

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.

for-profit child welfare agency. Both requested that the regulations be amended to provide additional direction to social services districts on the issue of school stability.

A commenter commented that the proposed regulations are too vague and will not lead to compliance with the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (the Act). The commenter requested that the proposed regulations be significantly expanded to prescribe actions to be taken by local social services districts. Also, recommended was that the proposed regulations address how disputes involving local social services districts and school districts should be resolved, along with resolution of disputes among the parties to Family Court proceedings. Examples of how other states have implemented the Act were provided. The commenter expressed concern with compliance with the current regulations and how the lack of compliance is impacting the court process.

OCFS considered the comments. Based on such consideration, the regulations were not revised. Recommendations involving prescribed actions by school officials or the courts are outside the authority of this agency. However, in response to other concerns raised in the comments, including those relating to compliance, the mandatory nature of the regulations, and the role of local social services districts, OCFS will develop and issue an administrative directive to the local social services districts addressing those issues.

Office of Children and Family Services

NOTICE OF ADOPTION

Education Stability of Foster Children, Transition Planning and Relative Involvement in Foster Care Cases

I.D. No. CFS-48-10-00004-A

Filing No. 173

Filing Date: 2011-02-14

Effective Date: 2011-03-02

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

Action taken: Amendment of sections 421.24, 428.3, 428.5, 430.11 and 430.12 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f)

Subject: Education stability of foster children, transition planning and relative involvement in foster care cases.

Purpose: The regulations implement the Federal Foster Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351).

Text or summary was published in the December 1, 2010 issue of the Register, I.D. No. CFS-48-10-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Public Information Office, NYS Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 473-7793

Assessment of Public Comment

The Office of Children and Family Services (OCFS) received two comments, one from the Legal Aid Society and the other from a private not-

Department of Correctional Services

NOTICE OF ADOPTION

Correctional Camps

I.D. No. COR-48-10-00003-A

Filing No. 168

Filing Date: 2011-02-09

Effective Date: 2011-03-02

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

Action taken: Repeal of section 100.65; and addition of new section 100.65 to Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Correctional Camps.

Purpose: To remove reference to correctional camps that have been closed and to remove a programmatic function.

Text or summary was published in the December 1, 2010 issue of the Register, I.D. No. COR-48-10-00003-P.

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

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

Assessment of Public Comment

The agency received no public comment.

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

Lyon Mountain Correctional Facility

I.D. No. COR-09-11-00004-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 repeal section 100.110 of Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Lyon Mountain Correctional Facility.

Purpose: To remove the reference to a correctional facility that is no longer in operation.

Text of proposed rule: The Department of Correctional Services repeals and reserves section 100.110 of Title 7 NYCRR.

Text of proposed rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, New York State Department of Correctional Services, 1220 Washington Avenue - State Campus - Building 2, 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 Correctional Services has determined that no person is likely to object to the proposed action. The repeal of this section removes the reference to a correctional facility that is no longer in operation. Since the facility is no longer in operation the reference to it in the regulations is no longer applicable to any person. See SAPA section 102(11)(a).

The Department's authority resides in section 70 of Correction Law, which mandates that each correctional facility must be designated in the rules and regulations of the Department and assigns the Commissioner the duty to classify each facility with respect to the type of security maintained and the function as specified. See Correction Law § 70(6).

Job Impact Statement

A job impact statement is not submitted because this proposed rulemaking is removing the reference to a Correctional Facility that was closed in accordance with the law; since the correctional facility is no longer in operation the removal of the reference to it has no adverse impact on jobs or employment opportunities.

Department of Economic Development

**EMERGENCY
RULE MAKING**

Empire Zones Reform

I.D. No. EDV-09-11-00001-E

Filing No. 170

Filing Date: 2011-02-09

Effective Date: 2011-02-09

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

Action taken: Amendment of Parts 10 and 11; renumbering and amendment of Parts 12 through 14 to Parts 13, 15 and 16; and addition of new Parts 12 and 14 to Title 5 NYCRR.

Statutory authority: General Municipal Law, art. 18-B, section 959; L. 2000, ch. 63; L. 2005, ch. 63; and L. 2009, ch. 57

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

Specific reasons underlying the finding of necessity: Regulatory action is

needed immediately to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate. It bears noting that General Municipal Law section 959(a), as amended by Chapter 57 of the Laws of 2009, expressly authorizes the Commissioner of Economic Development to adopt emergency regulations to govern the program.

Subject: Empire Zones reform.

Purpose: Allow Department to continue implementing Zones reforms and adopt changes that would enhance program's strategic focus.

Substance of emergency rule: The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2000, Chapter 63 of the Laws of 2005, and Chapter 57 of the Laws of 2009. These laws, which authorize the empire zones program, were changed to make the program more effective and less costly through higher standards for entry into the program and for continued eligibility to remain in the program. Existing regulations fail to address these requirements and the existing regulations contain several outdated references. The emergency rule will correct these items.

The rule contained in 5 NYCRR Parts 10 through 14 (now Parts 10-16 as amended), which governs the empire zones program, is amended as follows:

1. The emergency rule, tracking the requirements of Chapter 63 of the Laws of 2005, requires placement of zone acreage into "distinct and separate contiguous areas."

2. The emergency rule updates several outdated references, including: the name change of the program from Economic Development Zones to Empire Zones, the replacement of Standard Industrial Codes with the North American Industrial Codes, the renaming of census-tract zones as investment zones, the renaming of county-created zones as development zones, and the replacement of the Job Training Partnership Act (and private industry councils) with the Workforce Investment Act (and local workforce investment boards).

3. The emergency rule adds the statutory definition of "cost-benefit analysis" and provides for its use and applicability.

4. The emergency rule also adds several other definitions (such as applicant municipality, chief executive, concurring municipality, empire zone capital tax credits or zone capital tax credits, clean energy research and development enterprise, change of ownership, benefit-cost ratio, capital investments, single business enterprise and regionally significant project) and conforms several existing regulatory definitions to statutory definitions, including zone equivalent areas, women-owned business enterprise, minority-owned business enterprise, qualified investment project, zone development plans, and significant capital investment projects. The emergency rule also clarifies regionally significant project eligibility. Additionally, the emergency rule makes reference to the following tax credits and exemptions: the Qualified Empire Zone Enterprise ("QEZE") Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

5. The emergency rule requires additional statements to be included in an application for empire zone designation, including (i) a statement from the applicant and local economic development entities pertaining to the integration and cooperation of resources and services for the purpose of providing support for the zone administrator, and (ii) a statement from the applicant that there is no viable alternative area available that has existing public sewer or water infrastructure other than the proposed zone.

6. The emergency rule amends the existing rule in a manner that allows for the designation of nearby lands in investment zones to exceed 320 acres, upon the determination by the Department of Economic Development that certain conditions have been satisfied.

7. The emergency rule provides a description of the elements to be included in a zone development plan and requires that the plan be resubmitted by the local zone administrative board as economic conditions change within the zone. Changes to the zone development plan must be approved by the Commissioner of Economic Development ("the Commissioner"). Also, the rule adds additional situations under which a business enterprise may be granted a shift resolution.

8. The emergency rule grants discretion to the Commissioner to determine the contents of an empire zone application form.

9. The emergency rule tracks the amended statute's deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

10. The emergency rule reflects statutory changes to the process to revise a zone's boundaries. The primary effect of this is to limit the number of boundary revisions to one per year.

11. The emergency rule describes the amended certification and

decertification processes. The authority to certify and decertify now rests solely with the Commissioner with reduced roles for the Department of Labor and the local zone. Local zone boards must recommend projects to the State for approval. The labor commissioner must determine whether an applicant firm has been engaged in substantial violations, or pattern of violations of laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding. If such applicant firm has been found in a criminal proceeding to have committed any such violations, the Commissioner may not certify that firm.

12. The emergency rule describes new eligibility standards for certification. The new factors which may be considered by the Commissioner when deciding whether to certify a firm is (i) whether a non-manufacturing applicant firm projects a benefit-cost ratio of at least 20:1 for the first three years of certification, (ii) whether a manufacturing applicant firm projects a benefit-cost ratio of at least 10:1 for the first three years of certification, and (iii) whether the business enterprise conforms with the zone development plan.

13. The emergency rule adds the following new justifications for decertification of firms: (a) the business enterprise, that has submitted at least three years of business annual reports, has failed to provide economic returns to the State in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; (b) the business enterprise, if first certified prior to August 1, 2002, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (c) change of ownership or moving out of the Zone, (d) failure to pay wages and benefits or make capital investments as represented on the firm's application, (e) the business enterprise makes a material misrepresentation of fact in any of its business annual reports, and (f) the business enterprise fails to invest in its facility substantially in accordance with the representations contained in its application. In addition, the regulations track the statute in permitting the decertification of a business enterprise if it failed to create new employment or prevent a loss of employment in the zone or zone equivalent area, and deletes the condition that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control. The emergency rule provides that the Commissioner shall revoke the certification of a firm if the firm fails the standard set forth in (a) above, or if the Commissioner makes the finding in (b) above, unless the Commissioner determines in his or her discretion, after consultation with the Director of the Budget, that other economic, social and environmental factors warrant continued certification of the firm. The emergency rule further provides for a process to appeal revocations of certifications based on (a) or (b) above to the Empire Zones Designation Board. The emergency rule also provides that the Commissioner may revoke the certification of a firm upon a finding of any one of the other criteria for revocation of certification set forth in the rule.

14. The emergency rule adds a new Part 12 implementing record-keeping requirements. Any firm choosing to participate in the empire zones program must maintain and have available, for a period of six years, all information related to the application and business annual reports.

15. The emergency rule clarifies the statutory requirement from Chapter 63 of the Laws of 2005 that development zones (formerly county zones) create up to three areas within their reconfigured zones as investment (formerly census tract) zones. The rule would require that 75% of the acreage used to define these investment zones be included within an eligible or contiguous census tract. Furthermore, the rule would not require a development zone to place investment zone acreage within a municipality in that county if that particular municipality already contained an investment zone, and the only eligible census tracts were contained within that municipality.

16. The emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage; the rule removes the requirement that any subsequent additions after their official redesignation by the Designation Board will still require unanimous approval by that Board.

17. The emergency rule clarifies the statutory requirement that certain defined "regionally significant" projects can be located outside of the

distinct and separate contiguous areas. There are four categories of projects: (i) a manufacturer projecting the creation of fifty or more net new jobs in the State of New York; (ii) an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more net new jobs in the State of New York, (iii) a financial or insurance services or distribution center creating three hundred or more net new jobs in the State of New York, and (iv) a clean energy research and development enterprise. Other projects may be considered by the empire zone designation board. Only one category of projects, manufacturers projecting the creation of 50 or more net new jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. Regionally significant projects that fall within the four categories listed above must be projects that are exporting 60% of their goods or services outside the region and export a substantial amount of goods or services beyond the State.

18. The emergency rule clarifies the status of community development projects as a result of the statutory reconfiguration of the zones.

19. The emergency rule clarifies the provisions under Chapter 63 of the Laws of 2005 that allow for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The area which will be "grandfathered" shall be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

20. The emergency rule elaborates on the "demonstration of need" requirement mentioned in Chapter 63 of the Laws of 2005 for the addition (for both investment and development zones) of an additional distinct and separate contiguous area. A zone can demonstrate the need for a fourth or, as the case may be, a seventh distinct and separate contiguous area if (1) there is insufficient existing or planned infrastructure within the three (or six) distinct and separate contiguous areas to (a) accommodate business development and there are other areas of the applicant municipality that can be characterized as economically distressed and/or (b) accommodate development of strategic businesses as defined in the local development plan, or (2) placing all acreage in the other three or six distinct and separate contiguous areas would be inconsistent with open space and wetland protection, or (3) there are insufficient lands available for further business development within the other distinct and separate contiguous areas.

The full text of the emergency rule is available at www.empire.state.ny.us

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires May 9, 2011.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 959(a) of the General Municipal Law authorizes the Commissioner of Economic Development to adopt on an emergency basis rules and regulations governing the criteria of eligibility for empire zone designation, the application process, the certification of a business enterprises as to eligibility of benefits under the program and the decertification of a business enterprise so as to revoke the certification of business enterprises for benefits under the program.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to statutory amendments and the remaining revisions either conform the regulations to existing statute or clarify administrative procedures of the program. These amendments further the Legislative goals and objectives of the Empire Zones program, particularly as they relate to regionally significant projects, the cost-benefit analysis, and the process for certification and decertification of business enterprises. The proposed amendments to the rule will facilitate the administration of this program in a more efficient, effective, and accountable manner.

NEEDS AND BENEFITS:

The emergency rule is required in order to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Empire Zones program, only voluntary participants.

B. Costs to the agency, the state, and local governments: There will be additional costs to the Department of Economic Development associated with the emergency rule making. These costs pertain to the addition of

personnel that may need to be hired to implement the Empire Zones program reforms. There may be savings for the Department of Labor associated with the streamlining of the State's administration and concentration of authority within the Department of Economic Development. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones program. If a local government chooses to participate, there is a cost associated with local administration that local government officials agreed to bear at the time of application for designation as an Empire Zone. One of the requirements for designation was a commitment to local administration and an identification of local resources that would be dedicated to local administration.

This emergency rule does not impose any additional costs to the local governments for administration of the Empire Zones program.

PAPERWORK:

The emergency rule imposes new record-keeping requirements on businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years.

DUPLICATION:

The emergency rule conforms to provisions of Article 18-B of the General Municipal Law and does not otherwise duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

FEDERAL STANDARDS:

There are no federal standards in regard to the Empire Zones program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes new record-keeping requirements on small businesses and large businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years. Local governments are unaffected by this rule.

2. Compliance requirements

Each small business and large business choosing to participate in the Empire Zones program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the Empire Zone program and relating to existing annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

No professional services are likely to be needed by small and large businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

No initial capital costs are likely to be incurred by small and large businesses choosing to participate in the Empire Zones program. Annual compliance costs are estimated to be negligible for both small and large businesses. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in full compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small businesses and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Empire Zones program is a statewide program. Although there are municipalities and businesses in rural areas of New York State that are eligible to participate in the program, participation by the municipalities

and businesses is entirely at their discretion. The emergency rule imposes no additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Empire Zones program. The Empire Zones program itself is a job creation incentive, and will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency rule, which is being promulgated as a result of statutory reforms, will enable the program to continue to fulfill its mission of job creation and investment for economically distressed areas. Because it is evident from its nature that this emergency rule will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Education Department

EMERGENCY RULE MAKING

Clinically Rich Graduate Level Teacher Preparation Program

I.D. No. EDU-47-10-00011-E

Filing No. 177

Filing Date: 2011-02-15

Effective Date: 2011-02-15

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

Action taken: Amendment of section 52.21(b)(5) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 208, 210, 214, 216, 224, 305(1), (2), (7), 3004(1) and 3006(1)

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

Specific reasons underlying the finding of necessity: At its April 2010 meeting, the Board of Regents established certain eligibility requirements to participate in the clinically rich teacher preparation pilot program, including certain curriculum requirements, a clinical component, mentoring and training requirements. As part of the eligibility requirements adopted in April 2010, program providers were required to complete at least one continuous school year of experience. In order to provide program providers with the flexibility they need to provide innovative approaches to this new pilot program, the proposed amendment amends the clinical experience requirement to allow providers to provide up to one continuous school year of clinical experience.

Emergency action is necessary at the February Board of Regents meeting in order to ensure that the rule remains continuously in effect until such time as it can be adopted as a permanent rule on March 3, 2011 after expiration of the 30-day public comment period for revised rule makings prescribed in the State Administrative Procedure Act.

Subject: Clinically rich graduate level teacher preparation program.

Purpose: To amend the clinical experience requirement to provide program providers with the flexibility they need to be innovative.

Text of emergency rule: Subclause (3) of clause (c) of subparagraph (iv) of paragraph (5) of section 52.21 of the Regulations of the Commissioner of Education shall be amended, effective February 15, 2011, to read as follows:

(3) Clinically rich experience component. The clinical experience component of the program shall meet the following requirements:

(i)

(ii) Prior to assigning the candidate to a classroom, the institution shall enter into a written agreement with the high need school wherein the high need school shall agree to establish a plan for [at least] up to one continuous school year of mentored clinical experience by the assigned teacher-mentor for the candidate and support by a team comprised of a faculty member of the program, the school principal or designee, the assigned teacher-mentor, and a school curriculum supervisor or specialist.

(iii) The program shall ensure its candidates receive

mentoring support by a teacher-mentor during the entire period they are assigned to the classroom and enrolled in the program, which shall [be at least] include up to one continuous school year of mentoring.

(iv)

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-47-10-00011-P, Issue of November 24, 2010. The emergency rule will expire April 15, 2011.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 208 of the Education Law authorizes the Regents to award and confer diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Section 210 of the Education Law authorizes the Regents to register domestic and foreign institutions in terms of New York standards, and fix the value of degrees, diplomas and certificates issued by institutions of other states or countries and presented for entrance to schools, colleges and the professions in this state.

Section 214 of the Education Law provides that institutions of the university shall include all secondary and higher educational institutions which are now or may hereafter be incorporated in this state, and such other libraries, museums, institutions, schools, organizations and agencies for education as may be admitted to or incorporated by the university.

Section 216 of the Education Law authorizes the Regents to incorporate any university, college, academy, library, museum, or other institution or association for the promotion of science, literature, art, history or other department of knowledge, or of education in any way.

Section 224 of the Education Law prohibits any individual, partnership or corporation not holding university, college or other degree conferring powers by special charter from the Legislature or the Regents from conferring any degree or using the designation college or university unless specifically authorized by the Regents to do so.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (7) of section 305 of the Education Law authorizes the Commissioner of Education to annul upon cause shown to his satisfaction any certificate of qualification granted to a teacher.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes by modifying the registration requirements in the Regulations of the Commissioner of Education for teacher education programs, by amending the eligibility requirements for the graduate level clinically rich pilot teacher preparation program.

3. NEEDS AND BENEFITS:

At its November 2009 and December 2009 meetings, the Board of Regents approved the conceptual framework for graduate level clinically rich teacher preparation pilot programs. At its April 2010 meeting, the Board approved an amendment to the Commissioner's regulations to establish a graduate level clinically rich teacher preparation pilot program, effective May 1, 2010.

The amendment established two tracks for the graduate level clinically rich program: 1) the Model A track is the residency program for candidates working with a teacher of record in a high need school; and 2) the Model B track is the residency program for candidates employed as teachers of record in a high need school who will be eligible to receive a Transitional B certificate upon completion of required introductory preparation, tests, and workshops. To ensure program quality, the regulatory amendment requires that the pilot program meet the general registration standards established by the Board of Regents for graduate curricula in terms of instructional time, faculty qualifications, and the rigor of curriculum.

The pilot program also includes components of effective residency programs supported by research findings and best practices, which include, among other requirements:

- Recruitment and selection for program candidates: the recruitment process will be highly selective to attract not only the highest caliber of candidates to the pilot program but also candidates with a strong commitment to high need schools.
- Collaboration between program providers and partnering high need schools or school districts: program providers shall execute a written agreement with partnering high need schools which specifies the roles of each partner in the design, implementation, and evaluation of the pilot programs.
- Recruitment, selection, training, and support for mentors: program providers shall collaborate with the high need schools to select mentors that are highly effective teachers and must provide mentors with continuous support and research-based training to support program candidates. Mentors will work collaboratively with faculty supervisors to evaluate candidates and provide feedback.
- Mentoring and support for candidates throughout the program and after program completion: Prior to assigning candidates to a classroom, program providers will enter into a written agreement with the high need schools specifying the mentoring plan. During the clinical experience, each candidate will be assigned a teacher-mentor and a support team comprised of a faculty member of the program, the school principal or designee, the assigned teacher-mentor, and a school curriculum supervisor or specialist. In addition, program providers must have a formal written agreement with partnering schools or school districts to provide continued mentoring support for program graduates during their first year of teaching.

The regulatory amendments adopted in April 2010 also required that the pilot programs include at least one continuous school year of mentored clinical experience, grounded in the teaching standards currently being developed, and centered on practicing research-based teaching skills that make a difference in the classroom.

A competitive bidding process will be implemented to select program providers for the graduate level clinically rich teacher preparation pilot program. In order to provide program providers with the flexibility they need to be as innovative as possible, the Department believes that the one school year requirement for clinical experience is too restrictive. Therefore, the proposed amendment changes the required clinical experience component of the pilot program to require up to one continuous school year of mentored experience.

4. COSTS:

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

(b) Cost to local government: The proposed amendment will not impose any additional costs on local government.

(c) Cost to private regulated parties. The proposed amendment will not impose any additional costs on private regulated parties.

(d) Costs to the regulatory agency: As stated above in Costs to State Government, the amendment does not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment provides some flexibility to local governments by allowing local governments to provide less than one school year of mentored clinical experience to candidates enrolled in a graduate level clinically rich teacher preparation program, as opposed to the prior requirement, which required them to provide at least one continuous school year of clinical experience.

6. PAPERWORK:

The proposed amendment does not impose any paper requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternative proposals considered.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with graduate level clinically rich program requirements qualifying individuals to teach in the New York State public schools, the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

If adopted as an emergency measure at the November Regents meeting, the proposed amendment will become effective on November 19, 2010. It is anticipated that the proposed amendment will become effective as a permanent rule on March 30, 2011.

Regulatory Flexibility Analysis

a) Small Businesses:

1. Effect of rule:

The purpose of the proposed amendment is to change the program

registration standards for the clinically rich graduate level pilot program. Some of the institutions that are selected by the Board of Regents to participate in this pilot program may be small businesses.

2. Compliance requirements:

At its April 2010 meeting, the Board of Regents established certain eligibility requirements to participate in the clinically rich teacher preparation pilot program, including certain curriculum requirements, a clinical component, mentoring and training requirements. As part of the eligibility requirements adopted in April 2010, program providers were required to complete at least one continuous school year of experience.

In order to provide program providers with the flexibility they need to provide innovative approaches to this new pilot program, the proposed amendment amends the clinical experience requirement to allow providers to provide up to one continuous school year of clinical experience.

3. Professional services:

The proposed amendment does not require small businesses to contract for additional professional services to comply.

4. Compliance costs:

The proposed amendment does not impose any additional costs on small businesses.

5. Economic and technological feasibility:

See above response to compliance costs. The proposed amendment would not require schools or school districts to secure special technology to comply.

6. Minimizing adverse impact:

As stated above, the proposed amendment is permissive in nature. As part of the eligibility requirements adopted at the April 2010 Regents meeting, program providers were required to complete at least one continuous school year of experience.

In order to provide program providers with the flexibility they need to provide innovative approaches to this new pilot program, the proposed amendment amends the clinical experience requirement to allow providers to provide up to one continuous school year of clinical experience.

7. Small business participation:

The conceptual framework of the graduate level clinically rich teacher pilot program was shared with the State Professional Standards and Practices Board for Teaching and comments were solicited from this board. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The board has representatives from school districts across the State.

b) Local Governments:

1. Effect of rule:

The purpose of the proposed amendment is to establish program registration standards for a clinically rich graduate level pilot program and to authorize institutions, other than institutions of higher education, that are selected by the Board of Regents, to offer teacher preparation programs under this pilot program. High need schools and school districts may opt to participate and collaborate with institutions that are selected by the Board of Regents to participate in this program.

2. Compliance requirements:

At its April 2010 meeting, the Board of Regents established certain eligibility requirements to participate in the clinically rich teacher preparation pilot program, including certain curriculum requirements, a clinical component, mentoring and training requirements. As part of the eligibility requirements adopted in April 2010, program providers were required to complete at least one continuous school year of experience.

In order to provide program providers with the flexibility they need to provide innovative approaches to this new pilot program, the proposed amendment amends the clinical experience requirement to allow providers to provide up to one continuous school year of clinical experience.

3. Professional services:

The proposed amendment does not require schools or school districts to contract for additional professional services to comply.

4. Compliance costs:

The proposed amendment does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

See above response to compliance costs. The proposed amendment would not require schools or school districts to secure special technology to comply.

6. Minimizing adverse impact:

As part of the eligibility requirements adopted in April 2010, program providers were required to complete at least one continuous school year of experience.

In order to provide program providers with the flexibility they need to provide innovative approaches to this new pilot program, the proposed amendment amends the clinical experience requirement to allow providers to provide up to one continuous school year of clinical experience.

7. Local government participation:

The conceptual framework of the graduate level clinically rich teacher pilot program was shared with the State Professional Standards and Practices Board for Teaching and comments were solicited from this board. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The board has representatives from school districts across the State.

Rural Area Flexibility Analysis

1. Types and estimate of number of rural areas:

The proposed amendment will impact institutions that elect to offer a clinically rich teacher preparation program, which may include colleges and universities and institutions other than institutions of higher education that are selected by the Board of Regents to participate in this program. Such institutions may include cultural institutions, libraries, research centers, and other organizations with an educational mission. The proposed amendment will also impact high need schools and school districts in New York State that elect to participate in this program. These high need schools and institutions may be located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Any institution that participates in this pilot program will be required to provide up to one continuous school year of clinical experience to meet the eligibility requirements of this program.

3. Costs:

The proposed amendment does not impose any additional costs on regulated entities.

4. Minimizing adverse impact:

Implementation of the proposed rule will not have a negative impact on entities or individuals located in rural communities. The proposed amendment is permissive in nature. Only program providers that wish to offer a clinically rich principal preparation pilot program are required to meet the new requirements for such programs. High need schools and school districts that elect to participate in the pilot program will benefit by having access to a larger pool of teacher candidates, although they will have the expense of providing mentoring support.

Moreover, the proposed amendment provides flexibility to program providers located in all areas of the State, including rural areas. The proposed amendment changes the clinical experience component of the program to require program providers to provide up to one continuous school year of clinical experience.

5. Rural area participation:

The concept of the graduate level clinically rich pilot programs was shared with the State Professional Standards and Practices Board for Teaching and comments were solicited from this board. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts.

Job Impact Statement

The purpose of the proposed amendment is to amend the clinical experience component of the graduate level clinical rich pilot programs to allow program providers to offer less than a year of mentored clinical experience to provide program providers with the flexibility they need to be as innovative as possible.

Because it is evident from the nature of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

EMERGENCY/PROPOSED

RULE MAKING

NO HEARING(S) SCHEDULED

Expedited Teacher Certification Pathway for Science or Mathematics in Grades 5-9 and 7-12

I.D. No. EDU-09-11-00005-EP

Filing No. 174

Filing Date: 2011-02-15

Effective Date: 2011-02-15

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

Proposed Action: Addition of sections 80-1.1(b)(45) and 80-5.22; and

amendment of sections 80-3.3(a)(2)(i) and 80-3.7(a)(3)(ii)(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1) and (2), 3001(2), 3004(1) and (6) and 3006(1)(b)

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

Specific reasons underlying the finding of necessity: Supply and demand data has shown that, in many regions of New York, there is a shortage of certified teachers in the areas of science and mathematics in grades (5-9) and (7-12). To address this issue, the proposed regulations have been developed to create an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and with at least two years of teaching experience at the post-secondary level to become certified teachers in these shortage areas.

The proposed amendment ensures that individuals prepared through the expedited pathway are effective teachers through rigorous admission requirements and additional pedagogical study: To be eligible for the expedited pathway, the candidate must hold a graduate degree or higher in science, technology, engineering or mathematics; have a graduate major in the subject or a closely related subject area of the certificate sought; and have at least two years of satisfactory teaching experience at the post-secondary level in the certificate area to be taught or in a closely related subject area. At this point, the candidate would be eligible to receive a Transitional G teaching certificate, which would authorize the candidate to teach in the public schools of the State for a year, while the candidate completes at least six semester hours of undergraduate pedagogical core study or four semester hours of graduate pedagogical study in the area of the candidate's certificate.

Emergency action at the February 2011 Board of Regents meeting is necessary for the preservation of the general welfare to address the State's persistent shortages of certified teachers who are qualified to teach in one of the sciences or mathematics at the 5-9 or 7-12 grade level. The proposed amendment is designed to support the Department's continuing efforts to certify a sufficient number of properly qualified candidates to fill the need for science and mathematics teachers in the State's schools. Candidates who meet the requirements of the new Transitional G certificate will be able to serve as teachers in the classroom in these shortage areas immediately.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at its May 2011 meeting, which is the first scheduled meeting after the expiration of the 45-day public comment period mandated by the State Administrative Procedures Act.

Subject: Expedited teacher certification pathway for science or mathematics in grades 5-9 and 7-12.

Purpose: To provide an expedited pathway for candidates with an advanced degree in STEM areas and postsecondary teaching experience.

Text of emergency/proposed rule: 1. A new paragraph (45) of subdivision (b) is added to Section 80-1.1 of the Regulations of the Commissioner of Education, effective February 15, 2011, to read as follows:

(45) *Transitional G certificate means the first teaching certificate obtained by a candidate who holds an appropriate graduate degree in science, technology, engineering or mathematics and has two years of acceptable experience teaching in a post-secondary institution, that qualifies that individual to teach in the public schools of New York State, subject to the requirements and limitations of this Part, and excluding the provisional certificate, initial certificate, internship certificate, conditional initial certificate, transitional A certificate, transitional B certificate and transitional C certificate.*

2. Subparagraph (i) of paragraph (2) of subdivision (a) of section 80-3.3 of the Regulations of the Commissioner of Education is amended, effective February 15, 2011, to read as follows:

(i) [The] (a) *Except as otherwise provided in subdivision (b) of this section, the candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test, written assessment of teaching skills, and content specialty test(s) in the area of the certificate, except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to achieve a satisfactory level of performance on the content specialty test.*

(b) *Examination requirement for candidates with a graduate degree in science, technology, engineering or mathematics and two years of post-secondary teaching experience in the area of the certificate sought. Any candidate seeking an initial certificate in earth science, biology, chemistry, physics, mathematics or in a closely related field as determined by the Department in (grades 5-9) or (grades 7-12) and who is seeking an initial certificate through individual evaluation under section 80-3.7(a)(3)(ii)(c) shall not be required to achieve a satisfactory level of performance on the written assessment of teaching skills examination or the content specialty test.*

3. Clause (c) of subparagraph (ii) of paragraph (3) of subdivision (a) of section 80-3.7 of the Regulations of the Commissioner of Education is amended, effective February 15, 2011, to read as follows:

(c) *For candidates with a graduate degree in science, technology, engineering or mathematics and two years of postsecondary teaching experience in the certificate area to be taught or in a closely related subject area acceptable to the Department, who apply for a certificate or license on or after February 2, 2011 in earth science, biology, chemistry, physics, mathematics or a closely related field, the candidate shall not be required to meet the general requirements in paragraph (2)(iii)(iv) or (v) of subdivision (a) of this section. However, the candidate shall meet the following requirements:*

(1) *Degree completion. The candidate shall possess a graduate degree in science, technology, engineering or mathematics from a regionally or nationally accredited institution of higher education, a higher education institution that the Commissioner deems substantially equivalent, or from an institution authorized by the Board of Regents to confer degrees and whose programs are registered by the Department. The candidate shall have completed a graduate major in the subject of the certificate sought, or in a related field approved by the department for this purpose.*

(2) *Post-secondary teaching experience. The candidate must show evidence of at least two years of satisfactory teaching experience at the post-secondary level in the certificate area to be taught or in a closely related subject area acceptable to the Department.*

(3) *Pedagogical study or two years of satisfactory teaching experience in a school district under a Transitional G certificate. The candidate shall complete one of the following:*

(i) *at least six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study for the initial certificate in the area of the candidate's certificate, as prescribed for the certificate title in this paragraph, which shall include study in the methods of teaching in the certificate area, teaching students with disabilities; curriculum and lesson planning aligned with the New York State Learning Standards; and classroom management and teaching at the developmental level of students to be taught; or*

(ii) *at least two years of teaching experience in a school district while the candidate holds a Transitional G certificate under this Part.*

4. Section 80-5.22 of the Regulations of the Commissioner is added, effective February 15, 2011, as follows:

§ 80-5.22 *Transitional G certificate for career changers and others holding a graduate or higher degree in science, technology, engineering or mathematics and with at least two years of acceptable post-secondary teaching experience.*

(a) *General requirements.*

(1) *Time validity. The transitional G certificate shall be valid for two years.*

(2) *Limitations. The transitional G certificate shall authorize a candidate to teach only in a school district for which a commitment for employment has been made. The candidate shall meet the requirements in each of the following paragraphs:*

(1) *Education. A candidate shall hold a graduate degree in science, technology, engineering or mathematics from a regionally or nationally accredited institution of higher education, a higher education institution that the Commissioner deems substantially equivalent, or from an institution authorized by the Board of Regents to confer degrees. A candidate shall complete study in the means for identifying and reporting suspected child abuse and maltreatment, which shall*

include at least two clock hours of coursework or training in the identification and reporting of suspected child abuse or maltreatment in accordance with the requirements of section 3004 of the Education Law. In addition, the candidate shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider approved or deemed approved by the Department pursuant to Subpart 57-2 of this Title.

(2) *Examination.* The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test.

(3) *Post-secondary teaching experience.* The candidate shall submit evidence of at least two years of satisfactory teaching experience at the post-secondary level in the certificate area to be taught or in a closely related subject area acceptable to the Department.

(4) *Employment and support commitment.* The candidate shall submit satisfactory evidence of having a commitment from a school district of at least two years of employment as a teacher with the school district in the area of the certificate sought, which shall include mentoring and at least 70 hours of professional development targeted toward appropriate pedagogical skills, over the two years of employment.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire May 15, 2011.

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

Data, views or arguments may be submitted to: Peg Rivers, New York State Education Department, 89 Washington Avenue, Albany, New York 12234, (518) 408-1189, email: privers@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Subdivision (6) of section 3004 of the Education Law requires the Regents and the Commissioner to develop programs to assist in the expansion of alternative teacher preparation programs.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above referenced statutes by establishing an alternative certification pathway for candidates with an advanced degree in either science, technology, engineering or mathematics and two years of teaching experience at the post-secondary level, to teach in the certificate area of their advanced degree or one closely related to it.

3. NEEDS AND BENEFITS:

The proposed amendment establishes a transitional G certificate to

create a mechanism for schools to employ applicants with a graduate degree or higher in science, technology, engineering or mathematics, and two years of experience teaching at the college level in the same area as the certificate requested, or in a closely related field as determined by the Commissioner, to address demonstrated shortage areas in these subjects. School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder for two years of employment, which shall include mentoring and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment. For individuals who meet the other requirements but do not have an offer of employment by a school district they would still have the option of completing six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study.

The proposed amendment is needed to facilitate the State's ability to address persistent shortages of certified teachers who are qualified to teach in one of the sciences or mathematics at the 5-9 or 7-12 grade level. The proposed amendment is designed to support the Department's continuing efforts to certify a sufficient number of properly qualified candidates to fill the need for science and mathematics teachers in the State's schools.

The transitional G certificate will be valid for two years from its effective date and will not be renewable. It will be limited to employment with an employing entity.

4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department. The State Education Department will use existing staff and resources to process certificate applications.

(b) Cost to local government. The amendment does not impose additional costs upon local governments, including schools districts and BOCES.

(c) Cost to private regulated parties. A candidate seeking a transitional G certificate will be required to pay a \$100 application fee.

(d) Costs to the regulatory agency. As stated above in Costs to State Government, the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, and that the district or BOCES will provide mentoring and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. The employing school district or BOCES will be required to certify that the district wants to employ the candidate in a position for which the candidate would need the transitional G certificate to qualify, and that it will provide mentoring and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternative proposals were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that address alternative certification requirements in the areas of science and mathematics.

10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its effective date. Because of the nature of the proposed amendment, no additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

(a) Small Businesses:

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 5-9 and 7-12 to address the demonstrated shortage areas in these subjects and grade levels. The amendment does not impose any reporting, recordkeeping, or compliance requirements and will not have an economic impact on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken.

(b) Local Governments:

1. Effect of the rule:

The proposed amendment affects all school districts and BOCES in the State that wish to hire a teacher for employment that holds a transitional G certificate.

2. Compliance requirements:

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 5-9 and 7-12 to address the demonstrated shortage areas in these subjects and grade levels.

The proposed amendment establishes a transitional G certificate which authorizes a qualified applicant, upon meeting the prescribed requirements, a certification to teach at the 5-9 or 7-12 grade level in science, mathematics, or a closely related field as determined by the Commissioner. School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, and that the district or BOCES will provide mentoring and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

3. Professional services:

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

4. Compliance costs:

There are no compliance costs for school districts or BOCES that exercise the option of employing a teacher under a transitional G certificate. However, the candidate will be required to pay an application fee of \$100 for the transitional G certificate.

5. Economic and technological feasibility:

Meeting the requirements of the proposed amendment is economically and technologically feasible. As stated above in compliance costs, the amendment imposes no costs on school districts or BOCES.

6. Minimizing adverse impact:

The amendment establishes requirements for the issuance of a transitional G certificate. The State Education Department does not believe that establishing different standards for local governments is warranted. A uniform standard ensures the quality of the State's teaching workforce.

7. Local government participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES.

Rural Area Flexibility Analysis

1. Types and estimate of number of rural areas:

The proposed amendment will affect candidates, New York State school districts and BOCES in all parts of the State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square mile or less.

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

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 5-9 and 7-12 to address the demonstrated shortage areas in these subjects and grade levels. The proposed amendment also establishes requirements regarding the application for and issuance of the transitional G certification. This certification will authorize a qualified applicant, with an advanced degree in either science, technology, engineering, mathematics or a closely related field as determined by the Commissioner, and two years of teaching experience at the post-secondary level, to teach in the certificate area of their advanced degree or one closely related to it, for the period of two years, at which time the candidate may apply for an initial certificate in that subject area. For individuals who meet the other requirements but do not have an offer of employment by a school district they would still have the option of completing six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study. Certificate areas identified for the transitional G include: Biology, Chemistry, Earth Science, Physics, Mathematics, or a closely related field as determined by the Commissioner, at the 5-9 or 7-12 grade level.

School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, and that the district or BOCES will provide mentoring and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

3. Costs:

There are no compliance costs for school districts or BOCES that exercise the option of employing a teacher under a transitional G certificate. However, the candidate will be required to pay an application fee of \$100 for the transitional G certificate.

4. Minimizing adverse impact:

The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

5. Rural area participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts and BOCES.

Job Impact Statement

The purpose of the proposed amendment is to establish requirements for an expedited certification pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science and mathematics in grades 5-9 and 7-12.

The proposed amendment is needed to facilitate the Department's continuing ability to certify a sufficient number of properly qualified candidates to address shortage areas in the State's public schools and BOCES. This proposal is intended to increase the supply of teachers who are certified in the sciences and mathematics in grades 5-9 and 7-12, all of which are shortage areas.

Because it is evident from the nature of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

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

Technical Amendment of Section 100.2(ee)(2)

I.D. No. EDU-09-11-00007-EP

Filing No. 175

Filing Date: 2011-02-15

Effective Date: 2011-02-15

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

Proposed Action: Amendment of section 100.2(ee)(2) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1) and (2), 308 (not subdivided), 309 (not subdivided) and 3204(3)

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

Specific reasons underlying the finding of necessity: The amendments concerning diploma credit for languages other than English (LOTE) and State assessments in Social Studies, that were adopted at the December 2010 Regents meeting (EDU-40-10-00022-P), inadvertently omitted language in section 100.2(ee)(2) that was added in a prior, separate amendment concerning Academic Intervention Services, that was permanently adopted at the October 2010 Regents meeting (EDU-31-10-00004-P). The proposed amendment is necessary to clarify and resolve this inconsistency by including the omitted language.

Since the Board of Regents meets at monthly intervals, the earliest the proposed amendment could be adopted by regular action, after publication of a Notice of Proposed Rule Making and expiration of the 45-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202, would be the May 16-17, 2011 Regents meeting. Because SAPA provides that an adopted rule may not become effective until a Notice of Adoption is published in the State Register, the earliest the proposed amendment could become effective if adopted at the May Regents meeting, is June 8, 2011. However, the inconsistencies in section 100.2(ee)(2) need to be resolved immediately in order to avoid confusion and ensure that the regulation's provisions are properly administered during the 2010-2011 school year pursuant to Regents policy.

Emergency action is necessary for the preservation of the general welfare to immediately clarify and resolve inconsistencies in section 100.2(ee)(2) of the Commissioner's Regulations, and therefore ensure that the regulation's provisions are properly administered during the 2010-2011 school year, pursuant to the policies established by the Board of Regents.

Subject: Technical amendment of section 100.2(ee)(2).

Purpose: To add language that was inadvertently omitted in a previous rule making.

Text of emergency/proposed rule: Paragraph (2) of subdivision (ee) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective February 15, 2011, as follows:

(2) Requirements for providing academic intervention services in grade [four] *three* to grade eight. Schools shall provide academic intervention services when students:

(i) score below:

(a) the State designated performance level on one or more of the State elementary assessments in English language arts, mathematics or science, *provided that for the 2010-2011 school year only, the following shall apply:*

(1) *those students scoring at or below a scale score of 650 shall receive academic intervention instructional services; and*

(2) *those students scoring above a scale score of 650 but below level 3/proficient shall not be required to receive academic intervention instructional and/or student support services unless the school district, in its discretion, deems it necessary. Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-2011 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010, and shall no later than the commencement of the first day of instruction either post to its Website or distribute to parents in writing a description of such process; and/or*

(b) the State designated performance level on a State elementary assessment in social studies administered prior to the 2010-2011 school year; provided that beginning in the 2010-2011 school year, at which time a State elementary assessment in social studies shall no longer be

administered, a school shall provide academic intervention services when students are determined to be at risk of not achieving State learning standards in social studies pursuant to clause (iii) of this paragraph;

(ii) . . .

(iii) . . .

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire May 15, 2011.

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

Data, views or arguments may be submitted to: John B. King, Jr., Senior Deputy Commissioner P-12, State Education Department, State Education Building Room 125, 89 Washington Ave., Albany, NY 12234, (518) 474-3862, email: NYSEDP12@mail.nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

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

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education.

Education law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of education.

Education Law section 3204(3) provides for the courses of study in the public schools.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents.

3. NEEDS AND BENEFITS:

The amendments concerning diploma credit for languages other than English (LOTE) and State assessments in Social Studies, that were adopted at the December 2010 Regents meeting (EDU-40-10-00022-A), inadvertently omitted language in section 100.2(ee)(2) that was added in a prior, separate amendment concerning Academic Intervention Services, that was permanently adopted at the October 2010 Regents meeting (EDU-31-10-00004-A). The proposed amendment is necessary to clarify and resolve this inconsistency by including the omitted language.

COSTS:

(a) Costs to State government: None.

(b) Costs to local government: The proposed amendment establishes modified requirements for the provision of AIS during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to received AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. School districts may incur some costs associated with distributing to parents of students a written description of the district's process for determining whether AIS will be offered to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010. However, the proposed amendment allows school districts to post the description on its Website in lieu of distributing to parents, and it is anticipated that any associated costs would be minimal and can be absorbed using existing district staff and resources. More importantly, any such costs would be more than offset by the reduction in costs to schools districts resulting from implementation of the modified AIS requirements in the 2010-2011 school year.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: None.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment establishes modified requirements for the provision of AIS during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. As part of the modified requirements, the proposed amendment requires each school district to develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-2011 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010, and to either post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

6. PAPERWORK:

The proposed amendment requires each school district to develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-2011 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010, and to either post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or federal regulations.

8. ALTERNATIVES:

There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The amendment applies to each school district within the State.

2. COMPLIANCE REQUIREMENTS:

The amendments concerning diploma credit for languages other than English (LOTE) and State assessments in Social Studies, that were adopted at the December 2010 Regents meeting (EDU-40-10-00022-A), inadvertently omitted language in section 100.2(ee)(2) that was added in a prior, separate amendment concerning Academic Intervention Services, that was permanently adopted at the October 2010 Regents meeting (EDU-31-10-00004-A). The proposed amendment is necessary to clarify and resolve this inconsistency by including the omitted language.

The amendment establishes modified requirements for the provision of academic intervention services (AIS) during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. As part of the modified requirements, the proposed amendment requires each school district to develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-2011 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010, and to either post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

Specifically, the amendment provides that for the 2010-2011 school year only:

(1) Students scoring at or below a scale score of 650 must receive academic intervention instructional services.

(2) Students scoring above a scale score of 650 but below level 3/proficient will not be required to receive academic intervention instructional and/or student support services unless the school district deems it necessary.

(3) Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-11 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-10, and shall post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

(4) In recognition of the effects on school districts of a change in cut scores for such school year, a waiver is given for the 2010-2011 school year from the requirement that school districts review and revise their description of AIS based on student performance results.

3. PROFESSIONAL SERVICES:

The amendment imposes no additional professional service requirements on school districts.

4. COMPLIANCE COSTS:

The amendment establishes modified requirements for the provision of AIS during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. School districts may incur some costs associated with distributing to parents of students a written description of the district's process for determining whether AIS will be offered to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010. However, the proposed amendment allows school districts to post the description on its Website in lieu of distributing to parents, and it is anticipated that any associated costs would be minimal and can be absorbed using existing district staff and resources. More importantly, any such costs would be more than offset by the reduction in costs to schools districts resulting from implementation of the modified AIS requirements in the 2010-2011 school year.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The amendment does not impose any technological requirements on school districts. Economic feasibility is addressed under the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The purpose of the amendment is to provide flexibility to school districts in providing academic intervention services (AIS) during the 2010-2011 school year in order to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics. School districts will continue to have the option to offer services to those children who they feel are in need of the additional support.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Comments on the amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The amendment applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The amendments concerning diploma credit for languages other than English (LOTE) and State assessments in Social Studies, that were adopted at the December 2010 Regents meeting (EDU-40-10-00022-A), inadvertently omitted language in section 100.2(ee)(2) that was added in a prior, separate amendment concerning Academic Intervention Services, that was permanently adopted at the October 2010 Regents meeting (EDU-31-10-00004-A). The proposed amendment is necessary to clarify and resolve this inconsistency by including the omitted language.

The amendment establishes modified requirements for the provision of academic intervention services (AIS) during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. As part of the modified requirements, the proposed amendment requires each school district to develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-2011 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010, and to either post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

Specifically, the amendment provides that for the 2010-2011 school year only:

(1) Students scoring at or below a scale score of 650 must receive academic intervention instructional services.

(2) Students scoring above a scale score of 650 but below level 3/proficient will not be required to receive academic intervention instructional and/or student support services unless the school district deems it necessary.

(3) Each school district shall develop and maintain on file a uniform

process by which the district determines whether to offer AIS during the 2010-11 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-10, and shall post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

(4) In recognition of the effects on school districts of a change in cut scores for such school year, a waiver is given for the 2010-2011 school year from the requirement that school districts review and revise their description of AIS based on student performance results.

The amendment imposes no additional professional services requirements on school districts in rural areas.

3. COMPLIANCE COSTS:

The amendment establishes modified requirements for the provision of AIS during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. School districts may incur some costs associated with distributing to parents of students a written description of the district's process for determining whether AIS will be offered to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010. However, the proposed amendment allows school districts to post the description on its Website in lieu of distributing to parents, and it is anticipated that any associated costs would be minimal and can be absorbed using existing district staff and resources. More importantly, any such costs would be more than offset by the reduction in costs to schools districts resulting from implementation of the modified AIS requirements in the 2010-2011 school year.

4. MINIMIZING ADVERSE IMPACT:

The amendment provides flexibility to school districts in providing academic intervention services (AIS) during the 2010-2011 school year in order to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics. School districts will continue to have the option to offer services to those children who they feel are in need of the additional support.

5. RURAL AREA PARTICIPATION:

Comments on the amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The amendment establishes modified requirements for the provision of academic intervention services (AIS) during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency.

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

NOTICE OF ADOPTION

Clinically Rich Graduate Level Teacher Preparation Program

I.D. No. EDU-47-10-00011-A

Filing No. 176

Filing Date: 2011-02-15

Effective Date: 2011-03-02

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

Action taken: Amendment of section 52.21 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 208, 210, 214, 216, 224, 305(1), (2), (7), 3004(1) and 3006(1)

Subject: Clinically rich graduate level teacher preparation program.

Purpose: To amend the clinical experience requirement to provide program providers with the flexibility they need to be innovative.

Text or summary was published in the November 24, 2010 issue of the Register, I.D. No. EDU-47-10-00011-P.

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, 89 Washington Avenue, Albany, NY 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Clinically Rich Graduate Level Principal Preparation Program

I.D. No. EDU-09-11-00003-P

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

Proposed Action: Amendment of section 52.21(c)(7) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 208, 210, 214, 216, 224, 305(1), (2) and (7), 3004(1) and 3006(1)

Subject: Clinically rich graduate level principal preparation program.

Purpose: To amend the clinical experience requirement to provide program providers with the flexibility they need to be innovative.

Text of proposed rule: 1. Subclause (3) of clause (d) of subparagraph (v) of paragraph (7) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective June 8, 2011, as follows:

(3) Clinically rich experience component. The clinical experience component of the program shall meet the following requirements:

(i) . . .

(ii) . . .

(iii) . . .

(iv) prior to assigning the candidate to a school, the institution shall enter into a written agreement with the high need school or the school district in which the high need school is located, wherein the high need school shall agree to establish a plan for [at least] up to one continuous school year of mentored clinical experience by the assigned principal-mentor for the candidate and support by a team comprised of program faculty, teachers and administrators at the high need school and the superintendent.

(v) The program shall ensure its candidates receive mentoring support during the entire period they are assigned to the school and enrolled in the program, which shall be [at least] up to one continuous school year.

(vi) . . .

(vii) . . .

(viii) . . .

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

Data, views or arguments may be submitted to: Peg Rivers, NYS Education Department, 89 Washington Avenue, Room 977 EBA, Albany, NY 12234, (518) 408-1189, email: privers@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law grants to the Regents the authority to register domestic and foreign institutions in terms of New York standards.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and authorizes the Commissioner to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the State's public schools.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in the State's public schools.

Subdivision (2) of section 3007 of the Education Law authorizes the Commissioner of Education to endorse a certificate issued by another state.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes by modifying the requirements in the Regulations of the Commissioner of Education for principal preparation programs, by making a technical amendment to the eligibility requirements for the clinically rich principal preparation pilot programs.

3. NEEDS AND BENEFITS:

At its May 2010 meeting, the Board of Regents approved an amendment to the Commissioner's regulations to establish a graduate level clinically rich principal preparation pilot program.

The regulatory amendments adopted in May 2010 required that the pilot programs include at least one continuous school year of mentored clinical experience.

In order to provide program providers with the flexibility they need to be as innovative as possible, the Department believes that the one school year requirement for clinical experience is too restrictive. Therefore, the proposed amendment changes the required clinical experience component of the pilot program to require up to one continuous school year of mentored experience.

4. COSTS:

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

(b) Cost to local government: The proposed amendment will not impose any additional costs on local governments.

(c) Cost to private regulated parties: The proposed amendment does not impose any costs on private regulated parties.

(d) Costs to the regulatory agency: As stated above in Costs to State Government, the amendment does not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment provides some flexibility to local governments by allowing local governments to provide less than one school year of mentored clinical experience to candidates enrolled in a graduate level clinically rich principal preparation program, as opposed to the prior requirement, which required them to provide at least one continuous school year of clinical experience.

6. PAPERWORK:

The proposed amendment does not impose any paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternative proposals considered.

9. FEDERAL STANDARDS:

There are no Federal standards that address program registration requirements for principal preparation programs, qualifying individuals to be employed as a school building leader in the New York State public schools, the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

If adopted as an emergency measure at the March Regents meeting, the proposed amendment will become effective as an emergency rule on March 11, 2010. It is anticipated that the proposed amendment will become effective as a permanent rule on June 8, 2011.

Regulatory Flexibility Analysis

a) Small Businesses:

1. Effect of rule:

The purpose of the proposed amendment is to change the program registration standards for the clinically rich graduate level pilot program. Some of the institutions that are selected by the Board of Regents to participate in this pilot program may be small businesses.

2. Compliance requirements:

At its May 2010 meeting, the Board of Regents established certain eligibility requirements to participate in the clinically rich principal preparation pilot program, including certain curriculum requirements, a clinical component, mentoring and training requirements. As part of the eligibility requirements adopted in May 2010, program providers were required to complete at least one continuous school year of experience.

In order to provide program providers with the flexibility they need to provide innovative approaches to this new pilot program, the proposed amendment amends the clinical experience requirement to allow providers to provide up to one continuous school year of clinical experience.

3. Professional services:

The proposed amendment does not require small businesses to contract for additional professional services to comply.

4. Compliance costs:

The proposed amendment does not impose any additional costs on small businesses.

5. Economic and technological feasibility:

See above response to compliance costs. The proposed amendment would not require schools or school districts to secure special technology to comply.

6. Minimizing adverse impact:

As stated above, the proposed amendment is permissive in nature. As part of the eligibility requirements adopted at the May 2010 Regents meeting, program providers were required to complete at least one continuous school year of experience.

In order to provide program providers with the flexibility they need to provide innovative approaches to this new pilot program, the proposed amendment amends the clinical experience requirement to allow providers to provide up to one continuous school year of clinical experience.

7. Small business participation:

The conceptual framework of the graduate level clinically rich principal pilot program was shared with the State Professional Standards and Practices Board for Teaching and comments were solicited from this board. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The board has representatives from school districts across the State.

b) Local Governments:

1. Effect of rule:

The purpose of the proposed amendment is to establish program registration standards for a clinically rich graduate level pilot program and to authorize institutions, other than institutions of higher education, that are selected by the Board of Regents, to offer teacher preparation programs under this pilot program. High need schools and school districts may opt to participate and collaborate with institutions that are selected by the Board of Regents to participate in this program.

2. Compliance requirements:

At its May 2010 meeting, the Board of Regents established certain eligibility requirements to participate in the clinically rich principal preparation pilot program, including certain curriculum requirements, a clinical component, mentoring and training requirements. As part of the eligibility requirements adopted in May 2010, program providers were required to complete at least one continuous school year of experience.

In order to provide program providers with the flexibility they need to provide innovative approaches to this new pilot program, the proposed amendment amends the clinical experience requirement to allow providers to provide up to one continuous school year of clinical experience.

3. Professional services:

The proposed amendment does not require schools or school districts to contract for additional professional services to comply.

4. Compliance costs:

The proposed amendment does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

See above response to compliance costs. The proposed amendment would not require schools or school districts to secure special technology to comply.

6. Minimizing adverse impact:

As part of the eligibility requirements adopted in May 2010, program providers were required to complete at least one continuous school year of experience.

In order to provide program providers with the flexibility they need to provide innovative approaches to this new pilot program, the proposed amendment amends the clinical experience requirement to allow providers to provide up to one continuous school year of clinical experience.

7. Local government participation:

The conceptual framework of the graduate level clinically rich principal pilot program was shared with the State Professional Standards and Practices Board for Teaching and comments were solicited from this board. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The board has representatives from school districts across the State.

Rural Area Flexibility Analysis

1. Types and estimate of number of rural areas:

The proposed amendment will impact institutions of higher education that are selected by the Board of Regents to participate in this program. Such institutions may include cultural institutions, libraries, research centers, and other organizations with an educational mission. These institutions may be located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

In May 2010, the Board of Regents adopted a regulation which established a clinically rich principal preparation pilot program. The

proposed amendment required, among other things, that the pilot programs include at least one continuous school year of mentored clinical experience.

In February 2011, the Board endorsed a technical modification to the one school year requirement to provide program providers with the flexibility they need to be as innovative as possible. To add this flexibility, the proposed amendment changes the required clinical experience component of the pilot programs to require up to one continuous school year of mentored experience.

3. Costs:

The proposed amendment will not impose any additional costs on individuals or entities located in the rural areas of the State.

4. Minimizing adverse impact:

Implementation of the proposed rule will not have a negative impact on entities or individuals located in rural communities. The proposed amendment is permissive in nature. Only program providers that wish to offer a clinically rich principal preparation pilot program are required to meet the requirements for such programs.

Moreover, the proposed amendment minimizes any adverse impact on entities located in rural areas by changing the required clinical experience component of the pilot programs to require up to one continuous school year of mentored experience.

5. Rural area participation:

Comments on the proposed rule were solicited from the Rural Advisory Committee. This Committee has representatives in the rural areas of the State.

Job Impact Statement

In May 2010, the Board of Regents adopted a regulation which established a clinically rich principal preparation pilot program. The proposed amendment required, among other things, that the pilot programs include at least one continuous school year of mentored clinical experience. In February 2011, the Board endorsed a technical modification to the one school year requirement to provide program providers with the flexibility they need to be as innovative as possible. To add this flexibility, the proposed amendment changes the required clinical experience component of the pilot programs to require up to one continuous school year of mentored experience.

Because it is evident from the nature of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Museum Collections Management Policies

I.D. No. EDU-09-11-00006-P

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

Proposed Action: Amendment of section 3.27 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 216 (not subdivided) and 217 (not subdivided)

Subject: Museum collections management policies.

Purpose: To clarify restrictions on the deaccessioning of items and materials in collections held by museums and historical societies.

Text of proposed rule: 1. Paragraph (6) of subdivision (c) of section 3.27 of the Rules of the Board of Regents is amended, effective June 8, 2011, as follows:

(6) Collections Care and Management. The institution shall:

(i) . . .

(ii) . . .

(iii) ensure that deaccessioning of items or materials in its collection is limited to the circumstances prescribed in paragraph (7) of this subdivision;

(iv) have a written collections management policy providing clear standards to guide institutional decisions regarding the collection, that is in regular use, available to the public upon request, filed with the commissioner for inspection by anyone wishing to examine it; and which, at a minimum, satisfactorily addresses the following subject areas:

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) deaccession. The criteria and process (including levels of

permission) used for determining what items are to be removed from the collections, which shall be consistent with paragraph (7) of this subdivision, and a statement limiting the use of any funds derived therefrom in accordance with subparagraph (vii) of this paragraph;

[(iv)] (v) ensure that collections or any individual part thereof and the proceeds derived therefrom shall not be used as collateral for a loan;

[(v)] (vi) ensure that collections shall not be capitalized; and

[(vi)] (vii) ensure that proceeds derived from the deaccessioning of any property from the institution's collection be restricted in a separate fund to be used only for the acquisition of collections, or the preservation, [protection] conservation or direct care of collections. In no event shall proceeds derived from the deaccessioning of any property from the collection be used for operating expenses or for any purposes other than the acquisition, preservation, [protection] conservation or direct care of collections.

2. Paragraph (7) of subdivision (c) of section 3.27 of the Rules of the Board of Regents is amended, effective June 8, 2011, as follows:

(7) *Deaccessioning of Collections.* An institution may deaccession an item in its collection only in a manner consistent with its mission statement and collections management policy and where one or more of the following criteria have been met:

(i) the item is inconsistent with the mission of the institution as set forth in its mission statement;

(ii) the item has failed to retain its identity;

(iii) the item is redundant;

(iv) the item's preservation and conservation needs are beyond the capacity of the institution to provide;

(v) the item is deaccessioned to accomplish refinement of collections;

(vi) it has been established that the item is inauthentic;

(vii) the institution is repatriating the item or returning the item to its rightful owner;

(viii) the institution is returning the item to the donor, or the donor's heirs or assigns, to fulfill donor restrictions relating to the item which the institution is no longer able to meet;

(ix) the item presents a hazard to people or other collection items;

and/or

(x) the item has been lost or stolen and has not been recovered.

[(7)] (8) Education and Interpretation. The institution shall offer programmatic accommodation for individuals with disabilities to the extent required by law.

3. Subdivision (e) of section 3.27 of the Rules of the Board of Regents is amended, effective June 8, 2011, as follows:

(e) Annual reports. Each institution shall file with the commissioner an annual report, in a form prescribed by the commissioner, which records the educational and cultural activities of the institution and presents an accurate statement of all financial operations. Each institution shall include in its annual report a list of all items or item lots deaccessioned in the past year and all items or item lots disposed of in the past year.

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

Data, views or arguments may be submitted to: Jeffrey W. Cannell, Deputy Comm. for Cultural Education, State Education Department, Cultural Education Center, Room 10C34, Albany, NY 12230, (518) 474-5930

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents as its head, and authorizes the Board of Regents to appoint the Commissioner of Education as the Chief Administrative Officer of the Department, which is charged with the general management and supervision of all public schools and the educational work of the State.

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

Education Law section 215 authorizes the Regents, the Commissioner, or their representatives, to visit, examine and inspect education corporations and other institutions admitted to the University of the State of New York, as defined in Education Law section 214, and to require, as often as desired, duly verified reports giving such information and in such form as they shall prescribe.

Education Law section 216 authorizes the Board of Regents to incorporate educational institutions, including museums and other institutions for the promotion of science, literature, art, history or other department of

knowledge, with such powers, privileges and duties, and subject to such limitations and restrictions, as they Regents may prescribe.

Education Law section 217 empowers the Board of Regents to grant a provisional charter to an institution, which shall be replaced by an absolute charter when the conditions for such absolute charter have been fully met.

Education Law section 233-aa enacts provisions governing the ownership and management of properties owned by or lent to museums, requires that the acquisition of property by a museum pursuant to section 233-aa must be consistent with the mission of the museum, and specifies that proceeds derived from the sale of any property title to which was acquired by a museum pursuant to section 233-aa shall be used only for the acquisition of property for the museum's collection or for the preservation, protection, and care of the collection and shall not be used to defray ongoing operating expenses of the museum.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the statutes by clarifying criteria regarding the deaccessioning of items and materials in the collections of chartered museums or historical societies, consistent with generally accepted professional and ethical standards within the museum and historical society communities.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item in its collection only in a manner consistent with its mission statement and collections management policy and where one or more of the following criteria have been met:

- (1) the item is inconsistent with the mission of the institution as set forth in its mission statement;
- (2) the item has failed to retain its identity;
- (3) the item is redundant;
- (4) the item's preservation and conservation needs are beyond the capacity of the institution to provide;
- (5) the item is deaccessioned to accomplish refinement of collections;
- (6) it has been established that the item is inauthentic;
- (7) the institution is repatriating the item or returning the item to its rightful owner;
- (8) the institution is returning the item to the donor, or the donor's heirs or assigns, to fulfill donor restrictions relating to the item which the institution is no longer able to meet;
- (9) the item presents a hazard to people or other collection items; and/or
- (10) the item has been lost or stolen and has not been recovered.

The proposed amendment would also require that proceeds from deaccessioning be restricted in a separate fund to be used only for the acquisition of collections or the preservation, conservation or direct care of collections.

In addition, the proposed amendment requires each institution to include in the annual report filed pursuant to section 3.27(e), a list of all items or item lots deaccessioned in the past year and all items or item lots disposed of in the past year.

4. COSTS:

- (a) Costs to the State: None.
- (b) Costs to local governments: None.
- (c) Costs to private, regulated parties: None.
- (d) Costs to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any costs on such institutions, the State, local governments or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment applies to museums and historical societies with collections chartered by the Board of Regents, and does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

6. PAPERWORK:

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any additional paperwork requirements on such institutions.

7. DUPLICATION:

The proposed amendment duplicates no existing state or federal requirements.

8. ALTERNATIVES:

There are no significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

There are no applicable federal standards regarding the chartering and registration of museums and historical societies by the Board of Regents.

10. COMPLIANCE SCHEDULE:

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, consistent with generally accepted professional and ethical standards within the museum and historical society communities. It is anticipated that regulated parties can achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

The proposed amendment applies to museums and historical societies authorized to hold collections chartered by the Board of Regents and does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse financial impact, on small businesses or local governments. Because it is evident from the nature of the rules that it does not affect small businesses or local governments, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to all of the 583 museums and 732 historical societies in New York State (source: New York State Museum chartering database as of December 2010), including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 persons per square mile or less.

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

The purpose of the proposed amendment is to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item in its collection only in a manner consistent with its mission statement and collections management policy and where one or more of the following criteria have been met:

- (1) the item is inconsistent with the mission of the institution as set forth in its mission statement;
- (2) the item has failed to retain its identity;
- (3) the item is redundant;
- (4) the item's preservation and conservation needs are beyond the capacity of the institution to provide;
- (5) the item is deaccessioned to accomplish refinement of collections;
- (6) it has been established that the item is inauthentic;
- (7) the institution is repatriating the item or returning the item to its rightful owner;
- (8) the institution is returning the item to the donor, or the donor's heirs or assigns, to fulfill donor restrictions relating to the item which the institution is no longer able to meet;
- (9) the item presents a hazard to people or other collection items; and/or
- (10) the item has been lost or stolen and has not been recovered.

The proposed amendment would also require that proceeds from deaccessioning be restricted in a separate fund to be used only for the acquisition of collections or the preservation, conservation or direct care of collections.

In addition, the proposed amendment requires each institution to include in the annual report filed pursuant to section 3.27(e), a list of all items or item lots deaccessioned in the past year and all items or item lots disposed of in the past year.

The proposed amendment does not impose any additional professional services requirements.

3. COMPLIANCE COSTS:

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any costs on such institutions, the State, local governments or the State Education Department.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies. The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession

sion proceeds, consistent with generally accepted professional and ethical standards within the museum and historical society communities, and does not impose any additional compliance requirements or costs on such institutions. Since these requirements must have State-wide application in order to ensure uniform, consistent practices relating to museum and historical society collections management, it is not feasible to impose a lesser standard on, or otherwise exempt, institutions located in rural areas.

5. RURAL AREA PARTICIPATION:

The proposed amendment was developed in concert with the New York museum community. Representatives of the Museum Association of New York and leaders from museums across the state, including several from rural areas, were included in a Regents Ad Hoc Committee on deaccessioning. The recommendations of the Ad Hoc Committee were developed by SED staff into the proposed amendment. The components of the proposed amendment have been posted to list serves and published to provide opportunities for public comment.

Job Impact Statement

The proposed amendment applies to museums and historical societies with collections, chartered by the Board of Regents and will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Online Coursework

I.D. No. EDU-09-11-00008-P

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

Proposed Action: Addition of section 100.5(d)(10) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 305(1), (2), 308 (not subdivided), 309 (not subdivided) and 3204(3)

Subject: Online coursework.

Purpose: Establishes criteria for awarding credit towards a Regents diploma for online and online/classroom coursework.

Text of proposed rule: Paragraph (10) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is added, effective June 8, 2011, as follows:

(10) *Credit for Online and Blended Courses.*

(i) *Definitions. For purposes of this paragraph:*

(a) *Online course means instruction in a specific unit of study consisting of teacher-to-student, student-to-student and/or student-to-content interactions that occur solely through digital and/or Internet-connected media.*

(b) *Blended course means instruction in a specific unit of study consisting of teacher-to-student, student-to-student and/or student-to-content interactions that occur through any combination of classroom-based and digital and/or Internet-connected media.*

(c) *Certified teacher means a teacher who holds a New York State teaching certificate in the subject area in which instruction is provided.*

(ii) *A school district, a charter school or a registered nonpublic school may provide its students with an opportunity to earn units of credit towards a Regents diploma through online and/or blended course study, pursuant to the following:*

(a) *To receive credit, the student shall successfully complete a unit of study and demonstrate mastery of the learning outcomes for the subject, including passing the Regents examination in the subject or other assessment required for graduation, if applicable.*

(b) *The school district, registered nonpublic school or charter school shall ensure that:*

(1) *courses are aligned with the applicable New York State Learning Standards for the subject area;*

(2) *courses provide for documentation of student mastery of the learning outcomes for such subjects, including passing the Regents examination in the subject or other assessment required for graduation, if applicable;*

(3) *instruction is provided by or under the direction and/or supervision of:*

(i) *a certified teacher from the school district; or*

(ii) *a certified teacher from a board of cooperative educa-*

tional services (BOCES) that contracts with the school district to provide instruction in the subject area where authorized pursuant to Education Law § 1950; or

(iii) *a certified teacher from a school district who provides instruction in the subject area under a shared service agreement; or*

(iv) *in the case of a registered nonpublic school, a teacher of the subject area from a registered nonpublic school; or*

(v) *in the case of a charter school, a teacher of the subject area from a charter school.*

(4) *courses include regular and substantive interaction between the student and the teacher providing direction and/or supervision pursuant to subclause (3) of this clause; and*

(5) *instruction satisfies the unit of study and unit of credit requirements in section 100.1(a) and (b) of this Part.*

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

Data, views or arguments may be submitted to: John B. King, Jr., Senior Deputy Commissioner P-12, Office of Elementary, Middle, Secondary and Continuing Ed., State Education Building, Room 125, 89 Washington Avenue, Albany, NY 12234, (518) 474-3862, email: NYSEDP12@mail.nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

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

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 305 (1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and shall execute all educational policies determined by the Board of Regents.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of instruction.

Education Law section 3204 (3) provides for required courses of study in the public schools and authorizes the State education department to alter the subjects of required instruction.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement.

3. NEEDS AND BENEFITS:

Digital and Internet-connected technologies have increased access to a rich variety of educational opportunities, in the form of online content and instruction, for schools and students across New York State. These educational opportunities have resulted in inquiries from school districts and educational organizations, and a need for the Department to establish alternative pathways for school districts to provide students with opportunities to earn course credit through online instruction and content.

The proposed rule would permit school districts, registered nonpublic schools and charter schools to provide their students with an opportunity

to earn units of credit towards a Regents diploma through online or a combination of online and classroom-based (blended) coursework.

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: The proposed rule permits, but does not require, school districts to provide instruction to their students by means of online coursework and does not directly impose any costs on school districts. School districts that choose to provide such instruction may incur some costs associated with implementing these programs through insuring the programs meet criteria and awarding credit for successful program completion. These costs are anticipated to be minimal and can be absorbed using existing district staff and resources.

(c) Costs to private regulated parties: The proposed rule permits, but does not require, registered nonpublic schools and charter schools to provide instruction to their students by means of online coursework and does not directly impose any costs on school districts. Registered nonpublic schools and charter schools that choose to offer independent study credit, may incur some costs associated with implementing independent study programs through insuring the programs meet criteria and awarding credit for successful program completion. These costs are anticipated to be minimal and able to be absorbed using existing school staff and resources.

(d) Costs to regulating agency for implementation and continued administration of this rule: The proposed rule imposes no additional costs to the State Education Department as regulating agency.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule does not impose any additional program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, or local government. The proposed rule merely permits, but does not require, school districts to provide instruction to their students by means of online coursework for purposes of earning credit towards a Regents diploma.

6. PAPERWORK:

The proposed rule does not directly impose any paperwork or record-keeping requirements. School districts, registered nonpublic schools and charter schools that choose to provide their students with instruction by means of online coursework must ensure the courses are:

- aligned with the applicable New York State learning standards for the subject area in which instruction is provided;
- provide for documentation of student mastery of the learning outcomes for such subjects, including passing the Regents examination in the subject or other assessment required for graduation, if applicable;
- provide for instruction by or under the direction and/or supervision of a certified teacher (if instruction is to be provided by a school district, BOCES, or pursuant to a shared service agreement), or of a teacher of the subject area (in the case of a registered nonpublic school or charter school);
- include regular and substantive interaction between the student and the teacher providing direction and/or supervision; and
- satisfy the unit of study and unit of credit requirements in section 100.1(a) and (b) of the Commissioner's Regulations.

7. DUPLICATION:

The proposed rule does not duplicate existing State or federal regulations.

8. ALTERNATIVES:

There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The proposed rule applies to each school district within the State. The proposed rule also applies to the approximately 10 registered (or registration pending) nonpublic high schools or junior-senior high schools in the State that are small businesses. In addition, there are presently 32 charter schools offering instruction in any or all of the grades 9-12.

2. COMPLIANCE REQUIREMENTS:

The proposed rule is necessary to implement policy adopted by the New York State Board of Regents by establishing criteria for earning credit towards a Regents degree by means of online or a combination of online and classroom-based (blended) coursework.

The proposed rule does not impose any additional compliance requirements on school districts. The proposed rule merely permits, but does not require, school districts to provide instruction to their students by means of online coursework for purposes of earning credit towards a Regents diploma.

School districts, registered nonpublic schools and charter schools that choose to provide their students with instruction by means of online coursework must ensure the courses are:

- aligned with the applicable New York State learning standards for the subject area in which instruction is provided;
- provide for documentation of student mastery of the learning outcomes for such subjects, including passing the Regents examination in the subject or other assessment required for graduation, if applicable;
- provide for instruction by or under the direction and/or supervision of a certified teacher (if instruction is to be provided by a school district, BOCES, or pursuant to a shared service agreement), or of a teacher of the subject area (in the case of a registered nonpublic school or charter school);
- include regular and substantive interaction between the student and the teacher providing direction and/or supervision; and
- satisfy the unit of study and unit of credit requirements in section 100.1(a) and (b) of the Commissioner's Regulations.

3. PROFESSIONAL SERVICES:

The proposed rule imposes no additional professional service requirements on school districts.

4. COMPLIANCE COSTS:

The proposed rule permits, but does not require, school districts to provide instruction to their students by means of online coursework and does not directly impose any costs on school districts. School districts that choose to provide such instruction may incur some costs associated with implementing these programs through insuring the programs meet criteria and awarding credit for successful program completion. These costs are anticipated to be minimal and can be absorbed using existing district staff and resources.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule does not impose any technological requirements on school districts or registered nonpublic schools. Economic feasibility is addressed under the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed rule will establish State-wide standards for earning credit towards a Regents degree by means of online or blended programs offered by school districts, registered nonpublic schools and charter schools.

The proposed rule has been carefully drafted to meet statutory requirements and Regents policy while minimizing the impact on school districts. The proposed rule provides considerable flexibility and discretion to school districts and registered nonpublic schools to develop and implement online and blended coursework for their students, provided that the programs are: (i) aligned with the applicable New York State learning standards for the subject area in which instruction is provided; (ii) provide for documentation of student mastery of the learning outcomes for such subjects, including passing the Regents examination in the subject or other assessment required for graduation, if applicable; (iii) provide for instruction by or under the direction and/or supervision of a certified teacher (if instruction is to be provided by a school district, BOCES, or pursuant to a shared service agreement), or of a teacher of the subject area in which instruction is to be provided (in the case of a registered nonpublic school or charter school); (iv) include regular and substantive interaction between the student and the teacher providing direction and/or supervision; and (v) satisfy the unit of study and unit of credit requirements in section 100.1(a) and (b) of the Commissioner's Regulations.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts. In addition, comments were solicited from the Commissioner's Advisory Council for Nonpublic Schools and from charter schools offering instruction in any of the grades 9-12.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed rule also applies to one charter school located in such area. There are no registered nonpublic schools located in such areas.

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

The proposed rule is necessary to implement policy adopted by the New York State Board of Regents by establishing criteria for earning credit towards a Regents degree by means of online or a combination of online and classroom-based coursework.

The proposed rule does not impose any additional compliance requirements on school districts. The proposed rule merely permits, but does not require, school districts to provide instruction to their students by means of online coursework for purposes of earning credit towards a Regents diploma.

School districts, registered nonpublic schools and charter schools that choose to provide their students with instruction by means of online coursework must ensure the courses are:

- aligned with the applicable New York State learning standards for the subject area in which instruction is provided;
- provide for documentation of student mastery of the learning outcomes for such subjects, including passing the Regents examination in the subject or other assessment required for graduation, if applicable;
- provide for instruction by or under the direction and/or supervision of a certified teacher (if instruction is to be provided by a school district, BOCES, or pursuant to a shared service agreement), or of a teacher of the subject area (in the case of a registered nonpublic school or charter school);
- include regular and substantive interaction between the student and the teacher providing direction and/or supervision; and
- satisfy the unit of study and unit of credit requirements in section 100.1(a) and (b) of the Commissioner's Regulations.

3. COMPLIANCE COSTS:

The proposed rule permits, but does not require, school districts to provide instruction to their students by means of online coursework and does not directly impose any costs on school districts. School districts that choose to provide such instruction may incur some costs associated with implementing these programs through insuring the programs meet criteria and awarding credit for successful program completion. These costs are anticipated to be minimal and can be absorbed using existing district staff and resources.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule has been carefully drafted to meet statutory requirements and Regents policy while minimizing the impact on school districts. The proposed rule provides considerable flexibility and discretion to school districts and registered nonpublic schools to develop and implement online and blended coursework for their students, provided that the programs are: (i) aligned with the applicable New York State learning standards for the subject area in which instruction is provided; (ii) provide for documentation of student mastery of the learning outcomes for such subjects, including passing the Regents examination in the subject or other assessment required for graduation, if applicable; (iii) provide for instruction by or under the direction and/or supervision of a certified teacher (if instruction is to be provided by a school district, BOCES, or pursuant to a shared service agreement), or of a teacher of the subject area in which instruction is to be provided (in the case of a registered nonpublic school or charter school); (iv) include regular and substantive interaction between the student and the teacher providing direction and/or supervision; and (v) satisfy the unit of study and unit of credit requirements in section 100.1(a) and (b) of the Commissioner's Regulations.

The proposed rule will establish State-wide standards for earning credit towards a Regents degree by means of online or blended programs offered by school districts, registered nonpublic schools and charter schools. Therefore, it was not possible to establish different compliance and reporting requirements for regulated parties in rural areas, or to exempt them from the rule's provisions.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas. Comments were also solicited from the Commissioner's Advisory Council for Nonpublic Schools and from charter schools that offer instruction in grades 9-12.

Job Impact Statement

The proposed rule establishes standards relating to earning credit towards a Regents degree by means of online or a combination of online and classroom-based (blended) coursework that is provided by school districts, registered nonpublic schools and charter schools. The proposed rule will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Health

NOTICE OF ADOPTION

Prenatal Care Assistance Program (PCAP)

I.D. No. HLT-45-10-00008-A

Filing No. 178

Filing Date: 2011-02-15

Effective Date: 2011-03-02

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

Action taken: Repeal of sections 85.40 and 86-4.36 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201 and 206; and Social Services Law, sections 363-a and 365-a

Subject: Prenatal Care Assistance Program (PCAP).

Purpose: To repeal a Prenatal Care Assistance Program (PCAP) provision that is no longer in existence.

Text or summary was published in the November 10, 2010 issue of the Register, I.D. No. HLT-45-10-00008-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Labor

ERRATUM

A Notice of Adoption, I.D. No. LAB-25-10-00006-A, pertaining to Public Employees Occupational Safety and Health Standards, published in the October 6, 2010 issue of the *State Register* erroneously adopted 12 NYCRR 800.3(dt) and (du). The proposal referred to in the above notice of adoption contained the text for the addition of 12 NYCRR 800.3(ds). The Department of Labor has not adopted 12 NYCRR 800.3(ds). The notice of proposed rule making for the addition of 12 NYCRR 800.3(ds) is published in the April 7, 2010 issue of the *State Register* and is still awaiting adoption. A new notice of proposed rule making for the addition of 12 NYCRR 800.3(dt) and (du) is published in this issue of the *State Register*.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Employees Occupational Safety and Health Standards

I.D. No. LAB-09-11-00013-P

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

Proposed Action: This is a consensus rule making to amend section 800.3 of Title 12 NYCRR.

Statutory authority: Labor Law, section 27-a(4)(a)

Subject: Public Employees Occupational Safety and Health Standards.

Purpose: To incorporate by reference updates to OSHA standards into the State Public Employee Occupational Safety and Health Standards.

Text of proposed rule: Regulation 12 NYCRR § 800.3 is amended to add the following subdivisions:

(dt) *Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards, Direct Final Rule-75 FR 12681-12686, March 17, 2010; Final Rule-75 FR 27188-27189, May 14, 2010.*

(du) *Safety Standards for Steel Erection, Final Rule-75 FR 27428-27429, May 17, 2010.*

Text of proposed rule and any required statements and analyses may be obtained from: Michael Paglialonga, New York State Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-1938, email: michael.paglialonga@labor.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 amendment is necessary because Section 27-a(4)(a) of the Labor Law directs the Commissioner to adopt by rule, for the protection of the safety and health of public employees, all safety and health standards promulgated under the U.S. Occupational Safety and Health Act of 1970, and to promulgate and repeal such rules and regulations as may be necessary to conform to the standards established pursuant to that Act. This insures that public employees will be afforded the same safeguards in their workplaces as are granted to employees in the private sector.

Job Impact Statement

As the proposed action does not affect jobs and employment opportunities but simply affords workplace safety and health guidelines to improve job performance and safety, a job impact statement is not submitted.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Capital Expenditure Commitments

I.D. No. PSC-09-11-00009-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 response by Iberdrola USA, Inc., New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation to the New York State Public Service Commission's April 30, 2010 Capital Expenditure Order.

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

Subject: Capital Expenditure Commitments.

Purpose: Consideration of Capital Expenditure Commitments.

Substance of proposed rule: The Commission is considering a response from Iberdrola USA, Inc., New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (together, the Companies) to the New York State Public Service Commission's April 30, 2010 Capital Expenditure Order. The order addresses compliance with Capital Expenditure Commitments in Case 07-M-0906. The Commission may approve, modify or reject, in whole or in part, the response by the Companies.

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

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

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

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

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

(07-M-0906SP7)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Clarification and/or Rehearing Filed by TransCanada Power Marketing Ltd. on January 24, 2011

I.D. No. PSC-09-11-00010-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 the petition of TransCanada Power Marketing Ltd., submitted on January 24, 2011, for clarification and/or rehearing of the Order Implementing Chapter 416 of the Laws of 2010, issued on December 17, 2010.

Statutory authority: Public Service Law, section 66(1); General Business Law, section 349-d

Subject: Petition for clarification and/or rehearing filed by TransCanada Power Marketing Ltd. on January 24, 2011.

Purpose: Petition for clarification and/or rehearing filed by TransCanada Power Marketing Ltd. on January 24, 2011.

Substance of proposed rule: On January 24, 2011, TransCanada Marketing, Ltd. (TransCanada) submitted a petition for clarification and/or rehearing of the Commission's Order Implementing Chapter 416 of the Laws of 2010, which was issued on December 17, 2010. The petition seeks clarification and/or rehearing regarding: (1) the definition of the term "residential" as used in the Commission's Uniform Business Practices, and (2) the ability of a customer to object to a contract renewal to which the customer has provided his or her express consent. The Commission is considering whether to accept, reject or modify, in whole or in part the petition of TransCanada and may also consider related matters.

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

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

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

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

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

(98-M-1343SP22)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rate Design

I.D. No. PSC-09-11-00011-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 the Municipal Commission of Boonville 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: Rate Design.

Purpose: To implement inclining block rates.

Substance of proposed rule: The Commission is considering a proposal filed by the Municipal Commission of Boonville (Boonville) to implement inclining block rates. The proposed filing has an effective date of June 1, 2011. The Commission may adopt in whole or in part, modify or reject Boonville's proposal.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: 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-0062SP1)

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

Petition for Rehearing Filed by the Small Customer Marketer Coalition on January 18, 2011

I.D. No. PSC-09-11-00012-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 the petition of the Small Customer Marketer Coalition, submitted on January 18, 2011, for rehearing of the Order Implementing Chapter 416 of the Laws of 2010, issued on December 17, 2010.

Statutory authority: Public Service Law, section 66(1); General Business Law, section 349-d

Subject: Petition for Rehearing filed by the Small Customer Marketer Coalition on January 18, 2011.

Purpose: Petition for Rehearing filed by the Small Customer Marketer Coalition on January 18, 2011.

Substance of proposed rule: On January 18, 2011, the Small Customer Marketer Coalition (SCMC) submitted a petition for rehearing of the Commission's Order Implementing Chapter 416 of the Laws of 2010, which was issued on December 17, 2010. The petition seeks rehearing of the adoption of modifications made to the Commission's Uniform Business Practices regarding prepayment arrangements that may be entered into between Energy Service Companies and customers. The Commission is considering whether to accept, reject or modify, in whole or in part the petition of SCMC and may also consider related matters.

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

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

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

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

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

(98-M-1343SP21)

**Urban Development
Corporation**

**EMERGENCY
RULE MAKING**

Small Business Revolving Fund

I.D. No. UDC-09-11-00002-E

Filing No. 172

Filing Date: 2011-02-11

Effective Date: 2011-02-11

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

Action taken: Addition of Part 4250 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); L. 1968, ch. 174; and L. 2010, ch. 59, section 16-t

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

Specific reasons underlying the finding of necessity: The delay in the ap-

proval of the State budget and the current economic crisis, including high unemployment and the immediate lack of financing from traditional financial institutions for job generating small business, are the reasons for the emergency adoption of this Rule which is required for the immediate implementation of the Small Business Revolving Loan Fund in order to promptly provide assistance to the State's small businesses in order to sustain and increase employment generated by these businesses.

Subject: Small Business Revolving Fund.

Purpose: Provide the basis for administration of Small Business Revolving Loan Fund including evaluation criteria and application process.

Text of emergency rule: SMALL BUSINESS REVOLVING LOAN FUND Section 4250.1 Purpose.

The purpose of these regulations is to set forth and codify administration by the New York State Urban Development Corporation (the "Corporation") of the Small Business Revolving Loan Fund (the "Program") authorized by Section 16-t of the New York State Urban Development Corporation Act (the "Act"). The Corporation is authorized, within available appropriations, to provide low interest loans to community development financial institutions, in order to provide funding for those lending organizations' loans to small businesses, located within New York State, that generate economic growth and job creation within New York State but that are unable to obtain adequate credit or adequate terms for such credit. If the use of a community development financial institution is not practicable based upon an assessment of geographic and administrative capacity and other factors as determined by the Corporation, then the Corporation is authorized, within available appropriations, to provide low interest loans to the following other local community based lending organizations: small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks.

Section 4250.2 Definitions.

a) "Administrative Costs" shall mean expenses incurred by a Community Based Lending Organization in its administration of a Program Loan from the Corporation.

b) "Administrative Income" shall mean income from (i) fees charged by a Community Based Lending Organization, including application fees, commitment fees and loan guarantee fees related to the Business Loans made to borrowers by the Community Based Lending Organization and (ii) interest income earned on the portion of the Program funds held by the Community Based Lending Organization (whether such funds are undisbursed Program funds or are repayment proceeds of Business Loans made by the Community Based Lending Organization).

c) "Business Loan" shall mean a loan made by a Community Based Lending Organization to an Eligible Business for an Eligible Project that is either a Micro-Loan or a Regular Loan.

d) "Community Based Lending Organizations" shall mean community development financial institutions, small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks.

e) "Community Development Financial Institution" or "CDFI" shall mean a community based organization that provides financial services and products to communities, businesses and people underserved by traditional financial institutions.

f) "Corporation" shall mean the New York State Urban Development Corporation d/b/a Empire State Development Corporation, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York created by Chapter one hundred seventy-four of the Laws of nineteen hundred sixty-eight, as amended.

g) "Eligible Businesses" shall have the meaning given in Section 4250.3 below.

h) "Eligible Project" shall have the meaning given in Section 4250.3 below.

i) "Eligible Uses" shall have the meaning given in Section 4250.4 below.

j) "Ineligible Businesses" shall mean newspapers, broadcasting, or other news media; medical facilities, libraries, community or civic centers. It also means any business relocating from one municipality with the State to another, except when the business is relocating within a municipality with a population of at least one million and the governing body of the municipality approves or each municipality from which such business operation will be relocated agrees to such relocation.

k) "Ineligible Projects" shall mean any project that is not an Eligible Project, including, without limiting the foregoing, public infrastructure improvements and funding for providing payment or distribution as a loan to owners, members and partners or shareholders of the applicant business or their family members.

l) "Loan Fund" shall mean the Small Business Revolving Loan Fund created by the Small Business Revolving Loan Fund Legislation.

m) "Loan Fund Account" shall mean each and every account established by the Community Based Lending Organization for the purpose of depositing Program funds.

n) "Loan Fund Legislation" shall mean Section 16-t of the Act.

o) "Loan Fund Proceeds" shall mean any and all monies made available to the Corporation for deposit to the Loan Fund, including monies appropriated by the State and any income earned by, or incremental to, the amount due to the investment of the same, or any repayment of monies advanced from the Loan Fund.

p) "Micro-Loan" shall mean a Small Business loan that has a principal amount that is less than or equal to twenty-five thousand dollars.

q) "Minority Business Enterprise" shall mean a business enterprise which is at least fifty-one percent owned, or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned, by one or more minority persons and such ownership must have and exercise the authority to independently control the day to day business decisions of the entity. Minority persons shall mean persons who are:

1. Black;

2. Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent or either Indian or Hispanic origin, regardless of race;

3. Asian and Pacific Islander persons having origins in the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or

4. American Indian or Alaskan Native persons having origins in any of the original people of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

r) "Program Loan Fund Agreement" shall mean the agreement between the Corporation and the Community Based Lending Organization pursuant to which the Program funds will be disbursed to and used by the Community Based Lending Organization.

s) "Program Loan" shall mean a loan made by the Corporation to a Community Based Lending Organization.

t) "Regular Loan" shall mean a Small Business loan that has a principal amount greater than twenty-five thousand dollars.

u) "Service Delivery Area" shall mean one or more contiguous counties or municipalities to be served by the Community Based Lending Organization and described in the Program Loan Fund Agreement between the Corporation, as lender, and the Community Based Lending Organization, as borrower.

v) "Small Business" shall mean a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis.

w) "State" shall mean the State of New York.

x) "Women Business Enterprise" shall mean a business enterprise that is at least fifty one percent owned, or in the case of a publicly-owned business at least fifty one percent of the common stock or other voting interests of which is owned, by United States citizens or permanent resident aliens, one or more who are women, regardless of race or ethnicity, and such ownership interest is real, substantial and continuing and such woman or women have and exercise the authority to independently control the day to day business decisions of the enterprise.

y) "Working Capital Loans" shall mean short and medium term loans for working capital, revolving lines of credit and seasonal inventory loans made by Community Based Lending Organizations to Eligible Businesses for Eligible Projects.

Section 4250.3 Eligible Business, Eligible Projects and Ineligible Projects.

Business Loans shall be offered by Community Based Lending Organizations on the terms and conditions that are in accordance with and subject to the Act and the provisions of this Part. Business Loans shall be provided by the Community Based Lending Organization only to Eligible Businesses for Eligible Projects and shall not be used for Ineligible Projects. The terms "Eligible Business", "Eligible Projects" and "Ineligible Projects" are defined as follows.

An "Eligible Business" is a:

1. business enterprise that is resident in and authorized to do business in New York State,

2. independently owned and operated,

3. not dominant in its field, and

4. employs one hundred or fewer persons.

An "Eligible Project" is a Business Loan from a Community Based Lending Organization to an Eligible Business in the Service Delivery Area for an Eligible Use, whereby the Community Based Lending Organization has reviewed every Business Loan application to determine the feasibility of the proposed Eligible Use(s) of the financing requested by the small

business applicant, the likelihood of repayment, and the potential that the loan will generate economic development and jobs within the State. An "Eligible Project" cannot be an "Ineligible Project" as defined below.

An "Ineligible Project" shall mean:

(i) a project or use that would result in the relocation of any business operation from one municipality within the state to another, except under one of the following conditions;

(A) When a business is relocating within a municipality with a population of at least one million where the governing body of such municipality approves such relocation; or

(B) each municipality from which such business operation will be relocated has consented to such relocation;

(ii) projects with respect to newspapers, broadcasting or other news media, medical facilities, libraries, community or civic centers, and public infrastructure improvements;

(iii) providing funds, directly or indirectly, for payments, distribution or as a loan (except in the case of a loan to a sole proprietor for business use), to owners, members, partners or shareholders of the applicant business, except as ordinary income for services rendered;

(iv) any project that results in a Business Loan to a person who is a member of the board or other governing body, officer, employee, or member of a loan committee, or a family member of the Community Based Lending Organization or who shall participate in any decision on the use of Program funds if such person is a party to or has a financial or personal interest in such loan.

Section 4250.4 Eligible Uses.

Eligible Uses of Program funds by a Small Business borrower of the Community Based Lending Organization are:

1. working capital;

2. acquisition and/ or improvement of real property;

3. acquisition of machinery and equipment; and

4. refinancing of debt obligations provided that:

a. it does not refinance a loan already in the portfolio of the Community Based Lending Organization;

b. the refinanced loan will provide a tangible benefit to the business borrower as determined by the Corporation in writing; and

c. the aggregate of the principal of all borrower refinancing loan amounts in the Community Based Lending Organization's Program loan portfolio is not greater than twenty-five percent (25%) of the principal amount of the Corporation's Program loan to the Community Based Lending Organization.

Section 4250.5 Fees.

A Community Based Lending Organization may charge application, commitment and loan guarantee fees pursuant to a schedule of fees adopted by the institution and approved in writing by the Corporation.

Section 4250.6 Niagara, St. Lawrence, Erie, and Jefferson Counties.

Notwithstanding anything to the contrary in this rule, the Corporation shall provide at least five hundred thousand dollars in Program funds to Community Based Lending Organizations for the purpose of making loans to small businesses located in each of the following counties: Niagara, St. Lawrence, Erie and Jefferson.

Section 4250.7 Business Loan Types and Limits.

a) There shall be two categories of Business Loans to Eligible Businesses:

1. a microloan that shall have a principal amount that is less than twenty-five thousand dollars; and

2. a regular loan that shall have a principal amount not less than twenty-five thousand dollars.

b) The Program funds amount used by the Community Based Lending Organization to fund a Business Loan shall not be more than fifty percent of the principal amount of such loan and shall not be greater than one hundred and twenty-five thousand dollars.

c) No less than ten percent (10%) of the aggregate Program funds shall be allocated by the Corporation for Microloans.

Section 4250.8 General Evaluation Criteria.

a) In addition to such criteria as may be set forth by the Corporation from time to time in solicitations for applications from Community Based Lending Organizations, the Corporation shall evaluate the Program assistance application of a Community Based Lending Organization in conformance with the Act and in accordance with the criteria set forth in this Part, including as applicable:

1. The ability of the Community Based Lending Organization to analyze small business applications for Business Loans, to evaluate the credit worthiness of small businesses, and to monitor and service Business Loans.

2. The ability of the Community Based Lending Organization to review every Business Loan application in order to determine, among other things, the feasibility of the proposed Eligible Use(s) of the financing requested by the small business applicant, the likelihood of repayment, and the potential that the loan will generate economic development and jobs within the State.

3. The ability of the Community Based Lending Organization to target and market to Minority and Women-Owned Enterprises and other small businesses that are having difficulty accessing traditional credit markets.

Section 4250.9 General Requirements.

a) Program funds shall be disbursed to a Community Based Lending Organization by the Corporation in the form of a Program Loan.

1. The term of the Program Loan shall commence upon closing of the Program Loan Fund Agreement between the Corporation and the Community Based Lending Organization.

2. The Program Loan shall carry a low interest rate determined by the Corporation based on then prevailing interest rates and the circumstances of the Community Based Lending Organization.

b) Notwithstanding the performance of the Business Loans made by the Community Based Lending Organization using Program funds, the Community Based Lending Organization shall remain liable to the Corporation with respect to any unpaid amounts due from the Community Based Lending Organization pursuant to the terms of the Corporation's Program Loan to the Community Based Lending Organization.

c) At the discretion of the Corporation, a portion of Program loan funds may be disbursed to the Community Based Lending Organization in the form of a grant or forgivable loan provided that those funds are used by the Community Based Lending Organization for administrative expenses associated with Business Loans to Eligible Borrowers for Eligible Projects, loan-loss reserves, or other eligible expenses as may be approved in writing by the Corporation.

d) Notwithstanding any provision of law to the contrary, the Corporation may establish a Program fund for Program use and pay into such fund any funds available to the Corporation from any source that are eligible for Program use, including moneys appropriated by the State.

e) Interest received by the Corporation from Program Loans to Community Based Lending Organizations may be used at the discretion of the Corporation for Program Loans and the management, marketing, and administration of the Program.

f) If the use of a community development financial institution is not practicable based upon an assessment of geographic and administrative capacity and other factors as determined by the Corporation, then the Corporation is authorized, within available appropriations, to provide low interest loans to the following other local community based lending organizations: small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks.

Section 4250.10 Loan Fund Accounts.

Each Community Based Lending Organization shall deposit Program funds awarded by the Corporation, repayments, and interest earned into a bank account in a State or Federal chartered banking institution.

Section 4250.11 Application and Approval Process.

The Corporation shall identify eligible Community Based Lending Organizations through one or more competitive statewide or local solicitations.

Section 4250.12 Auditing, Compliance and Reporting.

a) The Community Based Lending Organization shall submit to the Corporation annual reports and additional reports as requested at the discretion of the Corporation stating:

1. The number of Business Loans made;
2. The amount of each Business Loan;
3. The amount of Program Loan proceeds used to fund each Business Loan;

4. The use of Business Loan proceeds by the borrower;
5. The number of jobs created or retained;
6. A description of the economic development generated;
7. The status of each outstanding Business Loan; and
8. Such other information as the Corporation may require.

b) The Corporation may conduct audits of the Community Based Lending Organization in order to ensure compliance with the provisions of this section, any regulations promulgated with respect thereto and agreements between the Community Based Lending Organization and the Corporation of all aspects of the use of Program funds and Business Loan transactions.

c) In the event that the Corporation finds substantive noncompliance, the Corporation may terminate the Community Base Lending Organization's participation in the Program.

d) Upon termination of a Community Based Lending Organization's participation in the Program, the Community Based Lending Organization shall return to the Corporation, promptly after its demand thereof, all Program fund proceeds held by the Community Based Lending Organization; and provide to the Corporation, promptly after its demand thereof, an accounting of all Program funds received by the Community Based Lending Organization, including all currently outstanding Business Loans

that were made using Program funds. Notwithstanding such termination, the Community Based Lending Organization shall remain liable to the Corporation with respect to any unpaid amounts due from the Community Based Lending Organization pursuant to the terms of the Corporation's loans to the Community Based Lending Organization.

e) In the event that a Community Based Lending Organization's participation in the Program is terminated, the Corporation, in its discretion, can reassign all or part of the award made to such Community Based Lending Organization to one or more Community Based Lending Organizations that are already administering the Program and that serve the same Service Area or portions thereof without an additional solicitation.

Section 4250.13 Confidentiality.

a) To the extent permitted by law, all information regarding the financial condition, marketing plans, manufacturing processes, production costs, customer lists, or other trade secrets and proprietary information of a person or entity requesting assistance from the Loan Fund administered through the selected Community Based Lending Organizations by the Corporation, shall be confidential and exempt from public disclosures.

b) To the extent permitted by law, no full time employee of the State of New York or any agency, department, authority or public benefit corporation thereof shall be eligible to receive assistance under this Program.

Section 4250.14 Non-Discrimination and Affirmative Action.

The Corporation's affirmative action and non-discrimination policies and programs are grounded in both public policy and applicable law, including but not limited to, Section 2879 of the Public Authorities Law, Article 15-A of the Executive Law and Section 6254 (11) of the Unconsolidated Laws. These laws mandate the Corporation to take affirmative action in implementing programs. The Corporation has charged the affirmative action department with overall responsibility to ensure that the spirit of these mandates is incorporated into the Corporation's policies and projects. Where applicable, the affirmative action department will work with applicants in developing an appropriate Affirmative Action Program for business and employment opportunities generated by the Corporation's participation of the Program.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires May 11, 2011.

Text of rule and any required statements and analyses may be obtained from: Antovk Pidedjian, Sr. Counsel, 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 16-t of the Act provides for the creation of the Small Business Revolving Loan Fund (the "Program") and authorizes the New York State Urban Development Corporation d/b/a Empire State Development Corporation (the "Corporation"), within available appropriations, to provide low interest loans to Community Development Financial Institutions and other Community Based Lending Organizations, in order to provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit.

2. Legislative Objectives: Section 16-t of the Act sets forth the Legislative objective of authorizing the Corporation, within available appropriations, to provide low interest loans to community development financial institutions and other community based lending organizations, in order to provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit. The adoption of 21 NYCRR Part 4250 will further these goals by setting forth the types of available assistance, evaluation criteria, the application process and related matters for the Program.

3. Needs and Benefits: The State has allocated \$25 million to provide low interest loans to community development financial institutions and other community based lending organizations, in order to provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit. Small businesses have been determined to be a major source of employment throughout the State. Small businesses have historically had difficulties obtaining financing or refinancing in order to remain competitive and grow their operations, and the current economic difficulties have exacerbated this problem. Providing loans to small businesses should sustain and potentially increase the employment provided by such businesses, especially during this period of historically high unemployment and

underemployment. The Program (i) allows the Corporation to evaluate the effectiveness of community based lending organizations with respect to their ability to make loans to credit worthy small businesses, (ii) decentralizes to community based lending organizations the evaluation of the credit and operations of small businesses within the respective communities served by such organizations, and (iii) enhances the ability of community based lending organizations to make loans to small businesses in the communities served by such organizations. The rule facilitates these aspects of the Program by providing for a competitive process to select community based financial institutions for Program Loans and defining eligible and ineligible small businesses and eligible uses of the proceeds of loans to small businesses and other criteria to be applied by the community development financial institutions in making loans to small businesses.

4. Costs: The Program is funded by a State appropriation in the amount of twenty-five million dollars. Pursuant to the rule, community based lending organizations must provide not less than fifty percent of the principal amount of each small business loan funded with Program funds. The costs to a community based lending organization involved in the Program would depend on the extent to which they participate in the Program and their effectiveness and efficiency in making small business loans. The rule also provides for approval by the Corporation of fees charged by a community based lending institutions in connection with loans to small businesses that use Program funds.

5. Paperwork / Reporting: There are no additional reporting or paperwork requirements as a result of this rule on community based lending organizations participating in the Program except those required by the statute creating the Program such as an annual report on the organization's lending activity and providing information in connection with an audit by the Corporation with respect to the organization's use of Program funds. Standard applications and loan documents used for most other assistance by the Corporation will be employed in keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients.

6. Local Government Mandates: The Program imposes no mandates – program, service, duty, or responsibility – upon any city, county, town, village, school district or other special district.

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

8. Alternatives: While larger financial institutions can potentially provide small business financing and the community based lending organizations already provide small business financing, the State has established the Program in order to enhance the access of small businesses to such financing, and the proposed rule provides the regulatory basis for providing low interest loans to community based lending organizations for lending to small businesses in accordance with the statutory requirements of the Program.

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

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

Regulatory Flexibility Analysis

1. Effects of Rule: In the rule: "Small business" is defined as a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis; "Community Development Financial Institution" is defined as community based organization that provides financial services and products to communities, businesses and people underserved by traditional financial institutions; and "Community Based Lending Organizations" is defined as Community Development Financial Institutions, small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks. The rule will facilitate the statutory Program's purpose of having New York State Urban Development Corporation d/b/a Empire State Development Corporation (the "Corporation") make low interest loans to community based lending organizations in order to provide funding for those lending organizations' loans (including microloans in principal amounts equal to or less than twenty-five thousand dollars) to small businesses, located within the State, that are unable to obtain adequate credit or credit terms for such credit.

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: There are no compliance costs for small businesses and local governments in these regulations.

5. Economic and Technological Feasibility: There are no compliance costs for small businesses and local governments in these regulations so

there is no basis for determining the economic and technological feasible for compliance with the rule by 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 low interest loans to community based lending organizations in order to enhance the ability of such organizations to fund loans to small businesses.

7. Small Business and Local Government Participation: A number of community based lending organizations that engage in lending to small businesses responded to a survey circulated by the Corporation regarding implementation of the program as reflected in the rule.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: Community development financial institutions and other community based lending organizations serving all of the 44 counties defined as rural by the Executive Law § 481(7), are eligible to apply for the Small Business Revolving Loan Fund (the "Program") assistance pursuant to a State-wide request for proposals.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The rule will not impose any new or additional reporting or recordkeeping requirements other than those that would be required of any community based lending organization receiving a similar loan regarding such matters as financial condition, required matching funds, and utilization of Program funds, and the statutorily required annual report on the use of Program funds; no affirmative acts will be needed to comply other than the said reporting requirements and the making of loans to small businesses in the normal course of the business for any community based lending organization that receives Program assistance; 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 community based lending organizations that participate in the Program would depend on the extent to which they choose to participate in the Program, including the amount of required matching funds for their Program loans to small businesses and the administrative costs in connection with such small business loans and the fees, if any, charged to small businesses in connection with loans to such businesses that include Program funds.

4. Minimizing Adverse Impact: The purpose of the Program is to provide loans to community based lending organizations in order to enhance the ability of these entities to make loans to small businesses, especially those small businesses that may not be able to borrow funds at acceptable rates from larger financial institutions. This rule provides a basis for cooperation between the State and CBLOs, including CBLO that serve rural areas of the State, in order to maximize the Program's effectiveness and minimize any negative impacts for such CBLO and the small businesses, including small businesses located in rural areas of the State, that such CBLOs serve.

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those located only in urban areas or only in rural areas. The [National Federation of Independent Business, New York Farm Bureau, and the New York Conference of Mayors], have been or will be, consulted during this rulemaking and comments requested. In addition, rural organizations, cooperatives, and agricultural groups and 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 New York by providing greater access to capital for main street everyday small businesses. The Program is targeted to minorities, women and other New Yorkers who have difficulty accessing regular credit markets.

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