Date: 2011-08-10

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

Action taken: Amendment of section 155.17 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 305 and 2801-a

Subject: District-wide school safety plans and building-level school safety plans.

Purpose: To amend the content requirements of each plan to reflect current confidentiality requirements and concerns.

Text or summary was published in the May 18, 2011 issue of the Register, I.D. No. EDU-20-11-00001-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

NOTICE OF ADOPTION

Recreational Harvest Regulations for Black Sea Bass

I.D. No. ENV-22-11-00006-A

Filing No. 693

Filing Date: 2011-07-26

Effective Date: 2011-08-10

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

Action taken: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105 and 13-0340-f

Subject: Recreational harvest regulations for black sea bass.

Purpose: To reduce recreational harvest of black sea bass in order to remain in compliance with the ASMFC and MAFMC.

Text or summary was published in the June 1, 2011 issue of the Register, I.D. No. ENV-22-11-00006-EP.

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

Text of rule and any required statements and analyses may be obtained from: John D. Maniscalco, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, New York 11733, (631) 444-0437, email: jdmanisc@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the department.

Assessment of Public Comment

The agency received no public comment.

Insurance Department

EMERGENCY RULE MAKING

Excess Line Placements Governing Standards

I.D. No. INS-32-11-00005-E

Filing No. 688

Filing Date: 2011-07-22

Effective Date: 2011-07-22

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

Action taken: Addition of Part 27 (Regulation 41) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 316, 1213, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 3103, 5907, 5909, 5911, 9102; and arts. 21 and 59; L. 1997, ch. 225; L. 2002, ch. 587; and L. 2011, ch. 61

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

Specific reasons underlying the finding of necessity: This regulation governs the placement of excess line insurance. Article 21 of the Insurance Law and Regulation 41 enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from unauthorized insurers (known as "excess line insurers") if the unauthorized insurers are "eligible," and an excess line broker places the insurance.

On July 21, 2010, President Obama signed into law the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"), which prohibits any state, other than the insured's home state, from requiring a premium tax payment for nonadmitted insurance. The NRRA also subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured's home state, and provides that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate nonadmitted insurance with respect to such

insured. On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amended the New York Insurance Law to implement the provisions of the NRRRA.

The sections of Part I of Chapter 61 that amend the Insurance Law to bring New York into conformance with the NRRRA take effect on July 21, 2011, which is when the NRRRA takes effect.

For the reasons stated above, emergency action is necessary for the general welfare.

Subject: Excess Line Placements Governing Standards.

Purpose: To implement Chapter 61 of the Laws of 2011, conforming to the Federal Nonadmitted and Reinsurance Reform Act of 2010.

Substance of emergency rule: On July 21, 2010, President Obama signed into law the federal Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), which contains the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRRA"). The NRRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for excess (or "surplus") line insurance. The NRRRA also subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state, and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured.

In addition, the NRRRA provides that an excess line broker seeking to procure or place excess line insurance in a state for an exempt commercial purchaser ("ECP") need not satisfy any state requirement to make a due diligence search to determine whether the full amount or type of insurance sought by the ECP may be obtained from admitted insurers if: (1) the broker procuring or placing the excess line insurance has disclosed to the ECP that the insurance may be available from the admitted market, which may provide greater protection with more regulatory oversight; and (2) the ECP has subsequently requested in writing that the broker procure the insurance from or place the insurance with an excess line insurer.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amends the New York Insurance Law to conform to the NRRRA.

Regulation 41 (11 NYCRR Part 27) consists of 24 sections and one appendix addressing the regulation of excess line insurance placements.

The Department amended Section 27.0 to discuss the NRRRA and Chapter 61 of the Laws of 2011.

The Department amended Section 27.1 to delete language in the definition of "eligible" and to add three new defined terms: "exempt commercial purchaser," "insured's home state," and "United States."

Section 27.2 is not amended.

The Department amended Section 27.3 to provide an exception for an ECP consistent with Insurance Law Section 2118(b)(3)(F) and to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.4 to clarify that the requirements set forth in this section when the insured's home state is New York.

The Department amended Section 27.5 to: (1) clarify that the requirements set forth in this section apply when the insured's home state is New York; (2) with regard to an ECP, require an excess line broker or the producing broker to affirm in part A or part C of the affidavit that the ECP was specifically advised in writing, prior to placement, that the insurance may or may not be available from the authorized market that may provide greater protection with more regulatory oversight; (3) require an excess line broker to identify the insured's home state in part A of the affidavit; and (4) clarify that the premium tax is to be allocated in accordance with Section 27.9 of Regulation 41 for insurance contracts that have an effective date prior to July 21, 2011.

The Department amended Section 27.6 to clarify that the requirements set forth in this section apply when the insured's home state is New York. Section 27.7 is not amended.

The Department amended Section 27.8 to: (1) require a licensed excess line broker to electronically file an annual premium tax statement, unless the Superintendent of Insurance (the "Superintendent") grants the broker an exemption pursuant to Section 27.23 of Regulation 41; (2) acknowledge that payment of the premium tax may be made electronically; and (3) change a reference to "Superintendent of Insurance" to "Superintendent of Financial Services."

The Department amended Section 27.9 to clarify how an excess line broker must calculate the taxable portion of the premium for: (1) insurance contracts that have an effective date prior to July 21, 2011; and (2) insurance contracts that have an effective date on or after July 21, 2011 and that cover property or risks located both inside and outside the United States.

The Department amended Sections 27.10, 27.11, and 27.12 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.13 to clarify that the requirements

set forth in this section apply when the insured's home state is New York and to require an excess line broker to obtain, review, and retain certain trust fund information if the excess line insurer seeks an exemption from Insurance Law Section 1213. The Department also amended Section 27.13 to require an excess line insurer to file electronically with the Superintendent a current listing that sets forth certain individual policy details.

The Department amended Section 27.14 to state that in order to be exempt from Insurance Law Section 1213 pursuant to Section 27.16 of Regulation 41, an excess line insurer must establish and maintain a trust fund, and to permit an actuary who is a fellow of the Casualty Actuarial Society (FCAS) or a fellow in the Society of Actuaries (FSA) to make certain audits and certifications (in addition to a certified public accountant), with regard to the trust fund.

Section 27.15 is not amended.

The Department amended Section 27.16 to state that an excess line insurer will be subject to Insurance Law Section 1213 unless the contract of insurance is effectuated in accordance with Insurance Law Section 2105 and Regulation 41 and the insurer maintains a trust fund in accordance with Sections 27.14 and 27.15 of Regulation 41, in addition to other current requirements.

The Department amended Sections 27.17, 27.18, 27.19, 27.20, and 27.21 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

Section 27.22 is not amended.

The Department repealed current Section 27.23 and added a new Section 27.23 titled, "Exemptions from electronic filing and submission requirements."

Section 27.24 is not amended.

The Department amended the excess line premium tax allocation schedule set forth in appendix four to apply to insurance contracts that have an effective date prior to July 21, 2011.

The Department added a new appendix five, which sets forth an excess line premium tax allocation schedule to apply to insurance contracts that have an effective date on or after July 21, 2011 and that cover property and risks located both inside and outside the United States.

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 19, 2011.

Text of rule and any required statements and analyses may be obtained from: David Neustadt, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5265, email: dneustad@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the promulgation of the Fourteenth Amendment to Regulation 41 (11 NYCRR Part 27) derives from Sections 201, 301, 316, 1213, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 9102, and Article 21 of the Insurance Law, Chapter 225 of the Laws of 1997, Chapter 587 of the Laws of 2002, and Chapter 61 of the Laws of 2011.

The federal Nonadmitted and Reinsurance Reform Act of 2010 (the "NRRRA") significantly changes the paradigm for excess line insurance placements in the United States. Chapter 61 of the Laws of 2011 amends the New York Insurance Law and the New York Tax Law to conform to the NRRRA. The NRRRA and Chapter 61 will impact excess line placements effective on and after July 21, 2011.

Sections 201 and 301 of the Insurance Law authorize the Superintendent of Insurance (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law. Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

Section 1213 provides the manner by which substituted service on an unauthorized insurer may be made in any proceeding against it on an insurance contract issued in New York. Substituted service may be made on the Superintendent in the manner prescribed in Section 1213.

Article 21 sets forth the duties and obligations of insurance brokers and excess line brokers. Section 2101 sets forth relevant definitions. Section 2104 governs the licensing of insurance brokers. Section 2105 sets forth licensing requirements for excess line brokers. Section 2110 provides grounds for the Superintendent to discipline licensees by revocation or suspension of licenses, or, pursuant to Section 2127, imposition of a monetary penalty in lieu of revocation or suspension. Section 2116 permits

payment of commissions to brokers and prohibits compensation to unlicensed persons. Section 2117 prohibits the aiding of an unauthorized insurer, with exceptions. Section 2118 sets forth the duties of excess line brokers, with regard to the placement of insurance with eligible foreign and alien excess line insurers, including the responsibility to ascertain and verify the financial condition of an unauthorized insurer before placing business with that insurer. Section 2121 provides that brokers have an agency relationship with insurers for the collection of premiums. Section 2122 imposes limitations on advertising by producers. Section 2130 establishes the Excess Line Association of New York ("ELANY").

Section 9102 establishes rules regarding the allocation of direct premiums taxable in New York, where insurance covers risks located both in and out of New York.

2. **Legislative objectives:** Generally, unauthorized insurers may not do an insurance business in New York. In permitting a limited exception for licensed excess line brokers to procure insurance policies in New York from excess line insurers, the Legislature established statutory requirements to protect persons seeking insurance in New York. The NRRA significantly changes the paradigm for excess (or "surplus") line insurance placements in the United States. The NRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for excess line insurance. Further, the NRRA subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state, and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured. In addition the NRRA establishes uniform eligibility standards for excess line insurers. A state may not impose additional eligibility conditions.

Under the new NRRA paradigm, an excess line broker now must ascertain an insured's home state before placing any property/casualty excess line business. Thus, if the insured's home state is not New York, even though the insured goes to the broker's office in New York, the excess line broker must be licensed in the insured's home state in order for the broker to procure the excess line coverage for that insured. Conversely, a person who is approached by an insured outside of New York must be licensed as an excess line broker in New York in order to procure excess line coverage for a New York home-stated insured.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amends the New York Insurance Law to conform to the NRRA. The NRRA and Chapter 61 take effect on July 21, 2011 and will impact excess line placements effective on and after July 21, 2011.

3. **Needs and benefits:** Regulation 41 governs the placement of excess line insurance. The purpose of the excess line law is to enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from eligible excess line insurers. This regulation implements the provisions and purposes of Chapter 61 of the Laws of 2011, which amended the New York Insurance Law to conform to the NRRA. The NRRA and Chapter 61 take effect on July 21, 2011 and impacts excess line placements effective on and after July 21, 2011.

Section 27.14 of Regulation 41 currently prohibits an excess line broker from placing coverage with an excess line insurer unless the insurer has established and maintained a trust fund. However, the new NRRA eligibility requirements do not include a trust fund with respect to foreign insurers (alien insurers, however, do have to maintain a trust fund that satisfies the International Insurers Department ("IID") of the National Association of Insurance Commissioners ("NAIC")). As such, New York is no longer requiring a trust fund of foreign insurers for eligibility.

Currently Insurance Law Section 1213(e) exempts excess line insurers writing excess line insurance in New York from the requirements of Section 1213, such as the requirement that the insurer deposit cash or securities with the clerk of the court before filing any pleading in any proceeding against it, so long as the excess line insurance contract designates the Superintendent for service of process. On review of the legislative history, it appears that the reason that the Legislature excluded excess line insurers from the requirements of Section 1213 was because they maintained trust funds in New York of a very sizable amount.

Although New York cannot require foreign insurers to maintain a trust fund to be eligible in New York, or a trust fund for alien insurers that deviate from the IID requirements, New York policyholders need to be protected when claims arise. As a result, the Department is amending Section 27.16 of Regulation 41 to provide that an excess line insurer will be subject to Insurance Law Section 1213's requirements unless the contract of insurance is effectuated in accordance with Insurance Law Section 2105 and the insurer maintains a trust fund in accordance with Sections 27.14 and 27.15 of Regulation 41 (in addition to other requirements currently set forth in Section 27.16). Further, the Department amended Section 27.14 of Regulation 41 to state that in order to be exempt from Insurance Law Section 1213 pursuant to Section 27.16 of Regulation 41, an excess line insurer must establish and maintain a trust fund.

Insurance Law Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

The Department amended Section 27.8(a) of Regulation 41 to require excess line brokers to file annual premium tax statements electronically, and amended Section 27.13 to require excess line brokers to file electronically a listing that sets forth certain individual policy details. In addition, the Department added a new Section 27.13 to Regulation 41 to allow excess line brokers to apply for a "hardship" exception to the electronic filing or submission requirement.

4. **Costs:** The rule is not expected to impose costs on excess line brokers, and it merely conforms the requirements regarding placement of coverage with excess line insurers to the requirements in Chapter 61 of the Laws of 2011, which amended the New York Insurance Law to conform to the NRRA. Although the amended regulation will require excess line brokers to file annual premium tax statements and a listing that sets forth certain individual policy details electronically, most brokers already do business electronically. In fact ELANY already requires documents to be filed electronically. Moreover, the regulation also provides a method whereby excess line brokers may apply for an exemption from the electronic filing or submission requirement.

With regard to the trust fund amendment, on the one hand, excess line insurers may incur costs if they choose to establish and maintain a trust fund in order to be exempt from Insurance Law Section 1213. On the other hand, it should be significantly less expensive to establish and maintain a trust fund rather than comply with Insurance Law Section 1213. This is a business decision that each insurer will need to make. The trust fund, if established and maintained, will be for the purpose of protecting all United States policyholders.

Costs to the Insurance Department also should be minimal, as existing personnel are available to review any modified filings necessitated by the regulations. In fact, filing forms electronically may produce a cost savings for the Insurance Department. These rules impose no compliance costs on state or local governments.

5. **Local government mandates:** These rules do not impose any program, service, duty or responsibility upon a city, town, village, school district or fire district.

6. **Paperwork:** The regulation imposes no new reporting requirements on regulated parties.

7. **Duplication:** The regulation will not duplicate any existing state or federal rule, but rather implement and conform to the federal requirements.

8. **Alternatives:** The Department discussed the changes related to trust funds and Insurance Law Section 1213 with counsel at the NAIC and with ELANY.

We anticipate that ELANY will support the approach adopted in the regulation, since it provides additional protection for consumers and licensees.

9. **Federal standards:** This regulation will implement the provisions and purposes of Chapter 61 of the Laws of 2011, which amends the New York Insurance Law to conform to the NRRA.

10. **Compliance schedule:** Pursuant to Chapter 61 of the Laws of 2011, this regulation will impact excess line insurance placements effective on and after July 21, 2011.

Regulatory Flexibility Analysis

This rule is directed at excess line brokers and excess line insurers.

Excess line brokers are considered to be small businesses as defined in section 102(8) of the State Administrative Procedure Act. The rule is not expected to have an adverse impact on these small businesses because it merely conforms the requirements regarding placement of coverage with excess line insurers to Chapter 61 of the Laws of 2011, which amended the New York Insurance Law to conform to the NRRA.

The rule will require excess line brokers to file annual premium tax statements electronically, and to file electronically a listing that sets forth certain individual policy details. However, the excess line broker may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

Further, the Insurance Department has monitored Annual Statements of excess line insurers subject to this rule, and believes that none of them fall within the definition of "small business", because there are none that are both independently owned and have fewer than one hundred employees.

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses.

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

Rural Area Flexibility Analysis

The Insurance Department finds that this rule does not impose any additional burden on persons located in rural areas, and the Insurance Department finds that it will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

Job Impact Statement

The Insurance Department finds that this rule should have no impact on jobs and employment opportunities.

The rule conforms the requirements regarding placement of coverage with excess line insurers to Chapter 61 of the Laws of 2011, which amended the New York Insurance Law to conform to the NRRRA. The rule also makes an excess line insurer subject to Insurance Law Section 1213, unless it chooses to establish and maintain a trust fund in New York for the benefit of New York policyholders.

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Insurance Department publishes a new notice of proposed rule making in the *NYS Register*.

Charges for Professional Health Services

I.D. No.	Proposed	Expiration Date
INS-29-10-00006-P	July 21, 2010	July 21, 2011

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Implementation of Medicaid Fee Reductions in Various OMH-Licensed Programs

I.D. No. OMH-32-11-00003-P

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

Proposed Action: Amendment of Parts 512, 588 and 591 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 43.01 and 43.02

Subject: Implementation of Medicaid fee reductions in various OMH-licensed programs.

Purpose: To reduce rates for various non-State-operated programs consistent with the 2011-2012 enacted State budget.

Text of proposed rule: 1. Subdivision (e) of Section 512.12 of Title 14 NYCRR is amended to read as follows:

(e) Effective April 1, [2008] 2011, the monthly base rate and component add-on schedules for PROS programs are as follows:

(1) Comprehensive PROS Programs:

(i) for programs operated in the Downstate Region:

Pre-Adm	Monthly Base Rate*					Component Add-On		
	Level 1 2-12 Units	Level 2 13-27 Units	Level 3 28-43 Units	Level 4 44-60 Units	Level 5 61+ Units	IR	ORS	CT
\$[155] 153	\$[206] 204	\$[447] 442	\$[687] 680	\$[894] 884	\$[1,086] 1,074	\$[419] 414	\$[359] 355	\$[244.51] 242

* The Monthly Base Rate is determined by the total PROS units associated with a single PROS participant and his or her collateral(s) in a given month.

(ii) for programs operated in the Upstate Region:

Pre-Adm	Monthly Base Rate*					Component Add-On		
	Level 1 2-12 Units	Level 2 13-27 Units	Level 3 28-43 Units	Level 4 44-60 Units	Level 5 61+ Units	IR	ORS	CT

\$[141] 140	\$[188] 186	\$[407] 402	\$[625] 619	\$[812] 803	\$[988] 977	\$[381] 377	\$[327] 324	\$[244.51] 242
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* The Monthly Base Rate is determined by the total PROS units associated with a single PROS participant and his or her collateral(s) in a given month.

(2) Limited license PROS programs:

(i) for programs operated in the Downstate Region:

Reimbursement Category	Monthly Fee
Intensive Rehabilitation	\$[479] 474
Ongoing Rehabilitation and Support	\$[395] 391

(ii) for programs operated in the Upstate Region:

Reimbursement Category	Monthly Fee
Intensive Rehabilitation	\$[436] 431
Ongoing Rehabilitation and Support	\$[359] 355

2. Subdivisions (c), (e) and (f) of Section 588.13 of Title 14 NYCRR are amended to read as follows:

(c) [Reimbursement] *Effective April 1, 2011, reimbursement* under the medical assistance program for day treatment programs serving children licensed solely pursuant to article 31 of the Mental Hygiene Law, and Part 587 of this Title shall be in accordance with the following fee schedule.

(1) For programs operated in Bronx, Kings, New York, Queens and Richmond Counties:

Full day	at least 5 hours	\$[79.48] 78.61
Half day	at least 3 hours	[39.75] 39.31
Brief day	at least 1 hour	[26.50] 26.21
Collateral	at least 30 minutes	[26.50] 26.21
Home	at least 30 minutes	[79.48] 78.61
Crisis	at least 30 minutes	[79.48] 78.61
Preadmission - full day	at least 5 hours	[79.48] 78.61
Preadmission - half day	at least 3 hours	[39.75] 39.31

(2) For programs operated in other than Bronx, Kings, New York, Queens and Richmond Counties:

Full day	at least 5 hours	\$[76.84] 75.99
Half day	at least 3 hours	[38.41] 37.99
Brief day	at least 1 hour	[25.57] 25.29
Collateral	at least 30 minutes	[25.57] 25.29
Home	at least 30 minutes	[76.84] 75.99
Crisis	at least 30 minutes	[76.84] 75.99
Preadmission - full day	at least 5 hours	[76.84] 75.99
Preadmission - half day	at least 3 hours	[38.41] 37.99

(e) [Reimbursement] *Effective April 1, 2011, reimbursement* under the medical assistance program for regular, collateral, and crisis visits to all non-State operated partial hospitalization programs licensed pursuant to article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in accordance with the following fee schedule.

(1) For programs located in Nassau and Suffolk counties, the fee shall be \$[23.39] 23.13 for each service hour.

(2) For programs located in New York City, the fee shall be \$[30.71] 30.37 for each service hour.

(3) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Hudson River Region, the fee shall be \$[25.81] 25.53 for each service hour.

(4) For programs located in the counties in the region of New York State designated by the Office of Mental Health as the Central Region, the fee shall be \$[17.70] 17.51 for each service hour.

(5) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Western Region, the fee shall be \$[21.94] 21.70 for each service hour.

(f) [Reimbursement] *Effective April 1, 2011, reimbursement* under the medical assistance program for on-site and off-site visits for all non-State operated intensive psychiatric rehabilitation treatment programs licensed pursuant to article 31 of the Mental Hygiene Law and Part 587 of this Title shall be at \$[25.20] 24.92 for each service hour.

3. Section 591.5 of 14 NYCRR Part 591 is amended to read as follows:

[Reimbursement] *Effective April 1, 2011, reimbursement* for comprehensive psychiatric emergency programs under the medical assistance program shall be in accordance with the following fee schedule:

Brief emergency visit	\$[84.64] 83.71
Full emergency visit	[497.06] 491.59
Crisis outreach service visit	[497.06] 491.59
Interim crisis service visit	[497.06] 491.59

Text of proposed rule and any required statements and analyses may be obtained from: Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Joyce.Donohue@omh.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 43.01 of the Mental Hygiene Law gives the Commissioner of Mental Health the authority to set rates for outpatient services at facilities operated by the Office of Mental Health.

Section 43.02 of the Mental Hygiene Law provides that payments under the Medical Assistance Programs for services at facilities licensed by the Office of Mental Health shall be at rates certified by the Commissioner of Mental Health and approved by the Director of Budget.

2. Legislative objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. The amendments to 14 NYCRR Part 512, Part 588 and Part 591 are made in accordance with the 2011-2012 enacted State Budget (Chapter 59 of the Laws of 2011).

3. Needs and benefits: The amendments to Part 512, Part 588 and Part 591 are necessary to implement Medicaid fee reductions for Office of Mental Health-licensed programs including: Personalized Recovery Oriented Services (PROS) Programs, Day Treatment Programs, Partial Hospitalization Programs, Intensive Psychiatric Rehabilitation Treatment Programs, and Comprehensive Psychiatric Emergency Programs. These amendments are required to implement a continuation of the 1.1% reduction to Medicaid, as required by the enacted State budget. These rate decreases have been approved by the Director of the Division of the Budget and are effective as of April 1, 2011.

4. Costs:

a) Costs to state government: These regulatory amendments will not result in any additional costs to State government. It is estimated that the total savings to the State share of Medicaid will be \$421,150.

b) Costs to local government: These regulatory amendments will not result in any additional costs to local government other than in their status as a provider of mental health services. Such costs are addressed under 4(c) "Costs to regulated parties".

c) Costs to regulated parties: These regulatory amendments will not result in any additional costs to regulated parties, but will reduce the rates paid under the Medical Assistance Program for the programs listed above. Currently there are a total of 61 PROS Programs, 31 Day Treatment Programs, 35 Partial Hospitalization Programs, 15 Intensive Psychiatric Rehabilitation Treatment Programs, and 21 Comprehensive Psychiatric Emergency Programs. The estimated full annual impact of these rate changes is as follows: PROS: \$377,924; Day Treatment: \$196,888; Partial Hospitalization: \$68,004; Intensive Psychiatric Rehabilitation Treatment: \$95,222; and Comprehensive Psychiatric Emergency Programs: \$104,262 - resulting in total Medicaid reduction of \$842,300.

5. Local government mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not increase the paperwork requirements of affected providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: As noted above, this amendment is consistent with the 2011-2012 enacted State budget. The reduction in rates for these non-State operated programs is part of a continuation of the 1.1% reduction in State Medicaid expenditures for mental health programs, and reflects the serious fiscal condition of the State. The only alternative to the regulatory amendment would be to make further budgetary cuts to other programs which would have the potential to put those providers at financial risk. Therefore, that alternative was not considered.

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

10. Compliance schedule: These regulatory amendments are effective immediately. The rate adjustment is considered effective as of April 1, 2011.

Regulatory Flexibility Analysis

The rulemaking serves to implement Medicaid fee reductions for various programs licensed by the Office of Mental Health (Personalized Recovery Oriented Services, Day Treatment, Partial Hospitalization, Intensive Psychiatric Rehabilitation Treatment, and Comprehensive Psychiatric Emergency Programs). The reduction in rates for these non-State operated programs is a continuation of the 1.1% reduction in State Medicaid expenditures for mental health programs. These proposed changes are consistent with the 2011-2012 enacted State budget and reflect the serious fiscal condition of the State. As there will be no adverse economic impact on small businesses or local governments, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the rulemaking, which serves to implement Medicaid fee reductions for various programs licensed by the Office of Mental Health, will not impose any adverse economic impact on rural areas. The reduction in rates for these non-State operated programs (Personalized Recovery Oriented Services, Day Treatment, Partial Hospitalization, Intensive Psychiatric Rehabilitation Treatment, and Comprehensive Psychiatric Emergency Programs) is part of a continuation of the 1.1% reduction in State Medicaid expenditures for mental health programs. These proposed changes are consistent with the 2011-2012 enacted State budget and reflect the serious fiscal condition of the State.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the rulemaking, which serves to implement Medicaid fee reductions for various programs licensed by the Office of Mental Health, will have no impact upon jobs and employment opportunities. The reduction in rates for these non-State operated programs (Personalized Recovery Oriented Services, Day Treatment, Partial Hospitalization, Intensive Psychiatric Rehabilitation Treatment, and Comprehensive Psychiatric Emergency Programs) is part of a continuation of the 1.1% reduction in State Medicaid expenditures for mental health programs. These proposed changes are consistent with the 2011-2012 enacted State budget and reflect the serious fiscal condition of the State.

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

Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth

I.D. No. OMH-32-11-00004-P

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

Proposed Action: Amendment of Part 578 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 709 and 43.02

Subject: Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth.

Purpose: Amend reimbursement methodology for eligible pharmaceutical costs and freeze rates of payment for RTFs effective 7/1/11.

Text of proposed rule: 1. Subdivision (a) of section 578.8 of Title 14 NYCRR is amended to read as follows:

(a) The rate of payment shall consist of an operating cost per diem and a capital cost per diem, computed from allowable costs and subject to cost category standards. The rate year shall be the 12-month period from July 1st through June 30th. The rate of payment effective July 1, 1995 through June 30, 1996 shall be a continuance of the rate of payment effective July 1, 1994 through June 30, 1995. *The rate of payment effective July 1, 2011 through June 30, 2012 shall be a continuance of the rate of payment in effect on June 30, 2011, except to the extent necessary to adjust such payments pursuant to the provisions of subdivision (o) of Section 578.14 of this Part.*

2. Subdivision (o) of section 578.14 of Title 14 NYCRR is amended to read as follows:

(o) Effective on or after January 1, 2011, and contingent upon federal approval, allowable operating costs shall not include the costs of pharmaceuticals listed on the New York State Medicaid formulary, *except for such costs incurred during the first 90 days after admission to the residential treatment facility or until Medicaid eligibility is established for the recipient, whichever comes first.* [Such costs] *Pharmaceuticals for which the cost is so excluded* may be reimbursed, as appropriate, on a fee-for-service basis by the Medicaid program.

Text of proposed rule and any required statements and analyses may be obtained from: Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Joyce.Donohue@omh.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 43.02 of the Mental Hygiene Law provides that the Commissioner has the power to establish standards and methods for determining rates of payment made by government agencies pursuant to Title 11 of Article 5 of the Social Services Law for services provided by facilities, including residential treatment facilities for children and youth licensed by the Office of Mental Health (Office).

2. Legislative objectives: Article 7 of the Mental Hygiene Law reflects the Commissioner's authority to establish regulations regarding mental health programs. Allowable operating costs are subject to the review and approval of the Office, including eligible pharmaceutical costs. The rule provides for a change in the reimbursement methodology for eligible pharmaceutical costs for Residential Treatment Facilities (RTF) for children and youth. In addition, this rule provides consistency with the enacted State budget by freezing the rate of payments received by RTF providers for the year July 1, 2011 through June 30, 2012.

3. Needs and benefits: This rulemaking addresses two separate provisions within 14 NYCRR Part 578. The first amendment reflects a freeze of the rates paid to RTF providers for the year July 1, 2011 through June 30, 2012. This continuation of current rates is consistent

with the 2011-2012 enacted State budget and is the result of the serious fiscal condition of the State.

The other amendment concerns costs of pharmaceuticals for residents of an RTF. On February 2, 2011, the Office adopted as final amendments to this Part which specified that, on or after January 1, 2011, and contingent upon federal approval, allowable operating costs for RTFs for children and youth licensed by the Office shall not include the costs of pharmaceuticals listed on the New York State Medicaid formulary. The regulation further stated that, "Such costs may be reimbursed, as appropriate, on a fee-for-service basis by the Medicaid program." After this rule was promulgated, it was determined that a change is necessary due to the fact that when children are admitted to an RTF, there may be a significant lag of up to 90 days before they are deemed to be Medicaid eligible. In order to ensure that children receive their necessary medications, the Office is amending this regulation to provide that allowable operating costs for the RTFs will include pharmaceutical costs incurred during the first 90 days after a child's admission to an RTF or until Medicaid eligibility is established for the individual, whichever comes first. It is important to note that this provision is effective upon federal approval.

4. Costs:

(a) cost to State government: These regulatory amendments will not result in any additional costs to State government. It is anticipated that the rate freeze will result in a full annual savings to State government in the amount of \$1,169,951, and that the pharmaceutical carve out will result in a full annual savings to State government in the amount of \$375,000.

(b) cost to local government: These regulatory amendments will not result in any additional costs to local government.

(c) cost to regulated parties: The gross estimated reimbursable costs to providers for the lag in Medicaid eligibility could be as much as \$1,000,000. Providers will be reimbursed for all but approximately \$350,000 of this increase through adjustments to their reimbursement rates.

5. Local government mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not substantially increase the paperwork requirements of affected providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: As noted above, this rulemaking serves two purposes. The first amendment serves to freeze the rates paid to providers for the period July 1, 2011 through June 30, 2012. This amendment is consistent with the enacted State budget and is a reflection of the serious fiscal condition of the State. The second amendment provides, upon federal approval, for an exception to the exclusion of the costs of pharmaceuticals from the allowable operating costs of providers for 90 days after an individual's admission to an RTF or until Medicaid eligibility is established, whichever occurs first. This amendment will serve to ensure that children who have been admitted to an RTF will continue to have a means for having their medications reimbursed while their Medicaid eligibility is being established. While providers will initially incur the costs associated with these medications, those costs will be reimbursed by a subsequent adjustment in their rate of payment over the following two years, assuming the providers' overall administration maintenance and support costs do not surpass allowable amounts. Currently, it is anticipated that four providers may exceed these amounts, thereby resulting in the \$350,000 amount in the "cost to regulated parties" section above. No other alternative was considered.

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

10. Compliance schedule: The regulatory amendments would become effective immediately upon adoption.

Regulatory Flexibility Analysis

The rule provides consistency with the 2011-2012 enacted State budget by freezing the rate of payments received by residential treatment facilities

for children and youth, effective July 1, 2011. The rule also amends the reimbursement methodology for eligible pharmaceutical costs by permitting an exemption to the exclusion of the costs of pharmaceuticals from the allowable operating costs of RTF providers for 90 days after an individual's admission to an RTF, or until Medicaid eligibility is established, whichever comes first. While providers will initially incur costs associated with these medications, those costs will be reimbursed by a subsequent adjustment in their rate of payment over the following two years, assuming the providers' overall administration maintenance and support costs do not surpass allowable amounts. It is expected that the majority of RTF providers will not exceed allowable amounts; therefore, it is anticipated that the majority of providers will be reimbursed for the pharmaceutical costs by a rate adjustment over the subsequent two years. As no adverse economic impact upon small businesses or local governments is anticipated, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

The purpose of this rulemaking is twofold. The rule freezes the rate of payments received by residential treatment facilities for children and youth, effective July 1, 2011. This amendment is consistent with the 2011-2012 enacted State budget and reflects the serious fiscal condition of the State. The rule also amends the reimbursement methodology for eligible pharmaceutical costs by permitting an exemption to the exclusion of the costs of pharmaceuticals from the allowable operating costs of RTF providers for 90 days after an individual's admission to an RTF, or until Medicaid eligibility is established, whichever comes first. While providers will initially incur costs associated with these medications, those costs will be reimbursed by a subsequent adjustment in their rate of payment over the following two years, assuming the providers' overall administration maintenance and support costs do not surpass allowable amounts. It is expected that the majority of RTF providers will not exceed allowable amounts; therefore, it is anticipated that the majority of providers will be reimbursed for the pharmaceutical costs by a rate adjustment over the subsequent two years. As there is not expected to be an adverse economic impact upon rural areas, a rural area flexibility analysis is not included in this rulemaking.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because it is evident from the subject matter of the rulemaking that there will be no impact upon jobs and employment opportunities. The rule serves two purposes. First, it provides consistency with the enacted State budget by freezing rates of payments to providers of residential treatment facilities (RTF) for children and youth, effective July 1, 2011. Secondly, it amends the reimbursement methodology for eligible pharmaceutical costs for RTFS, effective on or after January 1, 2011 and pending federal approval.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Carbon Monoxide Detector Use in Residential Programs

I.D. No. OMH-32-11-00008-P

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

Proposed Action: This is a consensus rule making to amend Parts 594 and 595 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 31.04

Subject: Carbon monoxide detector use in residential programs.

Purpose: To conform to non-discretionary statutory requirements regarding the use of carbon monoxide detectors in OMH-licensed housing.

Text of proposed rule: A new paragraph (4) is added to section 594.16(a) of Title 14 NYCRR and the existing paragraph (4) is renumbered as paragraph (5) to read as follows:

(4) *Each type of residence housing children and adolescents shall provide carbon monoxide detectors, as per the Residential Code of New York State, the Fire Code of New York State, Subdivision 5-a of Section 378 of the New York Executive Law ("Amanda's Law") and Local Law #7 for residences in New York City, as applicable.*

(i) *Carbon Monoxide detectors shall be installed in locations as required by applicable law and according to manufacturer's directions and specifications.*

(ii) *Carbon monoxide detectors shall be battery operated, plug-in type or hardwired, in accordance with applicable law.*

(iii) *Inspections and tests of carbon monoxide detectors shall be*

made in accordance with manufacturer's directions and specifications. Written documentation of such testing shall be maintained for review.

[(4)](5) Residences must possess a valid certificate of occupancy or other documentation, which, in the opinion of the Office of Mental Health, satisfies the intent of a certificate of occupancy.

A new subparagraph (iii) of Section 595.15(a)(2) of Title 14 NYCRR is added to read as follows:

(iii) *Residential programs, or portions of residential programs located in buildings not fully controlled by the sponsoring agency or other Office of Mental Health-approved entity are required to provide carbon monoxide detectors, as per the Residential Code of New York State, the Fire Code of New York State, Subdivision 5-a of Section 378 of the New York Executive Law ("Amanda's Law") and Local Law #7 for residences in New York City, as applicable.*

(a) *Carbon Monoxide detectors shall be installed in locations as required by applicable law and according to manufacturer's directions and specifications.*

(b) *Carbon monoxide detectors shall be battery operated, plug-in type or hardwired, in accordance with applicable law.*

(c) *Inspections and tests of carbon monoxide detectors shall be made in accordance with manufacturer's directions and specifications. Written documentation of such testing shall be maintained for review.*

Text of proposed rule and any required statements and analyses may be obtained from: Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Joyce.Donohue@omh.ny.gov

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

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

Consensus Rule Making Determination

This rule making is filed as a Consensus rule on the grounds that its purpose is to update safety standards which apply to residential programs for adults diagnosed with mental illness and licensed pursuant to Article 31 of the Mental Hygiene Law, and Office of Mental Health-licensed housing programs for children and adolescents with serious emotional disturbance. It is believed that no one is likely to object to these changes as they are technical in nature and conform to non-discretionary statutory requirements.

The rule making amends 14 NYCRR Part 594 and 595 by including standards regarding the use of carbon monoxide detectors in residential programs licensed by the Office of Mental Health. Subdivision 5-a of Section 378 of the Executive Law ("Amanda's Law" - Chapter 367 of the Laws of 2009) establishes the criteria for the use and placement of carbon monoxide detectors. In addition, the rulemaking includes standards that are consistent with the Residential Code of New York State, the Fire Code of New York State and Local Law #7 for residences in New York City.

Statutory Authority: Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his/her jurisdiction and to set standards of quality and adequacy of facilities, equipment, personnel, services, records, and programs for the rendition of services for persons diagnosed with mental illness, pursuant to an operating certificate.

Job Impact Statement

A Job Impact statement is not being submitted with this notice because it is evident from the subject matter of the amendments that they will have no impact on jobs and employment opportunities. The rule merely serves to update existing regulations regarding the use of carbon monoxide detectors in OMH-licensed housing programs for children and adolescents with serious emotional disturbance and residential programs for adults with mental illness that are licensed pursuant to Article 31 of the Mental Hygiene Law. These amendments conform to non-discretionary statutory requirements and will have no impact upon jobs or employment.

Office of Parks, Recreation and Historic Preservation

NOTICE OF ADOPTION

Sex Offenders at Campgrounds

I.D. No. PKR-18-11-00013-A

Filing No. 684

Filing Date: 2011-07-20

Effective Date: 2011-08-10

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

Action taken: Addition of section 372.7(g)(16) to Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, section 3.09(5) and (8)

Subject: Sex offenders at campgrounds.

Purpose: Authorize OPRHP to direct a Level 2 or Level 3 sex offender who is occupying a campsite or cabin to leave the campground.

Text or summary was published in the May 4, 2011 issue of the Register, I.D. No. PKR-18-11-00013-P.

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

Text of rule and any required statements and analyses may be obtained from: Karen R. Kaufmann, General Counsel, Office of Parks, Recreation and Historic Preservation, ESP, Agency Building 1, Albany, NY 12238, (518) 474-0434, email: rulemaking@oprhp.state.ny.us

Assessment of Public Comment

This document summarizes public comments received by the Office of Parks, Recreation and Historic Preservation (State Parks) on the proposed regulation regarding sex offenders in campsites, and provides the agency's response to issues raised in the comments. State Parks received eleven (11) written comments. Overall, the comments were evenly split, with 5 expressing support for the regulation and 6 expressing opposition. The agency received the following substantive comments:

1. The proposal violates the rights of individuals registered as sex offenders.

It has been held that the right to enter a park is not a fundamental right, and that the exclusion of registered sex offenders from parks is permissible based on the state's legitimate governmental interest in protecting visitors to parks. *Standley v. Town of Woodfin*, 362 N.C. 328, 661 S.E.2d 728 (2008). This proposal is permissible because it imposes a lesser restriction on sex offenders than that which has been upheld in court. It authorizes State Parks to direct a level 2 or 3 sex offender to leave a campsite, but does not otherwise exclude such individuals from our parks.

2. The proposal is unjustified because most sex offenders do not reoffend; most offenses against minors are committed by someone close to the victim; and the registry level system does not accurately reflect the risk an individual poses.

The New York State Legislature expressly grounded its adoption of the Sex Offender Registry Act (SORA) in "the danger of recidivism posed by sex offenders" and the need for available information on sex offenders to protect vulnerable populations and the general public from potential harm. Corrections Law § 168 (Historical and Statutory Notes). SORA's "prime purpose is to allow parents the knowledge as to convicted sex offenders in their neighborhood so they can take appropriate safeguards for their children." *People v. Ross*, 169 Misc. 2d 308, 310 (N.Y. Co. 1996). Campgrounds present a unique environment where it is impossible to take fully protective measures once the presence of a sex offender is known. By adopting this regulation, State Parks adopts the findings of the Legislature regarding the dangers posed by the presence of sex offenders and implements the purpose of SORA's enactment.

The proposal applies only to level 2 and 3 sex offenders whom current law identifies as presenting a greater risk to public safety and

whose identity is available on the registry. By adopting this regulation, State Parks is applying extant State law and the determination of the State Legislature that level 2 and 3 sex offenders present a greater risk to public safety.

3. Campers should be checked for their presence on the sex offender registry when they register for a campsite.

As explained in the Regulatory Impact Statement for this proposal, it would be impossible for State Parks to "pre-screen" campers to detect the presence of registered sex offenders. Campsites are reserved in the name of one person, and multiple persons are permitted to stay at a campsite. Checking the identity of each person occupying the campsite against the sex offender registry would present an unacceptable diversion of State Parks staff resources from their essential park management duties.

4. Sex offenders should be prohibited for visiting all state park facilities (not just campgrounds).

State Parks does not believe it is necessary or appropriate to adopt a blanket prohibition preventing registered sex offenders from visiting all state park facilities. The agency has concluded that the "residential" nature of campgrounds presents a unique situation, and that adopting a regulation authorizing State Parks to direct Level 2 and 3 sex offenders to leave campgrounds is a necessary step to provide for the public's safety and welfare.

Public Service Commission

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-32-09-00013-A

Filing Date: 2011-07-20

Effective Date: 2011-07-20

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

Action taken: On 7/14/11, the PSC adopted an order approving the petition of Memo-Cogen Inc. to submeter electricity at 1380 University Avenue, Bronx, New York, located in the service territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of Memo-Cogen Inc. to submeter electricity at 1380 University Avenue, Bronx, New York.

Substance of final rule: The Commission, on July 14, 2011 adopted an order approving the petition of Memo-Cogen Inc. to submeter electricity at 1380 University Avenue, Bronx, New York located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(09-E-0453SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-39-10-00016-A

Filing Date: 2011-07-20

Effective Date: 2011-07-20

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

Action taken: On 7/14/11, the PSC adopted an order approving the petition of 4615 East Coast LLC to submeter electricity at 4615 Center Boulevard, Long Island City, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of 4615 East Coast LLC to submeter electricity at 4615 Center Boulevard, Long Island City, New York.

Substance of final rule: The Commission, on July 14, 2011 adopted an order approving the petition of 4615 East Coast LLC to submeter electricity at 4615 Center Boulevard, Long Island City, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0430SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-42-10-00008-A

Filing Date: 2011-07-20

Effective Date: 2011-07-20

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

Action taken: On 7/14/11, the PSC adopted an order approving the petition of 4545, 4610 and 4540 East Coast LLC to submeter electricity at 4545, 4610 and 4540 Center Boulevard, Long Island City, NY, located in the territory of Consolidated Edison Company of New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of 4545, 4610 and 4540 East Coast LLC to submeter electricity at 4545, 4610 and 4540 Center Blvd., Long Island City, NY.

Substance of final rule: The Commission, on July 14, 2011 adopted an order approving the petition of 4545, 4610 and 4540 East Coast LLC to submeter electricity at 4545, 4610, and 4540 Center Boulevard, Long Island City, New York located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0475SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-51-10-00020-A

Filing Date: 2011-07-20

Effective Date: 2011-07-20

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

Action taken: On 7/14/11, the PSC adopted an order approving the petition of FTC Residential Company I, L.P. and FTC Residential Company II, L.P. to submeter electricity at 40-22 College Point Boulevard, Flushing, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of FTC Residential Co. I & II, L.P. to submeter electricity at 40-22 College Point Blvd., Flushing, NY.

Substance of final rule: The Commission, on July 14, 2011 adopted an order approving the petition of FTC Residential Company I, L.P. and FTC Residential Company II, L.P. to submeter electricity at 40-22 College Point Boulevard, Flushing, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0606SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-52-10-00011-A

Filing Date: 2011-07-20

Effective Date: 2011-07-20

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

Action taken: On 7/14/11, the PSC adopted an order approving the petition of Clinton Park Development, LLC to submeter electricity at 770 11th Avenue, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of Clinton Park Development, LLC to submeter electricity at 770 11th Avenue, New York, New York.

Substance of final rule: The Commission, on July 14, 2011 adopted an order approving the petition of Clinton Park Development, LLC to submeter electricity at 770 11th Avenue, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0618SA1)

NOTICE OF ADOPTION**Modification of a Plan for Divestiture of Generation Facilities Owned by RG&E and Cayuga****I.D. No.** PSC-04-11-00004-A**Filing Date:** 2011-07-25**Effective Date:** 2011-07-25

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

Action taken: On 7/14/11, the PSC adopted an order addressing the petition of Rochester Gas and Electric Corporation (RG&E) and Cayuga Energy, Inc. (Cayuga) for divestiture of generation facilities.

Statutory authority: Public Service Law, sections 2(2-b), (4), (13), 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10) and 70

Subject: Modification of a plan for divestiture of generation facilities owned by RG&E and Cayuga.

Purpose: To approve, with modification, the plan for divestiture of generation facilities owned by RG&E and Cayuga.

Substance of final rule: The Commission, on July 14, 2011 adopted an order, denying the request of Rochester Gas and Electric Corporation and Cayuga Energy, Inc., for permission to terminate the auction process in its entirety and directed the Companies to make a compliance filing setting forth a revised auction plan for the Allegany, Carthage and Rochester Gas and Electric Corporation peaking facilities, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-M-0906SA6)

NOTICE OF ADOPTION**Petition for the Submetering of Electricity****I.D. No.** PSC-17-11-00021-A**Filing Date:** 2011-07-26**Effective Date:** 2011-07-26

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

Action taken: On 7/26/11, the PSC adopted an order approving the petition of CityStation West, LLC to submeter electricity at 1521 6th Avenue, Troy, New York, located in the territory of Niagara Mohawk Power Corporation, d/b/a National Grid.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of CityStation West, LLC to submeter electricity at 1521 6th Avenue, Troy, New York.

Substance of final rule: The Commission, on July 26, 2011 adopted an order approving the petition of CityStation West, LLC to submeter electricity at 1521 6th Avenue, Troy, New York, located in the territory of Niagara Mohawk Power Corporation d/b/a National Grid, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-E-0124SA1)

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED****Major Gas Rate Filing****I.D. No.** PSC-32-11-00013-P

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

Proposed Action: The Commission is considering a proposal filed by Corning Natural Gas Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedules for Gas Service—P.S.C. Nos. 4, 5 and 6—Gas.

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

Subject: Major gas rate filing.

Purpose: To consider a proposal to increase annual gas revenues by approximately \$2.6 million.

Public hearing(s) will be held at: 1:00 p.m. and continuing daily as needed beginning at 10:00 a.m. (Evidentiary Hearing)*, Nov. 7, 2011 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 11-G-0280.

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 Corning Natural Gas Corporation (Corning) which would increase its annual gas revenues by about \$2.6 million for the rate year ending April 30, 2013. This equates to a 23.05% increase in gas delivery revenues or approximately 11.90% on the total customer bill. Corning also proposed a multi-year rate plan including the initial rate year and two subsequent 12 month periods. The Company proposed using a levelized approach for the multi-year plan that would increase revenues by \$1,429,281 in each Rate Year or 12.84% increase in gas delivery revenues, or approximately 6.63% on the total customer bill (as compared to an additional revenue increase of \$901,464 in Rate Year Two and \$583,033 in Rate Year Three). The Company also proposed staged increases for the two years beyond the multi-year plan (twelve months ended April 30, 2016 and April 30, 2017) to recover carrying costs on capital expenditures on projected infrastructure investments. The statutory suspension period for the proposed filing runs through April 20, 2012. The Commission may adopt in whole or in part or reject terms set forth in Corning'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. Brilling, 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.

(11-G-0280SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Minor Rate Filing****I.D. No.** PSC-32-11-00010-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 proposed filing by Green Island Power Authority to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 1—Electricity.

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

Subject: Minor Rate Filing.

Purpose: To increase annual electric delivery revenues by approximately \$300,000 or 6.0%.

Substance of proposed rule: The Commission is considering a proposal filed by the Green Island Power Authority (Green Island) which would increase its annual electric revenues by about \$300,000 or 6.0%. The proposed filing has an effective date of November 1, 2011. The Commission may adopt in whole or in part, modify or reject Green Island's proposal. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

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. Brilling, 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.

(11-E-0387SP1)

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

Revenue Sharing Agreement

I.D. No. PSC-32-11-00011-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 proposed filing by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 15—Electricity.

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

Subject: Revenue Sharing Agreement.

Purpose: To modify General Information Section 29 - Energy Cost Adjustment Mechanism.

Substance of proposed rule: The Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation (Central Hudson) to modify the Energy Cost Adjustment Mechanism to reflect the expiration of the Purchased Power Agreement and the commencement of the Revenue Sharing Agreement. The proposed filing has an effective date of December 1, 2011. The Commission may adopt in whole or in part, modify or reject Central Hudson's proposal. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

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. Brilling, 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.

(11-E-0390SP1)

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

Revenue Decoupling Mechanism

I.D. No. PSC-32-11-00012-P

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

Proposed Action: The Commission is considering a proposed filing by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 15—Electricity.

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

Subject: Revenue Decoupling Mechanism.

Purpose: To consolidate Service Classification (SC) No. 1 Residential and SC No. 6 Residential Time-of-Use.

Substance of proposed rule: The Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation (Central Hudson) to consolidate Service Classification (SC) No. 1 Residential and SC No. 6 Residential Time-of-Use for purposes of the revenue decoupling mechanism and the New York State Assessment. The proposed filing has an effective date of November 1, 2011. The Commission may adopt in whole or in part, modify or reject Central Hudson's proposal. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

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. Brilling, 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.

(11-E-0388SP1)

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

Rates of O&R for Electric Service, Commencing July 1, 2011

I.D. No. PSC-32-11-00014-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 what action to take on two petitions for rehearing of its June 17, 2011 Electric Rate Order filed by Orange and Rockland Utilities, Inc. (O&R) and the Utility Intervention Unit of the New York Department of State (UIU).

Statutory authority: Public Service Law, sections 4(1), 22, 65(1) and 66(1)

Subject: Rates of O&R for electric service, commencing July 1, 2011.

Purpose: To resolve issues raised by O&R and UIU in their petitions for rehearing.

Substance of proposed rule: On June 17, 2011, the Commission issued an Order Establishing Rates for Electric Service (Rate Order) for Orange and Rockland Utilities, Inc. (O&R or company). The Utility Intervention Unit of the New York Department of State (UIU) and O&R filed petitions for rehearing on July 14, 2011 and July 15, 2011, respectively. The parties seek rehearing of certain aspects of the Rate Order relating to the price out of the forecast of electric delivery volumes, the treatment of costs associated with O&R's incentive compensation program, and application of an austerity adjustment to the company's revenue requirement. The Commission will consider the petitions of O&R and UIU and may grant or deny in whole or in part, or modify the relief sought in the petitions, or take other measures authorized by law.

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. Brilling, 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-0362SP2)

State University of New York

EMERGENCY RULE MAKING

State University of New York Tuition and Fees Schedule

I.D. No. SUN-32-11-00002-E

Filing No. 685

Filing Date: 2011-07-21

Effective Date: 2011-07-21

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

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

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

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

Specific reasons underlying the finding of necessity: Amendment of these regulations needs to proceed on an emergency basis because tuition increases are intended to be effective for the Fall 2011 semester. Billing for these new tuition rates occurs during the summer of 2011, therefore, notice of the new rates needs to occur as soon as possible.

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

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

Text of emergency rule: Section 302.1. Tuition and fees at State-operated units of State University.

* * * * *

(b) Tuition charges as listed in the following table for categories of students, terms and programs, and as modified, amplified or explained in footnotes 1 [and 2] through 5 are effective with the [2010] 2011 Fall term and thereafter.

	Charge per Semester		Charge per Semester credit hour ¹ Special Students	
	New York State residents	Out-of-State residents	New York State residents	Out-of-State residents
(1) Students enrolled in degree-granting undergraduate programs leading to an associate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	\$[2,485] \$2,635	\$[6,690] \$7,160 \$[4,550] \$4,870 ²	\$[207] \$220 \$175 ³	\$[558] \$597 \$[379] \$406 ² \$175 ³

(2) Students enrolled in degree-granting undergraduate programs leading to a baccalaureate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	\$[2,485] \$2,635	\$[6,690] \$7,160 \$7,360 ⁴ \$3,955 ⁵	\$[207] \$220	\$[558] \$597 \$613 ⁴ \$330 ⁵
(3) Students enrolled in graduate programs (other than Masters of Business Administration, Architecture, Social Work or Physician Assistant) leading to a Master's, Doctor's or equivalent degree	\$[4,185] \$4,435	\$[6,890] \$7,580, \$6,655 ⁵	\$[349] \$370	\$[574] \$632 \$555 ⁵
(4) Students enrolled in a graduate program leading to a Masters of Business Administration (MBA)	\$[4,690] \$5,105	\$[7,570] \$8,325	\$[391] \$425	\$[631] \$694
(5) Students enrolled in a graduate program leading to a Masters of Architecture	\$4,605	\$7,580	\$384	\$632
(6) Students enrolled in a graduate program leading to a Masters of Social Work	\$4,585	\$7,580	\$382	\$632
(5) Students enrolled in the professional program of pharmacy	\$[9,060] \$9,875	\$[17,250] \$18,975	\$[755] \$823	\$[1,438] \$1,581
(6) Students enrolled in the professional program of law	\$[8,725] \$9,510	\$[14,555] \$16,010	\$[727] \$793	\$[1,213] \$1,334
(7) Students enrolled in the professional program of medicine	\$[12,425] \$13,545	\$[24,385] \$26,825	\$[1,035] \$1,129	\$[2,032] \$2,235
(8) Students enrolled in the professional program of dentistry	\$[10,710] \$11,675	\$[23,650] \$26,015	\$[893] \$973	\$[1,971] \$2,168
(9) Students enrolled in the professional program of physical therapy and doctor of nursing practice	\$[7,550] \$8,230	\$[13,315] \$14,645	\$[629] \$686	\$[1,110] \$1,220
(10) Students enrolled in the professional program of optometry	\$[8,690] \$9,300	\$[16,685] \$17,855	\$[724] \$775	\$[1,390] \$1,488
(13) Students enrolled in the professional program of physician assistant	\$4,560	\$8,270	\$380	\$689

¹ The Chancellor shall determine the equivalent of a credit hour.

² In accordance with chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge this lower rate for out-of-state students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree.

³ In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge this lower rate for special students (part-time) enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs, and taking classes at off-campus locations or during the summer or winter intercessions. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree.

⁴ In accordance with the NY-SUNY 2020 Challenge Grant Program Act, the University Centers at Albany, Binghamton, Buffalo, and Stony Brook are authorized to charge this rate for non-resident undergraduate students.

⁵ As authorized by the Board of Trustees (2010-081), Maritime College is authorized to charge up to this rate for non-resident students from states considered to be in-region (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington D.C.).

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 18, 2011.

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, 353 Broadway, S-325, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Regulatory Impact Statement

1. **Statutory Authority:** Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to make and amend rules and regulations for the governance of the State University and institutions therein. Section 355(2)(h) authorizes the State University Trustees to regulate the admission of students, tuition charges and other fees and charges, curricula and all other matters pertaining to the operation and administration of each State-operated institution of the University.

2. **Legislative Objectives:** The present measure will provide essential financial support for the operations of the State University of New York, in accordance with the NY-SUNY 2020 Challenge Grant Program Act, which has passed both houses of the Legislature.

3. **Needs and Benefits:** The present measure establishes a series of tuition increases in the degree programs of the State University of New York.

- In accordance with the NY-SUNY 2020 Challenge Grant Program Act, undergraduate tuition will increase by \$300 for all resident students, and subject to approval by the Governor and Chancellor of a long term economic and academic plan submitted by each University Center, non-resident undergraduate tuition for students at the University Centers will increase by 10%
- Non-resident tuition for students at the Comprehensive Colleges, Colleges of Technology, and the Other Research/Doctoral institutions will be increased by 7%
- For graduate students enrolled in masters' and doctoral programs not otherwise specified, resident tuition will be increased by 6% and non-resident tuition will be increased by 10%
- Tuition rates for professional programs (medical, dental, law, pharmacy, doctorate of physical therapy, doctorate of nursing practice) will be increased by 9% for resident students and by 10% for non-resident students
- For students enrolled in the MBA program, rates for resident students will be increased 8.9% and by 10% for non-resident students
- For students enrolled in the Masters of Architecture program, rates for resident and for non-resident students will be increased by 10%
- For students enrolled in the Masters of Social Work program rates for resident students will be increased by 9.5% and by 10% for non-resident students
- For students enrolled in the Physician Assistant (Masters) program, rates will be increased by 9% for resident students and by 20% for non-resident students
- For students enrolled in the Optometry program, rates for resident and non-resident students will increase by 7%

Even with the recommended increases, the tuition charged at the State-operated campuses of State University of New York is still competitive when compared to peer institutions in other university systems. Accordingly, the tuition increases on an annual basis proposed by this measure are as follows:

Undergraduate Degree: Tuition would increase by \$300 to \$5,270 for resident students. Undergraduate Degree: Tuition would increase by \$1,340 to \$14,720 for out-of-state students at the University Centers (Albany, Binghamton, Buffalo, Stony Brook); and, by \$940 to \$14,320 for all other campuses.

Graduate Degree Programs: Tuition would increase by \$500 for resident students, to \$8,870. Tuition would increase by \$1,380 for out-of-state students, to \$15,160. For students enrolled in programs leading to a Masters in Business Administration degree, tuition would increase by \$830 to \$10,210 for residents and by \$1,510 to \$16,650 for out-of-state students. For students enrolled in programs leading to a Masters in Architecture degree, tuition would increase by \$840 to \$9,210 for residents and by \$1,380 to \$15,160 for out-of-state students. For students enrolled in programs leading to a Masters in Social Work degree, tuition would increase by \$800 to \$9,170 for residents and by \$1,380 to \$15,160 for out-of-state students.

Medicine: Tuition would increase by \$2,240 to \$27,090 for residents and by \$4,880 to \$53,650 for out-of-state residents.

Law: The tuition at the Law School of the University at Buffalo would be increased by \$1,570 to \$19,020 for residents and by \$2,910 to \$32,020 for out-of-state residents.

Pharmacy: The tuition at the School of Pharmacy at the University at Buffalo would increase by \$1,630 to \$19,750 for residents and by \$3,450 to \$37,950 for out-of-state residents.

Physical Therapy and Doctor of Nursing Practice: Tuition for the Doctor of Physical Therapy and Nursing Practice at the University at Buffalo and the University at Stony Brook would increase by \$1,360 to \$16,460 for residents and by \$2,660 to \$29,290 for out-of-state residents.

Dentistry: Tuition for the D.D.S programs at the Universities at Stony Brook and Buffalo would increase by \$1,930 to \$23,350 for residents and by \$4,730 to \$52,030 for out-of-state residents.

Optometry: Tuition for the Optometry program at the College of Optometry would increase by \$1,220 to \$18,600 for residents and by \$2,340 to \$35,710 for out-of-state residents.

Physician Assistant: Tuition for the Physicians' Assistant graduate program at Stony Brook and Upstate would increase by \$750 to \$9,120 for residents and by \$2,760 to \$16,540 for out-of-state residents.

The rates for non-resident undergraduate and graduate, MBA, Medicine, Law, Pharmacy, Physical Therapy, Doctor of Nursing Practice, Dentistry, and Optometry were last increased in the Fall 2010; the rates for resident undergraduate and graduate, the Masters of Architecture and Social Work; and the Physician Assistant in Fall 2009.

4. **Costs:** Students enrolled in these programs of the State University of New York will be required to pay additional tuition ranging from \$300 per year for resident associate degrees to \$4,880 for out-of-state resident students at the Schools of Medicine. In setting the new tuition schedule, the State University has examined its appropriation levels, the prevailing tuition rates charged by other public universities and the status of various State and Federal student financial aid programs.

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

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

7. **Duplication:** None.

8. **Alternatives:** Delays in tuition increases as well as higher increases were considered, however, there is no acceptable alternative to the proposed increases. The revenue from these tuition increases is necessary in order for the University to maintain quality of instruction and essential services to students, especially for the high cost professional programs.

9. **Federal Standards:** None.

10. **Compliance Schedule:** The amendment to the tuition schedule will go into effect for the Fall 2011 semester.

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Department of Transportation

EMERGENCY RULE MAKING

Suspension and Revocation of Carrier Operating Authority

I.D. No. TRN-32-11-00009-E

Filing No. 692

Filing Date: 2011-07-25

Effective Date: 2011-07-25

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

Action taken: Addition of section 720.32 to Title 17 NYCRR.

Statutory authority: Transportation Law, section 138(2)

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

Specific reasons underlying the finding of necessity: This emergency rule is being promulgated on July 25, 2011 to provide standards for the suspension or revocation of operating authority of motor carriers of passengers by motor vehicles (carriers). This rule will become effective on the same date.

Bus companies may operate within the state of New York only upon operating authority in permits and certificates issued by the United States Department of Transportation or issued by the Commissioner of Transportation pursuant to Article 7 of the Transportation Law. Passenger carriers must comply with safety regulations found at 17 NYCRR Part 720. A recent series of tragic accidents that resulted in deaths and personal injuries involving carriers has revealed that it is possible for a carrier to have multiple safety violations, or even have federal operating authority suspended or revoked, and yet continue to operate under authority issued by the Commissioner of Transportation within the state of New York.

The emergency rule provides that the state operating authority may be suspended in the event that a carrier has had a suspension or revocation of concurrent federal operating authority or because of safety violations that would suggest that the continued operation of such carrier poses a threat to public safety. In addition to requiring continued federal operating authority (where applicable), the new rule provides the basis for the suspension or revocation of state operating authority and prescribes procedures whereby such suspension and/or revocation will be effected.

Subject: Suspension and revocation of carrier operating authority.

Purpose: Enhance public safety.

Text of emergency rule: § 720.32 Suspension and revocation of operating authority.

(a) Notwithstanding any regulation of the department to the contrary, pursuant to section 156, subdivision 2, the Commissioner may immediately suspend or revoke the authority for operation authorized by certificate or permit for any of the following serious safety violations:

(1) Out of service violations which are determined by the Commissioner to be conditions or activities which constitute a danger to the safety of the people and which are found to have occurred for such carrier in the preceding six-month period. The incidence of out of service violations triggering a suspension of authority shall be as follows:

(i) For a carrier with at least one, but no more than five buses at any time in the preceding six month period: three violations.

(ii) For a carrier with at least six, but no more than twenty buses at any time in the preceding six month period: four violations.

(iii) For a carrier with more than twenty-one buses at any time in the preceding six month period: five violations;

(iv) For a carrier with at least ten Department of Transportation semi-annual inspections performed between April 1, 2010 and March 31, 2011 that resulted in an out-of service rate greater than 25%.

(2) Driving a bus while intoxicated in violation of the vehicle and traffic law;

(3) Driving a bus while using or in possession of drugs in violation of the vehicle and traffic law;

(4) Driving a bus after such driver has been placed out of service in violation of the transportation law, vehicle and traffic law or regulations adopted thereunder;

(5) Driving a bus that has been placed out of service in violation of the transportation law, vehicle and traffic law or regulations adopted thereunder; or

(6) Driving a bus without a required license in violation of the vehicle and traffic law.

(b) Notwithstanding any regulation of the department to the contrary, the Commissioner may immediately suspend or revoke the authority of any carrier operating pursuant to a certificate or permit issued by the Commissioner pursuant to article 6 or Article 7 of the Transportation Law if such carrier operates concurrently under any authority issued by the United States Department of Transportation, Federal Motor Carrier Safety Administration, and such federal operating authority has been suspended or revoked.

(c) The suspension of operating authority as provided in sub-sections (a) or (b) shall be effective five business days after the date of issuance. Pending the effective date of such suspension, any carrier subject to this section may be heard to present proof as to why such suspension should not occur or should not have occurred. The Commissioner shall make a determination based upon a hearing of the proof whether such suspension shall become effective or continue and a hearing regarding permanent revocation shall be scheduled. In addition to or in lieu of any suspension or revocation, the Commissioner may, after a hearing, impose a civil penalty upon such carrier in accordance with the provisions of Article 6 of the Transportation Law.

(d) Whenever because of danger to public safety or the welfare of the people it appears prejudicial to the interests of the people of the state, the commissioner may serve the respondent with a notice or order requiring certain action or the cessation of certain activities immediately or within a specified period, and the commissioner shall provide an opportunity to be heard within a period specified in such notice or order.

(e) Service may be made personally or by certified mail, return receipt requested, and a hearing shall be conducted pursuant to the provisions of section 503.2 of this title, except for the notice provisions, provided however, that notice may be made pursuant to sub-section (d) or this sub-section.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires October 22, 2011.

Text of rule and any required statements and analyses may be obtained from: David E. Winans, Associate Counsel, Dept of Transportation, Albany, NY, (518) 457-5793

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but will be published in the Register within 30 days of the rule's effective date.

Urban Development Corporation

EMERGENCY RULE MAKING

Downstate Revitalization Fund Program

I.D. No. UDC-32-11-00001-E

Filing No. 683

Filing Date: 2011-07-19

Effective Date: 2011-07-19

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; and 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: Downstate Revitalization Fund Program.

Purpose: Provide the basis for administration of 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 community" shall mean a census tract, or defined portion thereof, that, according to the most recent census data available, has (a) a poverty rate of at least 20% for the year to which the data relate; and (b) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relate.

(c) "Downstate" shall mean the following New York State counties, subject to ESDC Directors' approval: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester.

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 respectively by subdivisions (c) and (f) of section nine hundred fifty-seven of the General Municipal Law and section three hundred ten of the Executive 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, and 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 any 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) Program assistance is available for the following funding tracks:

(1) Business Investment Business Investments are capital expenditures that facilitate an employer's ability to create new jobs in New York State or retain jobs that are otherwise in jeopardy. Such jobs otherwise in jeopardy include, but are not limited to, jobs in danger of being eliminated, having hours and/or wages reduced or relocated outside of New York State. Within the Business Investment Track, five-year job commitments will be required of all beneficiaries; it is by underwriting these job commitments that ESDC is best able to forecast the economic benefits of providing assistance to any particular project. Applicants will therefore be required to commit to the number of jobs At Risk that will be retained by the proposed project, the number of new jobs that will be created by the project, and the average salaries of each. Failure to achieve or maintain these employment commitments will subject a beneficiary to potential recapture of assistance.

(2) Infrastructure Investment The Funds will finance infrastructure investments in order to attract new businesses and expand existing businesses, thereby fostering further investment. Infrastructure investments are capital expenditures for infrastructure including transportation, water

and sewer, communication, and energy generation and distribution. Infrastructure also includes the construction of parking garages. Unlike the other two Tracks, Infrastructure Investment may be used to finance planning or feasibility studies relating to capital expenditures. The Infrastructure Investment Track is appropriate only for infrastructure activity for unidentified end-users or for multiple users; infrastructure projects that will serve a single identified entity must apply for assistance under the Business Investment Track, which may be used to fund infrastructure expenses. Although projects without identified users may be funded under the Infrastructure Investment Track, preference under this Track will be given to projects with identified tenants.

Job commitments: Infrastructure Investment projects that are able to provide job commitments will be viewed favorably. However, it is important to note that (1) few Infrastructure Investment projects are anticipated to be able to provide job commitments and (2) if the employer will be an entity other than the Applicant, a third party guarantee of the Applicant's job commitment must be provided by the prospective employer and that prospective employer must be found by ESDC to be creditworthy.

(3) Downtown Redevelopment Downtown neighborhoods - whether major commercial areas of big cities or one block stretches of village main streets - are important generators of economic activity in New York State. In an effort to strengthen these cores of commerce, the Downtown Redevelopment Track will finance rehabilitation and new construction in downtown areas statewide. Funding will be available for a range of commercial uses, including retail, office and commercial. Funding will also be available for projects that are likely to increase tourism, including hotels, cultural institutions and entertainment facilities, and streetscape improvements. This Track will not be used to finance speculative development, and therefore only projects in which 60% of the square footage has been pre-leased generally will be considered.

Job commitments: Downtown Redevelopment projects that are able to provide job commitments will be viewed favorably. However, it is important to note that (1) few Downtown Redevelopment projects are anticipated to be able to provide job commitments and (2) if the employer will be an entity other than the Applicant, a third party guarantee of the Applicant's job commitment must be provided by the prospective employer and that prospective employer must be found by ESDC to be creditworthy.

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

Section 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.

(9) Applications for assistance will be scored competitively, using a point system. Applications under each Track will be scored separately; requests for assistance under one Track thus will not be scored against requests for assistance under another Track.

Following are the scoring criteria and the points assigned to each area:

Criterion	Business Infrastructure	Downtown
Private financing leveraged	10	5
Public financing leveraged	5	5
Return on public investment	10	5
Increased economic activity	10	5
Distressed Census Tract	10	10
Application supported by multiple public/private entities	7	7

Local/regional support	3	3	3
Significant regional breadth, likely to have wide regional impact, or likely to increase the community's economic and social viability	5	5	5
Minority or Women-Owned Business Enterprise	5	5	5
Comports with identifiable regional development plans/initiatives	5	5	5
Loan v. grant	10	10	10
ESDC credit score (considers cash flow, collateral and guarantees)	10	10	10
Project readiness	5	5	5
Sustainable development	5	5	5
Reuse/remediation	5	5	5
Identified tenants	5	5	5
Potential to revitalize a downtown neighborhood	3	3	3
Consistency/preserve architectural character	2	2	2
President & CEO discretion	10	10	10
Total	110	110	110

President & CEO discretion: ESDC's President & CEO will be able to assign up to 10 points in recognition of factors not otherwise captured in the scoring, such as geographic distribution throughout the State and a project's potentially transformative nature.

Scoring process: Applications will be scored in ESDC's regional offices, with assistance from ESDC's central office in estimating a project's fiscal and economic benefits and performing credit analysis. Funding recommendations will be made based on scoring results and final decisions will be made once President & CEO discretionary points have been assigned.

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 section 16-r of the Act.

(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 16, 2011.

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: 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.

In order to address these needs, Program assistance is available for the following funding tracks:

(1) Business Investment Business Investments are capital expenditures that facilitate an employer's ability to create new jobs in New York State or retain jobs that are otherwise in jeopardy. Within the Business Investment Track, five-year job commitments will be required of all beneficiaries; it is by underwriting these job commitments that ESDC is best able to forecast the economic benefits of providing assistance to any particular project. Applicants will therefore be required to commit to the number of jobs At Risk that will be retained by the proposed project, the number of new jobs that will be created by the project, and the average salaries of each. Failure to achieve or maintain these employment commitments will subject a beneficiary to potential recapture of assistance.

(2) Infrastructure Investment The Funds will finance infrastructure investments in order to attract new businesses and expand existing businesses, thereby fostering further investment. Infrastructure investments are capital expenditures for infrastructure including transportation, water and sewer, communication, and energy generation and distribution. Infrastructure also includes the construction of parking garages. Unlike the other two Tracks, Infrastructure Investment may be used to finance planning or feasibility studies relating to capital expenditures. The Infrastructure Investment Track is appropriate only for infrastructure activity for unidentified end-users or for multiple users; infrastructure projects that will serve a single identified entity must apply for assistance under the Business Investment Track, which may be used to fund infrastructure expenses. Although projects without identified users may be funded under the Infrastructure Investment Track, preference under this Track will be given to projects with identified tenants.

Job commitments: Infrastructure Investment projects that are able to provide job commitments will be viewed favorably. However, it is important to note that (1) few Infrastructure Investment projects are anticipated to be able to provide job commitments and (2) if the employer will be an entity other than the Applicant, a third party guarantee of the Applicant's job commitment must be provided by the prospective employer and that prospective employer must be found by ESDC to be creditworthy.

(3) Downtown Redevelopment Downtown neighborhoods - whether major commercial areas of big cities or one block stretches of village main streets - are important generators of economic activity in New York State. In an effort to strengthen these cores of commerce, the Downtown Redevelopment Track will finance rehabilitation and new construction in downtown areas statewide. Funding will be available for a range of commercial uses, including retail, office and commercial. Funding will also be available for projects that are likely to increase tourism, including hotels, cultural institutions and entertainment facilities, and streetscape improvements. This Track will not be used to finance speculative development, and therefore only projects in which 60% of the square footage has been pre-leased generally will be considered.

Job commitments: Downtown Redevelopment projects that are able to provide job commitments will be viewed favorably. However, it is important to note that (1) few Downtown Redevelopment projects are anticipated to be able to provide job commitments and (2) if the employer will be an entity other than the Applicant, a third party guarantee of the Applicant's job commitment must be provided by the prospective employer and that prospective employer must be found by ESDC to be creditworthy.

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.

As a result of Program assistance awarded to date, 1,176 jobs have been created and 2,882 jobs have been retained. Assistance to all three tracks has resulted in significant leveraging of public/private investment.

These remaining funds will be provided to eligible recipients as worthy projects are presented.

4. Costs: The 2008-2009 New York State Budget (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. Monies were reappropriated in the 2009-2010 New York State Budget (page 760, lines 15-24) and the 2010-2011 New York State Budget (page 717, lines 18-27).

Thus far, \$31,825,000 in assistance has been awarded to eligible recipients within the three targeted tracks of business investment, infrastructure investment and downtown redevelopment. \$3,175,000 remains in Program funding.

The Fund is 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.

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.

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.

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.

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. Outreach: 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.”

9. 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 examples of alternatives given above were provided during the outreach portion of the rulemaking process. All of the suggestions offered were from members of the small business community and local governments who responded to the Corporations request for input. All of the suggestions were included in the rules and regulations submitted with this Regulatory Impact Statement.

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

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

Regulatory Flexibility Analysis

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

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

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

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

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

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

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

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

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide financing for joint discretionary and competitive economic development projects for distressed communities. In addition the rule specifies that

project evaluation criteria include significant support from the local business community, local government, community organizations, academic institutions, and other regional parties. Because this program is open to for-profit businesses confidentiality features are included in the application process.

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

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

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

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

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

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

Section 4249.2, Part (a) defines “Distressed Communities”.

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

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

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

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

Rural Area Flexibility Analysis

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

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

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

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

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those only in urban areas or only in rural areas, except for the requirement that applicants must be in downstate counties and be in distressed communities. The extent of local government support for a project is a significant criteria for project acceptance. A public hearing may also be required under the NYS Urban Development Corporation Act. The National Federation of Independent Business, New York Farm Bureau, and the New York Conference of Mayors were consulted during this rulemaking and comments requested. In addition, 17 rural organizations, cooperatives, and agricultural groups and 10 local government associations were also asked for their review and comment.

Job Impact Statement

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of Downstate New York through strategic investments to

support investments in distressed communities in downstate regions and to support projects that focus on encourage responsible development.
There will be no adverse impact on job opportunities in the state.