

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.

Insurance Department

NOTICE OF ADOPTION

Regulations Implementing the Comprehensive Motor Vehicle Insurance Repairs Act

I.D. No. INS-04-11-00001-A

Filing No. 387

Filing Date: 2011-04-26

Effective Date: 2011-05-11

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

Action taken: Amendment of Subparts 65-1 (Regulation 68-A) and 65-2 (Regulation 68-B) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2307, 5103 and 5221

Subject: Regulations Implementing the Comprehensive Motor Vehicle Insurance Repairs Act.

Purpose: To revise the regulations to comply with chapter 303 of the Laws of 2010.

Text or summary was published in the January 26, 2011 issue of the Register, I.D. No. INS-04-11-00001-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Labor

EMERGENCY RULE MAKING

Restrictions on the Consecutive Hours of Work for Nurses As Enacted in Section 167 of the Labor Law

I.D. No. LAB-43-10-00003-E

Filing No. 378

Filing Date: 2011-04-25

Effective Date: 2011-04-25

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

Action taken: Addition of Part 177 to Title 12 NYCRR.

Statutory authority: Labor Law, section 21

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

Specific reasons underlying the finding of necessity: Section 167 of the Labor Law was effective July 1, 2009. However, Section 167 does not provide sufficient details with regard to what is expected of health care providers so as to avoid mandatory overtime for nurses, except in emergency situations. Section 167 was enacted to improve the health care environment for patients and the working environment for nurses.

Subject: Restrictions on the consecutive hours of work for nurses as enacted in Section 167 of the Labor Law.

Purpose: To clarify the emergency circumstances under which an employer may require mandatory overtime for nurses.

Text of emergency rule: A new Part 177 is added to 12 NYCRR to read as follows:

PART 177

RESTRICTIONS ON CONSECUTIVE HOURS OF WORK FOR NURSES

§ 177.1 Application.

In accordance with Labor Law, Section 167, this Part shall apply to health care employers, who shall be prohibited from assigning mandatory overtime to nurses except in certain circumstances as described in this regulation.

§ 177.2 Definitions.

(a) "Emergency" shall mean an unforeseen event that could not be prudently planned for by a health care employer and does not regularly occur, including an unanticipated staffing emergency.

(b) "Health care disaster" shall mean a natural or other type of disaster that increases the need for health care personnel, unexpectedly affecting the county in which the nurse is employed or in a contiguous county, as more fully explained in Section 177.3 of this Part.

(c) "Health care employer" shall mean any individual, partnership, association, corporation, limited liability company or any person or group of persons acting directly or indirectly on behalf of or in the interest of the employer, who provides health care services (i) in a facility licensed or operated pursuant to article twenty-eight of the public health law, including any facility operated by the state, a political subdivision or a public corporation as defined by section sixty-six of the general construction law, or (ii) in a facility operated by the state,

a political subdivision or a public corporation as defined by section sixty-six of the general construction law, operated or licensed pursuant to the mental hygiene law, the education law or the correction law.

Examples of a health care facility include, but are not limited to, hospitals, nursing homes, outpatient clinics, comprehensive rehabilitation hospitals, residential health care facilities, residential drug and alcohol treatment facilities, adult day health care programs, and diagnostic centers.

(d) "Nurse" shall mean a registered professional nurse or a licensed practical nurse as defined by article one hundred thirty-nine of the education law who provides direct patient care, regardless of whether such nurse is employed full-time, part-time, or on a per diem basis. Nurses who provide services to a health care employer through contracts with third party staffing providers such as nurse registries, temporary employment agencies, and the like, or who are engaged to perform services for health care employers as independent contractors shall also be covered by this Part.

(e) "On call" shall mean when an employee is required to be ready to perform work functions and required to remain on the employer's premises or within a proximate distance, so close thereto that s/he cannot use the time effectively for his or her own purposes. An employee who is not required to remain on the employer's premises or within a proximate distance thereto but is merely required to leave information, at his or her home or with the health care employer, where he or she may be reached is not on call.

(f) "Overtime" shall mean work hours over and above the nurse's regularly scheduled work hours. Determinations as to what constitutes overtime hours for purposes of this Part shall not limit the nurse's receipt of overtime wages to which the nurse is otherwise entitled.

(g) "Patient care emergency" shall mean a situation which is unforeseen and could not be prudently planned for, which requires nurse overtime in order to provide safe patient care as more fully explained in Section 177.3 of this Part.

(h) "Regularly scheduled work hours" shall mean the predetermined number of hours a nurse has agreed to work and is normally scheduled to work pursuant to the budgeted hours allocated to the nurse's position by the health care employer.

(1) For purposes of this Part, for full-time nurses, "the budgeted hours allocated to the nurses position" shall be the hours reflected in the employer's full-time employee (FTE) level for the unit in which the nurse is employed.

(2) If no such allocation system exists, regularly scheduled work hours shall be determined by some other measure generally used by the health care employer to determine when an employee is minimally supposed to work.

(3) The term regularly scheduled work hours shall be interpreted in a manner that is consistent with any relevant collective bargaining agreement and other statutes or regulations governing the hours of work, if any.

(4) Regularly scheduled work hours shall include pre-scheduled on-call time subject to the exceptions set forth in Section 177.3(b)(1) of this Part and the time spent for the purpose of communicating shift reports regarding patient status necessary to ensure patient safety.

(5) For a part-time nurse, regularly scheduled work hours mean those hours a part-time nurse is normally scheduled to work pursuant to the employer's budgeted hours allocated. If advance scheduling is not used for part-time nurses, the percentage of full-time equivalent, which shall be established by the health care employer (e.g. a 50% part-time employee), shall serve as the measure of regularly scheduled work hours for a part-time nurse.

(6) For per diem, privately contracted, or employment agency nurses, the employment contract and the hours provided therein shall serve as the basis for determining the nurse's regularly scheduled work hours.

§ 177.3 Mandatory Overtime Prohibition.

(a) Notwithstanding any other provision of law, a health care employer shall not require a nurse to work overtime. On call time

shall be considered time spent working for purposes of determining whether a health care employer has required a nurse to work overtime. No employer may use on-call time as a substitute for mandatory overtime.

(b) The following exceptions shall apply to the prohibition against mandatory overtime for nurses:

(1) *Health Care Disaster.* The prohibition against mandatory overtime shall not apply in the case of a health care disaster, such as a natural or other type of disaster unexpectedly affecting the county in which the nurse is employed or in a contiguous county that increases the need for health care personnel or requires the maintenance of the existing on-duty personnel to maintain staffing levels necessary to provide adequate health care coverage. A determination that a health care disaster exists shall be made by the health care employer and shall be reasonable under the circumstances. Examples of health care disasters within the meaning of this Part include unforeseen events involving multiple serious injuries (e.g. fires, auto accidents, a building collapse), chemical spills or releases, a widespread outbreak of an illness requiring hospitalization for many individuals in the community served by the health care employer, or the occurrence of a riot, disturbance, or other serious event within an institution which substantially affects or increases the need for health care services.

(2) *Government Declaration of Emergency.* The prohibition against mandatory overtime shall not apply in the case of a federal, state or local declaration of emergency in effect pursuant to State law or applicable federal law in the county in which the nurse is employed or in a contiguous county.

(3) *Patient Care Emergency.* The prohibition against mandatory overtime shall not apply in the case of a patient care emergency, which shall mean a situation that is unforeseen and could not be prudently planned for and, as determined by the health care employer, that requires the continued presence of the nurse to provide safe patient care, subject to the following limitations:

(i) Before requiring an on-duty nurse to work beyond his or her regularly scheduled work hours in connection with a patient care emergency, the health care employer shall make a good faith effort to have overtime covered on a voluntary basis or to otherwise secure nurse coverage by utilizing all methods set forth in its Nurse Coverage Plan required pursuant to Section 177.4 of this Part. The health care employer shall document attempts to secure nurse coverage through use of phone logs or other records appropriate to this purpose.

(ii) A patient care emergency cannot be established in a particular circumstance if that circumstance is the result of routine nurse staffing needs due to typical staffing patterns, typical levels of absenteeism, and time off typically approved by the employer for vacation, holidays, sick leave, and personal leave, unless a Nurse Coverage Plan which meets the requirements of Section 177.4 is in place, has been fully implemented and utilized, and has failed to produce staffing to meet the particular patient care emergency. Nothing in this provision shall be construed to limit an employer's right to deny discretionary time off (e.g., vacation time, personal time, etc.) where the employer is contractually or otherwise legally permitted to do so.

(iii) A patient care emergency will not qualify for an exception to the provisions of this Part if it was caused by the health care employer's failure to develop or properly and fully implement a Nurse Coverage Plan as required under Section 177.4 of this Part.

(4) *Ongoing Medical or Surgical Procedure.* The prohibition against mandatory overtime shall not apply in the case of an ongoing medical or surgical procedure in which the nurse is actively engaged and in which the nurse's continued presence through the completion of the procedure is needed to ensure the health and safety of the patient. Determinations with regard to whether the nurse's continued active engagement in the procedure is necessary shall be made by the nursing supervisor or nurse manager supervising such nurse.

(c) Nothing in this Part shall prohibit a nurse from voluntarily working overtime. A nurse may signify his or her willingness to work overtime by either: a) agreeing to work a particular day or shift as requested, b) agreeing to be placed on a voluntary overtime list or roster, or c) agreeing to prescheduled on-call time pursuant to a collective bargaining agreement or other written contract or agreement to work.

§ 177.4 Nurse Coverage Plans.

(a) Every health care employer shall implement a Nurse Coverage Plan, taking into account typical patterns of staff absenteeism due to illness, leave, bereavement and other similar factors. Such plan should also reflect the health care employer's typical levels and types of patients served by the health care facility.

(b) The Plan shall identify and describe as many alternative staffing methods as are available to the health care employer to ensure adequate staffing through means other than use of mandatory overtime including contracts with per diem nurses, contracts with nurse registries and employment agencies for nursing services, arrangements for assignment of nursing floats, requesting an additional day of work from off-duty employees, and development and posting of a list or roster of nurses seeking voluntary overtime.

(c) The Plan must identify the Supervisor(s) or Administrator(s) at the health care facility or at another identified location who will make the final determination as to when it is necessary to utilize mandatory overtime. The Plan may not require a nurse to find his or her own shift replacement or to self-mandate overtime.

(d) The Plan shall require documentation of all attempts to avoid the use of mandatory overtime during a patient care emergency and seek alternative staffing through the methods identified in subdivision (b) of this Section. In the event that the health care employer does utilize mandatory overtime, the documentation of such efforts to avoid the use of mandatory overtime shall be made available, upon request, to the nurse who was required to work the mandatory overtime and/or to the nurse's collective bargaining representative, provided, however, that the names and other personal identifying information about patients shall not be included unless authorized under State and federal law and regulations.

(e) The Plan shall be in writing and upon completion or amendment of such plan, it shall:

(i) be made readily available to all nursing staff through distribution to nursing staff, or conspicuously posting the Plan in a physical location accessible to nursing staff, or through other means that will ensure availability to nursing staff, e.g. posting on the employer's intranet site or its functional equivalent.

(ii) be provided to any collective bargaining representative representing nurses at the health care facility.

(iii) be provided to the Commissioner of Labor, or his or her designee, upon request.

(f) Nothing herein shall be read to establish the Nurse Coverage Plans required herein as standards to be used in assessing the health care employer's compliance with any other obligation or requirement, including facility accreditation.

(g) All such Plans were to have been prepared by October 13, 2009 in accordance with emergency regulations that were in effect. For health care employers who were not operating covered facilities on October 13, 2009, a Nurse Coverage Plan shall be in place prior to the time they commence operations.

§ 177.5 Report of Violations.

Parties who wish to file complaints of violations of this Part shall follow procedures and utilize the forms set forth for this purpose on the Department's website.

§ 177.6 Conflicts with Law and Regulation; Collective Bargaining Rights Not Diminished.

The provisions of this Part shall not be construed to diminish or waive any rights or obligations of any nurse or health care provider pursuant to any other law, regulation, or collective bargaining agreement.

§ 177.7 Waiver of Rights Prohibited.

A health care employer covered by this Part may not utilize employee waivers of the protections afforded under Labor Law § 167 or this Part as an alternative to compliance with such law or regulation. A health care employer who seeks such a waiver from a nurse in its employment shall be considered to have violated this Part.

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. LAB-43-10-00003-EP, Issue of October 27, 2010. The emergency rule will expire June 23, 2011.

Text of rule and any required statements and analyses may be obtained from: Teresa Stoklosa, NYS Department of Labor, State Office Campus, Building 12, Room 508, Albany, NY 12240, (518) 457-4380, email: teresa.stoklosa@dol.ny.gov

Regulatory Impact Statement

1. Statutory authority:

Section 21 of the Labor Law provides the Commissioner with authority to issue regulations governing any provision of the Labor Law as she finds necessary and proper. This rule is proposed pursuant to Section 167 of the Labor Law enacted by chapter 493 of the Laws of 2008. The effective date of the law was July 1, 2009.

2. Legislative objectives:

Legislation passed during the 2008 legislative session recognized the physical and emotional toll that mandatory overtime can take on nurses and on patient care. In response to these concerns, the legislation requires that health care employers take steps to prudently plan for adequate nursing staff coverage in their facilities so as to avoid the need to require mandatory overtime of nurses in most instances.

3. Needs and benefits:

Nurses work in a demanding and stressful environment where sound decision-making is a matter of life and death for patients. Limitations on mandatory overtime avoid successive work shifts which take a physical and mental toll on nurse's performance and can impact the quality of patient care. Labor Law Article 6, section 167 places restrictions on consecutive hours of work for nurses, except in emergency situations, while not prohibiting a nurse from voluntarily working overtime and allows an employer who experiences an unanticipated staffing emergency that does not regularly occur, to require overtime to ensure patient safety.

The enabling legislation does not provide sufficient details with regard to what is expected of health care employers so as to avoid mandatory overtime, except in emergency situations. The rule addresses these statutory gaps by requiring that covered employers develop a Nurse Coverage Plan (the Plan), by setting forth the minimum elements to be addressed in the Plan, and by requiring that the Plan be posted and made available to the Commissioner, to nursing staff and their employee representatives. At the same time, the rule clarifies circumstances under which various types of emergencies will allow health care employers to use mandatory overtime to cover nurse staffing needs.

4. Costs:

Employers in both the public and private sectors covered by this rule may have to enter into contracts with nursing staff providers such as nurses' registries, per diem nursing services, and temporary agencies to have a viable source of additional nursing staff to use in lieu of mandating overtime of current staff. The cost for individual health care employers will depend upon the extent to which the Plan relies on these contract workers and the degree of coverage that the health care employer will need. In the current environment of nursing shortages, a major medical center with several special care units requiring specially trained nursing staff may find it more difficult to fill shifts from among their own nursing staff. At the other end of the spectrum, facilities with a very small staff, few resources or in underserved or remote locations may not be able to compete to fill vacancies. At the time this legislation was before the Governor for action in 2008, the Division of Budget estimated compliance would cost approximately \$13 million in its first year. However, these projected costs - attributable to the hiring of per diem nurses necessary to ensure that sufficient nursing care is available for patients in the absence of the availability of mandatory overtime - should have been offset by savings of \$5 million, which otherwise would have been paid for such overtime.

Other than staffing needs, costs associated with the rule will be administrative. Health care employers must prepare a Nurse Coverage Plan.

The Plan must also identify and describe the alternative staffing methods the employer will use to avoid mandatory overtime. It is not anticipated that any health care employer would have to retain outside

professional services to prepare the Nurse Coverage Plan. Although there are administrative costs and time associated with developing and maintaining a written Plan and a log of efforts to obtain coverage using the Plan, these costs may be offset through use of a Plan that may reduce the need for last-minute supplemental staffing.

Legal services may be required to negotiate, draft or review contracts with alternative staffing providers such as per diem agencies. It is anticipated that a vast majority of health care providers in the state already have such agreements in place or have procurement or legal staff who regularly work on such contracts.

Requirements with regard to the posting of such Plan and the logging of efforts to obtain staff coverage in compliance with the Plan will result in minimal or no additional cost.

5. Paperwork:

The employer will be required to develop and post the Nurse Coverage Plan discussed above, along with all necessary paperwork to log the efforts to obtain staff coverage in compliance with the Plan. Additionally, the Nurse Coverage Plan may require the drafting of contracts with alternative staffing providers such as per diem agencies and the posting of a list of nurses seeking voluntary overtime. The rule does provide alternative, paperless options to meet this requirement including posting of the Nurse Coverage Plan on the employer's intranet or by sending electronic copies of the Plan to staff and their representatives.

6. Local government mandates:

This rule will have an impact on any county, city, town, village, school district, fire district or other special district that employ nurses. The impact will depend on the size of the facility and nursing staff and the degree to which mandatory, unscheduled overtime is currently being used on a routine basis.

7. Duplication:

This rule does not duplicate any state or federal regulations.

8. Alternatives:

One alternative is to draft regulations which allow the employers to have full discretion to make determinations regarding the existence of an emergency on an ad hoc basis. However, such discretion is inconsistent with the letter and spirit of the statute. Clearly, certain levels of absenteeism based upon sick leave, bereavement, leaves of absences, and breaks during shifts will always exist in all employment settings, including health care facilities. A health care employer must plan to cover for these expected staff absences, based upon patterns that have emerged from operating a facility and must have staffing options that address the need to provide appropriate nursing care. The Department of Labor circulated draft regulations for comment to State Agencies and other employer groups, and to various employee representative groups. In some instances, changes to the regulations were made in response to such concerns. For example, the Department of Corrections (DOCS) requested clarification regarding examples of health care disasters set forth in Section 177.3 of the regulations. The regulations were revised to include such language.

The Department received comments from one employer group, the Healthcare Association of New York State, that the regulations should provide alternatives to healthcare employers regarding the conspicuous posting of the Nurse Coverage Plans. It was suggested that the regulations authorize employers to utilize other means to make the Nurse Coverage Plans available to nursing staff such as the employer's intranet. The Department revised the regulations to allow for the use of other means to make the Nurse Coverage Plan available to nursing staff.

The Department also received a comment from employee representatives about requiring the filing of all Nurse Coverage Plans with the Commissioner of Labor. The Department considered such a filing requirement but decided it was unnecessary since the Commissioner will request such Plans once a complaint has been received about an employer. The Department heard from representatives of public sector nurses that the definition of regularly scheduled work hours should include a reference to regulations governing such typical work hours. The language in relevant sections of the rule has been changed in response to this request.

The representatives of public sector nurses had comments about the Nurse Coverage Plans and the requirement for documentation of all attempts to avoid the use of mandatory overtime during a patient care emergency. The representatives were concerned that some health care employers might have a nurse working alone and if that nurse is unable to find relief through alternative staffing methods, he or she might then have to self-mandate overtime. A Nurse Coverage plan that requires a nurse to find her own shift replacement or to self-mandate overtime is inadequate. The Department added language to Section 177.4 (c) (Nurse Coverage Plans) to require the Plan to identify the Supervisor at the health care facility who will make the final determination as to when it is necessary to utilize mandatory overtime.

Parties commenting on behalf of nurses in the public sector also asked that the regulations outline a system of recordkeeping regarding the documentation of all attempts to avoid the use of mandatory overtime. It was suggested that such documentation include information that would already be available in the employer's payroll records. The information provided in a nurse's complaint, the employer payroll records, and the documentation regarding all attempts to avoid mandatory overtime through the use of the Nurse Coverage Plan, should be sufficient for the Department to complete an investigation regarding a violation of Section 167 and 12 NYCRR Part 177. The representatives also suggested that in the event a health care employer utilizes mandatory overtime for a patient care emergency, the documentation regarding the efforts to avoid the use of such mandatory overtime should be available upon request to the nurse who had to work the mandatory overtime and/or the collective bargaining representative. The Department added language to Section 177.4(d) to require that such documentation is made available, upon request, to the nurse or the collective bargaining representative. The representatives also noted that any amendment to Nurse Coverage Plans should be made available to nurses and their collective bargaining representatives. Accordingly, Section 177.4(d) now includes language regarding amendments to the Nurse Coverage Plans.

The representatives of public sector nurses also suggested that Section 177.3(c) be revised to make it clear that an individual nurse must volunteer to remain on-call regardless of any contractual provisions which provide for on-call time for nurses. The Department does not have the authority to modify the terms of collective bargaining agreements. If the collective bargaining agreement provides for on-call time for nurses, than such on-call time is presumed to be voluntary.

The representatives of public sector nurses all suggest the regulations collapse the separate and independent requirements set forth in Labor Law, Section 167(3)(c) to prudently plan for routine staffing shortages and to make good faith efforts to cover staffing on a voluntary basis before mandating overtime when a patient care emergency exists. The regulations require Nurse Coverage Plans to take into account typical patterns of absenteeism and to reflect the employer's typical levels and types of patients served in the facility. The Nurse Coverage Plan must identify and describe as many alternative staffing methods as are available to the employer to ensure adequate staffing other than by use of mandatory overtime during a patient care emergency. This language clearly requires employers to have a Nurse Coverage Plan that provides sufficient staffing to account for typical patterns of absenteeism and, at the same time, have alternative staffing methods to cover patient care emergencies.

The representatives of public sector nurses also suggest that the regulations provide for enforcement action against a health care employer who fails to develop and implement the required policies and procedures and maintain the required recordkeeping. While the Department does find penalties to be an effective means of encouraging employer compliance with regulations protecting the rights of workers, the implementing legislation does not provide for such penalties.

The representatives of public sector nurses also suggest that the regulations should clearly set forth protections against reprisals for filing a complaint. Such protections already exist under Section 215 of the Labor Law for nurses in private facilities. Civil Service Law, Section 75-b prohibits retaliatory actions by public employers against public employees.

The representatives of public sector nurses also suggest that the

regulations set forth that the investigatory process be completed within 90 days and include an informal conference or means by which a Department Investigator, the complainant and/or the collective bargaining representative, and the employer meet to discuss issues arising from the investigation. The representatives also suggest a closing conference and a clearly defined appeal process or mechanism to dispute the Department's issuance of an order in a situation where the complainant employee or collective bargaining representative disputes the Department's decision. In short, the representatives of public sector nurses are requesting a procedural investigatory process similar to that for public employee safety and health complaints pursuant to Labor Law, Section 27-a. However, that investigatory process is clearly detailed in Section 27-a and includes site inspections, where representatives of the employer and an authorized employee representative are given an opportunity to accompany the Department Investigator during an inspection. This type of on-site inspection is needed to view whether safety and health hazards exist.

The representatives of public sector nurses suggest that nurse administrators or employees that have a nursing license, but do not provide direct patient care in their positions be covered under the provisions of Section 167 if the employer mandates them to provide direct patient care. Such a requirement is clearly contrary to the statutory provisions of Section 167. Specifically, Section 167(1)(b) defines a nurse as a registered professional nurse or a licensed practical nurse as defined by article one hundred thirty-nine of the Education Law who provides direct patient care. (Emphasis supplied) The Department does not have the statutory authority to expand the coverage of Section 167 to nurse administrators or other employees that have a nursing license, but do not have regularly scheduled work hours where they provide direct patient care.

During rule development, several parties presented diverse comments on many issues, some of which resulted in modification of this proposal. The Department looks forward to the public comment period, which will provide the opportunity for additional regulated parties and interested parties to explain their different perspectives and share expertise in this area that would help clarify, balance and generally improve the final regulation.

9. Federal standards:

There are no federal standards with like requirements.

10. Compliance schedule:

The rule would be effective on the date of final adoption.

However, emergency regulations have been in place for several months which have established the requirement for Nurse Coverage Plans. The Nurse Coverage Plans were required to be established by October 13, 2009.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule will apply to all health care employers which include any individual, partnership, association, corporation, limited liability company or any person or group of persons acting directly or indirectly on behalf of or in the interest of the employer, which provides health care services in a facility licensed or operated pursuant to Article 28 of the Public Health Law, including any facility operated by the State, a political subdivision or a public corporation as defined by Section 66 of the General Construction Law or in a facility operated by the State, a political subdivision or a public corporation as defined by Section 66 of the General Construction Law, operated or licensed pursuant to the Mental Hygiene Law, the Education Law, or the Correction Law. Accordingly, small businesses and local governments may be impacted if they provide health care services in a facility noted above. The Department's Division of Research and Statistics estimates that there are 4,175 health care facilities in the State with fewer than 100 employees. Of these 4,175 employers, 4,143 are private employers and 32 are public employers.

2. Compliance requirements:

The record and reporting requirements contained in the proposed rule are minimal. Healthcare employers must prepare a Nurse Coverage Plan which takes into account typical patterns of staff absenteeism due to illness, leave, bereavement and other similar factors as well as

the number and types of patients typically served in the health care employer's facility. The Plan must also identify and describe the alternative staffing methods the employer will use to avoid mandatory overtime. Additionally, the health care employer must make the Nurse Coverage Plan available to: nursing staff by posting the Plan or making it available to nursing staff by the intranet, employee representatives and to the Commissioner upon request. The health care employer must also maintain a log of efforts to obtain staff coverage in compliance with the Plan.

3. Professional services:

Legal services may be required to negotiate, draft and review contracts with alternative staffing providers such as per diem agencies. It is anticipated that a vast majority of health care providers in the state already have such agreements in place or have procurement or legal staff who regularly work on such contracts.

The rule will require health care employers to seek alternative sources to obtain the services of nurses other than forcing their current nursing staff to work mandatory overtime shifts. In this respect, the health care employers will be seeking professional nursing services which would have otherwise been performed by their current nursing staff on a mandatory basis.

4. Compliance costs:

Employers in both the public and private sectors covered by this rule may have to enter into contracts with nursing staff providers such as nurses' registries, per diem nursing services, and temporary agencies to have a viable source of nursing staff to use in lieu of mandatory overtime. The cost for individual health care employers will depend upon the extent to which the nurse staffing plan relies on these contract workers and the degree of coverage that the health care facility will need. For example, a major medical center with several special care units requiring specially trained nursing staff may find it more difficult to fill shifts from among their own nursing staff because of the need to fill such vacancies with nurses having the same specialized training. At the other end of the spectrum, facilities with very a small staff may find it equally difficult to fill vacancies without having to utilize outside staffing service providers. At the time this legislation was before the Governor for action in 2008, the Division of Budget estimated compliance would cost approximately \$13 million in its first year. However, these costs - attributable to the hiring of per diem nurses necessary to ensure that sufficient nursing care is available for patients in the absence of the availability of mandatory overtime - should have been offset by savings of \$5 million, which otherwise would have been paid for such overtime. Also, it is likely that in the approximately one and a half year period from when Section 167 was enacted into law, employers have been preparing for implementation of the statute and have taken steps to mitigate costs associated with this new law.

Other than staffing needs, costs associated with the rule will be administrative. Health care employers must prepare a Nurse Coverage Plan which takes into account typical patterns of staff absenteeism due to illness, leave, bereavement and other similar factors as well as the number and types of patients typically served in the health care employer's facility. The Plan must also identify and describe the alternative staffing methods the employer will use to avoid mandatory overtime. It is not anticipated that any health care employer would have to retain outside professional services to prepare the Nurse Coverage Plan. Although there are administrative costs and time associated with developing and maintaining a written Plan and log, these costs may be offset through the use of a Plan that may reduce the need for last-minute supplemental staffing.

Legal services may be required to negotiate, draft or review contracts with alternative staffing providers such as per diem agencies. It is anticipated that a vast majority of health care providers in the state already have such agreements in place or have procurement or legal staff who regularly work on such contracts.

Requirements with regard to the posting of such Plan and the logging of efforts to obtain staff coverage in compliance with the Plan will result in minimal or no additional cost.

5. Economic and technological feasibility:

The proposed rule does not impose any new technological

requirements. Economic feasibility is addressed above under compliance costs.

6. Minimizing adverse impact:

This rule is necessary to implement Labor Law, Section 167, as enacted by chapter 493 of the Laws of 2008. Although this enabling legislation does not require the promulgation of regulations, it does not provide sufficient details with regard to what is expected of health care employers so as to avoid, to the greatest extent possible, unnecessary mandatory overtime. The rule addresses these statutory gaps by requiring that covered employers develop a staffing plan, by setting forth the minimum elements to be addressed in this plan, and by requiring that the plan be made available to the Commissioner and to nursing staff and their representatives. At the same time, the rule clarifies circumstances under which various types of emergencies will exempt health care employers from the prohibition against mandatory overtime to cover nursing staffing needs that would otherwise apply.

This rule fulfills the legislative objective of chapter 493 by improving the health care environment for patients and the working environments for nurses and their families, while at the same time minimizes the potential impact on the health care employers by allowing them to develop a Nurse Coverage Plan which addresses their specific needs and takes into account all of their specific circumstances.

7. Small business and local government participation:

The Department solicited input on these regulations from various employer representatives. These employer representatives have members from small businesses and local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

Any rural area where nurses are employed will be affected. The type of affect will depend on the degree to which those areas are currently relying on unscheduled, mandatory overtime to fill staffing requirements.

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

The reporting, recordkeeping and compliance requirements contained in the proposed rule are minimal. The employer will be required to develop a Nurse Coverage Plan which identifies and describes as many alternative staffing methods as are available to the health care employer to ensure adequate staffing through means other than use of overtime, including, but not limited to, contracts with per diem nurses, contracts with nurse registries and employment agencies for nursing services, arrangements for assignment of nursing floats, requesting an additional day of work from off-duty employees, and development and posting of a list of nurses seeking voluntary overtime. The healthcare employer must log all good faith attempts to seek alternative staffing through the methods identified in the health care employers' Nurse Coverage Plan. The Plan must be in writing, and be provided to the nursing staff, to any collective bargaining representative representing nurses at the health care facility and to the Commissioner of Labor upon request.

The rule will also require health care employers to seek alternative sources to obtain the services of nurses other than forcing their current nursing staff to work mandatory overtime shifts. In this respect, the health care employers will be seeking professional nursing services which would have otherwise been performed by their current nursing staff on a mandatory basis. This may necessitate the drafting of contracts with alternative staffing providers such as per diem agencies.

3. Costs:

Employers in both the public and private sectors covered by this rule may have to enter into contracts with nursing staff providers such as nurses' registries, per diem nursing services, and temporary agencies to have a viable source of additional nursing staff to use in lieu of mandating overtime of current staff. The cost for individual health care employers will depend upon the extent to which the Plan relies on these contract workers and the degree of coverage that the health care employer will need. In the current environment of nursing shortages, a major medical center with several special care units requiring specially trained nursing staff may find it more difficult to fill shifts from among their own nursing staff. At the other end of the spectrum,

facilities with a very small staff, few resources or in underserved or remote locations may not be able to compete to fill vacancies. At the time this legislation was before the Governor for action in 2008, the Division of Budget estimated compliance would cost approximately \$13 million in its first year. However, these costs - attributable to the hiring of per diem nurses necessary to ensure that sufficient nursing care is available for patients in the absence of the availability of mandatory overtime - should have been offset by savings of \$5 million, which otherwise would have been paid for such overtime. Also, it is likely that in the approximately one and a half year period from when Section 167 was enacted into law, employers have been preparing for implementation of the statute and have taken steps to mitigate costs associated with this new law.

Other than staffing needs, costs associated with the rule will be administrative. Health care employers must prepare a Plan which takes into account typical patterns of staff absenteeism due to illness, leave, bereavement and other similar factors as well as the number and types of patients typically served in the health care employer's facility. The Plan must also identify and describe the alternative staffing methods the employer will use to avoid mandatory overtime. It is not anticipated that any health care employer would have to retain outside professional services to prepare the Nurse Coverage Plan. Although there are administrative costs and time associated with developing and maintaining a written Plan and log, these costs may be offset through the use of a Plan in place that may reduce the need for last-minute supplemental staffing.

Legal services may be required to negotiate, draft or review contracts with alternative staffing providers such as per diem agencies. It is anticipated that a vast majority of health care providers in the state already have such agreements in place or have procurement or legal staff who regularly work on such contracts.

Requirements with regard to the posting of such Plan and the logging of efforts to obtain staff coverage in compliance with the Plan will result in minimal or no additional cost.

4. Minimizing adverse impact:

This rule is necessary to implement Labor Law, Section 167, as enacted by chapter 493 of the Laws of 2008. Although this enabling legislation does not require the promulgation of regulations, it does not provide sufficient details with regard to what is expected of health care employers so as to avoid, to the greatest extent possible, unnecessary mandatory overtime. The rule addresses these statutory gaps by requiring that covered employers develop a staffing plan, by setting forth the minimum elements to be addressed in this plan, and by requiring that the plan be made available to the Commissioner and to nursing staff and their representatives. At the same time, the rule clarifies circumstances under which various types of emergencies will exempt health care employers from the prohibition against mandatory overtime to cover nursing staffing needs that would otherwise apply.

This rule fulfills the legislative objective of chapter 493 by improving the health care environment for patients and the working environments for nurses and their families, while at the same time minimizes the potential impact on the health care employers by allowing them to develop a Nurse Coverage Plan which addresses their specific needs and takes into account all of their specific circumstances.

5. Rural area participation:

The Department sought input on these regulations from various employee representative groups which represent rural area employees. Additionally, the Department received input from various employer representative groups which also represent rural area employers.

Job Impact Statement

Health care employers covered by this rule may have to enter into contracts with nursing staff providers such as nurses' registries, per diem nursing services and temporary agencies to have a viable source of nursing staff to use in lieu of mandatory overtime. At the time Section 167 of the Labor Law (the statutory authority for this rule) was before the Governor for signature, the Division of the Budget estimated compliance would cost approximately \$13 million in its first year, which was attributable to the hiring of per diem nurses to ensure that sufficient nursing care is available for patients in the absence of the availability of mandatory overtime. Accordingly, it is apparent from the nature and purpose of this rule that it will not

have any adverse impact on jobs or employment opportunities; in fact it will create more jobs.

Assessment of Public Comment

The agency received no public comment.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Approval of Applications for Inspection Station License

I.D. No. MTV-19-11-00002-P

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

Proposed Action: Amendment of Part 79 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 301(a), (d)(1), 302(a), (e), 303(a)(1) and (d)(1)

Subject: Approval of applications for inspection station license.

Purpose: Regulates the approval process relating to inspection stations in New York State.

Text of proposed rule: 79.7 (f) *Approval of applications for inspection station license. The commissioner reserves the right to determine the maximum number of public official emissions inspection stations that may be located in any county. The factors used to make this determination include: the total number of motor vehicles that are registered in any given county of the State; the total number of public official emissions inspection stations that are located in any given county of the State; motorist waiting times for inspections; and any other factors that the commissioner finds are materially and substantially related to making such determination. Such determination shall be re-assessed on an annual basis. If the maximum number of public official emissions inspection stations is reached in any county, the commissioner may refuse to approve an application for an original public official emissions inspection station license and may refuse to approve an application for an amendment for a public official emissions inspection station change of location, and shall place any such application on a waiting list. Any application fees or inspection station license fees for applications that are not approved pursuant this subdivision shall be returned to the applicant. If the number of public official emissions inspection stations falls below the maximum in any county, an application for an original public official emissions inspection station license or an application for an amendment for a change of location that has been on the waiting list for the greatest length of time shall be reviewed by commissioner. The Department shall post on its public website a summary of its findings regarding the number of public inspection stations that shall be permitted in each county.*

Notwithstanding the provisions of this subdivision, the commissioner shall accept an application for review if:

(1) the application is for the renewal of a public official emissions inspection station license; or

(2) a registered new motor vehicle dealer, as defined in Vehicle and Traffic Law section 415(1)(f), or a new motor vehicle dealer applicant, submits an application for an original public official emissions inspection station license or an amendment application for a change of location for one public official emissions inspection station license that is owned by and/or operated in conjunction with such dealer; or

(3) an original application for a public official emissions inspection station license is received from a person who purchased a facility from another person, and such facility had a public official emissions inspection station license in good standing at the time of sale. For the purposes of this paragraph, "in good standing" means that, at the time of the sale: the facility's license is not suspended or revoked; the facility does not owe any outstanding civil penalties; the facility has no hearings or appeals pending before the Department; and the facility has no litigation pending in which the Department is a named party; or

(4) a licensee submits an amendment application for a change of location, and the change of location is within the same county, or

within five (5) miles of the current location. This paragraph shall not apply to licensees covered by paragraph (2) of this section; or

(5) the commissioner determines that there is a need for an inspection station in a specific geographic region within a county due to consumer factors, including but not limited to, distance and travel time between stations. If an application is approved pursuant to this paragraph, no subsequent application for change of location that is greater than 5 miles from the original location will be accepted for a period of 5 years.

Section 79.9(d)(2) is amended to read as follows:

(2) In addition to the equipment specified in paragraph 1 above, an official emissions inspection station or any station required to complete advisory emissions scans as defined in 79.24(j) must also have the appropriate computerized vehicle inspection system (CVIS), approved by the Department of Environmental Conservation and the Department of Motor Vehicles, capable of performing OBD II and low enhanced emissions inspections. This equipment, which shall be known as the NYVIP CVIS, shall include but may not be limited to:

A new subdivision (j) is added to section 79.24 to read as follows:

79.24(j) *Advisory emissions scan. Any vehicle required to be equipped with an OBD system that is exempt from the OBD II emissions inspection under 79.2 (f)(4), and is inspected at an inspection station owned and/or operated by a registered new motor vehicle dealer, is required to have advisory emissions scan completed during the inspection. The advisory scan will be completed using the NYVIP CVIS. No results will be reported to the consumer and such consumer shall not be charged a fee for the advisory emissions scan.*

Text of proposed rule and any required statements and analyses may be obtained from: Monica J Staats, NYS Department of Motor Vehicles, Legal Bureau, Room 526, 6 Empire State Plaza, Albany, NY 12228, (518) 474-0871, email: monica.staats@dmv.ny.gov

Data, views or arguments may be submitted to: Ida L. Traschen, NYS Department of Motor Vehicles, Legal Bureau, Room 526, 6 Empire State Plaza, Albany, NY 12228, (518) 474-0871, email: monica.staats@dmv.ny.gov

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

Regulatory Impact Statement

1. Statutory authority: Section 215(a) of the Vehicle and Traffic Law (VTL) authorizes the Commissioner of the Department of Motor Vehicles (hereafter "the Commissioner") to enact rules which regulate and control the exercise of the powers of the Department. Section 301(a) of such law provides that the Commissioner shall require every motor vehicle registered in this state to have a safety and emissions inspection. Section 301(d) (1) of such law authorizes the Commissioner, in consultation with the Commissioner of the Department of Environmental Conservation, to implement a motor vehicle emissions inspection program. Section 302(a) of such law provides that it shall be the duty of the Commissioner to administer the provisions of Article 5 of such law which provides for the periodic inspection of all motor vehicles. Section 302(e) of such law empowers the Commissioner to make reasonable rules and regulations for the administration and enforcement of Article 5 and the periods during which motor vehicles are required to be inspected. Section 303 of such law grants the Commissioner discretion to have state-operated stations, state-contracted stations, or state-licensed stations. Section 303(d) (1) of such law provides that the Commissioner shall supervise and cause inspections to be made of official inspection stations. The Federal Clean Air Act of 1990 (42 U.S.C 7401 et. seq.) requires states to implement certain emissions inspection programs in order to comply with the Act and avoid the loss of federal funding.

Section 303(a) (1) of the VTL provides that an application for an inspection station shall be approved at the discretion of the Commissioner. The Commissioner is given broad authority to approve those applications that are in accordance with the Department's ability to administer Article 5 of the Vehicle and Traffic Law and the Commissioner's Regulations and to comply with the Federal Clean Air Act of 1990.

2. Legislative objectives: The Federal Clean Air Act of 1990 (42 U.S.C 7401 et. seq.) and the accompanying regulations at 40 CFR Part

51 require each state to implement an inspection and maintenance program that conforms to such federal regulations. This effort is documented by the submission of a State Implementation Plan (SIP) by New York to the Environmental Protection Agency (EPA) detailing how New York will comply with Clean Air Act standards. Failure to comply with the Act (and the SIP) may cost the State millions of dollars in federal highway funding or force New York to achieve pollution offsets by imposing stricter and more costly emissions standards on existing or new businesses (i.e. power stations, factories, etc.).

The New York SIP submitted to comply with Part 51.363 specifically requires the Department, in the New York Metropolitan Area (NYMA), to conduct overt audits twice a year of an inspection station's test lanes or bays and covert audits at least once a year of the station's inspection process. Outside of the NYMA, covert audits must be conducted once annually and overt audits must be conducted every five years. In addition to these requirements, section 303(d) (1) of the VTL requires the Department to inspect such stations for compliance with such law and regulations promulgated thereunder.

To achieve the legislative and regulatory mandates relative to the auditing of inspection stations, the Department proposes to establish and publish a maximum number of inspection stations for each county. When an application for an inspection station license is received, the application will be reviewed if the given county is not at its maximum or, if at maximum, the applicant will be placed on a waiting list for that county.

3. Needs and benefits: VTL Section 303 grants the Commissioner discretion to have state-operated stations, state-contracted stations, or state-licensed stations. New York currently licenses stations to carry out the program on behalf of the state and must regulate them for Federal, state, and consumer protection purposes. The current procedure of allowing an unlimited number of stations to carry out these requirements on behalf of the state will prove detrimental and problematic to: compliance with Federal mandates, state regulatory oversight, the investment made in the program by New York businesses, and ensuring vehicle safety and clean air for citizens. As explained below, this regulatory change will mitigate some of the negative effects of permitting an unlimited number of inspection stations.

The New York Transient Emissions Short Test (NYTEST) program was terminated on January 1, 2011 in the NYMA. With the elimination of the NYTEST program, new inspection stations will not have to purchase and maintain expensive dynamometer equipment, which costs approximately \$35,000. Annual maintenance contracts for the dynamometer equipment ran as high as \$5,000. Stations in the NYMA will only be required to have a New York Vehicle Inspection Program (NYVIP) analyzer costing roughly \$2,000.

By placing no limit on the number of stations, the Department will have inadequate resources to address station malfeasance and protect consumers. In the interest of consumer protection, as well as maintaining the integrity of existing New York State licensed inspection stations, the Department proposes to amend its current inspection station license application process. The Department will review the number of registered vehicles and determine a maximum number of stations needed in a given county. If an application is received for a license in a county that has not reached its published maximum of licenses, it will be considered for licensure. If an application is received for a county that has already reached its published maximum, it will be placed on a waiting list for that county in the order received. The Department's determination regarding the number of permitted stations in a given county will be posted on DMV's public website.

In this way, the Department can ensure that there is a manageable network of properly regulated inspection stations to meet consumer demand and maintain its ability to monitor such stations via overt and covert audits, and meet the monitoring objectives and mandates of the Clean Air Act and the VTL. The needs and benefits of this regulation are fully explained below.

Federal Compliance - SIP - The Federal Clean Air Act mandates that New York State file a State Implementation Plan (SIP) with the EPA. The current SIP requires the State to audit the emissions-related activity of each inspection station in the NYMA three times a year.

Two of these audits are required to be overt and one covert. This regulatory change would prevent an excessive increase in the number of inspection stations in the NYMA. Allowing such an increase could only further hamper the State's efforts to comply with the SIP, by jeopardizing our ability to conduct the required number of audits. In light of the State's dire fiscal climate, it is unlikely that new hires will be allowed to conduct such audits.

Federal Compliance - Penalties - As a part of the SIP, New York submits an annual report to the EPA on the status of the inspection program in New York. The report documents the number of inspection stations, the number of audits completed and the resulting enforcement activity. As mentioned, failure to comply with the Act (and the SIP) may cost the State millions of dollars in federal highway funding or force New York to achieve pollution offsets by imposing stricter and more costly emissions standards on existing or new businesses (i.e. power stations, factories, etc.). Part 179 of the Clean Air Act and 40 CFR 52.31 detail the actual sanctions that may be imposed and the process for imposing sanctions.

State Oversight of Inspection Stations under the VTL - The Department has an obligation under Section 303(a) of the Vehicle and Traffic Law to license official inspection stations. A Department employee must visit and inspect the proposed location of every inspection license applicant. Section 303(d) requires the Department to supervise and inspect (audit) these same entities. In addition to the requirements in the SIP, DMV must monitor stations' safety inspections, sticker handling, and recordkeeping. These audits, in combination with the results of SIP/emissions audits, often lead to time-consuming administrative action. During the last fiscal year, the Department found that inappropriate activity on the part of inspection stations warranted 1,032 administrative hearings. If the number of inspection stations continues to grow unchecked, the Department will not only have insufficient staff to monitor these additional stations, but it will have insufficient resources to uncover other illegal activities at such stations. This regulation would alleviate these problems by managing the network size and required staff for oversight.

Public Protection - The Revolving Door - The Clean Air Act requires DMV to take appropriate action to prevent fraud and improper inspections. The Department takes this mandate very seriously by conducting both overt and covert audits on an annual basis. These audits result in approximately 55 revocations each year. Unfortunately, some of the revoked stations find their way back into the inspection program by applying for a license in the name of a relative or employee. This "revolving door" of problematic stations would be more manageable under this regulation, because a station whose license is revoked might be placed on a waiting list and could not immediately open another station.

Protection of Licensed Businesses - Since 1998, NYMA inspection stations have been required to purchase a \$35,000 dynamometer or surrender their inspection license. Those that stayed in the program incurred not only the initial dynamometer costs but also up to \$5,000 in annual maintenance and supply costs. The end of NYTEST on January 1, 2011 has resulted in a significant drop in start-up equipment costs (to \$2,000) and in annual equipment costs (to nearly zero). Consequently, DMV anticipates that scores of new businesses will apply for inspection station licenses in the NYMA. There is a relatively finite number of inspections available to the industry. Additional stations will not increase the need for, or the number of, inspections. There are currently 9,045 public emissions inspection stations statewide that average 5 inspections per day. With the current number of inspection stations, there has been no pattern of complaints from the public indicating the inability to have a vehicle timely inspected because of an inadequate supply of stations. The growth in the number of inspection stations will jeopardize the revenue stream of businesses that are already dealing with a bad economy. This regulation would prevent this unnecessary dilution of existing business.

Advisory Scan - To further improve the inspection program, this proposal also requires new car dealers to conduct advisory scans of new motor vehicles at no cost to the consumer. The advisory scan will be done using the New York Vehicle Inspection Program Computer Vehicle Inspection System (NYVIP CVIS), a computerized system that is connected to the vehicle, communicates directly with its on-

board systems and reports the results to DMV. Dealers are already required by regulation to conduct a safety inspection of a vehicle within 30 days of the sale date. Dealers will complete the scan (which takes roughly 5 minutes) at the same time. The scan, therefore, imposes a minimum burden on the dealer.

There are several benefits associated with this proposal. Vehicles are exempted from emissions inspection for the two most recent model years. Every year, as a new model year vehicle is subject to emissions testing, DMV becomes aware of communication problems relating to specific makes and models. This can cause registration renewal problems for consumers due to inspection non-compliance. This inconveniences the consumer, the dealer and DMV until a resolution can be found. The advisory scan will alert dealers and DMV to communication issues two years in advance of an actual emissions test. Two years after purchase, when the vehicle is tested for emissions, DMV will have had the opportunity to prepare the NYVIP CVIS for any communication anomalies relating to a specific make or model. Finally, the advisory scan will provide information to the dealer on the performance of certain elements of the vehicle's emission components. This may alert the dealer, and in turn the manufacturer, to possible problems prior to delivery of the vehicle.

4. Costs: a. to regulated parties: There will be no cost to State or local governments. There will be no cost to the majority of the over 9,045 current public inspection stations. The cost impact is limited to inspection stations operated by a new car dealer that do not already have a NYVIP CVIS.

Currently, an estimated 29 new car dealers (out of roughly 1,100) that are licensed as inspection stations would need to acquire a NYVIP CVIS, which costs between \$1,980.56 and \$2,973.54 (depending upon options purchased). New car dealer inspection stations that currently do not have a NVIP CVIS would also pay a fee for transmission of inspection data (currently .373 cents per inspection). No other new car dealers would be impacted.

Applicants for a new inspection station license may be placed on a waiting list if no additional stations are needed in a given county. Such applicants would be denied any revenue that would result from opening a station. However, as the number of inspections is essentially stable at approximately 10,830,000 inspections per year, existing stations will be protected by the cap and, therefore, will not be in danger of going out of business due to the influx of new stations, particularly in the NYMA.

b. Source: DMV's Office of Vehicle Safety and Clean Air.

c. Cost to vehicle registrants: There are no costs to motor vehicle registrants.

5. Local government mandates: There are no new mandates imposed upon local governments.

6. Paperwork: This proposal does not impose any new paperwork requirements.

7. Duplication: This proposed regulation does not duplicate or conflict with any State or Federal rule.

8. Alternatives: The Department consulted with 28 individuals, businesses and associations that have expressed an interest in the proposed regulation. The Department received responses from six associations: The Eastern New York Coalition of Automotive Retailers, Inc (ENYCAR), the Greater New York Automobile Dealers Association (GNYADA), the New York State Automobile Dealers Association, Inc (NYSADA), the Long Island Gasoline Retailers Association, Inc (LIGRA) and the New York State Association of Service Stations & Repair Shops, Inc (NYSASSRS). Upon review of the concerns raised by these entities, DMV did make several changes to its original draft proposal.

Several associations recommended that DMV permit an existing inspection station to move from one location without being considered a new station to preserve the investment made in the business. DMV amended its proposal to provide that DMV would accept an application for a change of location within 5 miles from any currently licensed emissions inspection station.

Several associations commented that there should be a provision for any new franchised motor vehicle dealer to be able to obtain an

inspection station license, regardless of the number of stations in the county as an inspection license may be required to obtain a franchise agreement from a manufacturer. DMV amended its proposal to provide that DMV would accept an original application or amendment (for a new location) from a registered new motor vehicle dealer.

One entity expressed concern that the franchised new car dealer inspection stations would not be transferable in the event of a sale. Currently, Part 79.7(d) provides that inspection stations are not transferable. However, DMV did revise its proposal to require acceptance of an application for an inspection station license submitted by a person who has purchased such facility from a licensee who was in good standing with DMV at the time of the sale.

The Department consulted with the Department of Environmental Conservation (DEC) about this proposal. DEC supports the proposal, because it will assist the State's efforts to remain in compliance with the Clean Air Act. DEC is responsible for demonstrating to the EPA that the State is in compliance with the Act.

One entity requested that DMV set a fixed fee for inspections. This proposal is outside the scope of this rulemaking and will be further evaluated by DMV.

Although DMV did consider a no action alternative, in light of the mandates of the Clean Air Act, DMV concluded that this proposal was necessary for full compliance with the Act.

9. Federal standards: This proposal does not duplicate a federal rule. The proposal maintains New York State's compliance with the Clean Air Act.

10. Compliance schedule: The regulation will be effective upon adoption.

Regulatory Flexibility Analysis

1. Effect of rule: There are currently 9,045 public inspections statewide that are small businesses, 3,316 of which are located in the New York Metropolitan Area (NYMA). The proposed rule would have no adverse effect on existing inspections stations. It has no impact on local governments.

2. Compliance requirements: There are no compliance requirements for existing inspection stations.

3. Professional services: This regulation would not require inspection stations to obtain new professional services.

4. Compliance costs: Currently, an estimated 29 new car dealers that are licensed as inspection stations would need to acquire a NYVIP CVIS, which costs between \$1,980.56 and \$2,973.54 (depending upon options purchased). New car dealer inspection stations that currently do not have a NVIP CVIS would also pay a fee for transmission of inspection data (currently .373 cents). No other new car dealers would be impacted.

5. Economic and technological feasibility: This proposal requires new car dealers to conduct an advisory scan of new motor vehicles at no cost to the consumer. The advisory scan will be done using the New York Vehicle Inspection Program Computer Vehicle Inspection System (NYVIP CVIS), a computerized system which is connected to the vehicle, communicates directly with its on-board systems and reports the results to DMV. As explained below, there are several benefits associated with this proposal.

Vehicles are exempted from emissions inspection for the two most recent model years. Every year, as a new model year vehicle is subject to emissions testing, DMV becomes aware of communication problems relating to specific makes and models. This inconveniences the consumer, the dealer, and DMV until a resolution can be found. This can cause registration renewal problems for the consumer due to inspection non-compliance.

The advisory scan will alert dealers and DMV to communication issues two years in advance of an actual emissions test. Two years after purchase, when the vehicle is tested for emissions, DMV will have had the opportunity to prepare the NYVIP CVIS for any communication anomalies relating to a specific make or model.

Since vehicles are exempted from emissions testing during the first two model years, they receive a "safety only" inspection during that period. As such, some safety only inspections are not recorded on the NYVIP CVIS analyzer and DMV does not receive detailed informa-

tion on the issuance of the sticker. By using the NYVIP CVIS, DMV will improve our control of inspection stickers. In addition, the dealer will have access to reports generated by the NYVIP CVIS.

Finally, the advisory scan will provide information to the dealer on the performance of certain elements of the vehicle's emission components. This may alert the dealer, and in turn the manufacturer, to possible problems prior to delivery of the vehicle. Dealers are already required by regulation to conduct a safety inspection of a vehicle within 30 days of the sale date. Dealers will complete the scan (which takes roughly 5 minutes) at the same time. The scan, therefore, imposes a minimum burden on the dealer.

6. Minimizing adverse impact: This proposal has no adverse impact on existing inspection stations or local governments. Under the proposal, however, the Department will not approve an application for an inspection station license if the cap has been reached in a given county. The Department will establish a waiting list for such applicants. If the number of stations falls below the designated maximum in a given county, the applicant who has been on the list the longest will be considered for an inspection station license.

The Department consulted with 28 individuals, businesses and associations that have expressed an interest in the proposed regulation. The Department received responses from six associations: The Eastern New York Coalition of Automotive Retailers, Inc (ENYCAR), the Greater New York Automobile Dealers Association (GNYADA), the New York State Automobile Dealers Association, Inc (NYSADA), the Long Island Gasoline Retailers Association, Inc (LIGRA) and the New York State Association of Service Stations & Repair Shops, Inc (NYSASSRS). Upon review of the concerns raised by these entities, DMV did make several changes to its original draft proposal.

Several associations recommended that DMV permit an existing inspection station to move from one location without being considered a new station. DMV amended its proposal to provide that DMV would accept an application for a change of location from any licensed emissions inspection station.

Several associations commented that there should be a provision for any new franchised motor vehicle dealer to be able to obtain certification as an inspection station, regardless of the number of stations in the county. DMV amended its proposal to provide that DMV would accept an original application or amendment (for a new location) from a registered new motor vehicle dealer.

One entity expressed concern that the franchised new car dealer inspection stations would not be transferable in the event of a sale. Currently, Part 79.7(d) provides that inspection stations are not transferable. However, DMV did revise its proposal to require DMV to accept an application for an inspection station license submitted by a person who has purchased such facility from a licensee who was in good standing with DMV at the time of the sale.

One entity requested that DMV set a fixed fee for inspections. This proposal is outside the scope of this rulemaking and will be further evaluated by DMV.

7. Small business and local government participation: The Department consulted with 28 individuals, businesses and associations that have expressed an interest in the proposed regulation. The Department received responses from six associations: The Eastern New York Coalition of Automotive Retailers, Inc (ENYCAR), the Greater New York Automobile Dealers Association (GNYADA), the New York State Automobile Dealers Association, Inc (NYSADA), the Long Island Gasoline Retailers Association, Inc (LIGRA) and the New York State Association of Service Stations & Repair Shops, Inc (NYSASSRS).

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not attached because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement is not submitted with this proposal because there is no adverse on impact on job creation or development in New York State.

The Department acknowledges that the cap on inspection stations,

particularly in the New York Metropolitan Area, will prevent a certain number of stations opening in such area. Consequently, those potential businesses will not be hiring inspectors or other necessary staff to perform the duties relevant to operating an inspection station. However, as the result of this proposal, existing inspection stations will stay in business and the likelihood of their closing or filing for bankruptcy will be diminished because the market will not be flooded with inspections stations, which are not needed to meet consumer demand. Thus, existing stations will be able to retain their current employees, which is critical during this economic downturn.

Public Service Commission

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-05-10-00007-A

Filing Date: 2011-04-20

Effective Date: 2011-04-20

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

Action taken: On 4/14/11, the PSC adopted an order approving the petition of LC White Plains Recreation, LLC to submeter electricity at 6 City Place, White Plains, New York located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of LC White Plains Recreation, LLC to submeter electricity at 6 City Place, White Plains, New York.

Substance of final rule: The Commission, on April 14, 2011 adopted an order approving the petition of LC White Plains Recreation, LLC to submeter electricity at 6 City Place, White Plains, New York located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(09-E-0767SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-34-10-00004-A

Filing Date: 2011-04-20

Effective Date: 2011-04-20

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

Action taken: On 4/14/11, the PSC adopted an order approving the petition of Henry Phipps Plaza North, Inc. to submeter electricity at 331 East 29th Street, New York, New York located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of Henry Phipps Plaza North, Inc. to submeter electricity at 331 East 29th Street, New York, New York.

Substance of final rule: The Commission, on April 14, 2011 adopted an

order approving the petition of Henry Phipps Plaza North, Inc. to submeter electricity at 331 East 29th Street, New York, New York located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(10-E-0366SA1)

NOTICE OF ADOPTION

Modifications to the Competitive Procurement Procedures Provided for in a Code of Conduct

I.D. No. PSC-41-10-00015-A

Filing Date: 2011-04-21

Effective Date: 2011-04-21

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

Action taken: On 4/14/11, the PSC adopted an order denying Iberdrola, S.A.'s request to allow its unregulated affiliates to participate in New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation's competitive procurement processes.

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

Subject: Modifications to the competitive procurement procedures provided for in a code of conduct.

Purpose: To deny Iberdrola, S.A.'s request to allow its unregulated affiliates to participate in competitive procurement processes.

Substance of final rule: The Commission, on April 14, 2011 adopted an order denying Iberdrola, S.A.'s request to allow its unregulated affiliates to participate in New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation's competitive procurement processes provided for in a code of conduct, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(07-M-0906SA5)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York State Reliability Council's Revisions to its Rules and Measurements

I.D. No. PSC-19-11-00003-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 whether to adopt, modify, or reject, in whole or in part, revisions to the rules and measurements of the New York State Reliability Council (NYSRC) contained in Version 29 of the NYSRC's Reliability Rules.

Statutory authority: Public Service Law, sections 4(1), 5(2), 65(1), 66(1), (2), (4) and (5)

Subject: New York State Reliability Council's revisions to its rules and measurements.

Purpose: To adopt revisions to various rules and measurements of the New York State Reliability Council.

Substance of proposed rule: The Public Service Commission (PSC) is considering whether to adopt, modify, or reject, in whole or in part, revisions to the rules and measurements of the New York State Reliability Council (NYSRC) contained in Version 29 of the NYSRC's Reliability Rules, which were filed with the PSC on February 23, 2011.

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.

(05-E-1180SP11)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of 16 NYCRR 88.4(a)(4), 86.3(a)(1)(iii), 86.3(b)(2), and 85.3(a)(1)

I.D. No. PSC-19-11-00004-P

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

Proposed Action: The Public Service Commission is considering a waiver of certain provisions of 16 NYCRR regarding Long Island Power Authority's application pursuant to PSL Article VII for a Certificate of Environmental Compatibility and Public Need.

Statutory authority: Public Service Law, art. 7

Subject: Waiver of 16 NYCRR 88.4(a)(4), 86.3(a)(1)(iii), 86.3(b)(2), and 85.3(a)(1).

Purpose: Waiver of 16 NYCRR 88.4(a)(4), 86.3(a)(1)(iii), 86.3(b)(2), and 85.3(a)(1).

Substance of proposed rule: In a letter dated March 28, 2011, (Case No. 11-T-0116), Long Island Power Authority (LIPA) seeks a waiver of certain application requirements. LIPA seeks a Certificate of Environmental Compatibility and Public Need, pursuant to Public Service Law (PSL) Article 7, to increase the design capacity of the existing 10.6 mile Wildwood to Riverhead Electric Transmission Line from 69 kV to 138 kV.

LIPA specifically requests waiver of the following otherwise applicable provisions of 16 NYCRR:

(1) Section 88.4(a)(4), provide the System Reliability Impact Study (SRIS) as forwarded by the New York Independent System Operator's Transmission Planning Advisory Subcommittee (TPAS) for approval by the Operating Committee.

(2) Section 86.3(a)(1)(iii), provide maps showing archeological, geological, historical, or scenic areas within three miles of the right-of-way.

(3) Section 86.3(b)(2), provide aerial photographs taken within six months of the date of filing.

(4) Section 85.3(a)(1), provide maps showing the proposed right-of-way covering an area of at least five miles on either side of the proposed facility location.

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-T-0116SP1)

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

Transition Surcharge

I.D. No. PSC-19-11-00005-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 tariff filing by Corning Natural Gas Corporation to make various changes in its rates, charges, rules and regulations contained in its Schedules for Gas Service, PSC Nos. 4 and 5—Gas.

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

Subject: Transition Surcharge.

Purpose: To eliminate the Transition Surcharge.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Corning Natural Gas Corporation (Corning or the Company) to eliminate the Company's transition surcharge from its gas tariff schedules, P.S.C. Nos. 4 and 5. The proposed filing has an effective date of July 16, 2011.

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-G-0177SP1)

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

Consider the Request of 89 Murray Street Associates LLC and 101 Warren Street Associates LLC to Submeter Electricity

I.D. No. PSC-19-11-00006-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 89 Murray Street Associates LLC and 101 Warren Street Associates LLC to amend its December 20, 2007 Order approving electric submetering.

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

Subject: To consider the request of 89 Murray Street Associates LLC and 101 Warren Street Associates LLC to submeter electricity.

Purpose: To consider the request of 89 Murray Street Associates LLC and 101 Warren Street Associates LLC to submeter electricity.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 89 Murray Street Associates LLC and 101 Warren Street Associates LLC to amend its December 20, 2007 Order approving electric submetering at 89 Murray Street and 101 Warren Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc. The petitioner is requesting a modification to the Order to discontinue provision of submetered electricity for nonpayment of electric submetered

charges after exhaustion of the required notices and protections provided through the Home Energy Fair Practices Act.

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-E-1015SP2)

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

Utility Price Reporting Requirements Related to the Commission's "Power to Choose" Website

I.D. No. PSC-19-11-00007-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 whether to grant, deny or modify, in whole or in part, a petition of the Retail Energy Supply Association concerning utility electric commodity price reporting requirements for the Commission's "Power to Choose" website.

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

Subject: Utility price reporting requirements related to the Commission's "Power to Choose" website.

Purpose: Modify the Commission's utility electric commodity price reporting requirements related to the "Power to Choose" website.

Substance of proposed rule: On March 25, 2011, the Retail Energy Supply Association (RESA) filed a petition requesting that the Public Service Commission remove utility electric commodity prices from the "Power to Choose" website. The petition states that, the Commission's Order Adopting ESCO Price Reporting Requirements and Enforcement Mechanisms, issued November 8, 2006 in cases 06-M-0647 and 98-M-1343, did not mandate utility reporting. The Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by the RESA and may also consider other 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.

(06-M-0647SP3)

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

Approval of a Plan for Mitigation of Discrimination in Favor of Affiliates of Con Edison and O&R

I.D. No. PSC-19-11-00008-P

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

Proposed Action: The Commission is considering a filing from Consolidated Edison Company of N.Y., Inc. (Con Edison) and Orange and Rockland Utilities, Inc. (O&R) requesting approval of a plan for mitigation of discrimination in favor of affiliates.

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

Subject: Approval of a plan for mitigation of discrimination in favor of affiliates of Con Edison and O&R.

Purpose: Consideration of approval of a plan for mitigation of discrimination in favor of affiliates of Con Edison and O&R.

Substance of proposed rule: The Commission is considering a filing made on April 8, 2011 by Consolidated Edison Company of New York, Inc. (Con Edison) and Orange and Rockland Utilities, Inc. (O&R) requesting approval of a plan for mitigation of discrimination in favor of affiliates of Con Edison and O&R, when Con Edison and O&R make arrangements for the interconnection to their electric delivery systems of new renewable energy production generation facilities sized at no more than 20 megawatts. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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-0182SP1)

Urban Development Corporation

EMERGENCY RULE MAKING

Downstate Revitalization Fund Program

I.D. No. UDC-19-11-00001-E

Filing No. 377

Filing Date: 2011-04-22

Effective Date: 2011-04-22

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

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

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

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

Specific reasons underlying the finding of necessity: Effective provision of economic development assistance in accordance with the enabling legislation requires the creation of the Rule. Program assistance will address the dangers to public health, safety and welfare by providing financial, project development, or other assistance for the purposes of supporting investment in distressed communities in the downstate region, and in support of such projects that focus on: encouraging business, community and technology-based development and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

Subject: Downstate Revitalization Fund Program.

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

Text of emergency rule: Part 4249

DOWNSTATE REVITALIZATION FUND PROGRAM

Section 4249.1 General

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

Section 4249.2 Definitions

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

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

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

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

Section 4249.3 Types of Assistance

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

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

(b) support for the attraction or expansion of a business including, but not limited to, those primarily engaged in activities identified as a strategic industry and minority-owned and women-owned business enterprises as defined respectively by subdivisions (c) and (f) of section nine hundred fifty-seven of the General Municipal Law and section three hundred ten of the Executive Law;

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

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

4249.4 Eligibility

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

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

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

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

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

(4) Projects authorized under this subdivision whether developed by the Corporation or a private developer, must be located in distressed com-

munities, for which there is demonstrated demand within the particular community.

(c) Program assistance is available for the following funding tracks:

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

(2) *Infrastructure Investment* The Funds will finance infrastructure investments in order to attract new businesses and expand existing businesses, thereby fostering further investment. Infrastructure investments are capital expenditures for infrastructure including transportation, water and sewer, communication, and energy generation and distribution. Infrastructure also includes the construction of parking garages. Unlike the other two Tracks, Infrastructure Investment may be used to finance planning or feasibility studies relating to capital expenditures. The Infrastructure Investment Track is appropriate only for infrastructure activity for unidentified end-users or for multiple users; infrastructure projects that will serve a single identified entity must apply for assistance under the Business Investment Track, which may be used to fund infrastructure expenses. Although projects without identified users may be funded under the Infrastructure Investment Track, preference under this Track will be given to projects with identified tenants. Job commitments: Infrastructure Investment projects that are able to provide job commitments will be viewed favorably. However, it is important to note that (1) few Infrastructure Investment projects are anticipated to be able to provide job commitments and (2) if the employer will be an entity other than the Applicant, a third party guarantee of the Applicant's job commitment must be provided by the prospective employer and that prospective employer must be found by ESDC to be creditworthy.

(3) *Downtown Redevelopment* Downtown neighborhoods - whether major commercial areas of big cities or one block stretches of village main streets - are important generators of economic activity in New York State. In an effort to strengthen these cores of commerce, the Downtown Redevelopment Track will finance rehabilitation and new construction in downtown areas statewide. Funding will be available for a range of commercial uses, including retail, office and commercial. Funding will also be available for projects that are likely to increase tourism, including hotels, cultural institutions and entertainment facilities, and streetscape improvements. This Track will not be used to finance speculative development, and therefore only projects in which 60% of the square footage has been pre-leased generally will be considered. Job commitments: Downtown Redevelopment projects that are able to provide job commitments will be viewed favorably. However, it is important to note that (1) few Downtown Redevelopment projects are anticipated to be able to provide job commitments and (2) if the employer will be an entity other than the Applicant, a third party guarantee of the Applicant's job commitment must be provided by the prospective employer and that prospective employer must be found by ESDC to be creditworthy.

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

Section 4249.5 Evaluation criteria

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

- (1) with significant private financing or matching funds through other public entities;
- (2) likely to produce a high return on public investment;
- (3) with existence of significant support from the local business community, local government, community organizations, academic institutions and other regional parties;
- (4) deemed likely to increase the community's economic and social viability;
- (5) with cost benefit analysis that demonstrates increased economic activity, sustainable job creation and investments;
- (6) located in distressed communities;
- (7) whose application is submitted by multiple entities, both public and private; or

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

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

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

Criterion	Business	Infrastructure	Downtown
Private financing leveraged	10	10	5
Public financing leveraged	5	5	5
Return on public investment	10	5	5
Increased economic activity	10	5	5
Distressed Census Tract	10	10	10
Application supported by multiple public/private entities	7	7	7
Local/regional support	3	3	3
Significant regional breadth, likely to have wide regional impact, or likely to increase the community's economic and social viability	5	5	5
Minority or Women-Owned Business Enterprise	5	5	5
Comports with identifiable regional development plans/initiatives	5	5	5
Loan v. grant	10	10	10
ESDC credit score (considers cash flow, collateral and guarantees)	10	10	10
Project readiness	5	5	5
Sustainable development	5	5	5
Reuse/remediation	5	5	5
Identified tenants	5	5	5
Potential to revitalize a downtown neighborhood	3	3	3
Consistency/preserve architectural character	2	2	2
President & CEO discretion	10	10	10
Total	110	110	110

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

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

Section 4249.6 Application and Approval Process

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

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

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

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

Section 4249.7 Confidentiality

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

Section 4249.8 Expenses

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

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

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

Section 4249.9 Affirmative action and non-discrimination

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 20, 2011.

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

Regulatory Impact Statement

1. Statutory Authority: Section 9-c of the New York State Urban Development Corporation Act Chapter 174 of the Laws of 1968, as amended (the "Act"), provides, in part, that the corporation shall, assisted by the commissioner of economic development and in consultation with the department of economic development, promulgate rules and regulations in accordance with the state administrative procedure act.

Section 12 of the Act provides that the corporation shall have the right to exercise and perform its powers and functions through one or more subsidiary corporations.

Section 16-r of the Act provides for the creation of the Downstate Revitalization Fund. The corporation is authorized, within available appropriations, to provide financial, project development, or other assistance from such fund to eligible entities as set forth in this subdivision for the purposes of supporting investment in distressed communities in the downstate region, and in support of such projects that focus on: encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

2. Legislative Objectives: Section 16-r of the Act sets forth the Legislative intent of the Downstate Revitalization Fund to provide financial assistance to eligible entities in New York with particular emphasis on: supporting investment in distressed communities in the downstate region, and

in support of projects that focus on encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation, and small business growth.

It further states such activities include but are not limited to: support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including, but not limited to, smart growth and energy efficiency initiatives, intellectual capital capacity building; support for the attraction or expansion of a business including, but not limited to, those primarily engaged in activities identified as a strategic industry and minority-owned and women-owned business enterprises as defined by subdivisions (c) and (g) of section nine hundred fifty-seven of the general municipal law; support for land acquisition and/or the construction, acquisition or expansion of buildings, machinery, and equipment associated with a project; and support for projects located in an investment zone as defined by paragraph (i) of subdivision (d) of section 957 of the general municipal law.

The Legislative intent of Section 16-r of the Act is to assist business in downstate New York in a time of need and to promote the retention and creation of jobs and investment in the region.

The adoption of 21 NYCRR Part 4249 will further these goals by setting forth the types of available assistance, evaluation criteria, application and project process and related matters for the Downstate Revitalization Fund.

3. Needs and Benefits: As envisioned, the program would focus new investments on business, community and technology-based development. While the downstate region has experienced relatively strong growth in recent years, there still remain a significant number of areas that demonstrate high levels of economic distress. As measured by the poverty rate, the Bronx, at over 30%, ranks as the poorest urban county in the U.S. Brooklyn (Kings County) continues to rank among the top ten counties with the highest poverty rates in the country (22.6%). Overall, the poverty rate in New York City is just over 20%. The Community Service Society study, *Poverty in New York City, 2004: Recovery?*, concluded that if the number of New York City residents who live in poverty resided in their own municipality, they would constitute the 5th largest city in the U.S. Beyond the New York metro area in the Hudson Valley, the poverty rate exceeds 9%. Disproportionate levels of unemployment, population and job loss have left significant areas of the downstate region with shrinking revenue bases and opportunities for economic revitalization.

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

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

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

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

(3) Downtown Redevelopment Downtown neighborhoods - whether major commercial areas of big cities or one block stretches of village main streets - are important generators of economic activity in New York State. In an effort to strengthen these cores of commerce, the Downtown

Redevelopment Track will finance rehabilitation and new construction in downtown areas statewide. Funding will be available for a range of commercial uses, including retail, office and commercial. Funding will also be available for projects that are likely to increase tourism, including hotels, cultural institutions and entertainment facilities, and streetscape improvements. This Track will not be used to finance speculative development, and therefore only projects in which 60% of the square footage has been pre-leased generally will be considered.

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

The Corporation used the Implan® regional economic analysis system to model employment and personal income multipliers for construction spending to estimate the direct, indirect and induced jobs related to the Fund amounts assumed to be devoted to capital spending on infrastructure and construction-related activity.

New York State may collect approximately \$0.66 million in personal income tax and sales tax on income spending. To estimate the personal income tax revenues generated by this spending, the Corporation assumed the tax calculation for single or married filing separately on taxable income over \$20,000, using the standard deduction and 6.85% on income over \$20,000. Sales tax was estimated on taxable disposable income earned by wage earners. The Corporation assumed that 75% of gross income is disposable income and 40% of that is taxable.

This level of capital spending (assumed to be primarily on site development, infrastructure, building rehabilitation and new construction) will provide the basis for further investment in a broad range of economic activity.

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

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

4. Costs: The 2008-2009 New York State Budget (page 884, lines 5 thru 15) allocated \$35 million to support investment in projects that would promote the revitalization of distressed areas in the downstate region. Monies were reappropriated in the 2009-2010 New York State Budget (page 760, lines 15-24) and the 2010-2011 New York State Budget (page 717, lines 18-27).

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

The Fund is funded through the issuance of Personal Income Tax bonds. In addition to the interest costs, it is expected that fees and costs associated with issuing bonds, including the Corporation's fee, underwriting, banking and legal fees, will be approximately 1.6%.

The costs to municipalities and other regulated parties involved would depend on the extent to which they participate in and support the proposed projects. For municipalities, this may involve matching funds or the commitment of other public resources for project development. Participation is voluntary and would be considered on a case-by-case basis depending on the location of the municipality involved.

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

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

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

5. Paperwork / Reporting: There are no additional reporting or paperwork requirements as a result of this rule on regulated parties. Standard applications used for most other Corporation assistance will be employed keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients. The rule provides that the Corporation may, however, require applicants to submit materials prior to submission of a formal application to determine if a proposal meets eligible criteria for Fund assistance.

6. Local Government Mandates: The Fund imposes no mandates - program, service, duty, or responsibility - upon any city, county, town, village, school district or other special district. To the contrary, the Fund offers local governments potentially enhanced resources, either directly or indirectly, to encourage economic and employment opportunities for their citizens. Participation in the program is optional; local governments who do not wish to be considered for funding do not need to apply.

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

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

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

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

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

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

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

Section 4249.2, Part (a) defines "Distressed Communities"

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

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

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

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

9. Alternatives: The Fund proposed regulations provide for a variety of potential program outcomes, by type of assistance, eligible applicants, and eligible uses.

These program criteria were informed through an extensive strategic planning process managed for Downstate ESDC by the management consultant A. T. Kearney. Their report, *Delivering on the Promise of New York State*, developed a strategy for the State to capitalize on its rich and diverse assets to encourage the growth of the Innovation Economy.

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

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

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

Regulatory Flexibility Analysis

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

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

management of companies and enterprises, and arts, entertainment and recreation.

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

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

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

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

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

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

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide financing for joint discretionary and competitive economic development projects for distressed communities. In addition the rule specifies that project evaluation criteria include significant support from the local business community, local government, community organizations, academic institutions, and other regional parties. Because this program is open to for-profit businesses confidentiality features are included in the application process.

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

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

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

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Rural Area Flexibility Analysis

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

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

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

4. Minimizing Adverse Impact: The purpose of the Downstate Revital-

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

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

Job Impact Statement

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of Downstate New York through strategic investments to support investments in distressed communities in downstate regions and to support projects that focus on encourage responsible development.

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