RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-11-00005-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in Westchester County, by adding thereto the subheading "Solid Waste Commission," and the position of øExecutive Director of Solid Waste Licensing.

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

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-11-00006-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Indigent Legal Services," by adding thereto the positions of Assistant Counsel (3) and by increasing the number of positions of Special Assistant from 1 to 2.

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

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-11-00007-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and to classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by deleting therefrom the position of øDirector, Bureau of Quality Assurance (1) and by adding thereto the position of øMental Health Program Manager 2 (1).

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

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-11-00008-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Agriculture and Markets, by adding thereto the positions of Food Laboratory Scientist (1) and Food Laboratory Scientist (Seed) (1).

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

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-11-00009-P

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

Proposed Action: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete and substitute a subheading and to delete and classify positions in exempt and non-competitive classes.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department, by deleting therefrom the subheading "Division of Parole," and the positions of Associate Counsel, Confidential Legal Assistant, Counsel, Deputy Director (3), Director of Internal Audit, Director of Policy Analysis and Information, Executive Assistant (2), Executive Director, Public Relations Officer, Secretary and Special Assistant (2) and, by deleting therefrom the heading "Department of Correctional Services," and by substituting thereto the heading "Department of Corrections and Community Supervision," and transferring all of the titles from the Department of Correctional Services to the Department of Corrections and Community Supervision and by decreasing the number of positions of Assistant Commissioner from 15 to 13 and by adding thereto the positions of Confidential Legal Assistant, Counsel, Deputy Director (2) and Director Internal Audit and by increasing the number of positions of Associate Counsel from 5 to 6, Deputy Commissioner from 5 to 6, Executive Assistant from 1 to 3, Secretary from 1 to 2 and Special Assistant from 1 to 3; and,

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department, by deleting therefrom the subheading "Division of Parole," and the positions of øAssistant Counsel (7), øAssistant Deputy Director Parole Operations (3), Assistant Parole Services Program Specialist (10), øAssistant Regional Director of Parole Operations (7), øAssistant to Director of Parole Operations (1), Hearing Officer (Parole Revocations), øInformation Security Officer (1), øParole Services Program Specialist (7), Preliminary Hearing Officer (Parole Revocation) (9), øPrincipal Hearing Officer (Parole Revocation) (1), øRegional Director of Parole Operations (5), øSecretary 2 (1), øSenior Parole Officer (Special Services) (4), Supervising Hearing Officer (Parole Revocations) (3), øSupervising Parole Officer (Special Services) (1),

øSupervising Regional Director (2) and Translator (2) and, in the Department of Correctional Services, by deleting therefrom the subheading "Institutions," and the positions of Asbestos Control Supervisor, øAssistant Counsel (1) (Clinton Correctional Facility), Assistant Music Supervisor (1), Carpenter (Trades Training Program), Clinical Physician 1, Clinical Physician 2, Clinical Physician 3, Correctional Facility Nursing Director (4), Electrician (Trades Training Program), General Mechanic (Trades Training Program), Mason and Plasterer (Trades Training Program), Motor Equipment Mechanic (Trades Training Program), Occupational Therapy Aide, Plumber and Steamfitter (Trades Training Program), Recreation Assistant (Evening Positions) (3) (Clinton Correctional Facility), Senior Meat Cutter, Teacher 1, 2, 3 and 4 (Evening Positions) and Vocational Instructor 1, 2, 3 and 4 (Evening Positions) and, by deleting therefrom the heading "Department of Correctional Services," and by substituting thereto the heading "Department of Corrections and Community Supervision," and transferring all of the titles from the Department of Correctional Services to the Department of Corrections and Community Supervision and by deleting therefrom the positions of øAssistant Counsel (half-time) (1), øDirector of Clinical Services and øInformation Security Officer (1) and by adding thereto the positions of øAssistant Deputy Director Parole Operations (2), Assistant Music Supervisor (1), Assistant Parole Services Program Specialist (10), øAssistant Regional Director Parole Operations (7), øAssistant to Director Parole Operations (1), Carpenter (Trades Training Program), øChief Information Security Officer 1 (2), Clinical Physician 1, Clinical Physician 2, Clinical Physician 3 (various facilities), Correctional Facility Nursing Director (4), Electrician (Trades Training Program), General Mechanic (Trades Training Program), Hearing Officer (Parole Revocations), Mason and Plasterer (Trades Training Program), Motor Equipment Mechanic (Trades Training Program), Occupational Therapy Aide, øParole Services Program Specialist (7), Plumber and Steamfitter (Trades Training Program), Preliminary Hearing Officer (Parole Revocation) (9), øPrincipal Hearing Officer (Parole Revocation) (1), Recreation Assistant (Evening Positions) (3) (Clinton Correctional Facility), øRegional Director Parole Operations (5), Senior Meat Cutter, øSenior Parole Officer (Special Services) (4), Supervising Hearing Officer (Parole Revocations) (3), øSupervising Parole Officer (Special Services) (1), øSupervising Regional Director (2), Teacher 1, 2, 3 and 4 (Evening Positions) and Vocational Instructor 1, 2, 3 and 4 (Evening Positions) and by increasing the number of positions of øAssistant Counsel from 1 to 10 and øSecretary 2 from 1 to 2.

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

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-11-00010-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from and to classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Audit and Control, by deleting therefrom the position of øInformation Security Officer (1) and by adding thereto the position of øChief Information Security Officer 1 (1); in the Department of Civil Service, by deleting therefrom the position of øInformation Security Officer (1) and by adding thereto the position of øChief Information Security Officer 1 (1); in the Executive Department under the subheading "Office of General Services," by deleting therefrom the position of øInformation Security Officer (1) and by adding thereto the position of øChief Information Security Officer 1 (1); in the Department of Family Assistance under the subheading "Office of Children and Family Services," by deleting therefrom the position of øInformation Security Officer (1) and by adding thereto the position of øChief Information Security Officer 1 (1); in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by deleting therefrom the position of øInformation Security Officer (1) and by adding thereto the position of øChief Information Security Officer 1 (1); in the Department of Labor under the subheading "State Insurance Fund," by deleting therefrom the position of øInformation Security Officer (1) and by adding thereto the position of øChief Information Security Officer 1 (1); in the Department of Law, by deleting therefrom the position of øInformation Security Officer (1) and by adding thereto the position of øChief Information Security Officer 1 (1); in the Department of Mental Hygiene under the subheading "Office of Mental Health," by deleting therefrom the position of øInformation Security Officer (1) and by adding thereto the position of øChief Information Security Officer 1 (1); and in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by deleting therefrom the position of øInformation Security Officer (1) and by adding thereto the position of øChief Information Security Officer 1 (1).

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

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Department of Corrections and Community Supervision

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inmate Grievance Program

I.D. No. CCS-44-11-00013-P

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

Proposed Action: Amendment of section 701.3(e)(2) of Title 7 NYCRR.

Statutory authority: Correction Law, section 139

Subject: Inmate Grievance Program.

Purpose: To clarify the existing rule by providing an additional example of a decision that is non-grievable.

Text of proposed rule: The Department of Corrections and Community Supervision amends section 701.3(e)(2) of 7 NYCRR as follows:

(e) Non-grievable issues.

(1) An individual decision or disposition of any current or subsequent program or procedure having a written appeal mechanism which extends review to outside the facility shall be considered non-grievable.

(2) An individual decision or disposition of the temporary release committee, time allowance committee, family reunion program or media review committee is not grievable. Likewise, an individual decision or disposition resulting from a disciplinary proceeding, inmate property claim (of any amount), central monitoring case review or records review (freedom of information request, expunction) is not grievable. *In addition, an individual decision or disposition of the Commissioner, or his designee, on a foreign national prisoner application for international transfer is not grievable.*

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

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

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

Regulatory Impact Statement

Statutory Authority

Section 139(2) of Correction Law assigns to the Commissioner the authority to promulgate rules and regulations establishing procedures for the fair, simple and expeditious resolution of inmate grievances as deemed appropriate, having due regard for the constitutions and laws of the United States and the State of New York. Such procedures shall include but not be limited to setting time limitations for the filing of complaints and replies thereto and for each stage of the grievance resolution process. A person aggrieved by the decision of a grievance resolution committee may apply to the commissioner for review of the decision. The commissioner or his deputy may take such action as deemed appropriate to fairly resolve the grievance to the satisfaction of all parties.

Legislative Objective

By vesting the commissioner with the rulemaking authority as stated in section 139 of Correction Law, the legislature intended the commissioner to promulgate such rules and regulations that are in the best interest of orderly institutional operations, do not conflict with any statutes of the state and provide for the most expeditious resolution of inmate grievance complaints.

Needs and Benefits

The Inmate Grievance Program (IGP) is a non-adversarial problem resolution mechanism that allows inmates to attempt to resolve their complaints through a formal process. The IGP permits an inmate to file a complaint about the substance or application of any written or unwritten policy, regulation, procedure or rule of the Department or any of its program units, or the lack of a policy, regulation, procedure or rule. Title 7 NYCRR § 701.2(a). Under the IGP, an individual decision or disposition of any program or procedure having a written appeal mechanism that extends review to outside the facility is non-grievable in accordance with section 701.3(e)(1) of 7 NYCRR. Section 701.3(e)(2) of 7 NYCRR provides examples of several programs that have procedures whereby the decisions or dispositions rendered allow for review outside the facility level.

Correction Law § 5(4) authorizes the Commissioner to convert the sentence of a person serving an indeterminate sentence, except for a person serving a sentence with a maximum term of life imprisonment, to a determinate sentence equal to two-thirds of the maximum or aggregate maximum term imposed where such conversion is necessary to make the person eligible for transfer to Federal custody for transfer to foreign countries under treaties that provide for voluntary transfers. Correction Law § 71(1-b) confers on the Commissioner, or designee, the sole and absolute authority to approve or disapprove an inmate's application for international transfer. The Commissioner has promulgated rules and regulations at Part 130 of 7 NYCRR setting forth the procedures by which an inmate may apply to be considered for transfer to a foreign nation.

There has been some confusion regarding the ability to have such decisions reviewed through the IGP. Accordingly, the Agency has decided to revise the regulation to add foreign national prisoner application for international transfer to the list of examples of non-grievable matters for the sake of clarification. Since an inmate's application for international transfer is decided by the Commissioner or designee, and the decision is, as a matter of law, within the Commissioner or designee's sole discretion, this procedure is by definition non-grievable. Therefore, this rulemaking is clarifying an existing rule by adding another example to the list of non-grievable decisions or dispositions.

Costs

a) To agency, the state and local governments: None.

b) Costs to private regulated parties: None. The proposed amendment does not apply to private parties.

c) This cost analysis takes into account that the Department already has procedures in place for the processing of foreign national prisoner applications for international transfer. The proposed change is merely clarifying an existing regulation and the end result would be to decrease inmate grievance complaints regarding this matter.

Local Government Mandates

There are no new mandates imposed upon local governments by these proposals. The proposed amendments do not apply to local governments.

Paperwork

There are no new reports, forms or paperwork that would be required as a result of amending these rules.

Duplication

These proposed amendments do not duplicate any existing State or Federal requirement.

Alternatives

No alternatives are apparent and none have been considered. The change was determined to be necessary in order to address the specificity of the subject matter.

Federal Standards

There are no apparent minimum standards of the Federal government regarding this issue.

Compliance Schedule

The Department of Corrections and Community Supervision will achieve compliance with the proposed rules immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This proposal does not require any additional job duties for staff or changes to established procedures. It simply provides clarification to an existing regulation by providing an example of another decision made outside of the facility that is non-grievable for inmates.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal does not require any additional job duties for staff or changes to established procedures. It simply provides clarification to an existing regulation by providing an example of another decision made outside of the facility that is non-grievable for inmates.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal does not require any additional job duties for staff or changes to established procedures. It simply provides clarification to an existing regulation by providing an example of another decision made outside of the facility that is non-grievable for inmates.

Education Department

EMERGENCY RULE MAKING

Duties of the Executive Deputy Commissioner

I.D. No. EDU-31-11-00007-E
Filing No. 980
Filing Date: 2011-10-18
Effective Date: 2011-10-18

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

Action taken: Amendment of section 3.8 of Title 8 NYCRR.

Statutory authority: Education Law, section 101(not subdivided)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to conform the Rules of the Board of Regents to changes made in the internal organization of the State Education Department. The proposed amendment designates the Executive Deputy Commissioner as the deputy commissioner of education as specified in Education Law section 101, who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties of the Commissioner.

The proposed amendment was adopted as an emergency action at the July 2011 Regents meeting, effective July 19, 2011. The proposed rule has now been adopted as a permanent rule at the October 17-18, 2011 Regents meeting. Pursuant to the State Administrative Procedure Act, the earliest the permanent rule may become effective is after its publication in the State Register on November 2, 2011. Since the July 2011 emergency adoption will expire on October 16, 2011, 90 days after its filing with the Department of State on July 19, 2011, there would be a lapse in the rule's effectiveness. Another emergency adoption is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the July 2011 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

Subject: Duties of the Executive Deputy Commissioner.

Purpose: Designate Executive Deputy Commissioner as Deputy Commissioner of Education under Education Law section 101.

Text of emergency rule: Subdivision (b) of section 3.8 of the Rules of the Board of Regents is amended, effective October 18, 2011, as follows:

(b) The [senior deputy commissioner for p-12 education] *executive deputy commissioner* shall be the deputy commissioner of education as specified in section 101 of the Education Law. In the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, *the executive deputy commissioner* [such senior deputy commissioner] shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by statute and by rule of the Regents.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-31-11-00007-EP, Issue of August 3, 2011. The emergency rule will expire December 16, 2011.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 101 of the Education Law designates the Board of Regents as the head of the State Education Department and the Commissioner of Education as Chief administrative officer. The statute provides that the Regents may also appoint and, at pleasure, remove a deputy commissioner of education, who shall perform such duties as the Regents may assign by rule and who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties conferred or imposed on the Commissioner by the Education Law.

LEGISLATIVE OBJECTIVES:

Consistent with the authority granted to the Board of Regents pursuant to Education Law section 101, the proposed amendment designates the State Education Department's Executive Deputy Commissioner as the deputy commissioner of education as specified in Education Law section 101: ''. . . who shall perform such duties as the regents may assign to him by rule and who, in the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by this chapter.''

NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Rules of the Board of Regents to changes made in the internal organization of the State Education Department, relating to the designation of the Executive Deputy Commissioner as the deputy commissioner of education specified in Education Law section 101, who shall exercise the duties of the Commissioner of Education in his absence or disability, or when a vacancy exists in the office of Commissioner.

COSTS:

(a) Costs to State: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

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

The proposed amendment is necessary to conform the Rules of the Board of Regents to changes in the internal organization of the State Education Department, and will not impose any costs on the State, local government, private regulated parties or the regulating agency.

PAPERWORK:

The proposed amendment does not impose any reporting or other paperwork requirements.

LOCAL GOVERNMENT MANDATES:

The proposed amendment relates solely to the internal administration of the State Education Department and does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

DUPLICATION:

The proposed amendment relates solely to the internal administration of the State Education Department. There are no relevant statutes, rules or other legal requirements of the State and Federal governments, including those which may duplicate, overlap or conflict with the rule.

ALTERNATIVES:

The proposed amendment is necessary to conform the Rules of the Board of Regents to changes in the internal organization of the State Education Department, relating to the designation of the Executive Deputy Commissioner as the deputy commissioner of education specified in Education Law section 101, who shall exercise the duties of the Commissioner of Education in his absence or disability, or when a vacancy exists in the office of Commissioner. There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no applicable standards of the Federal government for the subject area of the proposed amendment, which relates solely to the internal administration of the State Education Department.

COMPLIANCE SCHEDULE:

The proposed amendment relates solely to the internal administration of the State Education Department and does not impose any compliance requirements on any regulated parties.

Regulatory Flexibility Analysis

The proposed amendment relates solely to the internal organization of the State Education Department and does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses

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

Rural Area Flexibility Analysis

The proposed amendment relates solely to the internal organization of the State Education Department and does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on public and private sector interests in rural areas. Because it is evident from the nature of the proposed amendment that it does not affect such interests, no further steps were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment relates solely to the internal organization of the State Education Department and will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that no substantial impact will occur, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Duties of the Executive Deputy Commissioner

I.D. No. EDU-31-11-00007-A

Filing No. 981

Filing Date: 2011-10-18

Effective Date: 2011-11-02

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

Action taken: Amendment of section 3.8 of Title 8 NYCRR.

Statutory authority: Education Law, section 101(not subdivided)

Subject: Duties of the Executive Deputy Commissioner.

Purpose: To designate the Executive Deputy Commissioner as Deputy Commissioner of Education pursuant to Education Law section 101.

Text or summary was published in the August 3, 2011 issue of the Register, I.D. No. EDU-31-11-00007-EP.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content

I.D. No. HLT-39-11-00012-E

Filing No. 974

Filing Date: 2011-10-13

Effective Date: 2011-10-13

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

Action taken: Amendment of Part 59 of Title 10 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 1194(4)(c) and 1198(6); and Environmental Conservation Law, section 11-1205(6)

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

Specific reasons underlying the finding of necessity: This amendment to Part 59 is being filed as an emergency action because immediate adoption is necessary to avoid a conflict between Part 59 as it currently exists and an emergency action filed by the Division of Probation and Correctional Alternatives (DPCA) to implement Chapter 496 of the Laws of 2009 (Leandra's Law). This law mandates use of ignition interlock devices for all individuals sentenced for Driving While Intoxicated (DWI) misdemeanor or felony offenses, and is expected to result in more widespread use of ignition interlock devices. Since the Department of Health will continue to set standards for and certify devices to make them eligible for use in NYS, the Department has a vested interest in ensuring success of this initiative. Leandra's Law also greatly expanded DPCA's role in ignition interlock oversight, and DPCA has incorporated certain regulatory provisions that are in existing Part 59 in its new Title 9 NYCCR Part 358, consistent with DPCA's mandate for oversight of the installation, use and servicing of ignition interlock devices. If this amendment to Part 59 does not become effective contemporaneously with DPCA's Part 358, a seamless transfer of responsibility would not take place, and regulated parties would be exposed to contradictory requirements, leading to confusion and non-compliance. It is also noteworthy that the timely transfer of responsibility between agencies ensures that statutory deadlines for implementing an important statewide public safety initiative are met.

In addition, this amendment would enable law enforcement agencies to use breath alcohol testing devices identified in the recently published March 11, 2010 list of devices approved by the federal National Highway Traffic Safety Administration. Existing Part 59 references a 2007 list and must be updated now that a new list is available. The federal and State lists of approved breath testing devices need be identical to avoid legal challenges and preclude inadmissibility of evidence, and to ensure effective enforcement of the law against driving while intoxicated.

Subject: Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content.

Purpose: Update technical standards for blood and breath alcohol testing conducted by law enforcement.

Substance of emergency rule: This proposed amendment to Part 59 updates standards, reflects changes in nomenclature and technology, and provides clarification of provisions pertinent to alcohol determinations of breath, blood and other body fluids, and certification of ignition interlock devices used for enforcement of Vehicle and Traffic Law.

The Section 59.1 definition for the term techniques and methods is amended to include saliva, which itself is defined in a new subdivision (k). The definition of testing laboratory is revised to clarify the Department's requirements. A definition for calibration is added. Section 59.2 is modified to introduce current terminology, specifically blood alcohol concentration (BAC). The rule clarifies that urine may be used as a specimen, and its analysis requires controls and blanks similar to those used for analyses of blood. This amendment removes the list of persons authorized to draw blood and eliminates technical specifications not required for analytical accuracy. Section 59.2 is further modified to revise the acceptable range for the alcohol reference standard used for calibration verification of instruments for both breath and blood analysis. This section and others now provide for a 0.08 grams/100 ml (w/v) reference standard. This proposal also requires that units for alcohol determinations of blood and urine be expressed as blood alcohol concentration (BAC), meaning percent weight per volume, rather than the outdated terminology of grams percent.

Section 59.3 is modified in several places to address saliva as a potential specimen. The proficiency testing performance criteria for renewal of a permit for the chemical analysis of blood, urine and saliva are clarified. ''Competence'' is replaced with ''proficiency'' throughout the section. In Section 59.4, outdated NYS-specific criteria for breath testing instruments are replaced with documentation that the model has been accepted by the U.S. Department of Transportation/National Highway Traffic Safety Administration (NHTSA) as an evidential breath alcohol measurement device. The proposed amendment includes the list of NHTSA-approved breath measurement instruments published in the Federal Register on March 11, 2010 to remove any possible ambiguity about the fact that devices listed therein, including the Alcotest 9510 manufactured by Draeger Safety, Inc., are fully approved by the Department of Health. The training agencies' responsibilities for instrument maintenance, including the establishment of a calibration cycle, and records retention are clarified.

The Section 59.5 two-hour time frame for specimen collection is eliminated, and the requirement for certain techniques and methods to be a component of each training agency's curriculum and to be put to use by the analyst is clarified. The requirement for observation of a subject prior to collection of a breath sample has been clarified. Minor technical changes have been made to Section 59.6.

This proposal would reduce the hours spent in initial training for a breath analyst permit as specified in Section 59.7, from 32 hours required to 24 hours, and require training agencies to develop learning objectives. The minimum time for hands-on training with breath analysis instruments is reduced from ten to six hours. Revised Section 59.7 establishes an ap-

plication window of 120 calendar days preceding the permit's expiration date. The Section also clarifies that a permit expires and is void when not renewed, but that the Commissioner of Health may extend the permit expiration date for 30 calendar days, during which period the permit remains valid. The amendment makes clear that failure to renew in accordance with time frames established in the regulation results in the permit becoming void, which then requires the analyst to participate in the 24-hour initial/comprehensive training course. Section 59.7, as revised, requires training agencies to submit information on training sessions and participant lists to the Department of Health in a format designated by the Commissioner.

Section 59.9, as amended, provides for an effective period of four years for technical supervisor certification, an increase of two years. The responsibilities of a technical supervisor have been modified to reflect current practice. Notably, the duty to conduct field inspections has been eliminated, as has the responsibility to provide expert testimony, since the recognition of expertise is a role of the court. Revised Section 59.9 clarifies that a technical supervisor may delegate certain tasks, including instrument maintenance and preparation of chemicals used in testing, to a person not qualified as a supervisor, provided the work product is reviewed and found acceptable. A new sentence at the end of the section codifies long-standing Department policy that suspension or revocation of an operator's permit held by a supervisor triggers suspension or revocation of the person's certification as a technical supervisor.

Existing Sections 59.10 and 59.11 are repealed, and replaced with two new sections that provide criteria, respectively, for certification for ignition interlock devices and for testing of such devices by independent laboratories. The existing reference to a seven-county pilot study of ignition interlock devices is removed, and outdated performance standards for devices are replaced with NHTSA standards. Existing provisions for the application process, manufacturer interaction with testing laboratories, and discontinuance of certification remain in effect. New Section 59.10 requires the manufacturer to provide contact information, including identification of a person to respond to Department inquiries, and requires the manufacturer to furnish a certificate stating that the company issuing the requisite liability coverage will notify the Department at least 30 days prior to cancellation of the policy before the expiration date. Section 59.10 also makes clear the Department's requirement that the manufacturer must demonstrate, through arrangements with a testing laboratory, that the device meets the NHTSA model specifications when calibrated to a set point of 0.025% BAC; and stipulates that only devices that employ fuel cell technology or another technology with demonstrated comparable accuracy and specificity are eligible for certification.

New Section 59.11 specifies the minimal elements of a testing laboratory report and requires such report to be submitted directly to the Department. In both new sections, a reference to ''circumvention'' has been added with each occurrence of the word ''tampering,'' to recognize that these are both prohibited in Vehicle and Traffic Law Section 1198.

Existing Section 59.12 is repealed. New Section 59.12 establishes requirements for continued ignition interlock certification. New Section 59.12 requires a manufacturer to notify the Department of any operational modification to a certified device, and to obtain express approval for its continued use, as modified, under the existing certification. The definition of operational modification and the process for reporting modifications has been moved from Section 59.10 to Section 59.12. A new requirement is added that the manufacturer notify the Department of each renewal of insurance coverage, each change of issuing company, and each change in liability limits. The section requires manufacturers to supply to installation/service providers a sufficient number of labels with text that conforms to the text mandated by statute. The vast majority of the section's other requirements, including reporting and labeling requirements and manufacturer-service provider interactions, have been eliminated from Section 59.12; most have been incorporated into a new 9 NYCRR Part 358 being promulgated by the Division of Probation and Correctional Alternatives (DPCA) contemporaneously with this regulation in response to the anticipated August 2010 implementation of the ignition interlock provisions of Leandra's Law (L. 2009, Ch. 496). New Section 59.12 establishes a process for periodic renewal to ensure that information on file with the Department is current. The application form has been removed from the regulation, as it will be available electronically.

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. HLT-39-11-00012-P, Issue of September 28, 2011. The emergency rule will expire December 11, 2011.

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

Summary of Regulatory Impact Statement

Statutory Authority:

The New York State (NYS) Vehicle and Traffic Law, Section 1194(4)(c), and Department of Environmental Conservation Law, Section 11-1205(6), authorize the Commissioner of Health to adopt regulations concerning methods of testing breath and body fluids for alcohol content. NYS Vehicle and Traffic Law, Section 1198(6) authorizes the Commissioner of Health to promulgate regulations setting standards for use of ignition interlock devices.

Legislative Objectives:

This amendment is consistent with the legislative objective of ensuring effective enforcement of laws against driving while intoxicated (DWI). This proposal is consistent with Chapter 669 of the Laws of 2007, which authorized statewide use of ignition interlock devices, and Chapter 496 of the Laws of 2009 (Leandra's Law), which mandates that every person sentenced for any DWI offense, must have an ignition interlock device installed as a requirement for conditional discharge or probation.

Needs and Benefits:

Part 59 establishes standards for chemical tests on blood, breath, and urine for the presence of alcohol, for purposes of detecting unacceptable levels of alcohol in persons. Courts rely on Part 59 provisions daily in adjudicating alcohol-related offenses; the State's correctional alternatives program relies on effective operation of ignition interlock devices to prevent repeat offenders from driving while impaired by alcohol. The existing regulation must be updated, as it is inconsistent with existing DWI statutes, as well as current and anticipated usage of ignition interlock devices.

The specificity of Section 59.2 standards for collecting, handling and analyzing a specimen for blood alcohol analysis has prevented convictions even though the defendant was driving while intoxicated. This amendment would delete the list of persons authorized to draw blood, as the listing could present a legal conflict with similar provisions in Vehicle and Traffic Law Section 1194(4)(a) and Public Health Law Section 3703. This amendment would eliminate technical specifications for the collection of blood within a two-hour timeframe, and use of a clean and sterile syringe and anticoagulant, and require that alcohol units be expressed as blood alcohol concentration, rather than the outdated terminology of grams percent. The reference standard for calibration verification of breath and blood analysis instruments has been changed to a standard greater than or equal to 0.08 grams/100 ml, consistent with the Vehicle and Traffic Law provision that sets 0.08% weight per volume (w/v) alcohol in blood as the threshold for certain DWI sanctions. The amendment describes criteria for revocation or nonrenewal of a blood alcohol analysis permit based on unsuccessful proficiency testing (PT) performance or failure to participate in PT challenges.

Section 59.4 affords training agencies the flexibility of establishing retention times for records, as these may vary by record type and potential use in a legal proceeding; delegation of recordkeeping activities is authorized. Section 59.4, as revised, stipulates the commissioner's approval of breath measurement devices for use in NYS provided the device has been accepted by the National Highway Traffic Safety Administration (NHTSA). The revised section includes the list of NHTSA-approved breath measurement instruments published in the Federal Register on March 11, 2010 to remove any possible ambiguity about the fact that devices listed therein, including the Alcotest 9510 manufactured by Draeger Safety Inc., are fully approved by the Department of Health. The requirement in Section 59.5 for conducting breath analysis within two hours of arrest or a positive breath alcohol screening test has been removed. The requisite for test subject observation prior to testing has been clarified, as the existing provision for continuous observation carries the risk of unintended and unnecessarily specific interpretation, thus jeopardizing successful DWI prosecution. The reference to operational checklists, which are no longer used, has been eliminated. The requirement for certain techniques and methods to be a component of each training agency's curriculum and to be put into use by analysts is clarified.

This proposal would reduce from 32 to 24 hours the time trainees must spend in initial training. The reduction from 10 to six hours in hands-on use of instruments is reasonable given the decreasing complexity of instrumentation overall, and the trend towards use of one device model within a jurisdiction. Training agencies would be required to identify learning objectives and design examinations in keeping with objectives. The outdated term equilibrators has been deleted, as breath analyzers no longer need to counter a matrix effect from use of simulator solutions. As modified, the rule requires retraining to renew a BTO permit take place via a course designed to refresh applicants' recall of formal training material, such as including mechanisms to assess proficiency and measure retained knowledge. The proposal stipulates that retraining must occur within the 120 days prior to permit expiration, to eliminate overlap within the two-year BTO cycle. This amendment would afford, at the Commissioner's discretion, a 30-day extension in permit expiration date, in an ef-

fort to avoid the potential legal dilemma of administrative permit lapses due to paperwork processing delays. Operators whose permits are voided are required to participate successfully in another initial certification course before a new BTO permit may be issued, to demonstrate that recall and competency have been maintained.

The effective period for a technical supervisor's certification has been increased from two to four years. Supervisor responsibilities have been detailed; and supervisors are permitted to delegate certain tasks, provided they review the work product to ensure the designee's performance meets expectations. A reference to field inspection of instruments by supervisors has been modified to reflect the current practice of remote calibration checks. Provision of expert testimony has also been deleted from the list of supervisor's responsibilities, since the process of qualifying subject matter experts rests with the court.

Existing Section 59.10 is repealed. New Section 59.10 retains many existing ignition interlock certification criteria, rearranged for ease of comprehension. The reference to a seven-county pilot study for ignition interlock devices has been eliminated, as Chapter 669 of the Laws of 2007 amended the Vehicle and Traffic Law to expand the study into a statewide program. New Section 59.10 requires the manufacturer to identify a person to respond to Department inquiries, and requires the manufacturer to furnish a certificate stating that the company issuing the requisite liability coverage will notify the Department at least 30 days prior to cancelling a policy before the expiration date. New Section 59.10 also makes clear that the manufacturer must demonstrate, through arrangements with a testing laboratory, that the device meets the NHTSA model specifications when calibrated to a set point of 0.025% BAC; and stipulates that only devices that employ fuel cell technology or another technology with demonstrated comparable accuracy and specificity are eligible for certification, thus ensuring deployment of state-of-the-art equipment.

Existing Section 59.11 is repealed. New Section 59.11 replaces New York State-specific criteria for certification of interlock devices with NHTSA standards, as the NYS standards, codified in 1990, are less encompassing than federal standards. Submission of testing agency credentials with each application for device approval is no longer required. New Section 59.11 details requirements for certification of the testing laboratory, the laboratory's responsibilities in the device approval process, and the minimum components of a testing laboratory report. In both new Section 59.10 and 59.11 a reference to ''circumvention'' has been added with each occurrence of the word ''tampering,'' to recognize that these are distinct Vehicle and Traffic Law violations.

Existing Section 59.12 is repealed. New Section 59.12 establishes requirements for continued ignition interlock certification. New Section 59.12 requires a manufacturer to notify the Department of any operational modification to a certified device, and to obtain approval for continued use, as modified, under the existing certification. The definition of operational modification and the process for reporting modifications has been moved to Section 59.12. The amendment codifies a currently implicit requirement that manufacturers notify the Department of changes to insurance coverage. The text required for the warning label is revised to conform to the text mandated by statute. The section requires the manufacturers to supply a sufficient number of labels to installation/service providers. The vast majority of the section's other requirements, including reporting and labeling requirements and manufacturer-service provider interactions, have been eliminated from Section 59.12; most have been incorporated into a new 9 NYCRR Part 358 being promulgated by the Division of Probation and Correctional Alternatives (DPCA) to implement the ignition interlock provisions of Leandra's Law. New Section 59.12 establishes a process for periodic renewal to ensure that information on file with the Department is current. The application form for device certification has been removed from the regulation, and will be available electronically.

COSTS:

Costs to Private Regulated Parties:

The requirements of this regulation applicable to ignition interlock manufacturers and installation/service providers impose no new costs on these private regulated parties. The newly codified requirement that manufacturers notify the Department of changes to insurance coverage may be accomplished electronically at no cost to the manufacturer. The renewal of certification form/attestation may be electronically submitted.

Costs to State Government:

Affected State agencies other than the Department of Health, i.e., the State Police, the Division of Criminal Justice Services (DCJS), and DPCA, would incur minimal additional costs as a result of adoption of this amendment, as the amendment relaxes, clarifies or codifies practices already implemented. The State Police and DCJS, as training agencies, may realize cost savings from the proposed reduced duration of the breath analyst certification course, from 32 to 24 hours.

Costs to Local Government:

The Nassau County, Suffolk County and New York City Police Departments, which are local-government training agencies, would incur either no to minimal additional costs as a result of this amendment's adoption, as the amendment relaxes, clarifies or codifies processes already in place. These training agencies may realize cost savings from the proposed reduced duration of the breath analyst certification course, from 32 to 24 hours, which represents one full day that officers need not be absent from the work pool.

Prosecutorial units of local government may experience cost savings resulting from this amendment's deletion of specific requirements for specimen collection that, historically, have been challenged successfully by defense attorneys.

Costs to the Department of Health:

Adoption of this regulation would impose minimal additional costs on the Department. Implementation of a renewal process for the six manufacturers that currently hold ignition interlock certifications will use existing resources and result in minimal additional work load. Regulated parties will be provided with the text of the final adopted rule by electronic mail.

Local Government Mandates:

This regulation does not impose any new mandate on any county, city, town, village, school district, fire district or other special district.

Paperwork:

The proposal to extend, from two to four years, the effective period of breath analyzer supervisor permits will reduce paperwork, as will deletion of the requirement for quarterly reporting to multiple agencies of ignition interlock use data. This amendment's emphasis on learning goals rather than course structure would allow for paperwork reduction, as recertification courses would be adaptable to online distance learning modules. Manufacturers are encouraged to utilize electronic means of communication for required notifications and certificate renewals.

Duplication:

Part 59 as amended would be consistent with, but not duplicate, federal standards for approval of breath alcohol evidentiary devices as promulgated by the NHTSA.

Alternative Approaches:

At the present time, there are no acceptable alternatives to pursuing adoption of the amendment as written. The major stakeholders have reached agreement that inability to move forward with the changes as proposed would likely impede DWI enforcement and prosecutorial activities in NYS. The clarifications and updates in this amendment are required to keep the regulation current with law enforcement practices and changes to laws governing ignition interlock programs and evidence-gathering protocols related to DWI prosecutions, as well as technological advances in the devices themselves.

Federal Standards:

The proposed rule does not exceed any minimum standards of the federal government; it references sources for information on federally approved devices, and is consistent with federal standards for ignition interlock and breathalyzer device approval.

Compliance Schedule:

Regulated parties should be able to comply with these regulations effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

No Regulatory Flexibility Analysis is required pursuant to Section 202-b(3)(b) of the State Administrative Procedure Act. The proposed amendment does not impose any adverse economic impact on small businesses or local governments, and does not impose reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

No Rural Area Flexibility Analysis is required pursuant to Section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose any adverse impact on facilities in rural areas, and does not impose any reporting, recordkeeping or other compliance requirements on regulated parties in rural areas.

Job Impact Statement

A Job Impact Statement is not required because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs and employment opportunities.

EMERGENCY RULE MAKING

Amendment to Limitations of Operating Certificates

I.D. No. HLT-44-11-00003-E

Filing No. 973

Filing Date: 2011-10-13

Effective Date: 2011-10-13

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

Action taken: Amendment of section 401.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)(a)

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

Specific reasons underlying the finding of necessity: The amendment to 10 NYCRR 401.2(b) will give the Commissioner the ability to safeguard the health and welfare of residents of areas affected by emergency situations by permitting operators of health care facilities licensed pursuant to Public Health Law Article 28 (''facilities'') to resume or continue operations at temporary sites.

Recent weather events have required the temporary evacuation of facilities in the New York metropolitan area and relocation of facilities in Broome and Tioga Counties due to flooding. Section 401.2(a) of Title 10 allows operators to temporarily exceed the bed capacities stated on their facilities' operating certificates, which, during the recent emergencies, has allowed operators of facilities impacted by those weather events to transfer their patients or residents to other facilities temporarily. This was effective in the New York metropolitan area due to the availability of adequate space in surrounding facilities and due to the lack of any significant damage to the evacuated facilities. In Broome and Tioga Counties, however, the heavy flooding caused lasting damage to facilities, thereby threatening patients' access to health care in clinic space and requiring residents of nursing homes to be moved to space in other nursing homes in the area.

Because section 401.2(b) of Title 10 currently limits an operator's operating certificate to the site of operation set forth in the operating certificate, an operator of an impacted facility is not able to care for its patients or residents at any other site until the Commissioner has approved a certificate of need application for the relocation of the facility. In Broome County, a hospital filed applications to relocate some of its extension clinics, but a more expedient process could have better mitigated issues of access to health care. Residents of flooded nursing homes have been cared for in other local nursing homes that had adequate space due to the recent decertification of beds in that area. Although an application to relocate one of the flooded nursing home is expected, currently, nursing homes in Broome County are now at capacity and are unable to accept hospital patients who need to be discharged to nursing home level of care. The number of such patients has been steadily increasing.

This amendment to 10 NYCRR 401.2(b) is necessary now to allow appropriate arrangements by operators of affected facilities in a manner that will not adversely impact the ability of hospitals in Broome County to properly discharge patients to area nursing homes. The amendment is also necessary to ensure access to appropriate health care for patients or residents during the next time of emergency.

Subject: Amendment to Limitations of Operating Certificates.

Purpose: To allow PHL Article 28 facilities to operate at sites not designated on their operating certificate during an emergency.

Text of emergency rule: Section 401.2 is amended to read as follows:

401.2 Limitations of operating certificates. Operating certificates are issued to established operators subject to the following limitations and conditions:

(a) The medical facility shall control admission and discharge of patients or residents to assure that occupancy shall not exceed the bed capacity specified in the operating certificate, except that a hospital may temporarily exceed such capacity in an emergency.

(b) An operating certificate shall be used only by the established operator for the designated site of operation, *except that the commissioner may permit the established operator to operate at an alternate or additional site approved by the commissioner on a temporary basis in an emergency.* [provided that an] *An* operating certificate issued for a facility approved to provide:

(1) chronic renal dialysis services shall also encompass the provision of such services to patients at home;

(2) comprehensive outpatient rehabilitation facility (CORF) services shall also encompass the provision of the following services offsite: physical therapy, occupational therapy, speech pathology and in addition, home visits to evaluate the home environment in relation to the patient's established treatment goals; and

(3) outpatient physical therapy, occupational therapy and/or speech-language pathology services shall also encompass the provision of home visits to evaluate the home environment in relation to the patient's established treatment goals.

(c) An operating certificate shall be posted conspicuously at the designated site of operation.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire January 10, 2012.

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in section 2803(2)(a)(v) of the Public Health Law, which authorizes the Public Health and Health Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, that define standards and procedures relating to hospital operating certificates.

Legislative Objective:

The regulatory objective of this authority is to permit the Commissioner of the Department of Health to ensure access to health care in communities where a crisis has prevented or limited an existing local health care facility operator from operating at the site designated on its operating certificate.

Needs and Benefits:

This amendment would give the Commissioner the ability to safeguard the health and welfare of residents of areas affected by emergency situations by permitting operators of health care facilities to resume operations at temporary sites. Under the existing regulation, the Commissioner has no authority to permit an operator to operate its health care facility at any site other than that designated on the operating certificate. In the event all or part of a facility cannot be used due to circumstances related to an emergency such as a natural disaster or a fire, this amendment would permit the Commissioner to act quickly to ensure that the patients or residents of the operator are temporarily served at an alternate or additional site appropriate under the circumstances. The operator of the affected facility would be able to continue to meet the needs of its patients or residents at a safe and appropriate alternate or additional site pending the repair, replacement or relocation of the designated site of operation.

COSTS:

Costs for the Implementation of, and Continuing Compliance with this Regulation to Regulated Entity:

None. The ability to receive revenue through continued operations during the temporary relocation would be a benefit to the regulated entity.

Cost to the Department of Health:

There will be no costs to the Department.

Local Government Mandates:

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

Paperwork:

This amendment will increase the paperwork for providers only to the extent required by the temporary relocation of their operations.

Duplication:

This regulation does not duplicate, overlap or conflict with any other state or federal law or regulations.

Alternatives:

No alternatives were considered, as § 401.2 (b) presents the only barrier to allowing a health care facility operator to operate at a site not designated on its operating certificate.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The proposed amendment will become effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

No impact on small businesses or local governments is expected.

Compliance Requirements:

This amendment does not impose new reporting, record keeping or other compliance requirements on small businesses or local governments.

Professional Services:

No new professional services are required as a result of this proposed action.

Compliance Costs:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Economic and Technological Feasibility:

This amendment does not impose any new financial or technical burdens upon regulated entities.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Small Business Participation:

Any operator of a hospital as defined under Article 28 of the Public Health Law, regardless of size, may need to operate its facility at another or additional location in an emergency. This amendment would allow it to do so.

No Amelioration or Cure Period Necessary:

This amendment does not involve the establishment or modification of a violation or of penalties associated with a violation. It merely gives

operators of hospitals as defined under Article 28 of the Public Health Law the ability to temporarily operate at sites not designated on their operating certificates in times of emergency. Therefore, as no new penalty could be imposed as a result of this amendment, no cure period was included.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

This rule will apply to all operators of hospitals as defined under Article 28 of the Public Health Law. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

No new reporting, recordkeeping or other compliance requirements and professional are needed in a rural area to comply with the proposed rule.

Compliance Costs:

There are no direct costs associated with compliance.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Rural Area Participation:

Any operator of a hospital as defined under Article 28 of the Public Health Law, including those in rural areas, may need to operate its facility at another location in an emergency. This amendment would allow it to do so.

Job Impact Statement

Nature of Impact:

It is not anticipated that there will be any impact of this rule on jobs or employment opportunities.

Categories and Numbers Affected:

This rule will apply to all operators of hospitals as defined under Article 28 of the Public Health Law.

Regions of Adverse Impact:

This rule will apply to operators of hospitals as defined under Article 28 of the Public Health Law in all regions within the State, but it will have no adverse impact on those operators or their employees.

Minimizing Adverse Impact:

The rule would not impose any additional requirements upon regulated entities, and therefore there would be no adverse impact on jobs or employment opportunities.

Self-Employment Opportunities:

The rule is expected to have no impact on self-employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

HIV/AIDS Testing, Reporting and Confidentiality of HIV Related Information

I.D. No. HLT-44-11-00021-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 63 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2786 and 2139

Subject: HIV/AIDS Testing, Reporting and Confidentiality of HIV Related Information.

Purpose: To increase HIV Testing and to promote HIV positive persons entering into treatment.

Substance of proposed rule (Full text is posted at the following State website:www.health.state.ny.us): Effective September 1, 2010, Chapter 308 of the Laws of 2010 authorized significant changes in HIV testing in New York State. This law was enacted to increase HIV testing in the State and promote HIV-positive persons entering into treatment. Implementing this legislation is critical, since approximately 20 percent of HIV-positive New Yorkers are unaware of their infection status and 33 percent of persons newly identified with HIV are diagnosed with AIDS within one year.

Key provisions of the legislation and the proposed regulatory changes include:

- HIV testing must be offered to all persons between the ages of 13 and 64 receiving hospital or primary care services, with limited exceptions noted in the law. The offering must be made to inpatients; persons seeking services in emergency departments; persons receiving primary care as an outpatient at a clinic; or from a physician, physician assistant, nurse practitioner or midwife.
- Standardized model forms for obtaining informed consent and providing for disclosure will be developed by the New York State Department of Health and posted on the Department website.
- Consent for HIV testing can be part of a general durable consent to medical care, though specific opt out language for HIV testing must be included.
- Consent for rapid HIV testing can be oral and noted in the medical record, except within correctional facilities.
- Prior to being asked to consent to HIV testing, patients must be provided the seven points of information about HIV required by the Public Health Law.
- Health care and other HIV test providers authorizing HIV testing must arrange an appointment for medical care for persons confirmed positive.
- HIV test requisition forms submitted to laboratories will be simplified.
- Deceased, comatose or persons otherwise incapable of providing consent, and who are the source of an occupational exposure, may now be tested for HIV in certain circumstances without consent.
- Confidential HIV information may be released without a written statement prohibiting re-disclosure when routine disclosures are made to treating providers or to health insurers to obtain payment.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for this regulation is contained in Public Health Law (PHL) Article 21, Title III, Sections 2130(1); 2135; and 2139: and Article 27-F Sections 2780(4); 2781; 2781-a; 2782(1); 2782(5)(a); and 2786(1) to be consistent with and in conjunction with implementing Chapter 308 of the Laws of 2010, the HIV Testing Law. PHL Section 2786 authorizes the Commissioner of Health to promulgate rules and regulations concerning implementation of Article 27-F for health facilities, health care providers, and other persons to whom this article is applicable. Section 2786 further authorizes the Commissioner to develop standardized model forms for informed consent for HIV testing, for the release of confidential HIV-related information, and materials for pre-test and post-test counseling. The Commissioner is also authorized to promulgate regulations, in consultation with the AIDS Advisory Council, to identify significant risk of contracting or transmitting HIV infection provided, however, that such regulations not be determinative of any significant risk of contracting or transmitting risk determined pursuant to paragraph (a) of subdivision 4 of Section 2782 or Section 2785 of Article 27-F. The commissioner is also authorized by PHL Section 2139 to promulgate rules and regulations as shall be necessary and proper to effectuate HIV reporting.

Legislative Objectives:

In enacting Chapter 308 of the Laws of 2010, the Legislature found that mandating a broad range of health facilities and practitioners to offer HIV diagnostic testing to adolescent and adult patients and streamlining consent, counseling, and information handling practices were important for addressing the ongoing challenge of the HIV epidemic. The legislative objective of the amendments contained in this law is to encourage HIV testing among a broad range of persons as a means of identifying HIV-infected persons as early as possible in the course of their infection and to link them into care. Chapter 308 maintains the informed consent requirement for HIV testing and protection of confidential HIV-related information while removing numerous barriers that are inherent in a broad-based mandated offer of screening. Chapter 308 allows for enhanced use of patient specific and non-patient specific HIV information to improve patient medical care and to assess co-morbidity or completeness of reporting and to direct program needs.

Needs and Benefits:

According to the federal Centers for Disease Control and Prevention (CDC) at the end of 2006, an estimated 1,106,400 persons (range: 1,056,400 - 1,156,400) in the United States were living with HIV. CDC estimates that 56,300 new HIV infections occurred in the United States in 2006. Each year, approximately 16-22 million persons in the United States are tested for HIV, with 2 million of those persons being New Yorkers.

By 2002, an estimated 38%-44% of all adults had been tested nationally for HIV. In 2009, approximately half of all New Yorkers age 18 to 64 reported having ever been tested; however, one-third of persons newly diagnosed with HIV were identified so late in the course of their infection they progressed to AIDS within one year. At the end 2006, approximately 1 in 5 of persons nationally with HIV (21%, or 232,700 persons) did not know they were infected.

In September 2006, CDC released Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care

Settings. These recommendations, which replaced CDC's 1993 Recommendations for HIV Testing Services for Inpatients and Outpatients in Acute-Care Hospital Settings, advise routine HIV screening of adults, adolescents, and pregnant women in health care settings in the United States. They also recommend reducing barriers to HIV testing. People who are infected with HIV but not aware of it are not able to take advantage of the therapies that can keep them healthy and extend their lives, nor do they have the knowledge to protect their sex or drug-use partners from becoming infected. Knowing whether one is positive or negative for HIV confers great benefits in health-related decision making.

Cohort studies have demonstrated that many infected persons decrease behaviors that transmit infection to sex or needle-sharing partners once they are aware of their positive HIV status. HIV-infected persons who are unaware of their infection tend to continue their high risk behaviors, therefore increasing the likelihood of transmitting HIV to partners. Medical treatment lowers HIV viral load and reduces risk for transmission to others, and early referral to medical care can prevent HIV transmission in communities and reduce a person's risk for HIV-related illness and death.

Chapter 308 of the Laws of 2010 brings New York State closely into alignment with CDC's 2006 recommendations while reducing barriers to HIV testing. Chapter 308 eases current written consent requirements by providing an option for a durable written general consent that specifically includes HIV testing, or a documented oral consent when the test being ordered is a rapid HIV test. Chapter 308 also makes a corresponding technical change to the law requiring that the Commissioner develop forms to be used for informed consent purposes. Specifically, Chapter 308 designates such forms as ''standardized model'' forms, and providers no longer need to obtain prior authorization for the use of alternative forms that contain information consistent with the standardized model forms. Similarly, Chapter 308 removes the requirement that physicians confirm to laboratories that informed consent has been obtained before ordering HIV-related testing.

Previously, state law required post-test counseling which was the same regardless of the test's results. This legislation requires that counseling be tailored based on whether the HIV test indicates infection. Counseling for positive results will remain consistent with existing law with a requirement added to make an appointment for the infected person to receive follow-up HIV medical care. For negative results, education will emphasize risks associated with participating in high risk behavior and may be accomplished by oral or written reference to information previously provided. Interactive counseling for HIV negatives is no longer necessary.

Chapter 308 also requires physicians to report HIV data obtained through laboratory tests conducted in conjunction with periodic monitoring of HIV infection, which will enable NYS DOH to monitor the spread of HIV/AIDS and to target program initiatives. This provision reflects the availability of data from HIV tests which was not available when Article 21, Title III and Article27-F were originally enacted. Chapter 308 makes similar technical changes to various provisions of law to update references to testing in accordance with newer testing technologies. In addition, Chapter 308 protects individuals who are at risk of acquiring HIV infection due to an occupational exposure by permitting anonymous HIV testing if the source patient is incapable of providing consent.

Finally, Chapter 308 changed confidentiality provisions, first by allowing limited access to confidential HIV information to the executor or administrator of an estate when needed by such persons to fulfill their responsibilities. Second, under the previous law, disclosure of HIV-related information had to be accompanied by a written statement regarding confidentiality and re-disclosure. It is appropriate to exempt from these requirements routine disclosures of information which are made to providers for purposes of treatment and to third party payers for reimbursement purposes.

Costs:

Chapter 308 of the Laws of 2010 created the requirements for the mandated offer of HIV testing for persons between the ages of 13 and 64 and other activities addressed in recommended revisions to Part 63. The proposed regulations add no further costs. The Department took steps in constructing the regulations to incorporate suggestions from regulated parties to minimize the financial burden. It is estimated that the implementation and administration of other requirements of this rule will not impose any costs upon this agency, New York State, or its local governments.

The law and proposed regulations can actually decrease long term costs. By increasing access to HIV testing and requiring a referral to care for HIV infected persons, there is the potential to lower individual and community level exposure to HIV, and also to potentially intervene at an earlier stage of disease (HIV vs. AIDS). Earlier medical intervention may lessen the degree of medical care therefore potentially decreasing costs (HIV treatment vs. AIDS treatment).

The costs associated with Chapter 308 mainly include offering tests to all persons between the ages of 13 and 64 receiving primary care in county operated sites, screening those that accept testing, and linking those found to be positive to HIV medical care. HIV testing can cost between $10 for a rapid screening test and up to $100 for confirmatory for the 1 out of 100 persons on average who have a preliminary positive test and need to have it confirmed with a western blot test. Early identification of HIV reduces medical costs for the identified person who can be treated with medicine rather than in-patient hospital stays and more expensive medical treatment. The infected person can also be educated how not to pass the virus to others. Each new case averted saves $367,134 in projected lifetime medical costs of an HIV infection. Neither the law nor the regulations require additional data reporting.

This rule mitigates costs by streamlining the consent process from a counseling model to one that can be accomplished by the provision of information in written, oral or electronic form. Consent can be obtained orally when a rapid test is being used and written consent can be incorporated into a facilities general medical consent. Similarly, post-test counseling has been eliminated as a requirement except in those instances in which a person is diagnosed with HIV.

Local Government Mandates:

This rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district other than those required under Chapter 308 of the Laws of 2010 for any entity operating a general hospital or providing primary care. The major mandate of the law is the required offer of HIV testing to all persons between the ages of 13 and 64 who are receiving primary care services. County clinics providing primary care must comply with the requirement to offer HIV testing. Similar to other entities covered under the law, steps were taken in drafting the regulations to minimize the impact by streamlining consent, pre-test, and post-test negative practices. Chapter 308 mandates an appointment for HIV medical care be made with any new positive identified. Posted to the NYSDOH website is contact information for Designated AIDS Centers across the state at which such appointments can be made.

Paperwork:

This rule imposes no new reporting requirements, forms, or other paperwork upon regulated parties.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

Alternatives:

The regulations were developed after considerable input from the community, provider groups, and regulated parties. All day regional meetings were held in Buffalo, Syracuse, Albany and New York City that had over 400 in-person participants, with others connected through telephone conference calls. Input was also elicited from the Healthcare Association of New York State, Greater New York Hospital Association, New York State Academy of Family Physicians, Medical Society of the State of New York, New York City Department of Health and Mental Hygiene, New York State Association of County Health Officials, Community Health Care Association of New York State, New York State AIDS Advisory Council, and the New York State HIV Prevention Planning Group. Alternative approaches were considered with a number of these already being reflected in the Department's publicly available materials for implementation of Chapter 308, as well as in the proposed regulations.

Examples of alternative approaches the Department has included in the proposed regulations include allowing pre-test information to be provided by oral, written, or electronic means. Similarly, negative test results and negative post-test information can be provided by mail, phone, or electronic means as long as the patient's confidentiality is protected. Previously, these would have involved potentially time consuming in-person interactions, which in settings such as emergency rooms are not feasible.

Federal Standards:

The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

Compliance Schedule:

Chapter 308 of the Laws of 2010 had an effective date of September 1, 2010 for all provisions relating to regulated parties. The Department has continued to assist affected entities in compliance efforts.

Regulatory Flexibility Analysis

Effect of Rule:

Chapter 308 of the Laws of 2010 will impact the existing sixty two local governments. This includes New York City and the fifty-seven counties outside of New York City. Also impacted would be all health care facilities with fewer than 100 employees that use certain licensed professionals to provide primary care such as private medical practices, community health centers, urgent care clinics, employee health services, retail health clinics, and student health services. Chapter 308 requires that all physicians, physician assistants, nurse practitioners, and midwives providing primary care make the offer of HIV testing, and the regulations clarify the mandate is in force regardless of the setting in which primary care is being provided.

Compliance Requirements:

This rule imposes no mandates upon any small business or local government except for those required under Chapter 308 of the Laws of 2010 for any entity operating a general hospital or providing primary care. A major mandate of the law is the required offer of HIV testing to all persons between the ages of 13 and 64 who are receiving primary care services. County clinics providing primary care must comply with the requirement to offer HIV testing. Similar to other entities covered under the law, steps were taken in drafting the regulations to minimize the impact by streamlining consent, pre-test, and post-test negative practices. Chapter 308 mandates an appointment for HIV medical care be made with any new positive identified. Posted to the NYSDOH website is contact information for Designated AIDS Centers across the state at which such appointments can be made.

Professional Services:

The Law does not require any significant changes to existing professional services.

Compliance Costs:

There are no capital costs incurred as a result of this Law. Costs associated with the implementation of this Law may be offset (to some degree) with existing grant and/or State funding. These funding sources include (a) Federal (Ryan White and Centers for Disease Control) and (b) State (Medicaid). Some small businesses may be directly impacted by now, under Chapter 308, having to offer and conduct HIV testing, a service they may not have offered in the past. While the state as a whole may benefit from the early detection of previously undiagnosed cases of HIV in terms of overall treatment cost savings, the individual small business will not directly participate in the benefits.

Economic and Technological Feasibility:

New York State Department of Health provides technical assistance to impacted providers regarding economic and technological feasibility. Providers covered under the law are by definition offering primary care services to patients, and most are providing HIV testing already. For those that must newly add screening services required by Chapter 308, rapid test technology is available that is reasonably priced (approximately $15 per test) and CLIA waived as a point of care device. Additional costs would be incurred in cases of persons testing positive by a rapid screening test (on average 1 in 100). Other point of care specimen collection devices are available for confirming results if the provider does not have phlebotomy capacity.

Minimizing Adverse Impact:

Chapter 308 of the Law of 2010 is intended to ease the compliance requirement of HIV Testing providers through, (a) a streamlined consent process, (b) the delivery of post-test negative test results through a variety of approaches including electronic mail, postal mail or phone.

The regulations were developed after considerable input from the community, provider groups, and regulated parties. All day regional meetings were held in Buffalo, Syracuse, Albany and New York City that had over 400 in-person participants, with others connected through telephone conference calls. Input was also elicited from the Healthcare Association of New York State, Greater New York Hospital Association, New York State Academy of Family Physicians, Medical Society of the State of New York, New York City Department of Health and Mental Hygiene, New York State Association of County Health Officials, Community Health Care Association of New York State, New York State AIDS Advisory Council, and the New York State HIV Prevention Planning Group. Alternative approaches were considered with a number of these already being reflected in the Department's publicly available materials for implementation of Chapter 308, as well as in the proposed regulations.

Examples of alternative approaches the Department has included in the proposed regulations include allowing pre-test information to be provided by oral, written, or electronic means. Similarly, negative test results and post-test information can be provided by mail, phone, or electronic means as long as the patient's confidentiality is protected. Previously, these would have involved potentially time consuming in-person interactions, which in setting such as emergency rooms are not feasible.

Small Business and Local Government Participation:

Small businesses and local governments had the opportunity to participate in the rule making process through (a) a series of New York statewide stakeholder meetings, (b) participation in regional meeting updates with New York State Association of County Health Officials (c) individual local government technical assistance provided by electronic mail, phone and in person as requested, and (d) discussions with the Academy of Family Physicians, the Greater New York Hospital Association, and the Healthcare Association of New York State. Groups have generally acknowledged that the Department has taken substantial steps to accommodate the legitimate concerns of providers by streamlining processes and not creating new requirements for data collection or reporting.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Chapter 308 of the Laws of 2010 is a statewide mandate including rural and urban counties. This would include any general hospital or provider of primary care. The proposed regulations do not expand the type of facilities to which the law applies, but do clarify that the mandated offer of HIV must be made by any physician, physician assistant, nurse practitioner or midwife providing primary care regardless of setting.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

This rule imposes no mandates upon entities in rural areas except those required under the law for any entity operating a general hospital or providing primary care. The major mandates of the law are the required offer of HIV testing to all persons between the ages of 13 and 64 who are receiving primary care services. Steps were taken in drafting the regulations to minimize the impact by streamlining consent, pre-test, and post-test negative practices. Chapter 308 mandates an appointment for HIV medical care be made with any new positive identified. Posted to the NYSDOH website is contact information for Designated AIDS Centers across the state at which such appointments can be made.

Costs:

There are no capital costs associated with Chapter 308 of the Laws of 2010. Costs associated with the implementation of this Law may be offset (to some degree) with existing grant and/or State funding. These funding sources include (a) Federal (Ryan White and Centers for Disease Control) and (b) State (Medicaid). HIV testing and counseling are covered benefits in Medicaid managed care, Family Health Plus and Medicaid fee-for-service. Some entities in rural areas may be directly impacted by now, under Chapter 308, having to offer and conduct HIV testing, a service they may not have offered in the past. While the state as a whole may benefit from the early detection of previously undiagnosed cases of HIV in terms of overall treatment cost savings, the individual small business will not directly participate in the benefits.

Minimizing Adverse Impact:

There are no capital costs associated with Chapter 308 of the Laws of 2010. Costs associated with the implementation of this Law may be offset (to some degree) with existing grant and/or State funding. These funding sources include (a) Federal (Ryan White and Centers for Disease Control) and (b) State (Medicaid). HIV testing and counseling are covered benefits in Medicaid managed care, Family Health Plus and Medicaid fee-for-service.

The regulations were developed after considerable input from the community, provider groups, and regulated parties. All day regional meetings were held in Buffalo, Syracuse, Albany and New York City that had over 400 in-person participants, with others connected through telephone conference calls. Input was also elicited from the Healthcare Association of New York State, Greater New York Hospital Association, New York State Academy of Family Physicians, Medical Society of the State of New York, New York City Department of Health and Mental Hygiene, New York State Association of County Health Officials, Community Health Care Association of New York State, New York State AIDS Advisory Council, New York State HIV Prevention Planning Group. Alternative approaches were considered with a number of these already being reflected in the Department's publicly available materials for implementation of Chapter 308, as well as in the proposed regulations.

Examples of alternative approaches the Department has included in the proposed regulations include allowing pre-test information to be provided by oral, written, or electronic means. Similarly, negative test results and post-test information can be provided by mail, phone, or electronic means as long as the patient's confidentiality is protected. Previously, these would have involved potentially time consuming in-person interactions, which in setting such as emergency rooms are not feasible.

Rural Area Participation:

Rural area participation was available through (a) New York State Department of Health statewide stakeholder meetings, (b) an ongoing mechanism for email inquiries and (c) individual technical assistance available through electronic mail, phone or in person as requested.

Job Impact Statement

Nature of Impact:

There is no anticipated loss of jobs due to the implementation of Chapter 308 of the Laws of 2010.

Categories and Numbers Affected:

The requirement for the offering of HIV testing applies to persons receiving inpatient or emergency department services at hospitals and persons receiving primary care services through hospital outpatient clinics, diagnostic and treatment centers, and persons receiving primary care services from physicians, physician assistants, nurse practitioners and midwives.

Regions of Adverse Impact:

An adverse impact is not anticipated in any region of the state due to the implementation of Chapter 308 of the Laws of 2010.

Minimizing Adverse Impact:

Not applicable.

Self-Employment Opportunities:
Not applicable.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Managed Care Organizations (MCOs)

I.D. No. HLT-44-11-00022-P

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

Proposed Action: Amendment of section 98-1.11 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 4403(2)

Subject: Managed Care Organizations (MCOs).

Purpose: To specify approval standards for asset transfers or loans proposed by MCOs.

Text of proposed rule: Subdivision (b) of section 98-1.11 is amended to read as follows:

(b) No funds [the aggregate of which involves five percent or more of the MCO's admitted assets at last year-end] shall be transferred or loaned from the MCO article 44 business to any other business, function or contractor of the MCO, or to any subsidiary or member of the MCO's holding company system *or to any member or stockholder* [over the course of a single calendar year,] without the prior approval of the commissioner and, except in the case of a PHSP, HIV SNP, [or] PCPCP[,] *or MLTC,* the superintendent. Repayment of any such approved loans, to the extent required, shall be made in accordance with schedules approved by the superintendent and commissioner. *Any such transfers or loans shall require a certification by the MCO that such transfer or loan is in compliance with and does not violate any provision of any applicable law or regulation.*

(1) No such transfer or loan shall be approved if the net worth of the MCO after the transfer or loan would fall below 12.5 percent of its annual net premium income, and all such transfers and loans must be accompanied by projections submitted by the MCO showing that its net worth shall continue to meet or exceed 12.5 percent of annual net premium income for two calendar years following the transfer or loan.

(2) Notwithstanding the provisions of paragraph (1) of this subdivision, no such proposed transfer or loan made by any MCO that received seventy-five percent or more of its net premium income from the New York State Medicaid, Family Health Plus, and Child Health Plus programs during the last calendar year shall be approved if the net worth of the MCO after such transfer or loan would fall below 15 percent of its annual net premium revenue, and all such transfers and loans must be accompanied by projections submitted by the MCO showing that its net worth shall continue to meet or exceed 15 percent of annual net premium revenue for two calendar years following the transfer or loan. In order to ensure the availability of quality health services for an enrolled population, the commissioner may waive the provisions of this paragraph should the proposed transfer of funds or loan be used to purchase a controlling interest, or a substantial portion of the assets, of a MCO certified to operate under Article 44 of the Public Health Law.

Subdivision (e) of section 98-1.11 is amended to read as follows:

(e)(1) Except for a PCPCP, a certified operating MCO, or an MCO that is initially commencing operations, shall maintain a reserve, to be designated as the contingent reserve [which must be equal to five percent of its annual net premium income].

(i) The contingent reserve for an HMO, PHSP or HIV SNP shall be equal to and shall not exceed:

[(i)] *(a)* 5 percent of net premium income for the first calendar year subsequent to the effective date of this Subpart;

[(ii)] *(b)* 6.5 percent of net premium income for the second calendar year subsequent;

[(iii)] *(c)* 7.5 percent of net premium income for the third calendar year subsequent;

[(iv)] *(d)* 8.5 percent of net premium income for the fourth calendar year subsequent;

[(v)] *(e)* 9.5 percent of net premium income for the fifth calendar year subsequent;

[(vi)] *(f)* 10.5 percent of net premium income for the sixth calendar year subsequent;

[(vii)] *(g)* 11.5 percent of net premium income for the seventh calendar year subsequent;

[(viii)] *(h)* 12.5 percent of net premium income for calendar years thereafter.

(ii) Notwithstanding the provisions of subparagraph (i) above, the contingent reserve applicable to net premium income generated from the Medicaid managed care, Family Health Plus and HIV SNP programs shall be:

(a) 7.25 percent of net premium income for 2011;
(b) 7.25 percent of net premium income for 2012;
(c) 8.25 percent of net premium income for 2013;
(d) 9.25 percent of net premium income for 2014;
(e) 10.25 percent of net premium income for 2015;
(f) 11.25 percent of net premium income for 2016;
(g) 12.25 percent of net premium income for 2017;
(h) 12.5 percent of net premium income for calendar years after 2017.

The provisions of this subparagraph shall not apply to HMOs and PHSPs beginning operations in 2011 or after.

(iii) Upon an HMO, PHSP or HIV SNP reaching its maximum contingent reserve of 12.5 percent of its net premium income for a calendar year, it must continue to maintain its contingent reserve at this level thereafter. Such contingent reserve requirement shall be deemed to have been met if the net worth of the HMO, PHSP or HIV SNP, based upon admitted assets, equals or exceeds the applicable contingent reserve requirement for such calendar year.

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

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

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

Regulatory Impact Statement

Statutory Authority:

Public Health Law section 4403(2) states the Commissioner may adopt and amend rules and regulations pursuant to the state administrative procedures act to effectuate the purposes and provisions of Article 44, which governs the certification and operational requirements of Managed Care Organizations (MCOs).

Legislative Objectives:

10 NYCRR 98 was extensively amended in 2005 to further implement the provisions of Article 44 of the Public Health Law. The proposed amendments to § 98-1.11(b) and § 98-1.11(e) specify criteria to be used to evaluate requests for approval of asset transfers and loans proposed by MCOs and allows implementation of certain provisions of the SFY 2012 budget and the Medicaid Redesign Team Proposal #6 by temporarily reducing the contingent reserve requirements applied to premium revenues from the Medicaid Managed Care (MMC), Family Health Plus (FHP) and HIV Special Needs Plan (SNP) programs.

Needs and Benefits:

§ 98-1.11(b) - Current regulation requires that the Department of Health (DOH) and State Insurance Department (SID), as applicable, must approve any asset transfers or loans of 5% or more of the MCOs admitted assets but fails to stipulate the criteria for approving such transactions. Both agencies follow a policy of approving a transfer or loan only when the net worth of the plan after the transaction would be equal to or greater than 12.5% of annual premium revenue, or 5% for Managed Long Term Care (MLTC) plans. The 12.5% threshold was selected to coincide with the maximum contingent reserve established under § 98-1.11(e)(1), which begins at 5% of premium revenue and increase by 1% per year until the maximum12.5% standard is reached. The revision to § 98-1.11(b) establishes this criteria for approval in regulation, applies the same criteria to all plans, including MLTC plans, and requires approval for any asset transfer or loan rather than only those that exceed 5% of admitted assets.

The revised regulation also establishes a higher standard for approval of asset transfers or loans made by MCOs that receive 75% or more of their annual premium revenue from managed care programs sponsored by NYS: Medicaid, Family Health Plus and Child Health Plus. The regulation would allow approval of asset transfers or loans only if the net worth of the MCO after the transaction would be equal to or greater than 15% of annual premium revenue. The Commissioner would have the authority, however, to waive the latter provision when the purpose of the asset transfer or loan is for the purchase of another MCO or a controlling interest thereof, that the Commissioner finds is in the public interest.

MCOs would also be required to submit financial projections showing that their net worth would continue to meet or exceed 12.5% or 15% of premium revenue, as applicable, for two calendar years following the transfer or loan.

§ 98-1.11(e) - The approved SFY 2012 NYS Budget incorporates a proposal from the Medicaid Redesign Team that reduces the allocation of surplus in the premium rates of MMC, FHP and HIV SNP managed care plans from 3% to 1% effective April 1, 2011, resulting in savings to the Medicaid program of approximately $188 million (federal and state shares combined). The actuarial firm employed by DOH, Mercer Consulting,

which must certify the actuarial soundness of the premium rates to CMS, has determined the reduction in surplus allocation will require the lowering of the contingent reserve requirement specified in § 98-1.11(e)(1) from the current 10.5% to 7.25% of premium revenue in order to maintain the actuarial soundness of the premium rates. The revision to 98-1.11(e) will allow DOH to reduce the surplus allocation in the mainstream Medicaid and FHP, and HIV SNP premium rates and allow Mercer to certify the actuarial soundness of the premium rates to CMS.

Costs:

The amended regulation imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Health Department or by the MCOs.

Local Government Mandates:

The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

Paperwork:

Paperwork associated with filings to DOH or SID should be minimal and would be no more substantial than the current regulation.

Duplication:

These regulations do not duplicate, overlap, or conflict with existing State and federal regulations.

Alternatives:

There were minimal alternative standards considered. Revisions to § 98-1.11(b) in part codifies current policy in evaluating requests for approval for asset transfers or loans. Removal of the 5% threshold before approval is required for asset transfers or loans is consistent with the desire of DOH and SID to ensure MCO financial reserve levels do not fall below regulatory requirements via unregulated financial transactions.

Revisions to § 98-1.11(e) are needed to implement provisions of SFY 2012 budget.

Federal Standards:

The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

Compliance Schedule:

Revisions to § 98-1.11(b) would apply to MCOs immediately upon adoption. Revisions to § 98-1.11(e) would be retroactive to January 1, 2011, once adopted.

Regulatory Flexibility Analysis

Effect of Rule:

Companies affected by the proposed regulation include all MCOs certified under Article 44 of the Public Health Law. Inasmuch as most of these companies are not independently owned and operated and employ more than 100 individuals, they do not fall within the definition of ''small business'' found in section 102(8) of the State Administrative Procedure Act. No local governments will be affected.

Compliance Requirements:

The amended regulation would not impose additional reporting, recordkeeping or other requirements on small businesses or local governments since the provisions contained therein apply only to MCOs authorized to do business in New York State and regulated by the NYS Health and Insurance Departments.

Professional Services:

There are no professional services that will need to be provided by small businesses or local government as a result of the amended regulation.

Compliance Costs:

The amended regulation would not impose any new reporting, recordkeeping or other requirements on small businesses or local governments.

Economic and Technological Feasibility:

There are no compliance requirements for small businesses or local governments.

Minimizing Adverse Impacts:

The amendment will have no adverse impact on small businesses or local governments since the provisions contained therein apply only to regulated MCOs authorized to do business in New York State.

Small Business and Local Government Participation:

As the amendments have no impact on small businesses or local governments, no input was sought from these entities.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

Companies affected by the proposed regulation include all Managed Care Organizations (MCOs) certified under Article 44 of the Public Health law. The companies affected by this regulation do business in certain ''rural areas'' as defined under section 102(1) of the State Administrative Procedure Act, although none do so exclusively or have a significant portion of their business in rural areas. Some of the home offices of these companies may lie within rural areas. Further, companies may establish new office facilities and/or relocate in the future depending on their requirements and needs.

Reporting, Recordkeeping and Other Compliance Requirements:

None of the compliance requirements are significantly different from requirements presently contained in Part 98 and none pertain exclusively to rural areas. The amendments should not impose any significant additional paperwork, recordkeeping or compliance requirements upon any regulated party.

Costs:

The amended regulation imposes no additional compliance costs on MCOs or state and local governments.

Minimizing Adverse Impact:

The proposed regulation applies to all MCOs certified under Article 44 to do business in New York State, including rural areas. It does not impose any adverse impacts unique to rural areas.

Rural Area Participation:

In developing the amended regulation, the Health Department conducted outreach to regulated managed care organizations authorized to do business throughout New York State, including those located or domiciled in rural areas.

Job Impact Statement

Nature of Impact:

The Health Department finds that these amendments will have no adverse impact on jobs and employment opportunities.

Categories and Numbers Affected:

Not Applicable.

Regions of Adverse Impact:

No region in New York should experience an adverse impact on jobs and employment opportunities.

Minimizing Adverse Impact:

The Health Department finds that these amendments will have no adverse impact on jobs and employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Potentially Preventable Negative Outcomes

I.D. No. HLT-44-11-00023-P

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

Proposed Action: Addition of section 86-1.42 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-c(35)

Subject: Potentially Preventable Negative Outcomes.

Purpose: Denies additional reimbursement for hospital acquired conditions.

Text of proposed rule: Pursuant to the authority vested in the Commissioner of Health by section 2807-c(35) of the Public Health Law, Subpart 86-1 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended, by adding a new section 86-1.42, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

86-1.42 Potentially preventable negative outcomes.

(a) Effective for discharges occurring on or after July 1, 2011, payments pursuant to this Subpart shall be denied with regard to the following potentially preventable negative outcomes if they are acquired during a patient's inpatient stay at the hospital seeking such payments:

(1) A foreign object retained within a patient's body after surgery.

(2) The development of an air embolism within a patient's body.

(3) A patient blood transfusion with incompatible blood.

(4) A patient's development of stage III or stage IV pressure ulcers.

(5) Patient injuries resulting from accidental falls and other trauma, including, but not limited to:

i. Fractures
ii. Dislocations
iii. Intracranial injuries
iv. Crushing injuries
v. Burns
vi. Electronic shock

(6) A patient's manifestations of poor glycemic control, including, but not limited to:

i. Diabetic ketoacidosis
ii. Nonketotic hyperosmolar coma
iii. Hypoglycemic coma
iv. Secondary diabetes with ketoacidosis
v. Secondary diabetes with hyperosmolarity

(7) A patient's development of a catheter-associated urinary tract infection.

(8) A patient's development of a vascular catheter-associated infection.

(9) A patient's development of a surgical site infection following:

i. a coronary artery bypass graft - mediastinitis;

ii. bariatric surgery, including, but not limited to, laparoscopic gastric bypass, gastroenterostomy, and laparoscopic gastric restrictive surgery; or

iii. orthopedic procedures, including, but not limited to, such procedures performed on the spine, neck, shoulder and elbow.

(10) A patient's development of deep vein thrombosis or a pulmonary embolism in connection with a total knee replacement or a hip replacement, excluding pediatric patients, defined as patients under eighteen years of age, and also excluding obstetric patients, defined as patients with at least one primary or secondary diagnosis code that includes an indication of pregnancy.

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

The requirement to deny reimbursement for hospital acquired conditions, which are avoidable hospital complications and medical errors that are identifiable, preventable, and serious in their consequences to patients, is set forth in section 2807-c(35)(b)(v) of the Public Health Law, as amended by section 35-a of Part H of Chapter 59 of the Laws of 2011. Further, section III(a) of Part H of Chapter 59 of the Laws of 2011 permits such regulations to be implemented retroactively.

Legislative Objectives:

The Legislature chose to address the issue of patient safety and quality of care through this proposal, which denies reimbursement for hospital acquired conditions. The proposal is also the result of a federal requirement and recommendations submitted by the Medicaid Redesign Team.

Needs and Benefits:

The Patient Protection & Affordable Care Act (HR 3590) requirement, effective on or after July 1, 2011, mandates states to implement a policy for Medicaid that prohibits federal payments for any costs of providing medical assistance for hospital acquired conditions (HACs). This proposal appropriately implements those requirements. HACs are conditions deemed to be reasonably preventable in accordance with evidence-based guidelines. Healthcare providers, patients and payers are all adversely impacted by the occurrence of HACs.

This proposal offers more direct and accountable reimbursement of healthcare services, thereby incentivizing providers to improve quality and provide higher valued healthcare for Medicaid beneficiaries.

COSTS:

Costs to State Government:

Section 2807-c(35)(b)(v) of the Public Health Law requires that the rates of payment for hospital inpatient services do not include, for APR-DRG assignment purposes, any conditions as a secondary diagnosis that were not present on admission and are therefore deemed a HAC. Since less than 0.1% of total Medicaid discharges (2009 data) were found to include a HAC, the denial in reimbursement results in an insignificant decrease in aggregate Medicaid payments.

Costs of Local Government:

There will be no additional cost to local governments as a result of these amendments.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this amendment.

Local Government Mandates:

The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

There is no additional paperwork required of providers as a result of this amendment.

Duplication:

These regulations do not duplicate existing State and federal regulations.

Alternatives:

No significant alternatives are available. New York State is required by federal regulations to implement a policy, and the Department is required by the Public Health Law sections 2807-c(35)(b)(v) to promulgate implementing regulations.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

Section 86-1.42 requires reimbursement for hospital acquired conditions, which are avoidable hospital complications and medical errors that are identifiable, preventable, and serious in their consequences, to be denied effective on or after July 1, 2011; there is no period of time necessary for regulated parties to achieve compliance.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, seven hospitals were identified as employing fewer than 100 employees.

Health care providers subject to the provisions of this regulation under section 2807-c(35)(b)(v) of the Public Health Law will not be reimbursed for any cost associated with the ten identified categories of hospital acquired conditions. Using 2009 Medicaid data, a total of 728 HACs were identified, accounting for less than 0.1% of total Medicaid discharges.

This rule will have no direct effect on local governments.

Compliance Requirements:

No new reporting, recordkeeping or other compliance requirements are being imposed as a result of these rules. Affected health care providers will bill Medicaid using procedure codes and ICD-9 codes approved by the American Medical Association, as is currently required. The rule should have no direct effect on local governments.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor will there be an annual cost of compliance. As a result of this proposal there will be a minimal decrease in hospital Medicaid revenues for hospital inpatient services that include HACs.

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are technologically feasible because it requires the use of existing technology. The overall economic impact to comply with the requirements of this regulation is expected to be minimal.

Minimizing Adverse Impact:

The proposed amendments reflect statutory intent and requirements.

Small Business and Local Government Participation:

Hospital associations participated in discussions and contributed comments through the State's Medicaid Redesign Team process regarding these changes.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 43 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida

Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:
No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of this proposal.
Professional Services:
No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.
Compliance Costs:
No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.
Minimizing Adverse Impact:
The proposed amendments reflect statutory intent and requirements.
Rural Area Participation:
This amendment is the result of federal requirement, effective on or after July 1, 2011, that requires states to implement a policy for Medicaid that prohibits federal payments for any costs of providing medical assistance for hospital acquired conditions (HACs).

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rules, that they will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulations establish quality-related measures pertaining to the reimbursement for hospital acquired conditions. The proposed regulations have no implications for job opportunities.

Division of Housing and Community Renewal

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

The Regulations Govern the Implementation of the Rent Stabilization Laws

I.D. No. HCR-44-11-00014-P

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

Proposed Action: This is a consensus rule making to amend sections 2500.2(m), (n)(1), 2500.9(I)(1), 2520.6(n), (o)(1), 2520.11(i)(1) and 2522.5(g)(1) of Title 9 NYCRR.

Statutory authority: L. 1974, ch. 576, section 10a; NYC Admin. Code, section 26-511(b), as recodified by L. 1985, ch. 907, section 1 (formerly section YY51-6.1[a] as added by L. 1985, ch. 888, section 8); Public Housing Law, section 14(4)

Subject: The regulations govern the implementation of the Rent Stabilization Laws.

Purpose: To comply with the Marriage Equality Act.

Text of proposed rule: 9 NYCRR § 2500.2 (m) Immediate family. A *spouse* [husband, wife], son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the owner.

(n) Family member.

(1) A *spouse* [husband, wife], son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the tenant; or [the rest of the subsection remains the same]

9 NYCRR § 2500.9(i) nonhousekeeping, furnished housing accommodations, located within a single dwelling unit not used as a rooming or boarding house, but only if:

(1) no more than two tenants for whom rent is paid (*spouses* [husband and wife] being considered one tenant for this purpose), not members of the landlord's immediate family, live in such dwelling unit; and [the rest of the subsection remains the same]

9 NYCRR § 2520.6(n) Immediate family. A *spouse* [husband, wife], son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the owner.

(o) Family member. (1) A *spouse* [husband, wife], son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the tenant or permanent tenant. [the rest of the subsection remains the same]

9 NYCRR § 2520.11(i)(1) nonhousekeeping, furnished housing accommodations, located within a single dwelling unit not used as a rooming or boarding house, but only if:

(1) no more than two tenants for whom rent is paid (*spouses* [husband and wife] being considered one tenant for this purpose), who are not members of the owner's immediate family, live in such dwelling unit; and [the rest of the subsection remains the same]

9 NYCRR § 2522.5(g) Same terms and conditions.

(1) The lease provided to the tenant by the owner pursuant to subdivision (b) of this section shall be on the same terms and conditions as the expired lease, except where the owner can demonstrate that the change is necessary in order to comply with a specific requirement of law or regulation applicable to the building or to leases for housing accommodations subject to the RSL, or with the approval of the DHCR. Nothing herein may limit the inclusion of authorized clauses otherwise permitted by this Code or by order of the DHCR not contained in the expiring lease. Notwithstanding the foregoing, the tenant shall have the right to have his or her spouse[, whether husband or wife,] added to the lease or any renewal thereof as an additional tenant where said spouse resides in the housing accommodation as his or her primary residence. [the rest of the subsection remains the same].

Text of proposed rule and any required statements and analyses may be obtained from: Gary R. Connor, General Counsel, Division of Housing and Community Renewal, 25 Beaver Street, 7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nyshcr.org

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

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

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

Consensus Rule Making Determination

The Division of Housing and Community Renewal ("DHCR") has determined that no person is likely to object to the adoption of these amended rules as written because they implement or conform to a non-discretionary statutory provision and make technical changes related thereto. To fully comply with the recently-enacted Marriage Equality Act, the amended rules eliminate the use of gender-specific marital references (i.e., "husband" and "wife") and instead use the term "spouse" in the following sections of Title 9 of Code, Rules and Regulations of the State of New York: 9 NYCRR § 2500.2(m); 9 NYCRR § 2500.2(n)(1); 9 NYCRR § 2500.9(i)(1); 9 NYCRR § 2520.6(n); 9 NYCRR § 2520.6(o)(1); 9 NYCRR § 2520.11(i)(1); 9 NYCRR § 2522.5(g)(1).

Job Impact Statement

The amended regulations are promulgated to fully comply with the recently-enacted Marriage Equality Act. The amended rules eliminate the use of gender-specific marital references (i.e., "husband" and "wife") and instead use the term "spouse." It is apparent from the text of the rules that the amendments will have no adverse impact on jobs or employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

The Regulations Govern Public Housing

I.D. No. HCR-44-11-00015-P

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

Proposed Action: This is a consensus rule making to amend sections 1627-4.1(b) and 1640-7.3(c)(1)(i) and (ii) of Title 9 NYCRR.

Statutory authority: Public Housing Law, sections 14(1)(a), (4) and 19

Subject: The regulations govern Public Housing.

Purpose: To comply with the Marriage Equality Act.

Text of proposed rule: 9 NYCRR § 1627-4.1(b) The signatures of both *spouses* [husband and wife] are required, although possession may be granted on one signature. In such cases, however, the second signature should be obtained as soon as possible, usually within two weeks of moving in. The signing of the lease by the lessee shall be witnessed by a designated authority employee. An authority member or the manager shall sign for the authority.

9 NYCRR § 640-7.3(c)(1)(i) $1100 or more, if such individual is unmarried, or if married, is not living with *his or her spouse* [husband or wife]; or

(ii) $2750 if married and living with *his or her spouse* [husband and wife].

[the rest of the subsection remains the same]

Text of proposed rule and any required statements and analyses may be obtained from: Gary R. Connor, General Counsel, Division of Housing and Community Renewal, 25 Beaver Street-7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nyshcr.org

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

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

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

Consensus Rule Making Determination

The Division of Housing and Community Renewal has determined that no person is likely to object to the adoption of these amended rules as written because they implement or conform to a non-discretionary statutory provision and make technical changes related thereto. To fully comply with the recently-enacted Marriage Equality Act, the amended rules eliminate the use of gender-specific marital references (i.e., "husband" and "wife") and instead use the term "spouse" in the following sections of Title 9 of Code, Rules and Regulations of the State of New York: 9 NYCRR § 1627-4.1(b); 9 NYCRR§ 1640-7.3(c)(1)(i) and (ii).

Job Impact Statement

The amended regulations are promulgated to fully comply with the recently-enacted Marriage Equality Act. The amended rules eliminate the use of gender-specific marital references (i.e., "husband" and "wife") and instead use the term "spouse." It is apparent from the text of the rules that the amendments will have no adverse impact on jobs or employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

The Regulations Govern Management and Supervision of Mitchell-Lama Housing Companies

I.D. No. HCR-44-11-00016-P

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

Proposed Action: This is a consensus rule making to amend sections 1700.2(a) and 1725-6.1(c) of Title 9 NYCRR.

Statutory authority: Private Housing Finance Law, sections 32(3), 32-1(6) and 84(9); and Public Housing Law, section 14(4)

Subject: The regulations govern management and supervision of Mitchell-Lama housing companies.

Purpose: To comply with the Marriage Equality Act.

Text of proposed rule: 9 NYCRR § 1700.2(a)(7) Family member shall mean a *spouse* [husband, wife], son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, or sister, grandfather, grandmother, grandson, granddaughter, daughter-in-law, son- in-law, mother-in-law or father-in-law of the tenant. Family member may also mean any other person residing with the tenant or cooperator. [the rest of the subsection remains the same]

9 NYCRR § 1725-6.1(c) Mutual Companies

(1) No board member of a mutual company shall participate in a vote to approve, renew, or otherwise affect a contract where such board member, a family member of such board member, a person residing with such board member, or a family member of a person residing with such board member at the time of such vote is employed by or has a direct or indirect interest in or, in the two year period prior to such vote, was employed by or had a direct or indirect interest in: (i) such contractor; or (ii) a company which such contractor manages or in which such contractor had a direct or indirect interest at the time of such person's employment or interest. As used in this paragraph, family member means *spouse* [husband, wife], son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law and daughter-in-law. [the rest of the subsection remains the same]

Text of proposed rule and any required statements and analyses may be obtained from: Gary R. Connor, General Counsel, Division of Housing and Community Renewal, 25 Beaver Street, 7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nyshcr.org

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

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

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

Consensus Rule Making Determination

The Division of Housing and Community Renewal has determined that no person is likely to object to the adoption of these amended rules and regulations as written because they implement or conform to a non-discretionary statutory provision and make technical changes related thereto. To fully comply with the recently-enacted Marriage Equality Act, the amended rules and regulations eliminate the use of gender-specific marital references (i.e., "husband" and "wife") and instead use the term "spouse" in the following sections of Title 9 of Code, Rules and Regulations of the State of New York: 9 NYCRR § 1700.2(a)(7); 9 NYCRR § 1725-6.1(c)(1).

Job Impact Statement

The amended regulations are promulgated to fully comply with the recently-enacted Marriage Equality Act. The amended rules eliminate the use of gender-specific marital references (i.e., "husband" and "wife") and instead use the term "spouse." It is apparent from the text of the rules that the amendments will have no adverse impact on jobs or employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

The Regulations Govern Implementation of the Rent Control Laws

I.D. No. HCR-44-11-00017-P

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

Proposed Action: This is a consensus rule making to amend sections 2100.9(h)(1), 2104.5(a)(1), 2104.6(d)(3), 2200.2(f)(5)(i), 2204.5(a) and 2204.6(d)(3)(i) of Title 9 NYCRR.

Statutory authority: L. 1983, ch. 403, section 28; NYC Admin. Code section 26-405g(1); L. 1946, ch. 274, subdivision 4(a), as amd. by L. 1950, ch. 250, as amd. by L. 1964, ch. 244; and Public Housing Law, section 14(4)

Subject: The regulations govern implementation of the Rent Control Laws.

Purpose: To comply with the Marriage Equality Act.

Text of proposed rule: 9 NYCRR § 2100.9(h) Nonhousekeeping, furnished housing accommodations, located within a single dwelling unit not used as a rooming or boarding house, but only if:

(1) no more than two tenants for whom rent is paid (*spouses* [husband and wife] being considered one tenant for this purpose), not members of the landlord's immediate family, live in such dwelling unit, and

[the rest of the subsection remains the same.]

9 NYCRR § 2104.5(a)(1) A certificate shall be issued where the landlord seeks in good faith to recover possession of housing accommodations because of immediate and compelling necessity for his own personal use and occupancy or for the use and occupancy of his immediate family. As used in this subdivision, the term ''immediate family'' includes only a *spouse* [husband, wife], son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother,

sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the landlord. [the rest of the subsection remains the same]

9 NYCRR § 2104.6(d)(3) For the purposes of this subdivision: (i) ''family member'' is defined as a *spouse* [husband, wife], son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law of the tenant; or any other person residing with the tenant in the housing accommodation as a primary residence who can prove emotional and financial commitment, and interdependence between such person and the tenant. [the rest of the subsection remains the same]

9 NYCRR § 2200.2(f)(5) Nonhousekeeping, furnished housing accommodations, located within a single dwelling unit not used as a rooming or boarding house, but only if:

(i) no more than two tenants for whom rent is paid (*spouses* [husband and wife] being considered one tenant for this purpose), not members of the landlord's immediate family, live in such dwelling unit; and

[the rest of the subsection remains the same]

9 NYCRR § 2204.5 Occupancy by landlord or immediate family (a) A certificate shall be issued where the landlord seeks in good faith to recover possession of a housing accommodation because of immediate and compelling necessity for his own personal use and occupancy, or for the use and occupancy of his immediate family; provided, however, that this section shall not apply where a member of the household lawfully occupying the housing accommodation is 62 years of age or older, has been a tenant in a housing accommodation in that building for 20 years or more, or has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which prevent the tenant from engaging in any substantial gainful employment. As used in this subdivision, the term ''immediate family'' includes only a *spouse* [husband, wife], son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law, of the landlord.

9 NYCRR § 2204.6(d)(3) For the purposes of this subdivision:

(i) ''family member'' is defined as a *spouse* [husband, wife], son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law of the tenant; or any other person residing with the tenant in the housing accommodation as a primary residence who can prove emotional and financial commitment, and interdependence between such person and the tenant. [the rest of the subsection remains the same]

Text of proposed rule and any required statements and analyses may be obtained from: Gary R. Connor, General Counsel, Division of Housing and Community Renewal, 25 Beaver Street, 7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nyshcr.org

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

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

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

Consensus Rule Making Determination

The Division of Housing and Community Renewal has determined that no person is likely to object to the adoption of these amended rules as written because they implement or conform to a non-discretionary statutory provision and make technical changes related thereto. To fully comply with the recently-enacted Marriage Equality Act, the amended rules eliminate the use of gender-specific marital references (i.e., "husband" and "wife") and instead use the term "spouse" in the following sections of Title 9 of Code, Rules and Regulations of the State of New York: 9 NYCRR § 2100.9(h)(1); 9 NYCRR § 2104.5(a)(1); 9 NYCRR § 2104.6(d)(3)(i); 9 NYCRR § 2200.2(f)(5)(i); 9 NYCRR § 2204.5(a); 9 NYCRR § 2204.6(d)(3)(i).

Job Impact Statement

The amended regulations are promulgated to fully comply with the recently-enacted Marriage Equality Act. The amended rules eliminate the use of gender-specific marital references (i.e., "husband" and "wife") and instead use the term "spouse." It is apparent from the text of the rules that the amendments will have no adverse impact on jobs or employment opportunities.

Office of Mental Health

NOTICE OF ADOPTION

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

I.D. No. OMH-32-11-00004-A
Filing No. 978
Filing Date: 2011-10-17
Effective Date: 2011-11-02

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

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

Statutory authority: Mental Hygiene Law, sections 7.09 and 43.02

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

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

Text or summary was published in the August 10, 2011 issue of the Register, I.D. No. OMH-32-11-00004-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Carbon Monoxide Detector Use in Residential Programs

I.D. No. OMH-32-11-00008-A
Filing No. 976
Filing Date: 2011-10-17
Effective Date: 2011-11-02

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

Action taken: Amendment of Parts 594 and 595 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 31.04

Subject: Carbon monoxide detector use in residential programs.

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

Text or summary was published in the August 10, 2011 issue of the Register, I.D. No. OMH-32-11-00008-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Implementation of 1.1% Medicaid Fee Reductions for Operating Rates of Continuing Day Treatment Programs

I.D. No. OMH-34-11-00017-A
Filing No. 977
Filing Date: 2011-10-17
Effective Date: 2011-11-02

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

Action taken: Amendment of Part 588 of Title 14 NYCRR.

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

Subject: Implementation of 1.1% Medicaid fee reductions for operating rates of Continuing Day Treatment Programs.

Purpose: To reduce rates for Continuing Day Treatment Programs consistent with the 2011-2012 enacted State Budget.

Text or summary was published in the August 24, 2011 issue of the Register, I.D. No. OMH-34-11-00017-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Power Authority of the State of New York

ERRATUM

A Notice of Proposed Rule Making, I.D. No. PAS-41-11-00028-P, pertaining to Rates for the Sale of Power and Energy, published in the October 12, 2011 issue of the *State Register* contained an incorrect substance of the rule. Following is the correct substance:

Substance of proposed rule: The Power Authority of the State of New York (the "Authority") proposes to decrease the production rates for Westchester County Governmental Customers ("Customers"). The Authority provides electricity to 104 Customers in Westchester County, including the County of Westchester, school districts, housing authorities, cities, towns and villages. Under the proposal, 2012 production rates will decrease by 2.71% when compared with 2011 rates. The rate decrease reflects the continuing reduction in the power supply costs as contained in the 2011 rates and is based on a pro forma Cost of Service for 2012. The new production rates will become effective with the January 2012 billing period. The proposal also includes technical corrections to the production minimum billing provision of the Customers' tariff to become effective January 2012.

Public Service Commission

EMERGENCY RULE MAKING

The New York State Energy Research and Development Authority's Proposal for an Agricultural Disaster Energy Efficiency Program

I.D. No. PSC-44-11-00018-EA

Filing Date: 2011-10-17

Effective Date: 2011-10-17

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

Action taken: The PSC adopted an order approving, on an emergency basis, an Agricultural Disaster Program to assist farmers to repair and replace equipment damaged by Hurricane Irene and Tropical Storm Lee and to integrate energy efficiency measures into the repairs.

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

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

Specific reasons underlying the finding of necessity: This action is taken on an emergency basis pursuant to State Administrative Procedure Act (SAPA) § 202(6). Hurricane Irene, Tropical Storm Lee and the resulting flooding have created an immediate need to rebuild and repair farms and agricultural infrastructure in order to preserve the public welfare. This program is designed to provide farmers harmed by the storms and flooding with quick and immediate access to funds for repairs and rebuilding. Failure to implement this program on an emergency basis would deny the damaged farms access to this necessary funding source. Moreover, if these funds are not available on an expedited schedule many opportunities for energy efficiency improvements could be lost if farmers are forced to choose inefficient equipment due to lack of funds and the immediate need to rebuild. As a result, compliance with the advance notice and comment requirements of SAPA § 201(1) would be contrary to the public interest, and the immediate authorization to implement the Agriculture Disaster Program is necessary for the preservation of the public health, safety and general welfare.

Subject: The New York State Energy Research and Development Authority's proposal for an Agricultural Disaster Energy Efficiency Program.

Purpose: To assist farms damaged by Hurricane Irene and Tropical Storm Lee and to promote gas and electricity conservation in New York.

Substance of final rule: The Public Service Commission adopted an order approving a proposal by the New York State Energy Research and Development Authority for an Agriculture Disaster Program designed to provide storm-damaged farms economic and technical assistance to incorporate energy efficient electric and natural gas equipment, measures, systems and improvements into replacements and repairs. The program will also incorporate face-to-face, on-line, and telephone support regarding energy efficiency technical knowledge, project review, outreach and general guidance. The program is designed to emphasize rapid deployment and strong support for participants and will be funded through a reallocation of existing Energy Efficiency Portfolio Standard funds of approximately $5.8 million.

The agency adopted the provisions of this emergency rule as a permanent rule, pursuant to SAPA section 202(6)(c), because the purposes of the emergency measure would be frustrated if subsequent notice procedures were required.

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

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

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

(08-E-1132EA3)

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Electric Revenue Decoupling Mechanism Targets of Rochester Gas and Electric Corporation (RG&E)

I.D. No. PSC-44-11-00012-EP

Filing Date: 2011-10-14

Effective Date: 2011-10-14

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

Proposed Action: The Public Service Commission adopted an order approving, on an emergency basis, corrections to the revenue decoupling mechanism targets of Rochester Gas and Electric Corporation for electric service, to avoid a more than 20% surcharge to certain large customers that could disrupt their operations and cause them to take actions that would have adverse economic impacts.

Statutory authority: Public Service Law, sections 65(1), (2), (3), 66(1), (4), (5), (10) and (12)

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

The specific reasons underlying the finding of necessity, above, are as follows: Approval of corrections to the revenue decoupling mechanism targets of Rochester Gas and Electric Corporation for electric service is necessary to avoid rate increases and rate volatility of unacceptable magnitude. Such rate increases and rate volatility would disrupt the plans that certain large customers have made to arrange for payment of their significantly-sized electric bills, and could cause them economic hardship that would redound to the detriment of the surrounding community if the disruption causes them to reduce employment levels or expenditures in the community.

Subject: Electric revenue decoupling mechanism targets of Rochester Gas and Electric Corporation (RG&E).

Purpose: To correct on an emergency basis errors in the electric revenue decoupling mechanism targets of RG&E.

Substance of emergency/proposed rule (Full text is posted at the following State website:www.dps.state.ny.us): The Public Service Commission approved, on an emergency basis subject to the terms and conditions set forth in the Order issued October 17, 2011 in Case 09-E-0717, corrections to the revenue decoupling mechanism targets of Rochester Gas and Electric Corporation for electric service, to avoid a more than 20% electric bill surcharge to certain large customers that could disrupt their operations and cause them to take actions that would have adverse economic impacts, The Commission may accept, reject or modify the relief set forth in the Order.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire January 11, 2012.

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann__ayer@dps.state.ny.us

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

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

Regulatory Impact Statement

A regulatory impact statement is 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.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is 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.

Rural Area Flexibility Analysis

A rural area flexibility analysis is 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.

Job Impact Statement

A job impact statement is 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.

(09-E-0717EP1)

NOTICE OF ADOPTION

To Return $180,891 in Over-Earnings to Ratepayers Through Refunds and Issuance of Credits

I.D. No. PSC-05-11-00005-A

Filing Date: 2011-10-17

Effective Date: 2011-10-17

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

Action taken: On 10/13/11, the PSC adopted an order directing Sagamor Water Corp. to return $180,891 in over-earnings to its ratepayers through refunds and issuance of credits.

Statutory authority: Public Service Law, sections 89-c, 89-f and 114

Subject: To return $180,891 in over-earnings to ratepayers through refunds and issuance of credits.

Purpose: To direct the return of $180,891 in over-earnings to ratepayers through refunds and issuance of credits.

Substance of final rule: The Commission, on October 13, 2011 adopted an order directing Sagamor Water Corp. to return $180,891 in over-earnings to its ratepayers through refunds and issuance of credits, 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-W-0534SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 1 — Electricity, Effective 11/1/11 to Implement Inclining Block Rates

I.D. No. PSC-09-11-00011-A

Filing Date: 2011-10-13

Effective Date: 2011-10-13

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

Action taken: On 10/13/11, the PSC adopted allowed The Municipal Commission of Boonville's amendments to PSC No. 1 — Electricity, effective 6/1/11 and postponed to 11/1/11 to implement inclining block rates, to go into effect.

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

Subject: Amendments to PSC No. 1 — Electricity, effective 11/1/11 to implement inclining block rates.

Purpose: To approve amendments to PSC No. 1 — Electricity, effective 11/1/11 to implement inclining block rates.

Substance of final rule: The Commission, on October 13, 2011 allowed The Municipal Commission of Boonville's amendments to PSC No. 1 – Electricity, effective June 1, 2011 and postponed to November 1, 2011 to implement inclining block rates to go into effect.

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

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

Assessment of Public Comment

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

(11-E-0062SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 8 — Gas, to Enhance System Reliability

I.D. No. PSC-23-11-00014-A

Filing Date: 2011-10-13

Effective Date: 2011-10-13

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

Action taken: On 10/13/11, the PSC allowed National Fuel Gas Distribution Corporation's amendments to PSC No. 8 — Gas, effective August 31, 2011, and postponed to October 31, 2011, to go into effect.

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

Subject: Amendments to PSC No. 8 — Gas, to enhance system reliability.

Purpose: To approve amendments to PSC No. 8 — Gas, effective August 31, 2011, and postponed to October 31, 2011.

Substance of final rule: The Commission, on October 13, 2011 allowed National Fuel Gas Distribution Corporation's amendments to PSC No. 8 – Gas, effective August 31, 2011, and postponed to October 31, 2011, for modifications to its storage inventory balance and associated rules for S.C. No. 19 - Supplier Transportation, Balancing and Aggregation (STBA); acquisition and use of interstate pipeline transmission capacity; revise its imbalance resolution procedures for S.C. No. 21 (Basic Gas-for-Electric-Generation-Service) and to make "housekeeping" changes to streamline its gas tariff.

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

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

Assessment of Public Comment

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

(11-G-0272SA1)

NOTICE OF ADOPTION

Loan Agreement with the Adirondack Trust Company for Not More Than $1,299,500 of Long-Term Debt

I.D. No. PSC-23-11-00015-A
Filing Date: 2011-10-17
Effective Date: 2011-10-17

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

Action taken: On 10/13/11, the PSC adopted an order approving the petition of Saratoga Water Services, Inc. to enter into a loan agreement with the Adirondack Trust Company for not more than $1,299,500 of aggregate principal amount of long-term debt.

Statutory authority: Public Service Law, section 89-f

Subject: Loan agreement with the Adirondack Trust Company for not more than $1,299,500 of long-term debt.

Purpose: To approve a loan agreement with the Adirondack Trust Company for not more than $1,299,500 of long-term debt.

Substance of final rule: The Commission, on October 13, 2011 adopted an order approving the petition of Saratoga Water Services, Inc. to enter into a loan agreement with the Adirondack Trust Company for not more than $1,299,500 of aggregate principal amount of long-term debt, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-W-0246SA1)

NOTICE OF ADOPTION

Waiver of 16 NYCRR Sections 894.1 to 894.4

I.D. No. PSC-25-11-00013-A
Filing Date: 2011-10-18
Effective Date: 2011-10-18

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

Action taken: On 10/13/11, the PSC adopted an order approving the Town of Conesville for waiver of the rules contained in 16 NYCRR sections 894.1, 894.2, 894.3, and 894.4 for a cable television franchise with The Heart of the Catskills Communication, Inc. d/b/a MTC Cable.

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

Subject: Waiver of 16 NYCRR sections 894.1 to 894.4.

Purpose: To approve waiver of the rules contained in 16 NYCRR sections 894.1 to 894.4 for an initial cable television franchise.

Substance of final rule: The Commission, on October 13, 2011 adopted an order approving the Town of Conesville's (Schoharie County) request for waiver of the rules contained in 16 NYCRR sections 894.1, 894.2, 894.3, and 894.4 for a cable television franchise with The Heart of the Catskills Communication, Inc. d/b/a MTC Cable, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-V-0273SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 9 — Electricity, Effective 11/1/11 to Establish Net Metering Provisions

I.D. No. PSC-29-11-00012-A
Filing Date: 2011-10-13
Effective Date: 2011-10-13

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

Action taken: On 10/13/11, the PSC 2011 allowed the Village of Freeport's amendments to PSC No. 9 — Electricity, effective 11/1/11 to establish net metering provisions for customers who own or operate solar or wind electric generating equipment, to go into effect.

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

Subject: Amendments to PSC No. 9 — Electricity, effective 11/1/11 to establish net metering provisions.

Purpose: To approve amendments to PSC No. 9 — Electricity, effective 11/1/11 to establish net metering provisions.

Substance of final rule: The Commission, on October 13, 2011 allowed the Village of Freeport's amendments to PSC No. 9 – Electricity, effective November 1, 2011 to establish net metering provisions for customers of Service Classification ("SC") No. 1 – Residential Service and SC No. 2 – General Service who own or operate solar or wind electric generating equipment, to go into effect.

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

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

Assessment of Public Comment

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

(11-E-0341SA1)

NOTICE OF ADOPTION

To Issue Up to $130 Million of Promissory Notes No Later Than December 31, 2014

I.D. No. PSC-30-11-00006-A
Filing Date: 2011-10-14
Effective Date: 2011-10-14

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

Action taken: On 10/13/11, the PSC 2011 adopted an order approving the petition of National Fuel Gas Distribution Corporation to issue up to $130 million of promissory notes no later than December 31, 2014.

Statutory authority: Public Service Law, section 69

Subject: To issue up to $130 million of promissory notes no later than December 31, 2014.

Purpose: To approve the issuance of up to $130 million of promissory notes no later than December 31, 2014.

Substance of final rule: The Commission, on October 13, 2011 adopted an order approving the petition of National Fuel Gas Distribution Corporation to issue up to $130 million of promissory notes no later than December 31, 2014, to finance new construction expenditures, to repay short-term debt incurred in order to finance previous years' construction expenditures, and to refinance long-term debt, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(11-G-0347SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 15 — Electricity, Effective 11/1/11 for Revenue Decoupling Mechanism

I.D. No. PSC-32-11-00012-A
Filing Date: 2011-10-13
Effective Date: 2011-10-13

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

Action taken: On 10/13/11, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 15 — Electricity, effective 11/1/11 to consolidate SC No. 1- Residential and SC No. 6 - Residential Time-of-Use for Revenue Decoupling.

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

Subject: Amendments to PSC No. 15 — Electricity, effective 11/1/11 for Revenue Decoupling Mechanism.

Purpose: To approve amendments to PSC No. 15 — Electricity, effective 11/1/11 for Revenue Decoupling Mechanism.

Substance of final rule: The Commission, on October 13, 2011 adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 15 – Electricity, effective November 1, 2011 to consolidate Service Classification No. 1- Residential and Service Classification No. 6 - Residential Time-of-Use for purposes of computing the revenue decoupling mechanism and the New York State Assessment.

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

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(11-E-0388SA1)

NOTICE OF ADOPTION

Lightened and Incidental Regulation of Ownership and Operation of a Gas Transportation Pipeline

I.D. No. PSC-33-11-00012-A
Filing Date: 2011-10-17
Effective Date: 2011-10-17

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

Action taken: On 10/13/11, the PSC adopted an order approving the petition of Alliance Energy Transmission - Syracuse to be lightly regulated as a gas transportation service after it assumes ownership of the Project Orange Associates LLC gas transportation pipeline.

Statutory authority: Public Service Law, sections 2(13), (22), 5(1)(b), 64, 65, 66, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Lightened and incidental regulation of ownership and operation of a gas transportation pipeline.

Purpose: To approve lightened and incidental regulation of ownership and operation of a gas transportation pipeline.

Substance of final rule: The Commission, on October 13, 2011 adopted an order approving the petition of Alliance Energy Transmission - Syracuse to be lightly regulated as a competitive provider of gas transportation service after it assumes ownership of the Project Orange Associates LLC gas transportation pipeline, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(11-G-0397SA1)

NOTICE OF ADOPTION

Petition to Use Revenues for the Acquisition of Alteva, LLC

I.D. No. PSC-33-11-00015-A
Filing Date: 2011-10-14
Effective Date: 2011-10-14

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

Action taken: On 10/13/11, the PSC adopted an order approving the petition of Warwick Valley Telephone Company to use revenues received utility service in an amount not to exceed $13 million for the purpose of investing in the assets and business of Alteva, LLC.

Statutory authority: Public Service Law, section 107

Subject: Petition to use revenues for the acquisition of Alteva, LLC.

Purpose: To approve the petition of Warwick Valley Telephone Company to use revenues for the acquisition of Alteva, LLC.

Substance of final rule: The Commission, on October 13, 2011 adopted an order approving the petition of Warwick Valley Telephone Company to use revenues received from the rendition of utility service in an amount not to exceed $13 million for the purpose of investing in the assets and businesses of Alteva, LLC, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(11-C-0402SA1)

NOTICE OF ADOPTION

Transfer Ownership of a Gas Transmission Pipeline and Article VII Certificate of Environmental Compatibility

I.D. No. PSC-33-11-00016-A
Filing Date: 2011-10-17
Effective Date: 2011-10-17

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

Action taken: On 10/13/11, the PSC adopted an order approving the petition of Project Orange Associates LLC and Alliance Energy Transmissions — Syracuse LLC to transfer ownership of a gas transmission pipeline and Article VII Certificate of Environmental Compatibility.

Statutory authority: Public Service Law, sections 70 and 121(2)

Subject: Transfer ownership of a gas transmission pipeline and Article VII Certificate of Environmental Compatibility.

Purpose: To approve the transfer ownership of a gas transmission pipeline and Article VII Certificate of Environmental Compatibility.

Substance of final rule: The Commission, on October 13, 2011 adopted an order approving the petition of Project Orange Associates LLC (POA) and Alliance Energy Transmissions – Syracuse LLC (Alliance Syracuse) to transfer from POA to Alliance Syracuse ownership of POA's gas transmission pipeline and the attendant PSL Article VII Certificate of Environ-

mental Compatibility and Public Need, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-M-0396SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 12 — Gas, Effective November 1, 2011

I.D. No. PSC-34-11-00010-A

Filing Date: 2011-10-18

Effective Date: 2011-10-18

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

Action taken: On 10/13/11, the PSC adopted an order approving The Brooklyn Union Gas Company, d/b/a National Grid's amendments to PSC No. 12 — Gas, effective November 1, 2011 to implement daily balancing.

Statutory authority: Public Service Law, section 66

Subject: Amendments to PSC No. 12 — Gas, effective November 1, 2011.

Purpose: To approve amendments to PSC No. 12 — Gas, effective November 1, 2011 to implement daily balancing.

Substance of final rule: The Commission on October 13, 2011, adopted an order approving The Brooklyn Union Gas Company, d/b/a National Grid's amendments to PSC No. 12 – Gas, effective November 1, 2011 to modify its Statement of Seller Charges and Adjustments. These changes were proposed to implement daily balancing effective November 1, 2011 and to initiate imbalance trading for monthly and daily balanced customers effective December 1, 2011, 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.

(06-G-1185SA13)

NOTICE OF ADOPTION

Amendments to PSC No. 1 — Gas, Effective November 1, 2011

I.D. No. PSC-34-11-00011-A

Filing Date: 2011-10-18

Effective Date: 2011-10-18

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

Action taken: On 10/13/11, the PSC, adopted an order approving KeySpan Gas East Corporation, d/b/a National Grid LI's amendments to PSC No. 1 — Gas, effective November 1, 2011, to implementy daily balancing.

Statutory authority: Public Service Law, section 66

Subject: Amendments to PSC No. 1 — Gas, effective November 1, 2011.

Purpose: To approve amendments to PSC No. 1 — Gas, effective November 1, 2011, to implement daily balancing.

Substance of final rule: The Commission on October 13, 2011, adopted an order approving KeySpan Gas East Corporation, d/b/a National Grid LI's amendments to PSC No. 1 – Gas, effective November 1, 2011, to modify its Statement of Seller Charges and Adjustments. These changes were proposed to implement daily balancing effective November 1, 2011 and to initiate imbalance trading for monthly and daily balanced customers effective December 1, 2011, 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.

(06-G-1186SA10)

NOTICE OF ADOPTION

Long Island American Water's Request to Sell Up to $20 Million of Long-Term Securities

I.D. No. PSC-34-11-00014-A

Filing Date: 2011-10-17

Effective Date: 2011-10-17

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

Action taken: On 10/13/11, the PSC adopted an order approving Long Island Water Corporation d/b/a Long Island American Water's request to sell up to $20 million of long-term securities in one or more transactions no later than December 31, 2012.

Statutory authority: Public Service Law, section 89-f

Subject: Long Island American Water's request to sell up to $20 million of long-term securities.

Purpose: To approve Long Island American Water's request to sell up to $20 million of long-term securities.

Substance of final rule: The Commission, on October 13, 2011 adopted an order approving Long Island Water Corporation d/b/a Long Island American Water's request to sell up to $20 million of long-term securities in one or more transactions no later than December 31, 2012, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-W-0399SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Modifications to Central Hudson Gas & Electric's Economic Development Plan

I.D. No. PSC-44-11-00019-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 approve, deny or modify, in whole or in part, a modification to Central Hudson Gas & Electric Corporations Economic Development Plan.

Statutory authority: Public Service Law, sections 2, 5, 65 and 66

Subject: Modifications to Central Hudson Gas & Electric's Economic Development Plan.

Purpose: Allows Central Hudson Gas & Electric to modify its existing Economic Development Plan.

Substance of proposed rule: The Commission is considering whether to

approve, deny or modify, in whole or in part, a proposal by Central Hudson Gas & Electric Corporation to modify its Economic Development Plan. The Commission may apply its decision here to other utilities.

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

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

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

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

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

(09-E-0588SP4)

Racing and Wagering Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Minimum Diameter of a Riding Crop Used in the Thoroughbred Racing

I.D. No. RWB-44-11-00001-P

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

Proposed Action: This is a consensus rule making to amend section 4035.9(a)(1)(iii) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1), 205 and 218

Subject: Minimum diameter of a riding crop used in the thoroughbred racing.

Purpose: Require the use of a padded riding crop with a minimum shaft diameter of 3/8th of an inch, which is more humane to the horse.

Text of proposed rule: Clause (c) of Subparagraph (iii) of Paragraph (1) of Subdivision (a) of section 4035.9 of 9 NYCRR is amended to read as follows:

(c) Minimum diameter of the shaft of *three-eighths* [one-half] inch; and

Text of proposed rule and any required statements and analyses may be obtained from: John Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305, (518) 395-5400, email: info@racing.ny.gov

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

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

Consensus Rule Making Determination

No person is likely to object to this rulemaking because it is noncontroversial and merely corrects an error in the text of the rule that was adopted in October 2010. As originally proposed by the Jockey Club, the rule prescribed a minimum riding crop shaft size three-eighths of an inch. In June 2010, due to a clerical error that was repeated by several other regulatory agencies, New York State erroneously proposed a rule that set the minimum riding crop shaft size of one-half inch. Currently, all of the riding crops used in New York State are manufactured to one size: three-eighths of an inch. The stewards have recognized the error and are enforcing the rule as originally proposed by the Jockey Club. Therefore, no person is likely to object to this rulemaking because it would merely correct a typographical error, prescribe a rule that is consistent with the original rule as proposed by the Jockey Club, and have no adverse impact on thoroughbred racing.

Job Impact Statement

Based upon the nature and purpose of the rule, it is apparent that this proposal will not have a substantial adverse impact on jobs and employment opportunities. Therefore, this rulemaking does not require a jobs impact statement since the rule conforms the Board's equipment rule for minimum shaft size to those prescribed by the Jockey Club and adopted by other racing jurisdictions. Jockeys are currently using riding crops with the three-eighths inch shaft because it is more humane riding crop to use. Therefore, this rule will neither have a positive nor an adverse impact on jobs and employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

The Trifecta Wager in Thoroughbred Horse Racing

I.D. No. RWB-44-11-00002-P

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

Proposed Action: This is a consensus rule making to amend section 4011.22(i) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101 and 235

Subject: The trifecta wager in thoroughbred horse racing.

Purpose: To amend the trifecta wager rule to allow wagering when there are 5 betting entries in the racing fields.

Text of proposed rule: Subdivision (i) of Section 4011.22 of 9 NYCRR is amended to read as follows:

(i) No trifecta wagering shall be conducted on any race having fewer than *five* [six] betting entries. [provided, however, that in a stakes race, handicap race or allowance race, no trifecta wagering shall be conducted on any race having fewer than five betting entries.] If fewer than *five* [six] betting entries start, [in other then a stakes race, handicap race or allowance race,] the trifecta shall be declared off and the gross pool refunded. [If fewer than five betting entries start in a stakes race, handicap race or allowance race, the trifecta shall be declared off and the gross pool refunded.] The board's steward may, in the exercise of discretion to protect the wagering public, require that there be at least six betting entries for the conduct of trifecta wagering. [If a trifecta pool is cancelled and if time permits, with the approval of the board's steward, a track may schedule exacta wagering in place of trifecta wagering.]

Text of proposed rule and any required statements and analyses may be obtained from: John Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.ny.gov

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

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

Consensus Rule Making Determination

No person is likely to object to the adoption of this rule because it is noncontroversial in that it merely modifies an existing wagering rule to allow the conduct of trifecta wagering in certain instances when there are only five horses in a race.

This rule was requested by the NYRA, which operates the Belmont, Aqueduct and Saratoga thoroughbred race tracks. Finger Lakes Race Track in Farmington, Ontario County, is only other thoroughbred racing venue in New York State. The Board does not expect this rule to be controversial for Finger Lakes insofar as the benefits sought by NYRA will be similarly conferred upon it.

The object of the trifecta wager is to select in order, the first, second and third place horses in a designated trifecta race. The current Board rule permits trifecta wagering only when there is a minimum of six horses in a race. If there is a horse scratched in a scheduled field of six horses, then the trifecta wager must be cancelled and tickets are refunded. This has resulted in the loss of a wagering opportunity for the betting public and the loss of revenue to the pari-mutuel wagering operators, such as the race tracks and off-track betting corporations.

This rule is also non-controversial because it is consistent with minimum entry requirements of other racing jurisdictions. Kentucky has a minimum number of five horses for its trifecta. In New Jersey and Maryland, the minimum number of carded betting interests for trifecta wagering is five, while a minimum field of four is allowed in the event

of scratched horse. Florida and California both offer trifecta wagering with four horse fields. Illinois allows trifecta wagering on a five-horse field whenever there is a scratched horse.

The NYRA conducted a review of 238 races for the purpose of determining the loss of handle that occured when trifecta wagering was cancelled due to a short field of five entries. According to its review, NYRA stood to gain $5.3 million in additional handle if trifecta wagering was not cancelled for those 238 races involving five-horse fields.

The rule amendment is also not expected to be controversial because it preserves the discretion of the Steward to require that there be at least six betting interests in order to protect the betting public. This clause is necessary to preserve the integrity of racing when the shortened field may include conflicted interests among owners, trainers or jockeys.

Job Impact Statement

As is apparent from the nature of rule, this rule will not have a substantial adverse effect upon jobs and employment. This rule is a minor modification of an existing trifecta wagering rule that has been in effect since before the Board was established in 1974. According to the New York Racing Association (NYRA), this rule amendment may provide additional income to NYRA, thoroughbred horsemen and breeders at a time when NYRA is being urged to improve its financial situation. The Board has reviewed the findings by NYRA and, while it cannot project increased employment opportunities, it has determined that the rule amendment will not have a substantial adverse effect upon jobs and employment. The Board is unable to determine the direct impact on job creation because of numerous unpredictable variables in the current economic environment, including wagering trends of the betting public, probability of scratches that result in five-horse fields, and the creation of jobs by pari-mutuel operators given their unique discretionary spending decisions and priorities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Generally Accepted Auditing Standards for Off-Track Betting Corporations

I.D. No. RWB-44-11-00020-P

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

Proposed Action: Amendment of sections 5208.1 - 5208.6 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 516, 517, 520, 524 and 621

Subject: Generally accepted auditing standards for off-track betting corporations.

Purpose: To establish uniform auditing standards for off-track betting corporations.

Text of proposed rule: Section 5208.1 of 9 NYCRR is amended to read as follows:

5208.1 Method of accounting.

Each corporation shall use *Generally Accepted Accounting Principles* [standard accounting procedures] so as to record and summarize financial information in order to produce financial statements and reports and to provide adequate internal fiscal controls.

Section 5208.2 of 9 NYCRR is amended to read as follows:

5208.2 Annual report.

Within one hundred and twenty (120) days after the end of the fiscal year of the corporation, [E]each corporation shall submit to the State Board a copy of its annual report of operations *audited by an independent certified public accounting firm in accordance with Generally Accepted Government Auditing Standards as prescribed by the Comptroller General of the Untied States* for approval prior to its distribution. *The report shall include the following supplemental schedules in a form prescribed by the State Board:*

(a) Statement of Section 516 Revenues and Expenditures;

(b) Statement of Revenue and Expense by Branch;

(c) Capital Acquisition Fund Balance Sheet and Statement of Changes in Section 509-a Capital Acquisition Fund.

The report shall include an opinion from the independent certified public accounting firm, in relation to the basic financial statements taken as a whole, on the required supplemental schedules listed above.

Section 5208.3 of 9 NYCRR is amended to read as follows:

5208.3 Quarterly reports.

Each corporation shall file with the State board, within *15* [30] days of the close of each fiscal quarter, a quarterly report [of revenue income and disbursement on analyses] of the activities of [each branch office] *the corporation in a form prescribed by the board*.

Section 5208.4 is amended to read as follows:

5208.4 Signatures on reports.

Each *quarterly* report shall be signed by at least *one* [two] of the corporation's principal officers, and by the person who prepared the report.

Section 5208.5 of 9 NYCRR is amended to read as follows:

5208.5 Other reports.

The corporation shall furnish to the State board *annual* [monthly] reports which shall include:

(a) *simulcast handle by track including out-of-state and special events* [copies of weekly payrolls of all personnel];

(b) *a listing of every track with which the corporation conducted simulcasting for the year and the percentage paid to each track* [copies of all written contracts, and written reports of all verbal agreements for the purchase of supplies or services];

(c) a list of directors and of officers, and the compensation paid to each;

(d) a report of any change of directors or of officers;

(e) *the total number of and dollar amount of uncashed tickets at the end of the year* [a statement depicting all unclaimed ticket fund accruals for the preceding month and to date];

(f) the total number of and dollar amount of uncashed vouchers at the end of the year; and

(g) a list of the total number of wagering devices by type (e.g. self-service terminal, teller operated terminal, etc.) at each branch and location.

Section 5208.6 is amended to read as follows:

5208.6 Books and records.

The State Board may conduct such investigations as it deems necessary in order to effectively carry out the purposes and objectives of off-track pari-mutuel betting as provided by law. The State Board may determine the [personnel practices,] method of accounts, and maintenance of books and records of each corporation, consistent with the powers of the *New York State Department of Taxation and Finance* [State Tax Commission] and of the *Office of the State Comptroller* [Department of Audit and Control] to prescribe uniform methods of accounts, records and books so as to adequately reflect the method of doing business and all financial transactions of the corporation including revenue received and distributions made thereof. Books and records of a corporation shall be maintained by the corporation as ordered by the State board and shall not be destroyed by the corporation or abandoned without the prior approval of the State Board.

Text of proposed rule and any required statements and analyses may be obtained from: John Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305, (518) 395-5400, email: info@racing.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority: Racing, Pari-Mutuel Wagering and Breeding Law (RPWBL) Section 101 grants the Board general jurisdiction over all horse racing and all pari-mutuel wagering activities in New York State. RPWBL 516 grants general and specific jurisdiction to the Board to supervise the books and accounts of regional OTBs. RPWBL 517 requires OTBs to submit annually a complete and detailed audited report setting forth its operations and accomplishments; its receipts and expenditures, its assets and liabilities; details of planned branch offices to be constructed; and any other pertinent information related to operations. RPWBL Section 520, subdivision 1 grants the Board general jurisdiction over the operation of off-track betting facilities within the State and the authority to adopt rules accordingly. RPWBL Section 524, subdivision 1 requires that the Board prescribe uniform methods of keeping accounts, records and books, and that the Board prescribe forms of accounts, records and memoranda to be kept by regional off-track betting corporations. RPWBL Section 621 requires the directors of the New York City OTB to submit annually to various public officials a complete and detailed report setting forth its operations and accomplishments; its receipts and expenditures, its assets and liabilities; details of planned branch offices to be constructed; and any other pertinent information related to operations.

2. Legislative Objectives: This proposed amendment advances the legislative objective of regulating the conduct of pari-mutuel wagering activity in a manner designed to maintain the integrity of racing while generating a reasonable revenue for the support of government.

3. Needs and Benefits: This rule is needed to ensure the integrity of

auditing procedures used by off-track betting corporations by establishing uniform standards for reporting and auditing activities. Currently, all but one of the New York State Regional Off-Track Betting Corporations' (OTBs') annual audits are performed in accordance with Governmental Auditing Standards. OTBs appear to be covered under the definition of ''local authority'' as prescribed by Public Authorities Law Section 2.2(a), and therefore should be subject to the Governmental Auditing Standards requirements under the Racing Law and State Finance Law Section 2.11, where Governmental Auditing Standards fall under ''principles of government accounting specified by authoritative national standard-setting bodies.'' The Comptroller General of the United States has issued Government Auditing Standards that are followed by auditors and audit organizations that receive federal funds as required by law, regulation, agreement, contract, or policy. As a tried and proven governmental standard, the use of Government Auditing Standards by OTBs would create a uniform method of reporting that the public and regulatory agencies can understand. Similarly, independent auditors must follow Governmental Auditing Standards when performing audits when required by law, regulation, agreement or policy. With these proposed rules, the Board will integrate these standards to the oversight and regulation of off-track betting corporations.

Government officials are responsible for carrying out public functions efficiently, economically, effectively, ethically, and equitably, while achieving desired program objectives. High-quality auditing is essential for government accountability to the public and transparency regarding linking resources to related program results. Auditing of government programs should provide independent, objective, fact-based, nonpartisan assessments of the stewardship, performance, and cost of government policies, programs, and operations. Government audits also provide key information to stakeholders and the public to maintain accountability; help improve program performance and operations; reduce costs; facilitate decision making; stimulate improvements; and identify current and projected crosscutting issues and trends that affect government programs and the people those programs serve.

By requiring the OTBs annual audits to be performed in accordance with Government Auditing Standards, the annual financial statement audits will require OTBs to provide reasonable assurances that financial information is presented in accordance with established criteria and that each OTB has adhered to specific financial compliance requirements. This will require additional audit procedures, modification to the independent auditors report that is currently provided and a separate report describing the independent auditors consideration of each OTB's internal controls over financial reporting and compliance with laws, regulations, (including New York State Racing, Pari-Mutuel Wagering and Breeding Laws and Rules) and provisions of contracts agreements.

In addition, the rules will require auditors to express an opinion, in relation to the basic financial statements taken as a whole, on the required supplemental schedules to the annual audit report, Statement of Section 516 Revenues and Expenditures; Statement of Revenue and Expense by Branch; Capital Acquisition Fund Balance Sheet and Statement of Changes in Section 509-a Capital Acquisition Fund. These schedules provide relevant information pertaining to various regulatory matters. Such statements have been a requirement for the OTBs for several years, but have not previously been subjected to audit. By doing so the reliability of the information presented will be strengthened.

Audits of financial statements in accordance with generally accepted Government Auditing Standards (GAGAS), requires the auditor to assume certain responsibilities beyond those of audits performed in accordance with Generally Accepted Auditing Standards (GAAS). GAGAS includes general standards, as well as fieldwork and reporting standards that are in addition to those required by GAAS. Those standards are in such areas as independence, competence, quality control systems, audit documentation requirements, audit follow-up, obtaining and reporting the views of responsible officials about findings and planned corrective actions, and report distribution.

GAGAS also requires additional reporting on internal control over financial reporting, compliance with laws, regulations, and provisions of contracts or grant agreements, which affect audit procedures. Specifically, in addition to an auditor's report that expresses an opinion or disclaimer of opinion on the financial statements as required by GAAS, Government Auditing Standards requires a written report on internal control over financial reporting and on compliance and other matters. New York State Racing, Pari-Mutuel Wagering and Breeding Laws and Rules would be included in this requirement.

The addition of such requirements will provide a useful tool not only for the Racing and Wagering Board but also to the OTBs as well as to each of their municipalities. Copies of a draft independent audit report's on financial statements and a draft report on internal control over financial reporting and on compliance and other matters based on and audit of financial statements performed in accordance with Government Auditing Standards are attached. A summary regarding the various intricacies of internal control structures is also attached for easy reference and is identified as OTB Internal Control Requirements Summary.

The Board is also recommending that in addition to the new audit requirements identified above (incorporated into proposed changes to 9E NYCRR sections 5208.1 and 5208.2) that various sections of the rule be revised to update the text (9E NYCRR 5208.6), conform to the statute (9E NYCRR 5208.3) and ease and update the reporting requirements to current practices (9E NYCRR sections 5208.4 and 5208.5).

Lastly it should be noted that the Government Auditing Standards are largely regarded as governments' equivalent to the Sarbanes-Oxley (SOX) reporting requirements that publicly traded entities are required to follow. SOX requirements were developed to increase controls and audit reporting requirements to protect investors and ensure the confidence of the public. It is hoped that these rule revisions will do the same.

Perhaps the most persuasive statement regarding the need for Government Auditing Standards by public benefit corporations like OTBs was made by Louis Grumet, Executive Director of the New York State Society of CPAs, in the May 2008 edition of The CPA Journal: ''Citizens should not be taking risks when they pay their taxes. If [Government Auditing Standards] were required for New York State-funded entities, taxpayers would benefit from those standards' independence, continuing education, and peer review requirements. Broader implementation of the [Government Auditing Standards] would improve the quality of audits of government and not-for-profit organizations. It would also promote audit economy and efficiency, and ensure professional competence.''

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: The accounting firm that audits Capital Region OTB and formerly audited NYCOTB stated that the rule would result in an approximate 15 percent to 20 percent increase in time to address the internal control and compliance requirements. NYCOTB is no longer in operation. For Capital OTB, the added cost would be less than $15,000.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. This rule would not impose any new costs upon local governments and the New York State Racing and Wagering Board. In fact, the rule may lower local and state agency costs by reducing the amount of time and travel needed to meet with OTB auditors and discuss audit findings. By adopting auditing standards, audit review will become systematic and more efficient, mitigating the need for extensive post-audit follow-ups by local and State staff.

(c) The information related to costs was obtained from the Board staff, who in turn obtained the information from the regulated entities prior to publication of this rule as a proposed rulemaking. Costs were communicated directly to Board staff after copies of the proposed rules were provided to the regulated entities.

5. Paperwork: This rule will require the filing of several forms in addition to audit reports already required by statute. Auditors will be required to express an opinion, in relation to the basic financial statements taken as a whole, on the required supplemental schedules to the annual audit report, Statement of Section 516 Revenues and Expenditures; Statement of Revenue and Expense by Branch; Capital Acquisition Fund Balance Sheet and Statement of Changes in Section 509-a Capital Acquisition Fund. These schedules provide relevant information pertaining to various regulatory matters. Such statements have been a requirement for the OTBs for several years, but have not previously been subjected to audit. By doing so the reliability of the information presented will be strengthened.

6. Local Government Mandates: There is no program, service, duty or responsibility imposed by the rule upon any county, city, town, village, school district, fire district or other special district. Counties and cities are already under a statutory duty to review the financial activities of off track betting corporations. This rule will make audits uniform and therefore lower costs and facilitate the audits that localities are required to perform under current statutory mandates.

7. Duplication: There are no relevant rules or legal requirements of the state and federal governments that duplicate, overlap or conflict with the rule.

8. Alternative Approaches: One alternative would be to allow current accounting practices to continue. However, this alternative was rejected because the use of Government Auditing Standards creates a uniform method of reporting that the public and regulatory agencies can understand. Furthermore, independent auditors must follow Governmental Auditing Standards when performing audits. If this alternative is not adopted the continued use of non-standard accounting principles and recordkeeping procedures could compromise the integrity of the racing industry.

9. Federal Standards: There are no federal standards for pari-mutuel wagering. The New York State Racing and Wagering Board and, to a limited fiscal extent, the Department of Taxation of Finance are solely responsible for regulating pari-mutuel wagering in New York State.

10. Compliance Schedule: OTBs are required to submit annual audits every April. The Board would like to have this rule in place for the April 2012 reports.

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

A job impact statement, statement of regulatory flexibility for small businesses and a rural area flexibility analysis is not necessary for this rulemaking.

This rule will not adversely impact jobs or employment opportunities. The rule does not require audits - OTB audits are required under the law. Instead, the rule will enact standards for audits that are currently required by law. In light of the threatened loss of 1,500 jobs at New York City OTB that was averted in June 2008, these new standards may help to preserve OTB jobs by ensuring transparency of fiscal operations within OTBs and bolster public integrity in the financial operations of these public benefit corporations. These rules may also have a positive job impact on private auditing firms that are not presently affiliated with OTBs and would qualify as independent auditors. As is apparent from the nature and purpose of the rule, these rules may also positively impact private sector jobs statewide by economizing revenues derived from pari-mutuel wagering, that in turn help reduce local property taxes and reduce the overall tax burden on residential and commercial property owners.

This rule will not adversely impact small businesses or local governments because the rule affects public benefit corporations that do not meet the definition of either entity. OTBs are not local governments, and all of the OTB corporations have more than 100 employees. This rule does not impose reporting, recordkeeping or other compliance requirements on small businesses or local governments. In fact, the rule may have a positive impact by reducing time and manpower costs on local governments that receive payments from OTBs by facilitating the accounting and auditing processes. Local governments who already are familiar with Governmental Auditing Standards, which are required for localities that accept federal funds, will benefit because OTBs audits will be prepared under a standard they are already familiar with.

This rule does not require a rural area regulatory flexibility analysis because it will not impose an adverse impact on rural areas and it would not impose reporting, recordkeeping or other compliance requirements. The use of Governmental Auditing Standards have already been established and should already be in use by rural governments that accept federal funds. There is no need to establish differing compliance or reporting requirements or timetables that take into account the resources available to rural areas. While some regional OTBs have remote operations in rural areas of the state (e.g., OTB branches and automated tellers located in rural counties), these public benefit corporations maintain their business offices in -- and mainly operate from -- urban or suburban areas. Therefore, they already have the administrative ability meet the auditing requirements as mandated by statute and are not subject to the compliance issues described in Section 202-bb of the State Administrative Procedure Act. These rules will merely establish a uniform standard for the preparation of these audits and will not have an adverse impact on rural areas.

Department of State

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Do-Not-Call

I.D. No. DOS-44-11-00004-P

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

Proposed Action: Amendment of section 400.8 of Title 19 NYCRR; and amendment of sections 4602.1, 4602.2 and 4603.1 - 4603.4 of Title 21 NYCRR.

Statutory authority: Executive Law, section 94; and General Business Law, section 399-z

Subject: Do-Not-Call.

Purpose: The proposed rule carries out the intent of the December 2010 amendments to the Do-Not-Call Law.

Text of proposed rule: Subdivision (a) of section 4602.1 is amended to read as follows:

Section 4602.1 Authorization of transfer of telephone numbers to federal registry

(a) The [Consumer Protection Board] *New York State Department of State* is authorized to have the national ''do-not-call'' registry, established, managed and maintained by the Federal Trade Commission pursuant to 16 C.F.R. Section 310.4(b)(1)(iii)(B)[FN*] (herein referred to as the national ''do-not-call'' registry) serve as the New York State ''do-not-call'' registry.

Subdivisions (d) through (f) of section 4602.2 are amended to read as follows:

Section 4602.2 Definitions

(d) ''Negative Option Feature'' means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject such goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

[(d)] *(e)* Telemarketer means any person who, for financial profit or commercial purposes in connection with telemarketing, makes a telemarketing sales call to a consumer in this state or any person who directly controls or supervises the conduct of a telemarketer. Telemarketer shall also include any person, firm, or corporation acting as an agent or representative of such telemarketer. For purposes of this paragraph, commercial purposes shall mean the sale or offer for sale of goods and services. Charitable organizations as defined in section 171-a(1) of the Executive Law and registered pursuant to section 172 of the Executive Law, religious corporations as defined in section 2 of the Religious Corporations Law, political parties as defined in section 1- 104(3) of the Election Law, and political committees as defined in section 14-100(1) of the Election Law, are deemed not able to conduct any act or activity for commercial purposes and are deemed not to be operating for financial profit for purposes of these regulations.

[(e)] *(f)* Telemarketing means any plan, program or campaign which is initiated by a telephone call to a consumer or a message left on a telephone answering machine or voice mail system of a consumer, conducted to induce or encourage payment or the exchange of any other consideration for any goods or services by use of one or more telephones and which involves more than one telephone call by a telemarketer in which the consumer receiving such call or message is located within the state at the time of the call. Telemarketing does not include the solicitation of sales through media other than by telephone calls.

[(f)] *(g)* Telemarketing sales call means a telephone call made by a telemarketer *or by any outbound telephone calling technology that delivers a prerecorded message either* to a consumer *or to their voicemail or answering machine service* for the purpose of encouraging the purchase or rental of, or investment in property, goods or services, or inducing payment or the exchange of any other consideration for any goods or services, where the consumer's receiving device is a telephone.

Section 4603.1 is amended to read as follows:

4603.1 Violations

(a) No telemarketer or seller may make or cause to be made any unsolicited telemarketing sales call to any consumer more than 31 days after the telephone number appears on the national do-not-call registry, pursuant to 16 CFR section 310.4(b)(1)(iii)(B). Each call to a telephone number shall be deemed a separate occurrence for purposes of the penalty and enforcement provisions of these regulations.

(b) No telemarketer or seller shall engage in telemarketing at any time other than between 8:00 a.m. and 9:00 p.m. local time unless the consumer has given his or her express consent to the call at a different time.

(c) At the beginning of each telemarketing sales call telemarketers shall provide, in a clear and coherent manner using words with common and everyday meanings, at the beginning of each telemarketing sales call all of the following information: (1) the telemarketer's name and the person on whose behalf the solicitation is being made, if other than the telemarketer; (2) the purpose of the telephone call; and (3) the identity of the goods or services for which a fee will be charged.

(d) Prior to the purchase of any good or service, telemarketers shall disclose to the customer the cost of the goods or services that are the subject of the call and if the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charges, the dates the charges will be submitted for payment, and the specific steps the customer must take to avoid the charge.

4603.2 Exceptions

(a) Unsolicited telemarketing sales call means any telemarketing sales call other than a call made:

(1) in response to an express written or verbal request of the specific customer called; *or*

(2) in connection with an established business relationship, which has not been terminated by either party, unless such customer has stated to the telemarketer or the telemarketer's agent that such customer no longer wishes to receive the telemarketing sales calls of such telemarketer.[; or]

[(3) to an existing customer, unless such customer has stated to the telemarketer or the telemarketer's agent that such customer no longer wishes to receive the telemarketing sales calls of such telemarketer.]

(b) Established business relationship shall mean a prior or existing relationship formed by a voluntary two-way communication between a consumer and a telemarketer with or without an exchange of consideration, on the basis of the consumer's purchase or transaction with the telemarketer within the [eighteen (]*18*[)] months immediately preceding the date of the telephone call or on the basis of the consumer's inquiry or application regarding products or services offered by the telemarketer within the three [(3)] months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

[(c) Existing customer shall mean a prior or existing relationship formed by a voluntary two-way communication between a consumer and a telemarketer with or without an exchange of consideration, on the basis of the consumer's purchase or transaction with the telemarketer within the 18 months immediately preceding the date of the telephone call or on the basis of the consumer's inquiry or application regarding products or services offered by the telemarketer within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.]

[(d)] *(c)* Person shall mean any natural person, association, partnership, firm, corporation, and its affiliates or subsidiaries or other business entity.

Subdivision (a) of section 4603.3 is amended to read as follows:

4603.3 Safe Harbor provisions

A person (which includes an entity, corporation, or other telemarketer) shall not be held liable for violating these regulations if the person can demonstrate, by clear and convincing evidence, that: [(1)] (a) the person has obtained a version of the national 'do-not-call' registry from the Federal Trade Commission no more than 31 days prior to the date any telemarketing call is made, pursuant to 16 CFR section 310.4(6)(i))b)(iii) and as a part of the person's routine business practice, it has established*,* [and] implemented*, and updated* written policies and procedures related to the requirements of these regulations *prior to the date any telemarketing call is made*; [(2)] (b) the person has trained all personnel conducting telemarketing sales calls in the requirements of these regulations; [(3)] (c) the person maintains records demonstrating compliance with this section and the requirements of these regulations [in response to a notice from the board of alleged ''do-not-call''] violations and (d) any subsequent unsolicited telemarketing sales call is the result of an error.

Section 4603.4 is amended to read as follows:

4603.4 Enforcement

(a) *When the New York State Department of State has reason to believe a telemarketer has engaged in repeated unlawful acts in violation of this section, or when a notice of hearing has been issued, the New York State Department of State may request in writing the production of relevant documents and records as part of its investigation. If the person upon whom such request was made fails to produce the documents or records within thirty days after the date of the request, New York State Department of State may issue and serve subpoenas to compel the production of such documents and records. If any person shall refuse to comply with a subpoena issued under this section, New York State Department of State may petition a court of competition jurisdiction to enforce the subpoena and such sanctions as the court may direct.*

[(a)] *(b)* Upon allegation(s) of non-compliance with applicable law, or upon its own initiative, the [board] *New York State Department of State* may conduct an inquiry as to the sufficiency of any alleged violations. If the [board] *New York State Department of State*, finds any grounds to indicate that a violation(s) may have occurred, the [board] *New York State Department of State* may, as the public interest demands, send a notice of apparent liability to the alleged violator seeking a response.

[(b)] *(c)* The [board] *New York State Department of State* shall mail a copy of the notice of apparent liability to the last known business address of the alleged violator. Mailing of the notice shall be deemed receipt thereof.

[(c)] *(d)* The alleged violator shall respond to the notice no later than 35 days from the date the [board] *New York State Department of State* mailed such notice.

[(d)] *(e)* The [board] *New York State Department of State* will evaluate such response, conduct a review based on the evidence before it, and provide notice of its decision to the alleged violator within 60 days of receipt of the response. Mailing of the decision shall be deemed receipt thereof.

[(e)] *(f)* If the alleged violator disputes the [board] *New York State Department of State* decision, such violator may file an administrative appeal with the [board] *New York State Department of State* by requesting in writing an administrative hearing, within 10 days of receipt of the decision. The administrative hearing shall be subject to article 3 of the State Administrative Procedure Act (SAPA) *and 19 NYCRR Part 400 with the exception of the appeal provisions set forth in 19 NYCRR 400.2(j),(k) and (l)*.

[(f)] *(g)* If the alleged violator does not file an administrative appeal by requesting a hearing in writing within 10 days of receipt of such decision, the initial decision of the [board] *New York State Department of State* is deemed the final board decision and the alleged violator shall remit to the *New York State Department of State* [board] a fine payable to the ["State Consumer Protection Board"] *''New York State Department of State, Division of Consumer Protection''* as set out in the initial decision of the [board] *New York State Department of State*, within 10 days of receipt of the initial decision of the [board] *New York State Department of State*. *An aggrieved party shall have the right to challenge the final agency determination by filing a petition pursuant to Article 78 of the Civil Practice Law and Rules.*

[(g)] *(h)* If an administrative appeal is properly filed, the [board] *New York State Department of State* shall stay any fine pending the decision of such appeal.

[(h)] *(i)* During the hearing proceeding, the [board] *New York State Department of State* may establish evidentiary rebuttable presumption(s).

[(i)] *(j)* Any facts or evidence received by the [board] *New York State Department of State* may be used in any proceeding and shall be afforded appropriate consideration by the presiding officer. All evidence shall be kept in the custody of the presiding officer.

[(j)] *(k)* Where it is determined after the administrative hearing that the alleged violator has violated one or more provisions of these regulations, the presiding officer may assess a fine not to exceed $11,000 for each violation.

[(k)] *(l)* If the alleged violator requests an administrative appeal pursuant to subdivision [(e)] *(f)* of this section and an administrative hearing is held, the administrative hearing decision shall constitute a final [board] *New York State Department of State* decision. Violators shall remit to the [board] *''New York State Department of State''* a fine payable to the ["State Consumer Protection Board"] *''New York State Department of State, Division of Consumer Protection''* as set out in the administrative hearing decision within ten [(10)] days of the receipt of such decision. *An aggrieved party shall have the right to challenge the final agency determination by filing a petition pursuant to Article 78 of the Civil Practice Law and Rules.*

[(l)] *(m)* If the alleged violator does not respond to the notice of apparent liability within 35 days of receipt of the notice pursuant to subdivision [(c)] *(d)* of this section, said notice of apparent liability shall constitute the final [board] *New York State Department of State* decision. The alleged violator shall remit [to the board] a fine payable to the ["State Consumer Protection Board"] *''New York State Department of State, Division of Consumer Protection''* as set out in the notice of apparent liability, within 60 days from the date the [board] *New York State Department of State* mailed such notice. *An aggrieved party shall have the right to challenge the final agency determination by filing a petition pursuant to Article 78 of the Civil Practice Law and Rules.*

Section 400.8 of Title 19 NYCRR is amended to read as follows:

§ 400.8 Evidence and proof.

(a) The strict rules of evidence do not apply with respect to administrative adjudicatory proceedings.

(b) During the hearing proceeding, the New York State Department of State may establish evidentiary rebuttable presumption(s).

(c) Any facts or evidence received by the New York State Department of State may be used in any proceeding and shall be afforded appropriate consideration by the presiding officer. All evidence shall be kept in the custody of the presiding officer.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa R. Harris, NYS Dept. of State, Division of Consumer Protection, 5 ESP Suite 2101, Albany NY 12223, (518) 486-4852, email: lisa.harris@consumer.state.ny.us

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 91 of the Executive Law, titled Rules as added by Chapter 800 of the laws of 1951 and subdivision 3(6) of section 94-a of the Executive Law as added by Chapter 62 of the Laws of 2011, titled Consumer Protection Division, grants general rulemaking authority to the Consumer Protection Division to implement other powers and duties by regulation and otherwise as prescribed by any provision of law.

2. LEGISLATIVE OBJECTIVES:

The objective of the Do-Not-Call Law is to give natural persons, who are New York residents, an effective mechanism for preventing unsolicited and unwanted telemarketing calls. The proposed amendments carry out the intent of the statute by conforming the rules with federal and State laws and rules.

3. NEEDS AND BENEFITS:

General Business Law § 399-z as added in 2000, has been amended by Chapter 124 of the Laws of 2003, Chapter 417 of the Laws of 2004,

Chapter 214 of the Laws of 2005, Chapter 263 of the Laws of 2006, Chapter 69 of the Laws of 2007, and Chapter 344 of the Laws of 2010 and to keep pace with amendments to the federal Telephone Sales Rule and the Telephone Consumer Protection Act that enhances consumer protection in the area of unsolicited telemarketing sales calls and Chapter 62 of the laws of 2011 to acknowledge the merger of the New York State Consumer Protection Board with the New York State Department of State.

The purpose of the proposed amendments is to implement the statutory objectives of the legislation recently enacted in law and to acknowledge the merger of the New York State Consumer Board with the New York State Department of State. The benefits of the proposed amendments are to 1) enhance consumer protections by helping to prevent unsolicited telemarketing calls, including robocalls and calls received before 8 a.m. and after 9 p.m.; 2) require telemarketers to disclose the telemarketer's name and the person on whose behalf the solicitation is being made, the purpose of the telephone call, and the identity of the goods or services for which a fee will be charged, as well as any costs related to sale of such goods or services that are the subject of the call and the material terms and conditions of any negative option feature in the offer, if any; 3) grant the New York State Department of State, Consumer Protection Division subpoena power to enhance investigation and enforcement mechanisms; and 4) acknowledge the merger of the New York State Consumer Protection Board into the New York State Department of State.

4. COSTS:

(a) Costs to State government: There will be no additional costs to the New York State Department of State or to the State.

(b) Costs to private regulated parties: There will be no additional cost to private regulated parties.

(c) Costs to local governments: The proposed amendments will not impose any costs on local government.

5. PAPERWORK:

No additional paperwork should be necessary.

6. DUPLICATION:

The proposed amendments include prohibitions on deceptive telemarketing practices pursuant to General Business Law Section 399-pp(6) and General Business Law Section 399-pp(7).

7. ALTERNATIVES:

The New York State Department of State, Consumer Protection Division seeks to clarify the New York State Do-Not-Call Law requirements for telemarketers and businesses and enact rules that are consistent with General Business Law Section 399-z and with the federal law and rules to support compliance. The New York State Department of State, Consumer Protection Division considered the alternative of not implementing these regulations but, that alternative was dismissed because certain components of the law would have remained vague. Another alternative consideration was to implement provisions that were less restrictive and inconsistent with the law and rules of the Federal Trade Commission and the Federal Communications Commission which would cause unnecessary confusion for those entities required to comply.

8. LOCAL GOVERNMENT MANDATES:

The proposed amendments do not impose any program, service, duty, or responsibility upon local government.

9. FEDERAL STANDARDS:

The proposed amendments are in compliance with federal standards (47 U.S.C. § 227; 47 C.F.R. § 64.1200(c) (2010);15 U.S.C. 6101-6108; and, 16 C.F.R. § 310).

10. COMPLIANCE SCHEDULE:

The effective date of the proposed regulations is upon the publication of the notice of adoption in the State Register.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The proposed amendments will have no effects on local governments and will not impose reporting, record-keeping or other compliance requirements on local governments. The basis of this finding is that these amendments are directed at businesses that telemarket and telemarketers.

The amendments will not have additional effect on small businesses, which are defined as businesses which employ 100 or fewer individuals (SAPA § 102(8)). The New York State Department of State, does not possess statistics relating to the number of telemarketers or businesses that telemarket in or into New York State. However, according to the American Teleservices Association (See, www.ataconnect.org/public/government) there are over 400,000 employed teleservices professionals in New York State. The purpose of the proposed amendments is to prohibit calls at unpleasant hours, to make the Do-Not-Call Law applicable to prerecorded messages, to explicitly give the New York State Department of State subpoena power under General Business Law § 399-z, and to require telemarketers to make certain disclosures during the unsolicited telemarketing sales call.

The proposed amendments will provide a variety of benefits to New York consumers. The new rules will help reduce automated telemarketing calls and messages, also known as ''robocalls'', as well as late-night and early-morning telemarketing calls, which are particularly annoying and disruptive to most people's regular sleep patterns. The disclosure requirements will allow consumers to be on notice of who is calling and why and will help prevent deceptive negative option offers. Additionally, the New York State Department of State is granted subpoena power under General Business Law § 399-z, which will improve Do-Not-Call investigative and enforcement capabilities.

2. COMPLIANCE REQUIREMENT:

Neither the law nor these regulations require businesses to comply with any additional reporting requirements to the New York State Department of State.

3. PROFESSIONAL SERVICES:

Affected small businesses will not need to retain additional professional services to comply with the proposed amendments.

4. COMPLIANCE COSTS:

There are no expected compliance costs as the result of the amendments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendments do not impose new technological changes.

6. MINIMIZING ADVERSE IMPACT:

The regulations apply uniformly to all telemarketers including small businesses. These regulations are intended to prohibit calls at inappropriate hours, to make the Do-Not-Call Law applicable to prerecorded messages, to explicitly give the New York State Department of State subpoena power under General Business Law § 399-z, and to require telemarketers to make certain disclosures during the call. These regulations impose no additional negative impact on small businesses beyond those in the statute. Businesses currently have to comply with these proposed amendments under federal laws and rules. (47 U.S.C. § 227; 47 C.F.R. § 64.1200(c) (2010); 15 U.S.C. 6101-6108; and, 16 C.F.R. § 310).

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Local governments are not affected. The proposed amendments have no unique features, which would require the participation of local government. The New York State Department of State will carefully consider all comments filed in response to this notice and make changes to the extent necessary to reflect any unanticipated impacts on small businesses.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

Regulated businesses covered by the proposed amendments do business across New York State. The amendments will not have any additional effects on small businesses, which are defined as businesses which employ 100 or fewer individuals (SAPA § 102(8)). The New York State Department of State does not possess statistics relating to the number of telemarketers or business that telemarket in or into New York State. However, according to the American Teleservices Association's website, which can be found at www.ataconnect.org/public/government, there are over 400,000 employed teleservices professionals in New York State. The purpose of the proposed amendments is to prohibit calls at unpleasant hours, to make the Do-Not-Call Law applicable to prerecorded messages, to explicitly give the New York State Department of State subpoena power under General Business Law § 399-z, and to require telemarketers to make certain disclosures during the unsolicited telemarketing sales call.

The proposed amendments will not have any additional effect on small businesses located in rural areas. Any small business that utilizes telemarketing will be required to make certain disclosures during their phone calls and limit calls to certain times of day, but these changes will not be burdensome, as federal law currently requires telemarketers to meet these requirements.

The proposed amendments do not contemplate the imposition of additional costs to the Department of State.

2. REPORTING, RECORDKEEPING OR OTHER COMPLIANCE REQUIREMENTS:

The proposed amendments impose no new reporting requirements.

3. COSTS:

There will be no additional costs to rural areas.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendments apply uniformly to telemarketers that do business in both rural and non-rural areas of New York State. The proposed amendments do not impose any additional burden on persons located in rural areas and the New York State Department of State does not believe that the proposed amendments will have an adverse impact on rural areas. Federal regulations currently require the same disclosures, regulate robocalls, and restrict the time of day for telemarketing calls. 47 C.F.R § 64.1200(a), (b), (c)(1); § 16 C.F.R. 310.4(b)(1)(v), (c), (d).

5. RURAL AREA PARTICIPATION:

The proposed amendments have no unique features that would require rural area participation. The New York State Department of State will carefully consider any comments filed in response to this notice, and make changes to the extent necessary to reflect any impacts on rural areas.

Job Impact Statement

The nature of these amendments will have no impact on the number of jobs or employment opportunities. The proposed amendments make technical changes that conform to recent amendments to General Business Law § 399-z as well as the merger of the New York State Consumer Protection Board with the New York State Department of State, effectuated by Executive Law § 94-a. The proposed amendments also conform to federal rules set forth in the Telephone Sales Rule (TSR) (15 U.S.C. 6101-6108; 16 C.F.R. § 310) and the Telephone Consumer Protection Act (TCPA) of 1991 (47 U.S.C.A § 227; 47 C.F.R. § 64.1200). The TCPA became effective in December 1991. In 2003, the TCPA rules and regulations were revised to incorporate the National Do-Not-Call Registry. (See, Federal Communications Commission Report and Order, Released July 3, 2003, CG Docket No. 02-278). The TSR went into effect in March 2003 and currently imposes the requirements set forth in General Business Law (GBL) § 399-z(f); GBL § 399-z(2); and, GBL § 399-z(3). Since 2003, the Federal Trade Commission has implemented several amendments to the TSR to further strengthen consumer protections against unsolicited telemarketing sales calls. Accordingly, telemarketers and businesses should have already implemented policies and procedures that comply with the proposed amendments. Therefore, a job impact statement is not required.

Urban Development Corporation

EMERGENCY RULE MAKING

Downstate Revitalization Fund Program

I.D. No. UDC-44-11-00011-E

Filing No. 975

Filing Date: 2011-10-14

Effective Date: 2011-10-14

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 any such project, the Corporation shall secure a firm commitment from entities, independent of the Corporation, for the purchase or lease of such project. Such firm commitment shall be evidenced by a memorandum of understanding or other document describing the intent of the parties.

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

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

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

these employment commitments will subject a beneficiary to potential recapture of assistance.

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

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

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

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

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

Section 4249.5 Evaluation criteria

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

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

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

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

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

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

(6) located in distressed communities;

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

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

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

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

Maximum Score

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 of section 16-r of the Act.

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

Section 4249.7 Confidentiality

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

Section 4249.8 Expenses

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

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

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

Section 4249.9 Affirmative action and non-discrimination

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires January 11, 2012.

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 reapropriated 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.

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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.

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

Rural Area Flexibility Analysis

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

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

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

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

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

Job Impact Statement

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

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