

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

NOTICE OF EXPIRATION

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

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-51-10-00005-P	December 22, 2010	December 22, 2011

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Due Process Procedures for Criminal History Record Checks of Prospective School Employees and Applicants for Certification

I.D. No. EDU-02-12-00005-P

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

Proposed Action: Amendment of section 87.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(30)(a), 3001-d(1-4) and 3035(3)(a)

Subject: Due Process Procedures for Criminal History Record Checks of Prospective School Employees and Applicants for Certification.

Purpose: Eliminate oral argument in appeals of State Education Department determinations denying clearance for employment.

Text of proposed rule: 1. Subparagraph (iii) of paragraph (5) of subdivision (a) of section 87.5 of the Regulations of the Commissioner of Education is amended, effective April 11, 2012, as follows:

(iii) Such appeal papers, submitted within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph, may include any affidavits or other relevant written information and written argument which the prospective school employee wishes the Commissioner's designee to consider in support of the position that clearance for employment should be granted, including, where applicable, information in regard to his or her good conduct and rehabilitation. [The prospective school employee may request oral argument and must do so in the appeal papers submitted within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph. Such oral argument shall be conducted in accordance with the requirements of subparagraph (iv) of this paragraph.]

2. Subparagraph (iv) of paragraph (5) of subdivision (a) of section 87.5 of the Regulations of the Commissioner of Education is repealed, effective April 11, 2012, as follows:

(iv) A prospective school employee may request oral argument as part of the appeal of the department's determination denying clearance for employment. The department shall notify the prospective school employee of the time and location of such oral argument. Such argument shall be heard before the Commissioner's designee. At the oral argument, the prospective school employee may present additional affidavits or other relevant written information and written argument which the prospective school employee wishes the Commissioner's designee, to consider in support of the position that clearance for employment should be granted, including, where applicable, written information in regard to his or her good conduct and rehabilitation. No testimony shall be taken at the oral argument and no transcript of oral argument shall be made. The prospective school employee may make an audio tape recording of the oral argument. However, such audio tape recording or transcript thereof shall not be part of the record upon which the Commissioner's designee makes the determination on whether clearance for employment shall be granted or denied.]

3. Subparagraph (v) of paragraph (5) of subdivision (a) of section 87.5 of the Regulations of the Commissioner of Education is amended, effective April 11, 2012, as follows:

(v) Where a timely request for an appeal is received, upon review of the prospective school employee's criminal history record, related written information obtained by the department pursuant to the review of such criminal history record, written information and written argument submitted by the prospective school employee in this appeal within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph, [and written information provided at oral argument if requested by the prospective school employee,] the Commissioner's designee shall make a determination of whether clearance for employment shall be granted or denied. In such appeal, the Commissioner's designee shall apply the standards for the granting or denial of a license or employment application set forth in Correction Law, section 752 and shall consider the factors specified in Correction Law, section 753. Such appeal shall be conducted in accordance with the requirements of section 296(16) of the Executive Law. Where the determination of the Commissioner's designee is that clearance for employment is denied, his or her decision shall include the findings of facts and conclusions of law upon which the determination is based. A copy of the determination that clearance for employment is denied, or notice that such clearance is granted, as the case may be, shall be transmitted to the prospective school employee by regular first class mail. In addition, the covered school shall be notified of the denial or granting of clearance.

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-8857, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: John D'Agati, Deputy Commissioner of Education, NYS Education Department, Office of Higher Education, 89 Washington Avenue, Room 979 EBA, Albany, NY 12234, (518) 486-3633, email: jdagati@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Paragraph (a) of subdivision (30) of section 305 of the Education Law authorizes the Commissioner of Education to promulgate regulations to authorize the fingerprinting of prospective employees of school districts, charter schools and boards of cooperative educational services and nonpublic and private elementary and secondary schools, and for the use of information derived from searches of the records of the Division of Criminal Justice Services ("DCJS") and the Federal Bureau of Investigation ("FBI") based on the use of such fingerprints.

Education Law section 3001-d sets forth the procedures and requirements for conducting criminal history record checks of prospective employees of a nonpublic or private elementary or secondary schools.

Paragraph (a) of subdivision (3) of section 3035 of the Education Law requires the Commissioner of Education to promptly notify the nonpublic or private elementary or secondary school when the prospective school employee is cleared for employment based on his or criminal history and provides a prospective school employee who is denied clearance the right to be heard and offer proof in opposition to such determination in accordance with the Regulations of the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes by establishing requirements and procedures necessary to implement the statutory requirements prescribed in Chapter 630 of the Laws of 2006. That statute authorizes nonpublic and private schools to require their prospective school employees to be fingerprinted, to undergo a criminal history check, and be cleared for employment by the State Education Department.

3. NEEDS AND BENEFITS:

Pursuant to section 87.5(5) of the Commissioner's Regulations, a prospective school employee who was denied clearance for employment by the State Education Department as a result of a criminal history record check, may appeal that determination to a designee of the Commissioner and may request oral argument as part of the appeal. If requested, oral argument must be provided by the Department.

The proposed amendment would eliminate the provisions concerning oral argument. There is no legal requirement to conduct oral arguments under either the applicable statute (Education Law § 3035) or general due process principles, and elimination of oral arguments would not have a significant impact on the appeals process. A review of Department records of Part 87 decisions during a three year period (1/1/08 - 12/31/10) shows that oral arguments were requested in a minority of appeals (48 out of 138 appeals), and that the information received, as a result of oral argument, was the determinative factor in only 6 such appeals. Therefore, the considerable amount of Department staff time and resources devoted to conducting oral arguments is not justified by the small impact oral arguments have on the appeals process, particularly in a time of State fiscal constraints.

4. COSTS:

- (a) Costs to State government: none.
- (b) Costs to local government: none.
- (c) Costs to private regulated parties: none.
- (d) Costs to the regulatory agency: none.

The proposed amendment does not impose any costs but instead will eliminate costs to the State Education Department and parties to appeals, including school districts, BOCES and certain nonpublic and private schools, which are associated with conducting oral arguments.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment will eliminate provisions relating to oral arguments in appeals brought by prospective school employees who were denied clearance for employment by the State Education Department as a result of a criminal history record check.

6. PAPERWORK:

The proposed amendment does not impose any additional reporting or other paperwork requirements, and will eliminate paperwork associated with conducting oral arguments.

7. DUPLICATION:

The proposed amendment does not duplicate other requirements of the State and Federal government.

8. ALTERNATIVES:

Consideration was given to maintaining the present requirement that oral argument be provided if a party requests it, or revising the regulation to give the Commissioner discretion to grant oral argument in particular instances. However, there is no legal requirement to conduct oral arguments under either the applicable statute (Education Law § 3035) or general due process principles. Furthermore, elimination of oral arguments would not have a significant impact on the appeals process. A review of Department records of Part 87 decisions during a three year period (1/1/08 - 12/31/10) shows that oral arguments were requested in a minority of appeals (48 out of 138 appeals), and that the information received, as a result of oral argument, was the determinative factor in only 6 such appeals. Therefore, the considerable amount of Department staff time and resources devoted to conducting oral arguments is not justified by the small impact oral arguments have on the appeals process, particularly in a time of State fiscal constraints.

9. FEDERAL STANDARDS:

There are no Federal requirements relating to the subject matter of the proposed amendment.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small businesses:

The proposed amendment relates to procedures in appeals of clearance determinations resulting from criminal history record check of prospective nonpublic and private school employees, and does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no affirmative steps are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local governments:

1. EFFECT OF RULE:

The proposed amendment applies to school districts, charter schools and boards of cooperative educational services, or any nonpublic and private elementary and secondary school that elects to fingerprint and seek clearance for prospective employees from the State Education Department and is geographically located in New York State, except the city school district of the City of New York.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional program, service, duty or responsibility, or compliance requirements, on local governments. The proposed amendment will eliminate provisions relating to oral arguments in appeals brought by prospective school employees who were denied clearance for employment by the State Education Department as a result of a criminal history record check.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on local governments.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any costs but instead will eliminate costs to the State Education Department and parties to appeals, including school districts, BOCES and certain nonpublic and private schools, which are associated with conducting oral arguments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements or costs on local governments. The proposed amendment will eliminate requirements and costs relating to oral arguments in appeals brought by prospective school employees who were denied clearance for employment by the State Education Department as a result of a criminal history record check.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents for distribution to school districts within their supervisory districts for review and comment.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to school districts, charter schools and boards of cooperative educational services, or any nonpublic and private elementary and secondary school in the State (except for the New York City School District) that elect to fingerprint and seek clearance for prospective employees from the State Education Department, including those located in the 44 rural counties with less than 200,000 inhabitants

and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment does not impose any additional program, service, duty or responsibility or compliance requirements on local governments. The proposed amendment will eliminate provisions relating to oral arguments in appeals brought by prospective school employees who were denied clearance for employment by the State Education Department as a result of a criminal history record check.

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

COSTS:

The proposed amendment does not impose any costs but instead will eliminate costs to the State Education Department and parties to appeals, including school districts, BOCES and certain nonpublic and private schools, which are associated with conducting oral arguments.

MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements or costs on local governments. The proposed amendment will eliminate requirements and costs relating to oral arguments in appeals brought by prospective school employees who were denied clearance for employment by the State Education Department as a result of a criminal history record check.

RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the Department's Rural Advisory Committee.

Job Impact Statement

The proposed amendment relates to procedures in appeals of clearance determinations resulting from criminal history record check of prospective employees of school districts, charter schools and boards of cooperative educational services and certain nonpublic and private schools that elect to fingerprint and seek clearance for prospective employees from the State Education Department, and will not have any impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that it will not have a substantial adverse impact on jobs and employment opportunities, no further steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement was not required and one was not prepared.

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

Waiver Requirements for Special Education Schools and Early Intervention Agencies

I.D. No. EDU-02-12-00018-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 29.18; and addition of section 59.15 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6501(not subdivided), 6503-b, 6504(not subdivided), 6506(2), 6507(2)(a), 6508(1) and 6509(9)

Subject: Waiver requirements for special education schools and early intervention agencies.

Purpose: To implement chapter 581 of the Laws of 2011 by establishing waiver requirements for certain entities.

Text of proposed rule: 1. A new section 59.15 of the Regulations of the Commissioner of Education is added, effective April 11, 2012, to read as follows:

§ 59.15 Waiver for certain special education schools and early intervention agencies providing certain professional services.

(a) Applicability.

(1) Section 6503-b(2)(a) of the Education Law authorizes the Department to issue a waiver for special education schools, as defined in section 6503-b(1)(a) of the Education Law, to provide the following services:

- (i) conduct components of a multi-disciplinary evaluation as defined in section 6503-b(1)(d) of the Education Law; and
- (ii) related services, as defined in section 6503-b(1)(f) of the Education Law.

(2) Section 6503-b(2)(b) of the Education Law authorizes the Department to issue a waiver for early intervention agencies defined in section 6503-b(1)(b), to provide the following services:

- (i) early intervention program services, as defined in section 6503-b(1)(c) of the Education Law,

- (ii) multi-disciplinary evaluations for purposes of an early intervention program, as defined in section 6503-b(1)(e) of the Education Law; and

- (iii) service coordination services.

(b) Eligible entities. (1) To be eligible for a waiver under this section, an entity must be either:

- (i) a special education school, as defined in section 6503-b(1)(a) of the Education Law, if seeking to provide the services set forth in paragraph (1) of subdivision (a) of this section; or

- (ii) an early intervention agency, as defined in section 6503-b(1)(b) of the Education Law, if seeking to provide the services set forth in paragraph (2) of subdivision (a) of this section.

(2) Entities that do not require a waiver. In accordance with section 6503-b of the Education Law, the following entities do not require a waiver under this section:

- (i) a school district, board of cooperative educational services, municipality, state agency, or other public entity;

- (ii) a child care institution that conducts multi-disciplinary evaluations or provides related services through an approved private nonresidential school operated by such child care institution, provided that such school obtains a waiver pursuant to this section; and

- (iii) a special education school or an early intervention agency that is otherwise authorized by law to provide the applicable professional services.

(c) Application for a waiver.

(1) To be approved to provide the services described in subdivision (a) of this section, without having to demonstrate the need for the entity's services, an eligible entity shall have obtained a waiver from the Department no later than July 1, 2013. The Department may, however, issue a waiver to a qualified entity after July 1, 2013, regardless of the date on which the entity was created, upon a demonstration of need for the entity's services satisfactory to the Department (e.g., the entity provides services to an underserved population or in a shortage area).

(2) Within 120 days after the posting of the application form on the Department's website, any entity described in subdivision (b) of this section providing services described in subdivision (a) of this section, shall submit an application for a waiver on forms prescribed by the Commissioner. Upon submission of an application for a waiver under this section, the entity may continue to operate and provide services until the Department either denies or approves the entity's application.

(3) An application for a waiver under this section shall be accompanied by the application fee of \$345, provided that where the applicant simultaneously applies for a waiver as a special education school and a waiver as an early intervention agency, the total waiver fee shall be \$345. The application shall include:

- (i) the name of the special education school or early intervention agency;

- (ii) evidence acceptable to the Department that the entity is either:

- (a) a "special education school" as defined in section 6503-b(1)(a) of the Education Law; or

- (b) an "early intervention agency" as defined in section 6503-b(1)(b) of the Education Law;

- (iii) the primary address, phone number, website and email address for the entity;

- (iv) contact information for the individual responsible for submitting the application for a waiver, including phone number and email address;

- (v) the names and contact information of the directors, trustees and officers of the entity;

- (vi) a listing of other jurisdictions in which the entity may provide the services described in subdivision (a) of this section;

- (vii) an attestation by an officer authorized by the entity to make such attestation that:

- (a) identifies the scope of services to be provided by the entity;

- (b) includes a list of professions under Title VIII of the Education Law in which professional services will be provided by such entity;

- (c) includes a statement that individuals authorized to provide professional services only under supervision will receive the required supervision;

- (d) includes a description of how the services will be provided, including a description of whether the services will be provided by licensed or authorized individuals employed by the entity or provided through a contract with licensed professionals, individuals otherwise authorized to practice or a professional entity, as set forth in Education Law section 6503-b(6);

- (e) includes a statement that only a licensed professional, a person otherwise authorized to provide such services, or a professional services entity authorized by law to provide such services shall provide such professional services as are authorized under this section;

- (f) includes a statement that the entity will verify the licensure,

limited permit or other authorization of individuals and professional entities providing services described in this section, as employees of or on behalf of the entity; and

(g) includes a statement that, unless otherwise authorized by law, the entity shall only provide services authorized under section 6503-b of the Education Law;

(h) the entity will comply with section 18 of the Public Health Law relating to patient access to records;

(i) the entity will comply with all applicable laws and regulations relating to privacy and access to records of any student, client or business record.

(j) the entity will make available any and all information requested by the Department relating to the entity's eligibility for a waiver and the entity's compliance with the requirements of this section and section 6503-b of the Education Law;

(k) the entity has adequate fiscal and financial resources to provide such services; and

(l) the statements on the application are true and accurate.

(d) Attestation of moral character.

(1) Each officer, director, and trustee of the entity shall submit, on forms prescribed by the Commissioner, an attestation regarding whether:

(i) the individual has been found guilty after trial, or pleaded guilty, no contest or nolo contendere to a crime (felony or misdemeanor) in any court;

(ii) the individual has criminal charges (felony or misdemeanor) pending in any court;

(iii) any licensing or disciplinary authority has refused to issue a license or has ever revoked, annulled, cancelled, accepted surrender of, suspended, placed on probation, or refused to renew a professional license or certificate held by the individual now or previously, or has ever fined, censured, reprimanded or otherwise disciplined the individual;

(iv) there are any pending charges against the individual in any jurisdiction for any sort of professional misconduct; or

(v) a hospital or licensed facility has restricted or terminated the individual's professional training, employment or privileges, or whether the individual has ever voluntarily resigned or withdrawn from such association to avoid imposition of such measure.

(2) Any information included in the application that indicates that a director or officer of the entity has committed an act which raises a reasonable question as to the individual's moral character shall be referred to the Director of the Office of Professional Discipline or his or her designee. The determination of whether an officer, director or trustee of the entity is of good moral character shall be made in accordance with the procedures specified in Subpart 28-1 of the Rules of the Board of Regents.

(e) Provision of professional services.

(1) Notwithstanding any other provision of the law to the contrary, a special education school or early intervention agency operating under a waiver pursuant to section 6503-b of the Education Law may employ individuals licensed or otherwise authorized to practice a profession as defined under Title VIII of the Education Law, to the extent the services are authorized by the waiver.

(2) Unless otherwise authorized by law, an entity that holds a waiver under this section shall not provide services in any profession other than those authorized in 6503-b of the Education Law and included on the application for a waiver.

(f) Review of waiver applications. The application shall not be deemed acceptable if the entity has not submitted information identified in paragraphs (c) and (d) of this section. The Department may deny an application based on the failure of the applicant to submit the required information within a reasonable period of time, as determined by the Department. When, in the determination of the Department, all necessary information has been received, a decision to approve or deny the waiver application shall be made within 90 days of such determination. If the waiver application is denied, then the entity shall cease the provision of professional services as defined in section 6503-b of the Education Law. The determination of the Department shall be final, and a copy thereof shall be forwarded to the applicant.

(g) Waiver certificates.

(1) An entity that has been issued a waiver under this section shall apply for a waiver certificate for each setting at which the entity provides professional services in New York.

(2) The application for additional certificates may be made as part of the initial application for a waiver or after the Department has approved the entity for a waiver under section 6503-b of the Education Law.

(3) Each waiver certificate shall display the name of the entity and the address of the site.

(4) Any entity that willfully fails to obtain a certificate of waiver for each site and/or to display the waiver certificate at each site shall be subject to the penalties set forth in section 6511 of the Education Law.

(5) An entity with an approved waiver may apply, on a form pre-

scribed by the Commissioner, to amend the waiver to add additional professional services.

(h) Notification of changes.

(1) In the event that a change in the location of the chief administrative offices of a special education school or early intervention agency is contemplated, the owner shall notify the Department at least 30 days prior to relocation.

(2) An entity that is issued a waiver pursuant to section 6503-b of the Education Law shall notify the Department within 60 days of other changes in the information supplied to the Department, including but not limited to a change in the:

(i) name and terms of officers or directors;

(ii) site(s) at which professional services are provided;

(iii) person responsible for filing the waiver application on behalf of the entity or the contact information for such person; and/or

(iv) a transfer or assignment of interest as set forth in subdivision (i) of this section, provided that the entity shall notify the Department immediately of such change. Notification shall be made in a form prescribed by the Department.

(i) Transfer or assignment of waiver. A waiver issued by the Department pursuant to section 6503-b of the Education Law shall not be transferable or assignable. For purposes of this section, a transfer or assignment shall mean the conveyance of a waiver under this section from one entity to another entity by any means, including but not limited to a merger, consolidation, or a change in control of the entity.

(j) Triennial application. A waiver issued pursuant to this section shall be valid for three years. An entity that is issued a waiver pursuant to this section shall submit to the Department for review an application for renewal of the waiver every three years with the triennial registration fee of \$260, or a prorated portion thereof, as determined by the Department.

(k) Notwithstanding any other provision of law to the contrary, upon revocation or other termination by the commissioner of approval of the special education school pursuant to Article 89 of the Education Law and the provisions of this Title implementing such article or termination of the early intervention agency pursuant to Title 2-A of Article 25 of the Public Health Law and implementing regulations by the commissioner pursuant to section 4403(18) of the Education Law, the school's or early intervention agency's waiver pursuant to this section shall be deemed revoked and annulled.

2. Section 29.18 of the Rules of the Regents is amended, effective April 11, 2012, to read as follows:

§ 29.18 Unprofessional conduct in waived entities.

(a) An entity that is issued a waiver pursuant to section 6503-a or 6503-b of the Education Law [and section 59.14 of this Title] shall be under the supervision of the Board of Regents and subject to the disciplinary procedures and penalties set forth in subarticle 3 of article 130 of the Education Law. Any such waiver shall be subject to suspension, revocation or annulment for cause, and any entity holding such a waiver shall be subject to disciplinary proceedings and penalties in the same manner, to the same extent, and for the same reasons as individuals and professional entities practicing the same profession, as provided in title VIII of the Education Law and this Part. For purposes of this subdivision, a certificate of waiver shall be considered the same as a license to practice a profession.

(b) Failure to disclose information. It shall be unprofessional conduct for an entity issued a waiver pursuant to [section] sections 59.14 or 59.15 of this Title to have failed to disclose all information required by the department in order to make an accurate determination of the entity's waiver application. This shall include the failure to notify the department that a director or officer of the entity has committed an act with raises a reasonable question as to moral character.

(c) [Penalties for professional misconduct. The Board of Regents may impose upon an entity found guilty of unprofessional conduct under this section those penalties and fines authorized in section 6511 of the Education Law.]

Professional services. It shall be unprofessional conduct for an entity operating under a waiver pursuant to section 6503-a or 6503-b of the Education Law to practice any profession licensed pursuant to Title VIII of the Education Law or to hold itself out to the public as authorized to provide professional services, except as authorized by section 6503-a or 6503-b of the Education Law or otherwise authorized by law.

(d) In accordance with section 6503-b(7) of the Education Law, a special education school or early intervention agency granted a waiver under section 59.15 of this Title that conducts or contracts for a component of a multi-disciplinary evaluation that involves the practice of medicine by an individual subject to disciplinary proceedings in accordance with sections 230 and/or 230-b of the Public Health Law shall be subject to the pre-hearing procedures and hearing procedures as are provided with respect to individual licensees in Title 2-A of Article 2 of the Public Health Law.

(e) Penalties for professional misconduct. The Board of Regents may

impose upon an entity found guilty of unprofessional conduct under this section those penalties and fines authorized in section 6511 of the Education Law.

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, New York State Education Department, 89 Washington Avenue, Albany, New York 12234, (518) 473-2183, email: mgammon@mail.nysed.gov

Data, views or arguments may be submitted to: Seth Rockmuller, New York State Education Department, 2nd Floor, 89 Washington Avenue, Albany, New York 12234, (518) 474-1756, email: opdepcom@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the article of the Education Law that pertains to the particular profession.

Section 6503-b of the Education Law authorizes the Board of Regents to issue a waiver to certain special education schools ("schools") and early intervention agencies ("agencies") that seek to provide certain professional services, as defined in the Education Law.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (2) of section 6506 of the Education Law authorizes the Board of Regents to promulgate rules regarding the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations relating to the professions.

Subdivision (1) of section 6508 of the Education Law authorizes the state boards for the professions to assist the Regents and the Department in matters of professional licensure and practice.

Subdivision (9) of section 6509 of the Education Law authorizes the Board of Regents to define unprofessional conduct.

Section 6510 of the Education Law sets for the procedures to be followed in cases of professional misconduct.

Section 6511 of the Education Law establishes penalties for professional misconduct that may be imposed by the Board of Regents.

2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of section 6503-b of the Education Law by setting forth the requirements by which a qualified school or agency may submit an application for a waiver authorizing it to provide certain professional services that are restricted under Title VIII of the Education Law. The proposed amendment is necessary to ensure that schools and agencies employing licensed professionals and authorized persons, as defined in the Education Law, meet minimum standards for a waiver and that the entity is accountable and subject to the disciplinary authority of the Board of Regents, in the same way as a licensed professional under Title VIII of the Education Law.

3. NEEDS AND BENEFITS:

Chapter 581 of the Laws of 2011 added, among other things, a new section 6503-b to the Education Law authorizing the Department to issue waivers to schools and agencies to enable them to employ licensed professionals or contract with licensees or professional business entities to provide certain professional services to children in need of their services. Absent such a waiver, employment or contracting for professional services in most licensed professions would conflict with restrictions on corporate practice under Title VIII of the Education Law.

The new law allows schools approved by the State Education Department and agencies approved by the Department of Health that are currently providing professional services to continue to do so until July 1, 2013. In order to continue to provide services after that date, schools or agencies must submit a waiver application to the Department within 120 days of the posting of the applications on the Office of the Professions website (www.op.nysed.gov). Once a school or agency applies, it will be able to continue to provide services until the application is approved or denied. These provisions avoid a disruption in professional services provided to children receiving early intervention or preschool services. However, if an application is denied by the Department, the entity must cease providing professional services in New York.

The purpose of Chapter 581 of the Laws of 2011 is to reconcile the provisions of Title VIII of the Education Law that prohibit corporate practice of certain licensed professions with the provisions of section 4410 of the Education Law and Title 2-A of Article 25 of the Public Health Law that contemplate that special education schools and early intervention agencies

be able to provide multi-disciplinary evaluations, related services, and early intervention services recommended for a student.

Section 6503-b of the Education Law defines eligible entities and the professional services that may be offered by such entities, and provides for oversight by the Board of Regents. This section also requires, as part of the application process, that the entity provide attestations by each officer, director, and trustee of the entity that he or she is of good moral character. The fee for an initial waiver is \$345, although an entity that simultaneously applies for waivers as both a special education school and an early intervention agency only has to pay the \$345 fee once. An entity that receives a waiver under the law must apply for a renewal every three years and pay the triennial registration fee of \$260, or a pro-rated amount as determined by the Department. An approved entity must request a waiver certificate for each site at which professional services are provided and notify the Department in a timely manner if there are changes in the services provided or the location of the administrative office or sites operated by the entity.

The proposed regulations implement the provisions of law by setting forth the requirements to be met by a qualified entity in order to receive a waiver. These include, but are not limited to, verification from the appropriate regulatory agency that the entity is a qualified special education school or early intervention provider. Since these entities are already approved by the Education Department or the Department of Health, there is a known population of entities that will apply for, and require, a waiver under 6503-b, which facilitates the implementation of this law. Although the granting of a waiver resolves the issue of the authority of the entity to provide professional services, only licensed or authorized persons may provide services, and the entity is responsible for verifying the licensure of providers and the appropriate supervision of interns or permit holders who are only authorized to practice under supervision. This will ensure that preschool students receive appropriate services from competent and qualified individuals who are accountable under the Education Law.

The proposed amendment of section 29.18 of the Rules of the Board of Regents implements the Board of Regents disciplinary authority over entities receiving waivers under Education Law section 6503-b. The amendment clarifies that the entity is subject to the same professional misconduct provisions as a licensed professional or professional business entity, including the same due process rights.

4. COSTS:

(a) Costs to State government: The proposed amendment does not impose any additional costs on State government, beyond those imposed by statute.

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

(c) Cost to private regulated parties: The law establishes the fee of \$345 to be paid with an initial application and \$260 for a triennial re-registration. The proposed regulation will not impose any additional costs on applicants for the waiver of corporate practice prohibitions.

(d) Cost to the regulatory agency: As stated above in Costs to State government, the proposed regulation does not impose any additional costs beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed regulation implements the requirements of section 6503-b of the Education Law, in regard to the services provided by individuals licensed or authorized under the Education Law in certain schools and agencies. Therefore, the proposed regulation does not impose any program, service, duty or responsibility upon local governments beyond those imposed by statute.

6. PAPERWORK:

The proposed regulation imposes no additional reporting or recordkeeping requirements beyond those imposed by section 6503-b of the Education Law. In accordance with section 6503-b, entities applying for a waiver will be required to submit to the State Education Department an application and evidence satisfactory to the Department that the entity meets the requirements in law and regulation for a waiver.

7. DUPLICATION:

The proposed regulation does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

The proposed amendment implements the requirements of section 6503-b of the Education Law. Therefore, there are no viable alternatives.

9. FEDERAL STANDARDS:

There are no Federal standards for the waiver of corporate practice prohibitions for schools or agencies defined in section 6503-b of the Education Law.

10. COMPLIANCE SCHEDULE:

Applicants seeking a waiver must comply with the requirements of the proposed amendments on its stated effective date.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The proposed regulations implement Chapter 581 of the Laws of 2011

which established a new section 6503-b of the Education Law to authorize the Education Department to issue a waiver from corporate practice restrictions to certain special education schools and early intervention agencies that provide professional services. The proposed regulations add a new section 59.15 to the Regulations of the Commissioner of Education and amend section 29.18 of the Rules of the Board of Regents to implement the statute, which took effect on June 30, 2011.

There are approximately 450 special education schools approved by the State Education Department and 1,051 early intervention agencies approved by the Department of Health. Unless they are otherwise authorized to provide the relevant professional services, all of these schools and agencies would require a waiver under Chapter 581 of the Laws of 2011 and, therefore, would be affected by the proposed regulations.

2. COMPLIANCE REQUIREMENTS:

The regulation establishes the information that must be submitted in an application for a waiver under section 6503-b of the Education Law. This includes a fee of \$345; evidence that the entity is either a "special education school" or an "early intervention agency;" contact information to allow the Department to follow-up with the applicant; a list of the professions under Title VIII of the Education Law in which professional services will be provided; and attestations that only licensed or authorized persons will provide professional services, that the entity will verify licensure or qualifications, that the entity will comply with applicable laws and regulations related to privacy and access to records of any student, client or business record, and that the entity has adequate resources to provide the services authorized under the waiver.

In addition, each officer, director and trustee of the entity must submit an attestation of his/her good moral character, including whether the individual has been found guilty after trial, or pleaded guilty, no contest or nolo contendere to a crime in any court; the individual has criminal charges pending; any licensing or disciplinary authority has refused to issue a license or have ever revoked, annulled, cancelled, accepted surrender of, suspended, placed on probation or refused to renew a professional license or certificate held by the individual; there are pending charges against the individual in any jurisdiction for professional misconduct; or a hospital or licensed facility has restricted or terminated the individual's professional training, employment or privileges. These provisions are consistent with the statutory requirement that all directors, officers and trustees are of good moral character, as determined by the State Education Department.

The waiver is valid for three years and may be renewed for an additional three years, upon application and payment of the \$260 registration fee. If an entity's approval from the Commissioner of Education to operate a special education school or from the Commissioner of Health to operate an early intervention program is revoked or otherwise terminated, the waiver under section 6503-a shall be deemed revoked and annulled.

An entity that operates under a waiver issued by the Department, pursuant to section 6503-b of the Education Law, is under the supervision of the Board of Regents and subject to the disciplinary procedures and penalties set forth in the Education Law. Unprofessional conduct under section 29.18 of the Regents Rules is defined as failure to disclose to the Department information that is required to make an accurate determination of the entity's waiver application, or practicing any profession licensed pursuant to Title VIII of the Education Law or to hold out as authorized to provide professional services, except as authorized by law. The penalties that may be imposed upon an entity are those penalties and fines authorized in law.

3. PROFESSIONAL SERVICES:

The proposed regulation will not require special education schools or early intervention programs, as defined in the Education Law to hire professional services to comply.

4. COMPLIANCE COSTS:

The regulation will not impose additional costs on special education schools or early intervention programs that are operated by local governments, including school districts and boards of cooperative educational services, municipalities, state agencies or other public entities. A special education school or early intervention program that is not exempt from the waiver will have to submit the required application and initial fee of \$345, although an entity seeking a waiver to operate both a special education school and an early intervention program will only need to pay \$345. An entity seeking to renew a waiver must submit the triennial application and the \$260 fee, which may be prorated at the discretion of the Department.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed regulation will not impose any technological requirements on regulated parties, including those that are classified as small businesses, and is economically feasible. See above "Compliance Costs" for the economic impact of the regulation.

6. MINIMIZING ADVERSE IMPACT:

The proposed regulations are necessary to implement Chapter 581 of the Laws of 2011 and to authorize the Department to issue waivers to certain special education schools and early intervention providers. If these regulations are not adopted, and waivers are not issued, the entities will

not be able to employ individuals licensed or authorized under Title VIII of the Education Law or professional business entities authorized by law, to provide professional services that are restricted under the law. This will have a negative effect on children with a disability and those at risk of a disability who would benefit from the professional services authorized by a waiver issued pursuant to section 6503-b of the Education Law.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The State Boards for several of the professions established under Title VIII of the Education Law include members who have experience working in entities that are classified as small businesses or operated by local governments. The Boards worked with staff of the State Education Department to develop the proposed regulation to implement Chapter 581 of the Laws of 2011. In addition, the State Education Department communicated with organizations and individuals, including those that are small businesses, during the development of the proposed legislation, which was a priority for the Education Department. This law and the implementing regulations will reconcile provisions of Title VIII of the Education Law that prohibit corporate practice of certain licensed professions with the provisions of the Education Law and Public Health Law to allow the waived entities, including small businesses, to provide multi-disciplinary evaluations, related services and early intervention services recommended for students.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

Education Law section 6503-b was signed into law, pursuant to Chapter 581 of the Laws of 2011, effective June 30, 2011, to address critical issues relating to the authority of certain special education schools and early intervention agencies to employ licensed professionals or contract with licensees or professional business entities to provide certain professional services that are restricted under Title VIII of the Education Law. These regulations will affect special education schools and early intervention agencies that provide these services in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

Chapter 581 of the Laws of 2011 added, among other things, a new section 6503-b to the Education Law authorizing the Department to issue waivers to schools and agencies to enable them to employ licensed professionals or contract with licensees or professional business entities to provide certain professional services to children in need of their services. Absent such a waiver, employment or contracting for professional services in most licensed professions would conflict with restrictions on corporate practice under Title VIII of the Education Law.

The new law allows schools approved by the State Education Department and agencies approved by the Department of Health that are currently providing professional services to continue to do so until July 1, 2013. In order to continue to provide services after that date, schools or agencies must submit a waiver application to the Department within 120 days of the posting of the applications on the Office of the Professions website (www.op.nysed.gov). Once a school or agency applies, it will be able to continue to provide services until the application is approved or denied. These provisions avoid a disruption in professional services provided to children receiving early intervention or preschool services. However, if an application is denied by the Department, the entity must cease providing professional services in New York.

The purpose of Chapter 581 of the Laws of 2011 is to reconcile the provisions of Title VIII of the Education Law that prohibit corporate practice of certain licensed professions with the provisions of section 4410 of the Education Law and Title 2-A of Article 25 of the Public Health Law that contemplate that special education schools and early intervention agencies be able to provide multi-disciplinary evaluations, related services, and early intervention services recommended for a student.

Section 6503-b of the Education Law defines eligible entities and the professional services that may be offered by such entities, and provides for oversight by the Board of Regents. This section also requires, as part of the application process, that the entity provide attestations by each officer, director, and trustee of the entity that he or she is of good moral character. The fee for an initial waiver is \$345, although an entity that simultaneously applies for waivers as both a special education school and an early intervention agency only has to pay the \$345 fee once. An entity that receives a waiver under the law must apply for a renewal every three years and pay the triennial registration fee of \$260, or a pro-rated amount as determined by the Department. An approved entity must request a waiver certificate for each site at which professional services are provided and notify the Department in a timely manner if there are changes in the services provided or the location of the administrative office or sites operated by the entity.

The proposed regulations implement the provisions of law by setting

forth the requirements to be met by a qualified entity in order to receive a waiver. These include, but are not limited to, verification from the appropriate regulatory agency that the entity is a qualified special education school or early intervention provider. Since these entities are already approved by the Education Department or the Department of Health, there is a known population of entities that will apply for, and require, a waiver under 6503-b, which facilitates the implementation of this law. Although the granting of a waiver resolves the issue of the authority of the entity to provide professional services, only licensed or authorized persons may provide services, and the entity is responsible for verifying the licensure of providers and the appropriate supervision of interns or permit holders who are only authorized to practice under supervision. This will ensure that preschool students receive appropriate services from competent and qualified individuals who are accountable under the Education Law.

The proposed amendment of section 29.18 of the Rules of the Board of Regents implements the Board of Regents disciplinary authority over entities receiving waivers under Education Law section 6503-b. The amendment clarifies that the entity is subject to the same professional misconduct provisions as a licensed professional or professional business entity, including the same due process rights.

3. COSTS:

The cost for the initial application is established in law as \$345 and \$260 for the triennial re-registration. The regulations do not impose any additional costs on rural areas beyond those imposed by statute.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements the provisions of Chapter 581 of the Laws of 2011. These requirements are in place to ensure that special education schools or early intervention agencies that provide professional services and employ licensed professionals are subject to oversight by the Board of Regents to safeguard the public.

Due to the nature of the proposed amendment, the State Education Department does not believe it to be warranted to establish different requirements for institutions located in rural areas.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the State Boards and from statewide professional associations whose memberships include individuals who live or work in rural areas.

Job Impact Statement

Chapter 581 of the Laws of 2011 added a new section 6503-b of the Education Law authorizing the Department to issue waivers to special education schools and early intervention agencies to enable them to employ licensed professionals or contract with licensees or professional business entities to provide certain professional services to children in need of their services. Absent such a waiver, employment or contracting for professional services in most licensed professions would conflict with restrictions on corporate practice under Title VIII of the Education Law.

Because it is evident from the nature of the proposed regulation that it will have no negative impact on jobs or employment opportunities, 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.

Department of Environmental Conservation

NOTICE OF ADOPTION

Amend Part 189 Related to the Discovery of Chronic Wasting Disease in Deer in Maryland

I.D. No. ENV-42-11-00023-A

Filing No. 1409

Filing Date: 2011-12-27

Effective Date: 2012-01-11

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

Action taken: Amendment of Part 189 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 11-0325, 11-1905 and 27-0703

Subject: Amend Part 189 related to the discovery of chronic wasting disease in deer in Maryland.

Purpose: To prevent importation of chronic wasting disease infectious material from the State of Maryland into New York.

Text of final rule: Subparagraph 189.3(e)(1)(i) is amended to read as follows:

(i) United States: Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, [Maryland,] Massachusetts, Mississippi, New Hampshire, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, and Vermont.

Subdivision 189.7(h) is repealed.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 189.7(h).

Text of rule and any required statements and analyses may be obtained from: Patrick Martin, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4750, (518) 402-9001, email: pxmartin@gw.dec.state.ny.us

Additional matter required by statute: A negative declaration has been prepared pursuant to Article 8 of the Environmental Conservation Law and is on file with the department.

Revised Regulatory Impact Statement

The original Regulatory Impact Statement, as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended to reflect the changes made to the text of the regulation.

Revised Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed regulation is necessary to protect the white-tailed deer population in New York State from Chronic Wasting Disease (CWD). The white-tailed deer is a very important natural resource to small businesses and local governments in New York. The purpose of the new regulation is to protect this resource so that New Yorkers may continue to enjoy viewing deer, and benefit from deer hunting, and the positive economic and social effects of deer and deer hunting.

Under the proposed regulations, Maryland will be dropped from the list of states exempt for the importation restrictions. All CWD positive states are subject to the same importation restrictions. Although this will impact New York residents who may hunt in Maryland and plan to return to New York with whole carcasses of the deer they harvest, it is anticipated that this will effect relatively few hunters and, with some advanced planning, hunters can easily comply with these regulations without losing hunting opportunity.

No local governments will be affected by this rule.

2. Compliance Requirements:

Resident hunters who harvest a deer in Maryland will be required to remove specific parts from the animal before bringing it into New York.

3. Professional Services:

The rule will not require local governments or small businesses to engage professional services to comply with this rule.

4. Compliance Costs:

Some successful hunters will be required to pay for the processing of their harvested deer before returning to the State. Most hunters who hunt in the CWD restricted states have their harvested game processed before they return as a matter of course.

5. Economic and Technological Feasibility:

There is no economic or technological affect on local governments or small businesses. The rule will not require any technological changes or capital expenditures to comply with the new regulation.

6. Minimizing Adverse Impact:

As the serious nature of CWD is explained to the public, the new restrictions are likely to be accepted as reasonable and balanced. The Department of Environmental Conservation (department) strongly supports continued research on CWD to understand the modes of transmission, and associated risk variables. As new information becomes available, the department will adjust regulations in response to new data or findings.

7. Small Business and Local Government Participation:

When CWD was first confirmed, the department held public meetings to explain the nature of the disease and the department's initial response. Since early April 2005, the department has issued press releases to continue to inform the public of developments and findings relative to the CWD monitoring program. Similarly, as the department

establishes appropriate and necessary regulations to contain the disease outreach to affected stakeholders (businesses and local governments) will be done so that the importance of the new regulations is understood.

8. Cure Period or Other Opportunity for Ameliorative Action:

Pursuant to SAPA 202-b(1-a)(b), no such cure period is included in the rule because of the potential adverse impact that could have on the health of cervids. Immediate compliance with this rule is necessary to prevent further introduction of this disease into New York State and prevent exportation of this disease outside of New York. Compliance is also required to ensure that the general welfare of the public is protected.

Revised Rural Area Flexibility Analysis

The original Rural Area Flexibility Analysis statement, as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended to reflect the changes made to the text of the regulation.

Revised Job Impact Statement

The original Job Impact Statement, as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended to reflect the changes made to the text of the regulation.

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

EMERGENCY RULE MAKING

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

I.D. No. DFS-02-12-00004-E

Filing No. 1402

Filing Date: 2011-12-22

Effective Date: 2011-12-22

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

Action taken: Addition of Part 418 and Supervisory Procedures MB 109 and MB 110 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: Chapter 472 of the Laws of 2008, which requires mortgage loan servicers to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), went into effect on July 1, 2009. These regulations implement the registration requirement and inform servicers of the details of the registration process so as to permit applicants to prepare, submit and review applications for registrations on a timely basis.

Excluding persons servicing loans made under the Power New York Act from the mortgage loan servicer rules is necessary to facilitate the immediate implementation of such loan program so that the anticipated energy efficiency benefits can be realized without delay.

Subject: Registration and financial responsibility requirements for mortgage loan servicers.

Purpose: To require that persons or entities which service mortgage loans on residential real property on or after July 1, 2009 be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks).

Substance of emergency rule: Section 418.1 summarizes the scope and application of Part 418. It notes that Sections 418.2 to 418.11 implement the requirement in Article 12-D of the Banking Law that certain mortgage loan servicers ("servicers") be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), while Sections 418.12 and 418.13 set forth financial responsibility requirements that are applicable to both registered and exempt servicers. [Section 418.14 sets forth the transitional rules.]

Section 418.2 implements the provisions in Section 590(2)(b-1) of the Banking Law requiring registration of servicers and exempting mortgage bankers, mortgage brokers, and most banking and insurance companies,

as well as their employees. Servicing loans made pursuant to the Power New York Act of 2011 is excluded. The Superintendent is authorized to approve other exemptions.

Section 418.3 contains a number of definitions of terms that are used in Part 418, including "Mortgage Loan", "Mortgage Loan Servicer", "Third Party Servicer" and "Exempted Person".

Section 418.4 describes the requirements for applying for registration as a servicer.

Section 418.5 describes the requirements for a servicer applying to open a branch office.

Section 418.6 covers the fees for application for registration as a servicer, including processing fees for applications and fingerprint processing fees.

Section 418.7 sets forth the findings that the Superintendent must make to register a servicer and the procedures to be followed upon approval of an application for registration. It also sets forth the grounds upon which the Superintendent may refuse to register an applicant and the procedure for giving notice of a denial.

Section 418.8 defines what constitutes a "change of control" of a servicer, sets forth the requirements for prior approval of a change of control, the application procedure for such approval and the standards for approval. The section also requires servicers to notify the Superintendent of changes in their directors or executive officers.

Section 418.9 sets forth the grounds for revocation of a servicer registration and authorizes the Superintendent, for good cause or where there is substantial risk of public harm, to suspend a registration for 30 days without a hearing. The section also provides for suspension of a servicer registration without notice or hearing upon non-payment of the required assessment. The Superintendent can also suspend a registration when a servicer fails to file a required report, when its surety bond is cancelled, or when it is the subject of a bankruptcy filing. If the registrant cures the deficiencies, its registration can be reinstated. The section further provides that in all other cases, suspension or revocation of a registration requires notice and a hearing.

The section also covers the right of a registrant to surrender its registration, as well as the effect of revocation, termination, suspension or surrender of a registration on the obligations of the registrant. It provides that registrations will remain in effect until surrendered, revoked, terminated or suspended.

Section 418.10 describes the power of the Superintendent to impose fines and penalties on registered servicers.

Section 418.11 sets forth the requirement that applicants demonstrate five years of servicing experience as well as suitable character and fitness.

Section 418.12 covers the financial responsibility and other requirements that apply to applicants for servicer registration, registered servicers and exempted persons (other than insured depository institutions to which Section 418.13 applies). The financial responsibility requirements include a required net worth (as defined in the section) of at least \$250,000 plus 1/4% of total loans serviced or, for a Third Party Servicer, 1/4 of 1% of New York loans serviced; (2) a corporate surety bond of at least \$250,000 and (3) a Fidelity and E&O bond in an amount that is based on the volume of New York mortgage loans serviced, with a minimum of \$300,000.

The Superintendent is empowered to waive, reduce or modify the financial responsibility requirements for certain servicers who service an aggregate amount of loans not exceeding \$4,000,000.

Section 418.13 exempts from the otherwise applicable net worth and surety bond requirements, but not the Fidelity and E&O bond requirements, entities that are subject to the capital requirements applicable to insured depository institutions and that are considered at least adequately capitalized.

Section 418.14 provides a transitional period for registration of mortgage loan servicers. A servicer doing business in this state on June 30, 2009 which files an application for MLS registration by July 31, 2009 will be deemed in compliance with the registration requirement until notified that its application has been denied. A person who is required to register as a servicer solely because of the changes in the provisions of the rule regarding use of third party servicers which became effective on August 23, 2011 and who files an application for registration within 30 days thereafter will not be required to register until six months from the effective date of the amendment or until the application is denied, whichever is earlier.

Section 109.1 defines a number of terms that are used in the Supervisory Procedure.

Section 109.2 contains a general description of the process for registering as a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 109.3 lists the documents to be included in an application for servicer registration, including the required fees. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent of Financial Services (formerly the Superin-

tendent of Banks) can require additional information or an in person conference, and that the applicant can submit additional pertinent information.

Section 109.4 describes the information and documents required to be submitted as part of an application for registration as a servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, and other documents, such as fingerprint cards and background reports.

Section 110.1 defines a number of terms that are used in the Supervisory Procedure.

Section 110.2 contains a general description of the process for applying for approval of a change of control of a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 110.3 lists the documents to be included in an application for approval of a change of control of a servicer, including the required fees. It sets forth the time within which the Superintendent of Financial Services (formerly the Superintendent of Banks) must approve or disapprove an application. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent can require additional information or an in person conference, and that the applicant can submit additional pertinent information. Last, the section lists the types of changes in a servicer's operations resulting from a change of control which should be notified to the Department of Financial Services (formerly the Banking Department).

Section 110.4 describes the information and documents required to be submitted as part of an application for approval of a change of control of servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating continuing compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, a description of the acquisition and other documents regarding the applicant, such as fingerprint cards and background reports.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires March 20, 2012.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, Assistant Counsel, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1658, email: sam.abram@dfs.ny.gov

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

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

Department of Health

EMERGENCY RULE MAKING

Distributions from the Health Care Initiatives Pool for Poison Control Center Operations

I.D. No. HLT-42-11-00001-E

Filing No. 1403

Filing Date: 2011-12-23

Effective Date: 2011-12-23

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

Action taken: Amendment of section 68.6 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2500-d, 2807-j and 2807-l

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

Specific reasons underlying the finding of necessity: Section 40(e) of Part B of Chapter 109 of the Laws of 2010 authorizes the Commissioner to issue the proposed regulations on an emergency basis in order to meet the timeframes prescribed by the enacted 2010/11 New York State (NYS) Budget related to implementing a statewide consolidation of Regional

Poison Control Center (RPCC) services. Section 13 of Part B of Chapter 109 of the Laws of 2010 (10th Extender Bill enacted June 7, 2010) decreased total Health Care Initiatives (HCI) Pool funding to the RPCCs and directed consolidation of PCC services down from five RPCCs statewide to two RPCCs. To implement consolidation, effective January 1, 2011, the Commissioner has removed the designation of three Centers, thereby eliminating their eligibility for HCI Pool grant funding, and designated two RPCCs (one upstate and one downstate) which remain eligible on an ongoing basis for HCI Pool grant monies. Consolidation down to two RPCCs statewide restructured the geographical service area that the surviving RPCCs are now responsible for and rendered the existing HCI Pool funding distribution methodology contained in section 68.6 of 10 NYCRR obsolete. The proposed amendment establishes a new distribution methodology that will allow for more equitable distribution of available HCI Pool funds to the remaining two RPCCs on an ongoing basis effective January 1, 2011.

Subject: Distributions from the Health Care Initiatives Pool for Poison Control Center Operations.

Purpose: Revises the methodology for distributing HCRA grant funding to Regional Poison Control Centers (RPCCs).

Text of emergency rule: Section 68.6 - Distributions from the Health Care Initiatives Pool for Poison Control Center Operations is REPEALED and a new Section 68.6 is added to read as follows:

Section 68.6 - Distributions from the Health Care Initiatives Pool for Poison Control Center Operations

(a) *The monies available for distribution from the Health Care Initiatives (HCI) Pool for poison control center operations shall be distributed on a semi-annual basis in accordance with the methodology below:*

(1) *Population density by county, as established by the latest available decennial census data for New York State (NYS) as determined by the U.S. Census Bureau, shall be the basis for allocating available HCI Pool monies for distribution to the regional poison control centers.*

(2) *Population density applicable to the total county geographic area served by each regional poison control center shall be determined and the center's percentage to total NYS population density shall be calculated.*

(3) *Available HCI Pool monies shall be distributed proportionally to each regional poison control center based on the center's percentage population density served to total NYS population density.*

(b) *The Commissioner shall consider only those applications for prospective revisions of the projected pool distributions which are in writing and are based on errors, whether mathematical or clerical, made by the department in the pool distribution calculation process. Applications made pursuant to this subdivision must be submitted within thirty days of receipt of notice of the projected pool distribution for the calendar year.*

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-42-11-00001-P, Issue of October 19, 2011. The emergency rule will expire February 20, 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 statutory authority for the regulation is contained in sections 2500-d(7), 2807-j, and 2807-l(1)(c)(iv) of the Public Health Law (PHL), which authorizes the Commissioner to make distributions from the Health Care Initiatives (HCI) Pool to the Regional Poison Control Centers (RPCCs). This HCI Pool funding is intended to assist the Centers with meeting the operational costs of providing expert poison call response and poison consultation services on a 24/7 basis to health care professionals and the public statewide.

Legislative Objectives:

The enacted 2010/11 New York State (NYS) Budget (10th Extender Bill, Section 13 of Part B of Chapter 109 of the Laws of 2010) decreased total HCI Pool funding to the RPCCs and directed consolidation of PCC services down from five RPCCs statewide to two

RPCCs (one upstate and one downstate). To implement consolidation, effective January 1, 2011, the Commissioner has removed the designation of three Centers, thereby eliminating their eligibility for HCI Pool grant funding, and designated two RPCCs, one located at SUNY Syracuse University Hospital as the upstate RPCC and another located at Bellevue Hospital as the downstate RPCC, which remain eligible on an ongoing basis for HCI Pool grant monies. Consolidation down to two RPCCs restructured the geographical service area the surviving RPCCs are now responsible for and rendered the HCI Pool funding distribution methodology contained in section 68.6 of 10 NYCRR obsolete. Under the current methodology a Center's award is fixed at an amount established based on pre-HCRA (1996) operating costs. The methodology is outdated and provides no sensitivity to reflect current RPCC operations, both from a cost and a programmatic standpoint.

Needs and Benefits:

Effective January 1, 1997, the New York Prospective Hospital Reimbursement Methodology (NYPHRM) system expired and was replaced by a new system established under the Health Care Reform Act (HCRA) of 1996. HCRA substantially deregulated hospital reimbursement, allowing insurers, employers and other health care payers to freely negotiate rates of payment with hospitals, rather than base their payments as previously done on the Medicaid rates. For hospitals that sponsored PCCs, and for Emergency Room (ER) services in particular, the Medicaid ER rate included cost consideration for PCC operations. Under HCRA deregulation and effective January 1, 1997, forward, other payers were no longer obligated to recognize such PCC costs in their reimbursement rates to the sponsoring hospitals, placing financial support for this imperative public health service in jeopardy. To address this concern, enhanced funding for PCC operations was made available to the Centers through HCRA HCI Pool grant funding.

Effective January 1, 1997, forward, the HCI Pool grant amounts calculated for each PCC were determined based on each Center's ratio of projected revenue shortfall created by the expiration of the NYPHRM, plus allocated Medicare costs, to total projected revenue shortfall. PCC cost as reported on the affiliated hospital's 1996 Institutional Cost Report was utilized as the basis for this calculation, and once established the award amount was fixed for the given PCC at the 1996 determined grant dollar amount. This methodology, in place since the implementation of the HCRA, provides no flexibility to appropriately respond to changes in PCC operations over time or to recognize the impact on operating costs of State mandated PCC restructuring, as provided for in the enacted 2010/11 State Budget.

The proposed amendment repeals the existing obsolete provisions and establishes a new distribution methodology that will allow for more equitable distribution of available HCI Pool funds, as appropriated annually by the legislative/budget process, to the remaining two RPCCs on an ongoing basis, effective January 1, 2011.

Costs:

Costs to State Government:

There will be no additional costs to State government as a result of implementation of the regulation. To the extent that funds are appropriated annually by a given enacted State budget, the proposed amendment serves only to revise the methodology by which such appropriated Pool funds will be distributed to the RPCCs effective January 1, 2011, forward.

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties.

Costs to Local Government:

There will be no additional costs to local governments as a result of these amendments. The funds are State grants with no local district share of costs (not Medicaid funds).

Costs to the Department of Health:

There will be no additional costs to the Department of Health.

Local Government Mandates:

This regulation does not impose any program, service, duty or other responsibility on 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 these amendments.

Duplication:

These regulations do not duplicate existing State and Federal regulations.

Alternatives:

An alternative was evaluated prior to the selection of the proposed distribution methodology that considered the volume of human exposure calls by county as received by the RPCCs over time. Historically, the Centers have not consistently reported such data to the Department over the past decade, particularly as it relates to county specific call volume. The Department acknowledges that the American Association of Poison Control Centers (AAPCC) owns and manages a large database on poison information and human exposure calls. However, the reports they produce are generic in nature and do not offer the requisite state specific, by county, information that would be necessary to serve as a basis for Pool fund distributions. Though customized reports are available for sale, it is unknown whether reporting to the database on all calls is a mandatory requirement of PCC nationwide or to what degree the AAPCC database is inclusive of all poison related calls/services for a given PCC/state (by county). Furthermore, any such special reports would come at a cost to the Department and may not appreciably improve decision making relative to distributing HCI Pool grant funding. Population density related to the geographic areas served by the two RPCCs, as determined by the US Census Bureau's latest decennial survey data, provides a common ground that should fairly reflect each Center's scope of obligation for poison call response (exposure calls), poison consultation services (poison information requests) and poison education responsibilities for their respective service areas.

Federal Standards:

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

Compliance Schedule:

The proposed amendment establishes a revised distribution methodology for HCI Pool grant funds. There is no period of time necessary for regulated parties to achieve compliance with the regulation.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required pursuant to Section 202-b(3)(a) of the State Administrative Procedures Act. It is apparent from the nature of the proposed rule that it does not impose any adverse economic impact on small businesses or local governments, and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments. The proposed rule revises the methodology for determining Health Care Initiatives (HCI) Pool grant distributions to Regional Poison Control Centers (RPCCs). Effective January 1, 2011, poison control center operations statewide will be downsized from five RPCCs to two RPCCs, rendering the existing grant distribution methodology obsolete. The proposed regulation revises the methodology to reflect population density related to the restructured geographic area served by the surviving RPCCs, rather than continue their grant funding at the amounts that were established in 1997 based on poison control service revenue shortfall established for 1997. The HCI Pool grant funds are 100% State dollars, as appropriated for a given calendar year, and the proposed revised distribution methodology will have no impact on small businesses and local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not required pursuant to Section 202-bb(4)(a) of the State Administrative Procedure Act. It is apparent from the nature of the proposed rule that it does not impose any adverse economic impact on rural areas, and will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The proposed rule revises the methodology for determining Health Care Initiatives (HCI) Pool grant distributions to Regional Poison Control Centers (RPCCs). Effective January 1, 2011, poison control center operations statewide will be downsized from five RPCCs to two RPCCs, rendering the existing grant distribution methodology obsolete. The proposed regulation revises the methodology to reflect population density related to the restructured geographic area served by the surviving RPCCs, rather

than continue their grant funding at the amounts that were established in 1997 based on poison control service revenue shortfall established for 1997. The HCI Pool grant funds are 100% State dollars, as appropriated for a given calendar year, and the proposed revised distribution methodology will have no impact rural areas.

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 of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities. The proposed regulation replaces an existing obsolete methodology for determining grant funding to Regional Poison Control Centers. The proposed regulation will have no implications for job opportunities.

**EMERGENCY
RULE MAKING**

October 2011 Ambulatory Patient Groups (APGs) Payment Methodology

I.D. No. HLT-50-11-00015-E

Filing No. 1404

Filing Date: 2011-12-23

Effective Date: 2011-12-23

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

Action taken: Amendment of Subpart 86-8 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807(2-a)(e)

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulation on an emergency basis in order to meet the regulatory requirement found within the regulation itself to update the Ambulatory Patient Group (APG) weights at least once a year. To meet that requirement, the weights needed to be revised and published in the regulation for January 2010 and updated thereafter. Additionally, the regulation needs to reflect the many software changes made to the APG payment software, known as the APG grouper-pricer, which is a sub-component of the eMedNY Medicaid payment system. These changes include revised lists of payable and non-payable APGs, a new list of APGs that are not eligible for a capital add-on, and a list of APGs that are not subject to having their payment "blended" with provider-specific historical payment amounts. Finally, a brand new payment software enhancement, which allows payment on a procedure code-specific basis rather than an APG basis, needs to be reflected in the regulation.

There is a compelling interest in enacting these amendments immediately in order to secure federal approval of associated Medicaid State Plan amendments and assure there are no delays in implementation of these provisions. APGs represent the cornerstone to health care reform. Their continued refinement is necessary to assure access to preventive services for all Medicaid recipients.

Subject: October 2011 Ambulatory Patient Groups (APGs) Payment Methodology.

Purpose: To refine the APG payment methodology.

Text of emergency rule: Subdivision (r) of section 86-8.2 is hereby repealed.

Section 86-8.7 is hereby repealed effective October 1, 2011 and a new section 86-8.7 is added to read as follows:

(a) *The table of APG Weights, Procedure Based Weights and units, and APG Fee Schedule Fees and units for each effective period are published on the New York State Department of Health website at: http://www.health.state.ny.us/health_care/medicaid/rates/apg/docs/apg_payment_components.xls*

Subdivision (c) of section 86-8.9 is repealed and a new subdivision (c) is added, to read as follows:

(c) *Drugs purchased under the 340B drug benefit program and billed under the APG reimbursement methodology shall be reimbursed at a reduced rate comparable to the reduced cost of drugs purchased through the 340B drug benefit program.*

Subdivision (d) of section 86-8.9 is amended to read as follows:

* * *

94 CARDIAC REHABILITATION
274 PHYSICAL THERAPY, GROUP
275 SPEECH THERAPY AND EVALUATION, GROUP
322 MEDICATION ADMINISTRATION AND OBSERVATION
414 LEVEL I IMMUNIZATION AND ALLERGY IMMUNOTHERAPY
415 LEVEL II IMMUNIZATION
416 LEVEL III IMMUNIZATION
428 PATIENT EDUCATION, INDIVIDUAL
429 PATIENT EDUCATION, GROUP
451 *SMOKING CESSATION TREATMENT*
Subdivision (h) of section 86-8.10 is amended to read as follows:

* * *

065 RESPIRATORY THERAPY
066 PULMONARY REHABILITATION
117 HOME INFUSION
190 ARTIFICIAL FERTILIZATION
311 FULL DAY PARTIAL HOSPITALIZATION FOR SUBSTANCE ABUSE
313 HALF DAY PARTIAL HOSPITALIZATION FOR SUBSTANCE ABUSE
314 HALF DAY PARTIAL HOSPITALIZATION FOR MENTAL ILLNESS
319 ACTIVITY THERAPY
371 ORTHODONTICS
430 CLASS I CHEMOTHERAPY DRUGS
431 CLASS II CHEMOTHERAPY DRUGS
432 CLASS III CHEMOTHERAPY DRUGS
433 CLASS IV CHEMOTHERAPY DRUGS
434 CLASS V CHEMOTHERAPY DRUGS
441 CLASS VI CHEMOTHERAPY DRUGS
443 CLASS VII CHEMOTHERAPY DRUGS
452 DIABETES SUPPLIES
453 MOTORIZED WHEELCHAIR
454 TPN FORMULAE
456 MOTORIZED WHEELCHAIR ACCESSORIES
465 *CLASS XIII COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY*
999 UNASSIGNED
Subdivision (i) of section 86-8.10 is amended to read as follows:

* * *

281 MAGNETIC RESONANCE ANGIOGRAPHY - HEAD AND/OR NECK
282 MAGNETIC RESONANCE ANGIOGRAPHY - CHEST
283 MAGNETIC RESONANCE ANGIOGRAPHY - OTHER SITES
284 MYELOGRAPHY
285 MISCELLANEOUS RADIOLOGICAL PROCEDURES WITH CONTRAST
286 MAMMOGRAPHY
287 DIGESTIVE RADIOLOGY
288 DIAGNOSTIC ULTRASOUND EXCEPT OBSTETRICAL AND VASCULAR OF LOWER EXTREMITIES
289 VASCULAR DIAGNOSTIC ULTRASOUND OF LOWER EXTREMITIES
290 PET SCANS
291 BONE DENSITOMETRY
292 MRI - ABDOMEN
293 MRI - JOINTS
294 MRI - BACK
295 MRI - CHEST

296 MRI - OTHER
 297 MRI - BRAIN
 298 CAT SCAN BACK
 299 CAT SCAN - BRAIN
 300 CAT SCAN - ABDOMEN
 301 CAT SCAN - OTHER
 302 ANGIOGRAPHY, OTHER
 303 ANGIOGRAPHY, CEREBRAL
 330 LEVEL I DIAGNOSTIC NUCLEAR MEDICINE
 331 LEVEL II DIAGNOSTIC NUCLEAR MEDICINE
 332 LEVEL III DIAGNOSTIC NUCLEAR MEDICINE
 373 LEVEL I DENTAL FILM
 374 LEVEL II DENTAL FILM
 375 DENTAL ANESTHESIA
 380 ANESTHESIA
 390 LEVEL I PATHOLOGY
 391 LEVEL II PATHOLOGY
 392 PAP SMEARS
 393 BLOOD AND TISSUE TYPING
 394 LEVEL I IMMUNOLOGY TESTS
 395 LEVEL II IMMUNOLOGY TESTS
 396 LEVEL I MICROBIOLOGY TESTS
 397 LEVEL II MICROBIOLOGY TESTS
 398 LEVEL I ENDOCRINOLOGY TESTS
 399 LEVEL II ENDOCRINOLOGY TESTS
 400 LEVEL I CHEMISTRY TESTS
 401 LEVEL II CHEMISTRY TESTS
 402 BASIC CHEMISTRY TESTS
 403 ORGAN OR DISEASE ORIENTED PANELS
 404 TOXICOLOGY TESTS
 405 THERAPEUTIC DRUG MONITORING
 406 LEVEL I CLOTTING TESTS
 407 LEVEL II CLOTTING TESTS
 408 LEVEL I HEMATOLOGY TESTS
 409 LEVEL II HEMATOLOGY TESTS
 410 URINALYSIS
 411 BLOOD AND URINE DIPSTICK TESTS
 413 CARDIOGRAM
 435 CLASS I PHARMACOTHERAPY
 436 CLASS II PHARMACOTHERAPY
 437 CLASS III PHARMACOTHERAPY
 438 CLASS IV PHARMACOTHERAPY
 439 CLASS V PHARMACOTHERAPY
 440 CLASS VI PHARMACOTHERAPY
 444 CLASS VII PHARMACOTHERAPY
 448 AFTER HOURS SERVICES
 [451 SMOKING CESSATION TREATMENT]
 455 IMPLANTED TISSUE OF ANY TYPE
 457 VENIPUNCTURE
 460 CLASS VIII COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
 461 CLASS IX COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
 462 CLASS X COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
 463 CLASS XI COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
 464 CLASS XII COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
 470 OBSTETRICAL ULTRASOUND

471 PLAIN FILM
 472 ULTRASOUND GUIDANCE
 473 CT GUIDANCE
 490 INCIDENTAL TO MEDICAL, SIGNIFICANT PROCEDURE OR THERAPY VISIT

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-50-11-00015-P, Issue of December 14, 2011. The emergency rule will expire February 20, 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:

Authority for the promulgation of these regulations is contained in section 2807(2-a)(e) of the Public Health Law, as amended by Part C of Chapter 58 of the Laws of 2008 and Part C of Chapter 58 of the Laws of 2009, which authorize the Commissioner of Health to adopt and amend rules and regulations, subject to the approval of the State Director of the Budget, establishing an Ambulatory Patient Groups methodology for determining Medicaid rates of payment for diagnostic and treatment center services, free-standing ambulatory surgery services and general hospital outpatient clinics, emergency departments and ambulatory surgery services.

Legislative Objective:

The Legislature's mandate is to convert, where appropriate, Medicaid reimbursement of ambulatory care services to a system that pays differential amounts based on the resources required for each patient visit, as determined through Ambulatory Patient Groups ("APGs"). The APGs refer to the Enhanced Ambulatory Patient Grouping classification system which is owned and maintained by 3M Health Information Systems. The Enhanced Ambulatory Group classification system and the clinical logic underlying that classification system, the EAPG software, and the Definitions Manual associated with that classification system, are all proprietary to 3M Health Information Systems. APG-based Medicaid Fee For Service payment systems have been implemented in several states including: Massachusetts, New Hampshire, and Maryland.

Needs and Benefits:

This amendment replaces the actual APG weights, APG procedure based weights, and the APG fee schedule amounts listed in section 86-8.7 with a link to the New York State Department of Health website where all of the APG weights, APG procedure based weights, and the APG fee schedule amounts are posted for all periods. Removing this specificity from the regulation text obviates the need for quarterly amendments to the APG regulation.

Costs:

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

There will be no additional costs to providers as a result of these amendments.

Costs to Local Governments:

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

Costs to State Governments:

There will be no additional costs to NYS 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 these amendments.

Local Government Mandates:

There are no local government mandates.

Paperwork:

There is no additional paperwork required of providers as a result of these amendments.

Duplication:

This regulation does not duplicate other state or federal regulations.

Alternatives:

These regulations are in conformance with Public Health Law section 2807(2)-(a)(e). Although the 2009 amendments to PHL 2807 (2-a) authorize the Commissioner to adopt rules to establish alternative payment methodologies or to continue to utilize existing payment methodologies where the APG is not yet appropriate or practical for certain services, the utilization of the APG methodology is in its relative infancy and is otherwise continually monitored, adjusted and evaluated for appropriateness by the Department and the providers. This rulemaking is in response to this continually evaluative process.

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 Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals, diagnostic and treatment centers, and free-standing ambulatory surgery centers. Based on recent data extracted from providers' submitted cost reports, seven hospitals and 245 DTCs were identified as employing fewer than 100 employees.

Compliance Requirements:

No new reporting, recordkeeping or other compliance requirements are being imposed as a result of these rules.

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 is there an annual cost of compliance.

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are intended to further reform the outpatient/ambulatory care fee-for-service Medicaid payment system, which is intended to benefit health care providers, including those with fewer than 100 employees.

Minimizing Adverse Impact:

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-b(1) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that this reimbursement system is mandated in statute.

Small Business and Local Government Participation:

Local governments and small businesses were given notice of these proposals by the Department's issuance in the State Register of a federal public notice on October 5, 2011.

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 apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-bb(2) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that the reimbursement system is mandated in statute.

Opportunity for Rural Area Participation:

Local governments and small businesses were given notice of these proposals by the Department's issuance in the State Register of a federal public notice on October 5, 2011.

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 regulations, that they will not have a substantial adverse impact on jobs or employment opportunities.

NOTICE OF ADOPTION

Observation Unit Operating Standards

I.D. No. HLT-39-11-00008-A

Filing No. 1410

Filing Date: 2011-12-27

Effective Date: 2012-01-11

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

Action taken: Amendment of section 405.19 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803

Subject: Observation Unit Operating Standards.

Purpose: To provide operating standards for observation units.

Text or summary was published in the September 28, 2011 issue of the Register, I.D. No. HLT-39-11-00008-P.

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

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

Assessment of Public Comment

This regulation creates operating standards for observation units. Observation services delivered in observation units that comply with this regulation will be eligible for Medicaid reimbursement.

The public comment period for this proposal ended on November 12, 2011, and the Department received 11 comments. They came from the Healthcare Association of New York State, Unity Health System, Suburban Hospital Alliance of New York State, Iroquois Health Care Alliance, Lutheran Medical Center, Mercy Medical Center, New York American College of Emergency Physicians, Carthage Area Hospital, Woodhull Medical and Mental Health Center, University of Rochester Medical Center and NYU Langone Medical Center.

The proposed regulation received strong support from the New York American College of Emergency Physicians, University of Rochester Medical Center and an emergency physician at Mercy Medical Center who is charged with overseeing patient flow throughout that hospital. They all pointed to research that supports the use of distinct observation units under the direction of the emergency department, in order to promote improved patient safety and satisfaction, quality and timeliness of care, as well as reduced cost of care.

The remaining comments ranged from supportive in concept with some concerns to stating that they are onerous and burdensome. They objected to Medicaid's decision to reimburse only for observation services in distinct units and for no more than 24 hours (as opposed to Medicare reimbursement provisions which do not impose such restrictions), requirements that observation units be overseen by the emergency department, limits on the number of observation beds in an observation unit, and the fact that existing units would have to come into compliance within 2 years of the effective date.

RESPONSE**DEVIATION FROM MEDICARE POLICY GOVERNING PAYMENT FOR OBSERVATION SERVICES**

This regulation establishes standards for observation units in general hospitals. It does not mandate the creation of observation units, nor does it establish Medicaid payment policy. Therefore, comments concerning the Department's decision to pay for observation services under Medicaid only if they are delivered in observation units, and only for stays of up to 24 hours, are not directly relevant to the adoption of this regulation. Nevertheless, the Department will respond to these comments. In developing the Medicaid payment policy for observation services, the Department carefully considered whether to adopt the Medicare approach which imposes few limits on observation services. Under the Medicare model, patients can receive observation services anywhere in the hospital, and there is no limit on the duration of such observation services; Medicare will pay for observation services in excess of 24 hours.

Based on a review of the medical literature and discussions with hospitals that currently have observation units, the Department concluded that the Medicare model results in lengthy periods of observation far in excess of 24 or even 48 hours, in denials of Medicare coverage of post-discharge care, and in unexpected out-of-pocket costs for Medicare beneficiaries. As indicated by the comments from the New York American College of Emergency Physicians, "Studies have shown that when these patients are mixed with inpatients throughout the hospital it results in length of stays that are well beyond 24-hours." The Department concluded that a distinct observation unit is the best way to provide quality of care for patients, the best way to relieve emergency department overcrowding, and the best way to improve patient throughput.

While the Department has decided not to pay for "scatter bed" observation services nor for observation services in excess of 24 hours under Medicaid, this policy does not interfere with Medicare reimbursement nor with the practice of admitting Medicare beneficiaries to inpatient floors for stays that will be reimbursed by Medicare as observation services.

EMERGENCY DEPARTMENT OVERSIGHT

Some comments questioned the decision to assign to the emergency department, rather than other departments, oversight responsibility for observation units.

The Department is persuaded by the medical literature and experts in the field that the units operate most efficiently and effectively under the direction of the emergency department. As noted by one physician commenter, emergency physicians "think in terms of treatment minutes and hours; others think in terms of days." Emergency departments care for a diverse set of patients, routinely manage the array of diagnostic tests and short-term treatments necessary to make decisions concerning admission and discharge within short timeframes, and are best equipped for directing patient care in observation units.

TWO - YEAR GRACE PERIOD FOR COMPLIANCE

Currently there are approximately 20 hospitals that have received waivers from the Department to have an observation unit at their facility. This regulation will require such existing units to come into compliance with its provisions within 2 years. The regulation is not very different from the current waiver requirements. It will require observation units to comply with the 2010 Facilities Guidelines Institute architectural guidelines for observation units, which did not exist when some of the waivers were granted. These guidelines for observation units are very basic, and most, if not all, of the existing units will be in compliance with them. The Department believes that a two-year grace period will be plenty of time to come into compliance with these basic requirements.

LIMITATION ON NUMBER OF BEDS

Some hospitals and physicians expressed concerns about the regulation's limitation on the number of observation beds to 5 percent of certified capacity with a cap of 40 beds (hospitals with less than 100 beds may establish units of up to 5 beds). The Department determined that, since the regulation exempts observation beds from public need review, and since observation beds could be subject to unnecessary and excessive utilization, a limit on the number of observation beds is appropriate.

After careful review and consideration of all of the comments a change will not be made to these provisions.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Home Care Services Worker Registry**

I.D. No. HLT-02-12-00016-P

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

Proposed Action: Addition of Part 403; and amendment of sections 700.2, 763.13 and 766.11 of Title 10 NYCRR; and amendment of sections 505.14 and 505.23 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 3613

Subject: Home Care Services Worker Registry.

Purpose: Guidance for workers, providers etc. regarding the rights, duties and responsibilities for the Home Care Services Worker Registry.

Substance of proposed rule (Full text is posted at the following State website: www.health.state.ny.us): This rule creates a new Part 403 in Title 10 (Health) of the NYCRR. This part defines the rules for implementing Chapter 594 of the Laws of 2008 (Public Health Law § 3613) which requires the Department of Health (DOH) to establish a Home Care Worker Registry and the rights, duties and obligations of home care services workers, home care services agencies, and home care training and education programs.

Workers providing home health aide services and personal care aide services are covered by the rule. All agencies providing either home health aide or personal care aide services, including those operated by municipalities, are covered. All education and training programs for home health or personal care aides approved by either DOH or the State Education Department are covered.

The statute requires that, starting September 25, 2009, information about each and every home care services worker and every training program must be entered into a registry that is accessible to the public and to employers and prospective employers of such workers. The registry must be available through the DOH website and by a toll-free number.

Section 403.1 defines the groups and classes of persons and entities to whom the regulation applies.

Section 403.2 includes all of the definitions applicable to the rule. These include Commissioner, Department, home care services entity (entity), home care services worker (worker), home care services worker registry (registry), home care services worker trainee (trainee), state-approved education or training program (program), successfully completed or successful completion, and senior official.

Section 403.3 includes general requirements applicable to education and training programs.

Section 403.4 includes the responsibilities of state-approved education and training programs. Among those responsibilities are the entry of data about each and every training program that begins on or after September 25, 2009, into the registry within 10 business days after the beginning of the program, and entering required information from PHL § 3613(3)(a)-(e) about each trainee who completes the program into the registry within 10 days after completion of the program. Programs must also certify that they have verified the identity of each trainee within 10 days after the aide has successfully completed a training program, and must issue a certificate of completion to the trainee within 10 business days after execution of the certification of identity. Programs are also responsible for correcting incorrectly entered information that they entered.

Section 403.5 includes the responsibilities of home care services entities. Among these is the entry of required information into the registry about all employees prior to their performing home care services. Entities are required to check that the employee's training information is in the registry before they are allowed to provide home care services. Entities must update the registry to include additional information provided by the employee. Entities are also responsible for correcting incorrectly entered information that they entered. Required information must be entered into the registry within 10 business days after a triggering event. Entities must also create original entries into the registry about persons who completed their home care services worker training before September 25, 2009, and who were employed on that date. This information must have been entered before September 25, 2010.

Section 403.6 includes the responsibilities of home care services workers and trainees. They are required to provide training programs and home care services entities with all information required for the registry and all identity information.

Section 403.7 describes other responsibilities including record keeping requirements.

Conforming amendments to existing regulations are included in Title 10, sections 763.13 and 766.11 and Title 18, sections 505.14 and 505.23.

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 statutory authority for this rule is Chapter 594 of the Laws of 2008, which requires the Department of Health to create and populate a health care services worker registry. The Chapter has been codified as Section 3613 of the Public Health Law.

Legislative Objectives:

To protect homebound, care-dependent New Yorkers by establishing a central registry of persons who have successfully completed state approved education or training programs for home health aides and personal care aides.

Needs and Benefits:

According to the sponsor's memorandum for the legislation, the Office of the Attorney General (OAG) investigations uncovered "fraud and abuse in the home health care industry, . . . as it relates to the education and training. . . [of] home health aides or personal care aides. . ." These investigations uncovered instances of training programs issuing fraudulent certificates to persons who either had not

been trained or had not demonstrated competence to perform necessary tasks. The memo proposed that the existing methods for verification of education and training were "insufficient to prevent and deter fraud. In some cases, the training programs issuing fraudulent certificates, when contacted by home care services entities, represented that the fraudulent certificates were valid, when, in truth and fact, they were not. Frauds relating to fraudulent certificates...[were]... occurring throughout the State, endangering New York's most vulnerable population and costing taxpayers tens of millions of dollars."

Again, citing the sponsor's memo, the statute being implemented by this regulation is the legislature's "crucial first step" in reducing or eliminating fraudulent training. Using the nurse aide registry established by Public Health Law section 2803-j as a model, the legislation proposes to extend protections that exist in the nursing home context to homebound, care-dependent persons. The public nature of the registry will allow not only contractors and employers of home care services workers access to education and training information, but also will make this information available to members of the public.

Certified aides will not be able to gain employment until their training and employment information is posted on the Registry. For this reason, the Department decided on timeframes that were reasonable, but would not prevent an aide from being employed.

A central registry will help facilitate the Department's ability to track home care services workers, and will thus provide greater transparency and accountability, which, in turn, will enhance the quality of care delivered to the vulnerable population served by the home health care industry.

Costs:

Costs to Regulated Parties for the Implementation of and Continuing Compliance with the Rule:

Those agencies that hire additional staff solely for the purpose of collecting, entering and maintaining data related to the requirements of the registry will incur a continuing cost for such staff. The extent of the cost will be tied to the rate of pay for such employee(s) and will likely vary depending on skill level. It is estimated that it will take approximately a third of an hour (20 minutes) for an administrative staff person, with an average hourly wage of fifteen dollars, to enter the required data into and maintain it on the registry. This cost would apply to information that must be entered by the training program and also by the employer. In 2008, there were approximately 50,000 new home care and personal care aides. Based on this information, the overall administrative cost for entering information pertaining to new aides would be \$500,000 spread across the state. There will be an additional cost during the first year to input aides currently employed into the Home Care Registry. These costs will be incurred by the employers only.

Costs to the Agency, the State and Local Governments for the Implementation and Continuation of the Rule:

Two million dollars was appropriated for implementation of the registry at the State level in the 2009-10 State Budget. These funds have been used in part to develop the software and hardware linkages needed to house the registry, and in part to fund state staff to maintain the registry once it is operational. Approximately \$1 million will be needed annually to maintain the state staff and the registry functionality.

The information, including the source(s) of such information and the methodology upon which the cost analysis is based:

Information about appropriation levels was included in the 2009-10 State Budget. Information about staffing and worker training and retention was received from the home care provider associations and SEIU Local 1199.

Local Government Mandates:

Local governments that operate home care services agencies are exempt from many of the requirements of Article 36 of the Public Health Law. However, the enabling legislation for this regulation expressly includes exempted entities under its mandate. Thus, those local governments that operate home care services agencies must comply with the requirements for obtaining, reviewing, maintaining

and updating registry information for home care services workers employed by such local governments.

In accordance with Executive Order 17, the following fiscal impact relates to the costs associated with the implementation of this regulation on local governments. Local governments will incur the same administrative costs as any other employment related entity. No additional funds are provided for local government to implement this new mandate. Of the 1, 200 licensed and certified home care services agencies, approximately 5% are operated by counties. Most Certified Home Health Agencies (CHHAs) do not hire aides directly, but subcontract with a Licensed Home Care Services Agency (LHCSA). Therefore much of the local administrative costs associated with this regulation will be borne by the county operated LHCSAs.

In order to determine the true impact this regulation will have on local governments, the Department limited the scope of agencies with employment responsibilities to the approximately 900 LHCSA sites operating in the state. Of this amount, only 11 LHCSAs (1% of the total) are operated by counties. Each year, approximately 500 new aides are employed through county operated LHCSAs. It should be noted that local governments do not operate training programs, and therefore will only incur the administrative costs associated with home care employers. Assuming all administrative costs are equal, it is estimated that the overall cost to implement this new requirement will be approximately \$2,500 in total for all local governments operating LHCSAs. As with the general administrative costs associated with the Home Care Registry, costs will be higher in the first year to accommodate the necessary data entry required to enter all currently employed aides into the system.

Paperwork:

This rule requires significant “paperwork”, although most of it may be addressed with electronic rather than actual paper documentation.

State approved training and education programs must:

- Collect and maintain identity information from all trainees;
- Maintain information about all training programs;
- Post information about all training programs to the registry;
- Post names of trainees to the registry;

Collect, maintain and post to the registry statutorily required information about trainees who have completed the training program;

Maintain a written certificate of completion and issue a copy to trainees who complete the training program; and

Complete, retain and provide a copy of a signed certificate for the required training for each trainee.

Home care services agencies must:

Collect and maintain identity information from employees providing home care services;

Maintain information about duration of employment for employees providing home care services; and

Collect, maintain and post statutorily required information to the registry about employees who provide home care services.

Duplication:

Some of the information required to be collected and entered into the registry by employers may be the same information employers are required to provide to the Department for mandatory criminal history record check. At the present time, these systems have different forms and do not communicate, thus requiring the employer to submit some information more than once. Given the limited time frame, the Department is not able to link these systems at this time, but there may be opportunities in the future to limit some of the duplicative information.

Alternatives:

Because the enabling legislation is very prescriptive, other alternatives, such as waiting until other DOH systems were linked to the Registry to avoid initial duplication of information, were not considered. This regulation is the minimum implementation required to give full effect to the statute by the required implementation date.

Federal Standards:

Not applicable.

Compliance Schedule:

Full compliance will be achieved immediately, as most aspects of these regulations have been implemented.

Regulatory Flexibility Analysis

Effect of Rule:

Small businesses that will be affected by this rule include home care services agencies in the state that employ 100 or fewer persons and most state approved education and training programs for home health and personal care aides. There are approximately 500 training and education programs operating from approximately 700 sites statewide and approximately 1300 home care services agencies, many of which qualify as small businesses, and some of which are County operated. All of these will feel some impact from this rule, as all are affected by its requirements.

Compliance Requirements:

This rule establishes reporting and record keeping requirements for all impacted entities. Workers providing home health aide services and personal care aide services are required to report information to state approved education and training programs and employers. All education and training programs for home health or personal care aides approved by either DOH or the State Education Department are required to enter specific information about training programs, trainers and trainees into the registry, to maintain specific training records for six years after training is complete, and to issue a standardized certificate developed by the Department. All agencies providing either home health aide or personal care aide services, including those operated by municipalities, are required to collect and maintain identity and training information about covered home care services workers and must check the home care services worker registry before assigning a worker to provide services, and update or enter required information into the registry if such information is not present.

The Department does not intend to publish a small business regulation guide in connection with this regulation. While this regulation will impact a substantial number of small business and local governments, the Department has determined that the impact itself is not “substantial.” The Department does plan to issue additional guidance once the regulation has been published.

Professional Services:

No special professional services should be required to maintain the records or complete the data entry required by this rule, although covered educational programs and home care services agencies may need additional employees to perform these activities.

Compliance Costs:

Nominal capital and annual cost is anticipated for most impacted entities, including county governments that operate home care services agencies. All home care services agencies are already required to maintain a computer connection to the Health Provider Network (HPN) to receive and transmit information from and to the Department. No additional computer connections should be required. Those education and training programs that are not associated with a home care services agency will need to obtain an HPN account and maintain a computer connection to the internet. There is no charge for an HPN account; most organizations already maintain internet access of some sort. The costs for small business and local governments should not be significantly different from the costs of other affected providers. The only significant continuing cost would be additional staff to perform the functions required by the regulation which would accrue to entities that do not presently have sufficient staff to perform these additional functions.

Economic and Technological Feasibility:

The Department has considered the economic and technical feasibility impact associated with this rule on small business and local government. While there may be economic issues associated with this rule, such as the need to hire additional staff, the legislation that this rule implements would require the same investment in staff and technology as the rule requires.

Minimizing Adverse Impact:

While the Department has considered the options of State Administrative Procedure Act (SAPA) Section 202-b.1 in developing this rule,

the statutory mandate for the creation of the registry does not allow significant discretion in implementation. The Department has chosen generally to include only reporting and record keeping required by the legislation for home care services agencies. Most training programs are not in rural areas. The statute does not allow exemption from reporting to any particular entity type.

Small Business and Local Government Participation:

The Department will meet the requirements of SAPA Section 202-b(6) in part by publishing a notice of proposed rulemaking in the State Register with a comment period. The Department has already conducted meetings with representatives of statewide provider organizations representing home care services agencies and training programs including the Empire State Association of Assisted Living, NYS Association of Home Care Providers, Home Care Association of NYS, NY Association of Homes and Services for the Aging, as well as representatives of SEIU Local 1199, which represents significant numbers of home care services workers downstate. When the legislation was first introduced, most of the provider associations supported the bill.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

All rural areas of the State in which home care services agencies are located are equally affected. The impact on rural areas should be no greater and present no unique issues that differ from the impact on other areas of the State where these agencies are located.

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

This rule establishes reporting and record keeping requirements for all covered entities. Workers providing home health aide services and personal care aide services are required to report information to state approved education and training programs and employers. All such programs for home health or personal care aides approved by either DOH or the State Education Department are required to enter specified information about training programs, trainers and trainees into the registry, must maintain specific training records for six years after training is complete, and must issue a standardized certificate developed by the Department. All agencies providing either home health aide or personal care aide services, including those operated by municipalities, are required to collect and maintain identity and training information about home care services workers and must both check the home care services worker registry before assigning a worker to provide services, and update or enter required information into the registry if such information is not present.

No special professional services should be required to maintain the records or complete the data entry, although covered educational programs and home care services agencies may need additional employees to perform these activities.

Costs:

Nominal capital and annual cost is anticipated for most impacted entities. All home care services agencies are already required to maintain a computer connection to the Health Provider Network (HPN) to receive and transmit information from and to the Department. No additional computer connections should be required. Those education and training programs that are not associated with a home care services agency will need to obtain an HPN account and maintain a computer connection to the internet. There is no charge for an HPN account; most organizations already maintain internet access of some sort. The cost in rural areas should not be significantly more than the cost in other areas of the state. The only significant continuing cost would be the possible need for additional staff to perform the functions required by the regulation.

Minimizing Adverse Impact:

The statutory mandate authorizing the creation of the registry does not allow the Department of Health significant discretion in implementation. The Department generally requires only such reporting and record keeping as provided for in the legislation for home care services agencies. Most training programs are not in rural areas. The statute does not allow exemption from reporting to any particular entity type.

Rural Area Participation:

The Department participated in an April 28, 2009 meeting on the implementation of the registry with representatives of statewide provider organizations representing home care services agencies and training programs, including the Empire State Association of Assisted Living, NYS Association of Home Care Providers, Home Care Association of NYS, NY Association of Homes and Services for the Aging, as well as representatives of SEIU Local 1199, which represents significant numbers of home care services workers downstate.

Job Impact Statement

Nature of Impact:

The Department has determined that the proposed rule will not have a substantial adverse impact on jobs and employment opportunities.

Categories and Numbers Affected:

There may be a minor increase in the number of jobs in office and administrative support occupations statewide, depending upon how many affected entities choose to hire additional staff to meet the record keeping requirements of the rule.

Regions of Adverse Impact:

None.

Minimizing Adverse Impact:

None.

Self-Employment Opportunities:

Not applicable.

Division of Housing and Community Renewal

NOTICE OF ADOPTION

Regulations Govern the Implementation of the Rent Stabilization Laws

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

Filing No. 1405

Filing Date: 2011-12-27

Effective Date: 2012-01-11

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

Action taken: Amendment of sections 2500.2, 2500.9, 2520.6, 2520.11 and 2522.5 of Title 9 NYCRR.

Statutory authority: L. 1974, ch. 576, section 10a; New York City 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: Regulations govern the implementation of the Rent Stabilization Laws.

Purpose: To comply with the Marriage Equality Act.

Text or summary was published in the November 2, 2011 issue of the Register, I.D. No. HCR-44-11-00014-P.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Regulations Govern Public Housing

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

Filing No. 1406

Filing Date: 2011-12-27

Effective Date: 2012-01-11

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

Action taken: Amendment of 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: Regulations govern Public Housing.

Purpose: To comply with the Marriage Equality Act.

Text or summary was published in the November 2, 2011 issue of the Register, I.D. No. HCR-44-11-00015-P.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Regulations Govern Management and Supervision of Mitchell-Lama Housing Companies

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

Filing No. 1408

Filing Date: 2011-12-27

Effective Date: 2012-01-11

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

Action taken: Amendment of 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); Public Housing Law, section 14(4)

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

Purpose: To comply with the Marriage Equality Act.

Text or summary was published in the November 2, 2011 issue of the Register, I.D. No. HCR-44-11-00016-P.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Regulations Govern Implementation of the Rent Control Laws

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

Filing No. 1407

Filing Date: 2011-12-27

Effective Date: 2012-01-11

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

Action taken: Amendment of sections 2100.9, 2104.5, 2104.6, 2200.2, 2204.5 and 2204.6 of Title 9 NYCRR.

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

Subject: Regulations govern implementation of the Rent Control Laws.

Purpose: To comply with the Marriage Equality Act.

Text or summary was published in the November 2, 2011 issue of the Register, I.D. No. HCR-44-11-00017-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

Assessment of Public Comment

The agency received no public comment.

Department of Labor

NOTICE OF ADOPTION

Public Employees Occupational Safety and Health Standards

I.D. No. LAB-51-10-00013-A

Filing No. 1398

Filing Date: 2011-12-22

Effective Date: 2012-01-11

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

Action taken: Amendment of section 800.3 of Title 12 NYCRR.

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

Subject: Public Employees Occupational Safety and Health Standards.

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

Text or summary was published in the December 22, 2010 issue of the Register, I.D. No. LAB-51-10-00013-P.

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

Text of rule and any required statements and analyses may be obtained from: Michael Paglialonga, Department of Labor, Building 12, State Office Campus, Room 509, (518) 457-2259, email: michael.paglialonga@labor.ny.gov

Assessment of Public Comment

No comments were received.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Child Performers

I.D. No. LAB-45-10-00020-RP

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

Proposed Action: Addition of Part 186 to Title 12 NYCRR.

Statutory authority: Labor Law, section 154-a

Subject: Child Performers.

Purpose: To establish regulations regarding the employment of child performers.

Substance of revised rule: (Full text is posted at the following State website: www.labor.state.ny.us): The proposed rule creates a new section of regulations designated as 12 NYCRR Part 186 entitled "Child Performers" created under Chapter 89 of the Laws of 2008.

The Child Performer Education and Trust Act of 2003 requires trust accounts to be established for child performers, requires all child performers to have permits issued by the New York State Department of Labor, requires all employers of child performers to have employer certificates of eligibility issued by the New York State Department of Labor, and requires employers of child performers to provide teachers to such child performers if they are otherwise unable to fulfill educational requirements due to their employment schedules.

By Chapter 89 of the Laws of 2008, the Commissioner of Labor is required to promulgate rules and regulations as shall be necessary and

proper to effectuate the purposes and provisions of the Act, including but not limited to rules and regulations determining the hours of work and conditions of work necessary to safeguard the health, education, morals and general welfare of child performers.

An earlier version of the proposed rule was published in the State Register on November 10, 2010. Two public hearings subsequently were held in New York City, on January 10, 2011 and January 31, 2011. Seventy six (76) persons submitted written comments and twenty six (26) persons spoke at the hearings, fourteen (14) of whom also submitted written comments, for a total of eighty eight (88) persons formally submitting comments. In response to the comments, many substantive changes have been made in the proposed regulations.

Proposed new Part 186 contains all regulations pertaining to child performers. They define the type of work that will categorize a child as a "child performer," including but not limited to work as part of a "reality show," a term defined in the regulations.

They also exempt various types of performances from regulatory oversight in accordance with Section 35.01(2) of the Arts and Cultural Affairs Law.

They set forth the time and manner in which a child must obtain and renew a Child Performer Permit and the time and manner in which the employer of a child performer must obtain and renew an Employer Certificate of Eligibility. The proposed regulations also provide for a Temporary Child Performer Permit valid for a limited period of time so as to permit a child performer who has never previously obtained a Child Performer Permit to be employed prior to submission of all documents necessary for a full Child Performer Permit. They also provide for an Employer Certificate of Group Eligibility permitting a group of children to be employed as a group on certain projects for a period of not more than two days.

An annual physician's certification of fitness to work is necessary to obtain the Child Performer Permit.

The proposed regulations require parents and guardians to set up child performer trust accounts into which employers are required to deposit at least fifteen percent of a child performer's gross earnings.

They also require child performers below 16 years of age to be accompanied throughout the work day by a responsible person.

The proposed regulations require employers to provide time and facilities as necessary for children to fulfill their educational obligations and to provide a teacher to child performers under certain circumstances.

They also set forth the hours and conditions of work according to the age of the child.

Special provisions have been added for live theater and other live performance with regard to hours of work and of presence at the worksite and also with regard to supervision of the child performer by a responsible person while at the work site.

The proposed regulations provide for the issuance of variances in the event of significant hardship and for the suspension or revocation of a permit or certificate after hearing. In addition, the proposed regulations permit the Commissioner of Labor to impose fines for violation of the regulations.

The proposed sections of Part 186 are summarized as follows:

- Subpart 186-1 Purposes and scope
- Subpart 186-2 Definitions
- Subpart 186-3 Responsibilities of parents and guardians
- Subpart 186-4 Responsibilities of employers
- Subpart 186-5 Educational requirements
- Subpart 186-6 Hours and Conditions of work
- Subpart 186-7 Variances
- Subpart 186-8 Suspension or revocation of permits and certificates
- Subpart 186-9 Penalties and appeals

Revised rule compared with proposed rule: Substantial revisions were made in sections 186-2.1(a), (c), (l), (o), (p), (r), (t), (w), (x), 186-3.2(b)(6), 186-3.6, 186-4.3, 186-4.4, 186-4.4(a)(4), 186-4.6, 186-6.5(d) and Subparts 186-3, 186-4, 186-5 and 186-6.

Text of revised proposed rule and any required statements and analyses may be obtained from Teresa Stoklosa, New York State Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: Regulations@labor.ny.gov

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

Public comment will be received until: 30 days after publication of this notice.

Summary of Revised Regulatory Impact Statement

Statutory Authority: Section 35.01 of the Arts and Cultural Affairs Law makes it unlawful, with certain exceptions, to employ, exhibit or cause to be exhibited any child under the age of sixteen years except as provided by Section 151 of the Labor Law. Labor Law Article 4-A, including Section 151, describes the circumstances under which child performers may be employed, including depositing at least fifteen percent of a child performer's earnings in a trust account in accordance with Estates Powers and Trust Law Article 7, Part 7, and fulfilling the compulsory education requirements in Education Law Article 65, Part 1 by providing a teacher to the child. Section 154-a of Article 4-A of the Labor Law (as added by L. 2008 Ch. 89) charges the Commissioner with promulgating regulations determining the hours and conditions of work necessary to safeguard the health, education, morals and general welfare of child performers.

Legislative Objectives: The purpose of the authorizing legislation is to: protect the safety, health and well being of child performers; ensure that child performers who work or reside in the State of New York are provided with adequate education; and ensure that a portion of the child performer's earnings are kept in trust until the age of majority.

Needs and Benefits: New Part 186 addresses the need to protect child performers by including all existing requirements related to the welfare of child performers in one regulation. The rule protects a portion of the child performer's pay by requiring the establishment of a trust fund. The rule mandates that alternative education be available if a child cannot attend school while performing and that a responsible person supervises and safeguards the child performer at work. The rule makes the Department responsible for certification and monitoring.

Costs: There is no cost to apply for a Child Performer Permit, nor any cost to renew the permit annually. The costs incurred in obtaining a physician's statement that the child performer is physically fit will be minimal.

For employers, the cost to apply for 3-year Certificates of Eligibility is \$350 for an initial certificate, \$200 for theaters with less than 500 seats, and \$200 for renewals and Employer Certificates of Group Eligibility.

Per Article 4-A of the Labor Law, the employer must incur the cost of providing a certified teacher to a child performer whose employment schedule prevents the child from fulfilling New York's compulsory education requirements. The proposed rule does not add further costs to this statutory requirement and accommodates several circumstances in which alternative education plans may be pursued by the parents without any cost to the employer.

The proposed rule requires that every child performer under 16 years of age be accompanied throughout the workday by a responsible person. This will be an added cost for some productions. The proposed rule supports the industry norm by assigning the responsibility to the family to provide a responsible person for the child and by exempting children once they reach the age of 16. Thus, in film, television, and advertising, there are no added costs to employers from the "responsible person" regulation. In the tight spaces and time-lines of live theater and other live performance work, many employers already employ "responsible persons" to supervise child performers, in lieu of permitting parental accompaniment backstage. The proposed rule supports existing industry practice in such productions and will not add to existing costs for them. Productions, which would neither permit parental accompaniment nor employ responsible persons, will be compelled to do one or the other. Each responsible person can supervise several children.

Employers may incur additional accounting costs in the process of transferring statutory withholdings into a trust account and providing the parent or guardian with written notification of the transfers.

Local Government Mandate: Under the proposed rule the home school district will need to work with the parents and any employer-provided on-site teacher to agree on an education plan that complies with home district requirements. The teacher will submit written

reports on the child's educational progress, including attendance, lesson plans performed, and grades, to the home school. If the child's work, grades, and credit are accepted by the school district, the child need not be declared absent and the school district's attendance-related state aid need not be affected. The proposed rule allows school officials, cooperating with parents, to develop alternative methods which satisfy educational requirements. Many child performers will be able to attend their local or private schools or be home- or correspondence-schooled.

Paperwork: The statute requires that child performers obtain one-year permits and employers obtain three-year certificates from the Department of Labor. The only document required of an employer, besides the application for the Employer Certificate of Eligibility, is proof of insurance coverage for workers' compensation and disability benefits.

Certificated employers must provide the Department with "Notices of Use of Child Performers" at least 3 days in advance, containing very general information: anticipated dates of use, location of use, approximate number of children to be used, and type of production.

To employ a group of children as a group, for up to two days, without the children having to apply individually for child performer permits, certificated employers must provide only the same very general information as required in a Notice of Use, in order to obtain a group certificate.

Before the start of employment, employers are to obtain from the parent a copy of the child's permit, trust account information (if employment is paid), current emergency contact information, and authorization to provide emergency medical treatment.

The employer must give the parent or guardian written notification of the transfer of funds to a child's trust account within five days of such transfer.

If the employer lacks information on a trust account for a child, the employer is required to submit the monies to the NYS Comptroller instead.

The employer must require any on-set teacher to complete written reports covering attendance, lessons completed and grades. The reports will be given by the teacher to the child performer's school and parents or guardians at intervals required by the school and at the end of each employment. The employer will receive a copy of the attendance record only, as the employer will need this to show compliance with the education provisions.

The proposed rule requires the employer to retain records for six years. They must be open to inspection by the Department of Labor, school attendance and probation officers, the regular school or local school district, the State Education Department and the State Comptroller.

For a parent to apply for a Child Performer Permit, the statute requires the parent to provide the Department with information concerning the child, a school statement of satisfactory academic performance, and trust account information. The proposed rule, and the application process in use by the Department for several years, also requires proof of the child's age, a picture ID of the parent or guardian, a notarized guardian statement if the applicant is a guardian; and evidence that the child is no longer required to attend school, if that is the case.

A new requirement of the proposed rule is the requirement for a certification by a physician, nurse practitioner or physician's assistant that the child has been examined within 12 months prior to application or renewal and is physically fit to work.

Temporary 15-Day On-Line Child Performer Permits may be obtained on-line without providing any documentation to the Department and may be printed out by the applicants for the first time employment of a child who has never before applied for a child performer permit.

Duplication: This rule does not duplicate, overlap or conflict with any other State or federal requirements.

Alternatives: The Department conducted significant outreach to various groups that represent child performers and various employers who employ child performers, and asked them to make recommenda-

tions regarding the hours and conditions of work, as well as the educational needs, of child performers. The Department published an earlier version of the proposed regulations in the State Register and received written comments and oral testimony from some 88 different organizations and individuals. The Department used input from these various groups and individuals to draft and to revise Part 186.

Several groups requested an exemption from the rule's requirements when they were only using a larger group of children for a short scene. In response the Department created the Employer Certificate of Group Eligibility. The group certificate reduces the burden on the employer by eliminating the need to comply with the requirements necessary for individual child performers.

A child is not considered to be a "child performer" for purposes of these regulations when the child is performing: as part of the normal activities of a church, academy, or school; in a private home and is not being recorded for commercial purposes; under the direction, control, or supervision of a Department of Education; in programs broadcast from a school, church, academy, museum, library or other religious, civic or educational institution; for less than two hours a week from the studio of a regularly licensed broadcasting company, as long as the performance is nonprofessional in nature; or in productions made by students to satisfy academic requirements in a recognized course of study. These exemptions do not apply, however, when the child performer is participating in a reality show.

Parents were concerned about the ability to apply for and receive the Child Performer Permit in a timely manner when an unexpected and imminent performance opportunity occurs for the child. To accommodate these situations, the rule provides for a Temporary Permit. A parent or guardian of a child performer may apply for a Temporary Child Performer Permit prior to the first employment of a child performer. This allows the child performer to work for fifteen days while the parent or guardian fulfills the requirements for the Child Performer Permit.

Various production groups requested some flexibility if an employer would incur substantial hardship in complying with this rule. In response, the rule allows an employer to apply for a variance to the problem requirement no later than two business days prior to when the requested modification shall take effect.

Federal Standards: Child performers are exempted from the child labor provisions of the federal Fair Labor Standards Act. There are no other federal standards regulating the employment of child performers.

Compliance Schedule: An employer's application for an Employer Certificate of Eligibility is due prior to employing a child performer. An Employer Certificate of Eligibility is valid for three years, and a renewal application for such certificate is due thirty days prior to the certificate's expiration date. An employer must provide a Notice of Use of child performers to the Department at least three business days prior to such use.

A parent or guardian of a child performer must obtain a Child Performer Permit prior to commencement of employment. A Child Performer Permit is valid for twelve months, and a renewal application for such permit is due thirty days prior to the permit's expiration date. The parent or guardian must provide the employer with documentation of the child performer's child performer trust account within fifteen days of the commencement of employment if providing a Temporary Child Performer Permit or at the start of the employment if working under a full Child Performer Permit.

The regulation will become effective upon publication of its adoption in the State Register.

Revised Regulatory Flexibility Analysis

Effect of Rule: Labor Law 154-a charges the Commissioner of Labor with promulgating regulations determining the hours and conditions of work necessary to safeguard the health, education, morals and general welfare of child performers. These regulations apply to all child performers who either reside or work in New York State and to all the entities that employ them.

It is possible that small employers may employ child performers and therefore be subject to these regulations.

Local governments which engage anyone under eighteen years of age at performance work are subject to this Part.

However, a child performer's performance is exempt from these regulations if it is part of the activities of a school, or is under the direction, control, or supervision of a department of education, or is broadcast from a school, or is in productions made by students to meet academic requirements in a recognized course of study, unless the child performer is participating in a reality show.

A school district will be expected to work with a teacher provided by a child performer's employer in developing and agreeing to a suitable education plan for the child while he/she is employed, and to monitor, through reports from the teacher, the student's status in fulfilling that plan. These activities will not have an adverse impact on the respective school districts.

Approximately 478 employers have current Child Performer Certificates of Eligibility. While the number of Child Performer Permits varies depending upon the amount of available work, 15,610 Child Performer Permits were issued in 2010, and 17,290 Child Performer Permits were issued as of 12/13/2011. Each of these employers and child performers are subject to this Part. Employers subject to these regulations represent a small fraction of all New York State employers.

Compliance Requirements: Employers, including small businesses, are required to apply for an Employer Certificate of Eligibility prior to employing any child performer. Such Certificate is valid for three years. Employers are required to apply for a renewal no later than 30 days prior to the expiration of an Employer Certificate of Eligibility. Applicants must provide their identifying business information and contact information, the type and location of employment of child performers for which the certificate is requested, proof of Workers Compensation and Disability Benefits Insurance coverage and compliance with other legal mandates, and a signed acknowledgement that the applicant has read, understands, and agrees to abide by the laws, rules and regulations applicable to the employment of child performers.

Employers may also apply for an Employer Certificate of Group Eligibility permitting employment of a group of children for a group appearance as background in a production. The certificate is valid for the duration of the performance but not for more than two days and is not renewable. Child performer permits and trust accounts are not required for children who are employed pursuant to an Employer Certificate of Group Eligibility.

An employer must notify the Commissioner in writing of its intent to use child performers at least three business days in advance. The employer must provide the dates and expected duration of use, the location of use, the approximate number of child performers to be used, and contact information for the employer's on-site representative.

Prior to employing a child performer, employers must collect a copy of the child's temporary or full Child Performer Permit, emergency contact information, and parent/guardian authorization to provide emergency medical treatment to the child. In order for the full Child Performer Permit to be valid, documentation of the child's trust account must be attached to it. The employer must keep these documents on file for six years.

Employers must transfer fifteen percent of the child performer's gross wages, or a higher amount if directed to do so by the custodian of the account, into a trust account. If the employment is under a Temporary Child Performer Permit, the parent or guardian must provide the necessary trust account information to the employer within fifteen days of the start of the child performer's employment. If the employment is under a full Child Performer Permit, the parent or guardian must attach the trust account documentation and transfer instructions to the copy of the permit given to the employer in order for the permit to be valid. The employer must provide the parent or guardian with written notice of the transfer of funds to the trust account within five business days of such transfer. The employer can provide the notice either separately or as a notation on the child's pay stub.

If the parent or guardian has not provided the trust account information, the employer must transfer the funds to the Comptroller to be placed in a child performer's holding fund, on the same schedule as transfers to a trust account.

Employers must ensure that one or more persons are designated to

serve as a responsible person to supervise every child performer under the age of 16 throughout the work day and care for the child's best interests. Outside of live theater and other live performance, a child performer's parent or guardian must designate the responsible person and may choose to serve as the responsible person. In live theater and other live performance, when it is physically impracticable for the employer to permit a responsible person designated by the parent or guardian to accompany each child, the employer must either employ a responsible person (with the parent or guardian's consent to the person), or provide electronic or other means for a responsible person designated by the parent or guardian to see and hear the child; or both.

On school days, if a child performer is not otherwise receiving educational instruction due to his or her employment schedule, the employer must provide the child with time for education during the workday and must set aside a suitable location or locations where teaching, tutoring and study can take place. Such space shall be for the use of children being taught by a location teacher, studying or being tutored in home-schooling, studying independently, or doing homework.

An employer must provide a teacher to a child, other than a home-schooled or correspondence-schooled child, from the third day of missed educational instruction, or from the first day of missed educational instruction if the child was guaranteed three or more consecutive days of employment, through the end of the child's participation in the production.

The employer must employ at least one teacher for every ten child performers in need of on-location education or fraction thereof.

Employers must comply with stated restrictions on the hours of work and of presence at the worksite for child performers.

Employers must also provide meal periods, suitable places for the child to eat, play and rest, and where age appropriate, a crib or playpen at the worksite. Parents or guardians are responsible for providing sufficient nutritious food and diapers.

An employer may not employ a child performer in any activity that could result in harm to the child performer's health, education, morals or general welfare.

Employers must allow a child performer at least twelve hours of rest between days of employment, and at least ten minutes of rest time for every four hours of work time. An employer may not "hold" child performers when work is finished in order to ensure that the full rest and recreation time is provided.

The employer must provide orientation training to the child performer and the responsible person regarding safety and health precautions for the venue or location, traffic patterns backstage or on location, safe waiting areas for child performers, restricted areas, location of rest areas/rooms, toilet, makeup areas, and other relevant rooms, emergency procedures, and whom to talk to about hazardous conditions and what actions to take.

Professional Services: Employers will, under certain circumstances spelled out in detail in the proposed rule, be required to procure the services of certified teachers with credentials from any of the jurisdictions that are parties to an Interstate Agreement on Qualification of Education Personnel.

Compliance Costs: The application fees for employers, set by statute, are \$350.00 for an original Employer Certificate of Eligibility, \$200.00 for renewal, \$200 for original and renewal certificates for applicants operating theaters of fewer than 500 seats, and \$200 for a Certificate of Group Eligibility. Application fees for parents or guardians for Child Performer Permits are zero.

Employers will be required to employ credentialed teachers for child performers, other than home- or correspondence-schooled ones, if one or more children are unable to attend school due to their employment schedules. One teacher will be allowed to teach up to ten child performers. The proposed rule spells out the circumstances in which a provided teacher is or is not required and supports several alternative methods of educating child performers.

Under certain circumstances spelled out in the proposed rule, employers will have to employ "responsible persons" to accompany children under 16 and care for their well-being. Under other circum-

stances, parents or guardians will accompany a child throughout the work day at no cost to the employer. The proposed rule supports those existing industry practices that work well.

Economic and Technological Feasibility: The regulation does not require any use of technology to comply. The Department will offer, but not mandate, on-line application and notification for certificates and permits. The Department will post information on its website when these applications are available on-line.

Minimizing Adverse Impact: Fees and paperwork are minimal. Therefore, the Department does not anticipate that the regulations will adversely impact small employers who comply with this Part.

The Department conducted significant outreach to various groups, published an earlier draft of these regulations in the State Register, held two public hearings, and received written comments and oral testimony from numerous organizations and individuals. The organizations participating are listed in the Regulatory Impact Statement.

The Department used input from various groups and individuals to draft the first version of Part 186 and relied heavily on the written comments and oral testimony subsequently received from stakeholders to revise it.

Small Business and Local Government Participation: The Department conducted outreach with small businesses and local governments during the rule making process. Notice of the proposed rulemaking was distributed to business organizations and government entities and was posted on the Department's website for comment. The Department spoke directly with industry stakeholders including performing arts organizations, production companies, advertisers, talent agents, parents, educators of child performers, and unions. As discussed in the Regulatory Impact Statement, the revised proposal incorporates many of their recommendations.

Revised Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Any rural area where children are employed as performers will be affected. However, because performances are exempt when they take place in a house of worship, or academy or school, as part of the regular services, curriculum, or activities thereof; or in a private home when the child's performance is not being recorded for commercial purposes; or when the performance is under the direction, control, or supervision of a department or board of education, except when such performances are part of a reality show, the impact is greatly reduced for rural areas.

Most of the affected areas will most likely be urban. The vast majority of child performers and their employers are found in and around New York City in theater, the television, the advertising industry, and in film. When theater is taken on the road, it is traditionally found in cities.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Employers who employ child performers will have reporting, recordkeeping and other compliance requirements as a result of statute and regulation. The burden will rest mostly on the employer, who must collect a copy of the Child Performer Permit, current emergency contact information, authorization to provide emergency medical treatment, and information about the child performer's trust account. The employer must also provide the child performer's parent or guardian with written notice of transfer of funds to the child's trust account; this may either be noted on the pay stub or issued separately. All documents related to this rule must be available for inspection by the Department, school attendance officers, the state education department or local school district, and the Comptroller.

The employer must notify the Department of its intent to use child performers at least three business days in advance. The employer must provide the date and expected duration of use, the location of use, the approximate number of child performers to be used, and the name and contact information of the employer's on-site representative.

The rule also requires employers to provide a teacher for any child performer, other than home-schooled or correspondence-schooled children, who is unable to fulfill his or her regular educational requirements due to work. Many child performers can attend regular school and work outside of school hours. However, when the child's employment schedule prevents this, the teacher must be available on any day

the child performer is employed that his or her regular school is in session. The teacher must have teaching credentials from any of the jurisdictions that are parties to an Interstate Agreement on Qualification of Education Personnel. Therefore, employers may be required to engage the services of professional educators to comply with this rule.

3. Costs: Other than staffing needs, costs associated with the rule will be administrative and are required by the statute. Employers must prepare applications and notices, as well as regular transfers of a percentage of the child performer's gross income to a trust account. The fees to apply are \$350.00 for the initial Employer Certificate of Eligibility, \$200.00 for each renewal, and \$200 for both the initial and renewal Certificates to employers operating theaters containing fewer than 500 seats. The employer certificates are good for three years. It is not anticipated that any employer would have to retain additional outside professional services to prepare these documents and financial transfers, although most, if not all, likely retain accountants and other staff to manage payroll and financial transfers for other performers.

Under certain circumstances spelled out in the proposed rule, employers must incur the costs of employing certified teachers for those child performers who must miss school in order to work and who are not home-schooled or correspondence-schooled.

The proposed rule requires every child performer under 16 years of age to be accompanied by a responsible person throughout the work day. Large segments of the industry rely on parents or guardians to do this, at no cost to the employer. The proposed rule fully supports this practice. In live theater and live performance, in contrast, there is a tendency for employers to prefer to hire professionals who will guide the children through their workdays and to limit the presence of parents and guardians backstage. The proposed rule fully supports this practice as well. One responsible person can supervise several children. The cost to the employer of the responsible person rule will vary according to the extent to which parents serve as responsible persons versus hiring someone to fulfill this role.

Legal services may be required to negotiate, draft or review contracts with individuals providing teaching services or acting as the responsible person. It is anticipated that a vast majority of child performer employers in the State already have procurement or legal staff who regularly work on such contracts.

The cost to comply with this rule is minimal for child performers and their parent or guardian. There is no cost to apply for or renew a Child Performer Permit. There may be minimal costs incurred in obtaining a physician's statement that the child performer is physically fit.

4. Minimizing adverse impact: This rule is necessary to implement Labor Law § 154-a. This enabling legislation requires the promulgation of regulations to determine the hours and conditions of work necessary to safeguard the health, education, morals and general welfare of child performers. As discussed in the other SAPA documents related to this rule making, the Department included recommendations within the proposal to minimize adverse impact without jeopardizing the physical or mental health, education or general welfare of the children involved.

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

Revised Job Impact Statement

The rule will facilitate the orderly employment of child performers in New York by codifying procedures and policies that have applied to child performers for a number of years and further providing for the protection of child performers and assurances that the child performers will receive the education which is mandated under state law. This should increase the availability of child performers for the arts, entertainment, and advertising industries and bring more of this work to New York. It is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs or employment opportunities, therefore no Job Impact Analysis is required.

Assessment of Public Comment

Comments received from 88 individuals and organizations are summarized below, with our responses.

RESPONSIBLE PERSONS

1. Outside of live theater, all types of stakeholders were in favor of parents/guardians serving as “responsible persons” accompanying their child performers throughout the work day and monitoring their safety and well-being. The revised regulations require parents/guardians to serve as, or designate someone else as, “responsible persons.”

2. In live theater/performance, there was not general agreement. Industry organizations and others said employers needed to limit or bar parental presence and to employ “responsible persons” for child performers, due to limited physical spaces and the rapid, precise timing necessary in live performance. Others acknowledged that employers may sometimes need to bar parents, but the ‘decision should be location-specific; parents should be permitted to accompany where they can, and employers should be required to use technology to provide means for parents/guardians to view and hear their children remotely when parents cannot be within sight-and-sound of their children. The revised regulations say that “where it is physically impracticable” for the employer to permit parental accompaniment, the employer may instead employ a “responsible person” or may provide the parents with technical means to “observe and hear” their children, or both.

3. Industry and parents submitted that once a child turns 16, the age at which a young person can legally work alone late at night, they no longer need a “responsible person.” The revised regulations discontinue requiring a “responsible person” at age 16.

4. A union and parent groups said that vetting and qualifications are needed for “responsible persons.” An industry group recommended raising their minimum age from 18 to 21. The revised proposed regulations do not require vetting; they do say that responsible persons designated by employers “must be qualified by training or experience to care for the safety and well-being of children.” We did not raise the minimum age, as there are competent child care workers employed in New York State at age 18.

5. A union, parents, and educators recommended limiting the number of children who can be supervised by one responsible person. This was not done, as it is not clear this is a problem.

MEDICAL EXAMS

There was general agreement among every possible sector that two medical examinations per year are excessive and expensive; one is enough. From unions and parent groups came the objection that requiring screening for eating disorders, mental health, and substance abuse was unnecessary, invasive, and singled out child performers without good reason. The proposed regulations have been revised to require one medical certification of fitness to work per year and no special screenings other than the normal standards of care for physicians.

EDUCATION

1. A union, parents, educators and a legislator urged that we address the needs of home schoolers, correspondence schoolers, and families making alternative arrangements for education. They contended the original draft regulations would force parents to accept the on-set instruction made available by an employer. The revised regulations require the employer to provide the necessary time and facilities for education to home-schoolers, correspondence-schoolers, and school children doing homework, as well as to recipients of on-set instruction, under the same qualifying circumstances.

2. From industry groups, educators and a legislator came a recommendation to change the overly-restrictive times of day for education in the original draft regulations. In response, we have eliminated the restrictions on the times of day during which educational instruction can take place.

3. From film & television, education and a parents group came a recommendation that we require a fixed three hours of education per day, rather than an average of 3 hours. We did not adopt this recommendation, as we had been persuaded of the need for flexible education hours in theatrical settings and also wished to allow “banking” of instructional hours, which necessarily means education hours are not fixed.

4. From industry, education and parents’ organizations came the

advice that teachers lack the authority to determine hours of education; we revised the language to reflect the reality that the employer has this authority.

5. Groups representing the industry, education, and parents suggested that banking of instructional hours be considered. We have added such a provision, with banked hours allowed to be “spent” either in the same week or another week; no more than 5 banked hours can be carried over from week to week.

6. Unions, industry, education and parents all agreed that we needed to clarify that after initial qualifying events, on-set education must continue throughout the remainder of the production. We have done so.

7. An education organization recommended we remove a provision requiring that workplace instruction be provided to any child who is present when another child is being taught, and we did so.

8. A union, educators, and parents’ groups said it was impractical to require employers to continue to provide a teacher during hiatus periods, as children scatter. As the requirement applies only if the child was receiving on-set education, does not scatter, and is unable to resume attending school, we have not made the requested change.

9. Theatrical organizations said that a 12-hour interval between the end of a work day and the start of school the next morning (or else the employer has to provide instruction on set the next day) was too long for live theater. We have reduced the interval to 9 hours in all sectors. We have also removed the provision that the employer’s consent was necessary in order for parents to send their child to school with less than a 9-hour interval.

10. A union, educators, and parents said that a 20:1 student teacher ratio was too high. We have reduced the maximum ratio to 10:1.

11. Industry and parent groups argued that employers should not be involved in education except for providing time, space and a teacher if needed. We agreed and have rewritten the education regulations to exclude employers from educational matters other than providing time, space and teachers if needed.

12. We were urged by union, industry, education and parents’ groups to allow teachers credentialed in New York or any of the 37 states that are parties to an interstate agreement; we have revised the proposed regulations accordingly.

13. A union recommended requiring teacher credentials specialized to subject areas. We have not done so, concerned that more teachers and cost than is reasonable in some productions would be incurred.

14. A legislator is concerned that providing teachers and managing educational hours and paperwork is too expensive for employers. The revised regulations continue to require provided teachers under specified circumstances but eliminate some paperwork. The revised regulations no longer restrict the times of day during which employers must set aside time for education; this will make it easier for them to schedule such time.

15. Organizations from the film/TV industry, education, parents, and a union said that it was impractical to apply New York State’s child performer law and regulations outside of NYS. We have revised the regulations to say that work performed out-of-state is covered for the purposes of the trust and educational provisions only, and only when all of the following conditions exist: the child resides in NYS, the employer has an office in NYS or otherwise does business in NYS, and the child is taken to work at a location out-of-state.

HOURS LIMITS

A broad spectrum of organizations from every possible sector, plus a legislator, argued that the hours limits needed to be later and longer to accommodate performance schedules in live theater. We agree and have extended the limits of the work day in live theater to 5 am - 12:00 midnight on days preceding school days. For children ages 6 and up, we incorporated the numbers of hours of work and of presence at the worksite recommended by The Broadway League and supported by other organizations. For children under 6, we kept these limits the same as before. Variances are available if these pose a hardship on a particular production. As recommended, we also added certain definitions of terms for live theater.

Talent representatives were concerned that one-day assignments

could not be completed. In the revised regulations, for the purpose of completing a one-day assignment, an extra 2 hours can be added to the work day of a child over 6 months of age, but the child cannot then work the following day.

TRUST ACCOUNTS

1. Various groups proposed changes in the trust account provisions; as all of these items are statutory, we cannot change them by regulation.

2. A parents' organization recommended we create a system of fines and a claims filing process. We already have these; our Division of Labor Standards accepts and pursues claims for unpaid wages and can assess interest, liquidated damages and civil penalties. Our website provides instructions on how to file a claim and also provides a link to the Comptroller to seek release of funds held there.

3. An industry group was concerned that the regulations exceed the statute in the amount of information that must be submitted to the Comptroller when funds are transferred there. We made no change, as the information required is essential for the Comptroller to match funds held with a particular child or young adult.

NOTICES OF USE

1. Groups from all sectors said notifying the Department 5 business days in advance with detailed information about child performers to be used is burdensome and often impossible. We have reduced the notice period to 3 business days and replaced detailed information with only general information.

2. An organization in the film industry urged exemption of news and documentaries from notices of use. We have not added one, as newscasts and interviews are not covered by the regulations as a whole.

CHILD PERFORMER PERMITS

A parent's organization said the regulations required too much paperwork and sensitive identity information. Subsequently, the legislature reduced the existing paperwork burden on parents by requiring one-year permits rather than six-month permits. The revised regulations no longer require the physician to provide any sensitive information, only to certify that the child is fit to work. However, the identifying information remains, as it is needed for compliance and enforcement, and to match a child performer with funds on hold.

EMPLOYER CERTIFICATES

A parents' group said that employers or agencies would misuse "group certificates" to apply to any random collection of children. These certificates will permit employers to assemble groups of children, as well as use pre-existing groups, but are valid for two days only.

REALITY SHOWS

Two parents' groups urged us not to cover children in reality shows by child performer regulations; instead, cover them by the regular child labor laws. The revised regulations continue to cover children in "reality programming" as they need protections and this was the best fit.

An industry organization said that "responsible persons" and hours limits are inappropriate in reality programming, as children may be unsupervised in their own regular activities and carry them on as if a camera were not present. We disagree, and did not remove this provision, for reasons explained in the longer Assessment.

The industry group pointed out that the proposed light and sound exposure limits for infants might be exceeded in a reality show depicting a child's own life and environment. We have revised the proposed regulations to exempt such a program in such circumstances.

The industry group recommended extending the exemption for contests and competitions beyond school and sports activities. We believe the legislative purpose includes covering children used in game shows and competitions in commercial entertainment and have not exempted these.

OTHER CHANGES RECOMMENDED BY COMMENTERS

We removed a requirement for the employer to provide a nurse to care for children under 6 months of age.

We changed the requirement for parents to provide "instructions" on emergency medical treatment to "authorization for" emergency medical treatment.

We reassigned the responsibility to provide food and diapers from the employer to the parent.

Office for People with Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

IRA and Community Residence Reimbursement Methodology

I.D. No. PDD-02-12-00017-EP

Filing No. 1411

Filing Date: 2011-12-27

Effective Date: 2012-01-01

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

Proposed Action: Amendment of section 671.7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b), 41.36(c) and 43.02

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

Specific reasons underlying the finding of necessity: Prices established for Individualized Residential Alternative facilities and community residences are offset by a rent allowance based on SSI levels. However, SSI levels for 2012 were not public in time for OPWDD to update the reimbursement offset within the timeframes established by the State Administrative Procedure Act for regular rulemaking procedures. Without these amendments, the prices established by OPWDD for these facilities might not be properly offset by the amount of rent received by the provider from other sources (primarily SSI). The State would then be overpaying the provider by an amount equivalent to the increase in rent portion of the SSI. The amount overpaid by the State would likely have to be recovered by imposing a reduction in reimbursement to providers for the delivery of services to individuals with developmental disabilities. This reduction in reimbursement could adversely affect the health, safety and/or welfare of the individuals receiving those services.

Subject: IRA and community residence reimbursement methodology.

Purpose: To update rent allowance offsets based on Supplemental Security Income (SSI) levels for 2012.

Public hearing(s) will be held at: 10:30 a.m., Feb. 27, 2012 at Office for People with Developmental Disabilities, Counsel's Office Conference Rm., 44 Holland Ave., Albany, NY; 10:30 a.m., Feb. 29, 2012 at Office for People with Developmental Disabilities, Counsel's Office Conference Rm., at 44 Holland Ave., Albany, NY.

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

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

Text of emergency/proposed rule: Section 671.7(a)(9) is amended by the addition of a new subparagraph (xix) as follows:

(xix) Effective January 1, 2012: NYC and Nassau, Rockland, Suffolk, and Westchester Counties \$32.60 per day

Rest of State \$31.60 per day

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 March 25, 2012.

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, OPWDD, Regulatory Affairs Unit, 44 Holland Avenue, Albany, New York 12229, (518) 474-1830, email: barbara.brundage@opwdd.ny.gov

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

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

Additional matter required by statute: Pursuant to the requirements of the

State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory authority:
 - a. OPWDD has the authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).
 - b. Section 41.36(c) of the Mental Hygiene Law requires OPWDD to establish fees or rates for community residences.
 - c. OPWDD has the responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates for services in facilities licensed by OPWDD.
2. Legislative objectives: These emergency/proposed amendments further the legislative objectives embodied in sections 13.09(b), 41.36 and 43.02 of the Mental Hygiene Law. The emergency/proposed amendments are necessary to maintain the current fees or prices for Individualized Residential Alternative (IRA) facilities and community residences.
3. Needs and benefits: An essential element of OPWDD's price setting and reimbursement methodologies for IRAs and community residences is an offset for rent which is based on the Supplemental Security Income per diem allowances consistent with levels determined by the Federal Social Security Administration for Congregate Care level II.

SSI levels for 2012 were increased. Without these amendments, the prices established by OPWDD for these facilities might not be properly offset by the amount of rent received by the provider from other sources (primarily SSI).
4. Costs:
 - a. Costs to the Agency and to the State and its local governments. The modest increase in the rent offset in the methodology for setting prices for community residences and IRAs will reduce overall expenditures for these programs by \$4.65 million. The federal share of this reduction is \$1.07 million and the state share is \$3.58 million. The amendments will have no impact on local governments.
 - b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. Providers are realizing an increase in revenue attributable to the increase in SSI for individuals receiving services, which the individuals who live in the certified residences use to pay rent to the provider. OPWDD estimates that the overall increase in revenue attributable to the SSI increase is approximately \$4.65 million. These amendments will reduce reimbursement to providers by the same amount, so that overall providers will receive the same total revenue.
5. Local government mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.
6. Paperwork: No additional paperwork will be required by the emergency/proposed amendments.
7. Duplication: The emergency/proposed amendments do not duplicate any existing State or Federal requirements that are applicable to the above cited facilities or services for persons with developmental disabilities.
8. Alternatives: The current course of action as embodied in these emergency/proposed amendments reflects what OPWDD believes to be a fiscally prudent, cost-effective reimbursement of IRA facilities and community residences. There is no alternative to emergency adoption that would allow for prompt, timely implementation updating of the SSI per diem levels contained in the emergency/proposed amendments.
9. Federal standards: The emergency/proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.
10. Compliance schedule: The emergency rule is effective January 1, 2012. OPWDD has concurrently filed the rule as a Notice of Proposed Rule Making, and it intends to finalize the rule as soon as possible within the time frames mandated by the State Administrative Procedure Act. These amendments do not impose any new requirements with which regulated parties are expected to comply.

Regulatory Flexibility Analysis

1. Effect on small business: These emergency/ proposed regulatory amendments will apply to voluntary not-for-profit corporations that operate Individualized Residential Alternative (IRA) and community residence facilities for persons with developmental disabilities in New York State. There are 260 agencies which operate these facilities.

While most of these residences are operated by voluntary agencies which employ more than 100 people overall, many of the facilities operated by these agencies at discrete sites employ fewer than 100 employees at each site, and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees overall would themselves be classified as small businesses.

The emergency/proposed amendments have been reviewed by OPWDD in light of their impact on these small businesses and on local governments. OPWDD has determined that these amendments will continue to provide appropriate funding for small business providers of these residential services.

The amendments will not result in any costs or savings for local governments.

2. Compliance requirements: There are no additional compliance requirements for small businesses or local governments resulting from the implementation of these emergency/proposed amendments.

3. Professional services: In accordance with existing practice, providers are required to submit annual cost reports by certified accountants. The emergency/proposed amendments do not alter this requirement. Therefore, no additional professional services are required as a result of most of these amendments. The amendments will have no effect on the professional service needs of local governments.

4. Compliance costs: There are no additional compliance costs to small business regulated parties or local governments associated with the implementation of, and continued compliance with, these emergency/proposed amendments. OPWDD has considered the desirability of a small business regulation guide to assist provider agencies with this rule, as provided for by new section 102-a of the State Administrative Procedure Act. However, since the emergency/proposed rule requires no compliance effort on the part of the regulated service providers (some of which could be considered as small businesses), OPWDD does not, at this time, contemplate the development of any such small business regulation guide.

5. Economic and technological feasibility: The emergency/proposed amendments are concerned with price setting in the affected facilities. The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse economic impact: As noted in the Regulatory Impact Statement, the amendments increase the rent offset in Medicaid prices to reflect the increase in rent that will be paid to the provider due to the increase in SSI received by residents. Overall, revenues will remain approximately the same.

These amendments impose no adverse economic impact on regulated parties or local governments. Therefore, regulatory approaches for minimizing adverse economic impact suggested in section 202-b(1) of the State Administrative Procedure Act are not applicable.

7. Small business and local government participation: The per diem SSI levels, as a component of OPWDD's price setting methodology for IRAs and community residences, are not determined by OPWDD. OPWDD is incorporating them into its methodology as soon as practicable. The rent offset based on per diem SSI levels is a longstanding component of the OPWDD methodology for setting these prices. Historically, OPWDD has updated this level every year that there has been an increase in SSI levels. This routine update of the rent offset amount is expected by providers.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. The amendments are concerned with updating the rent offsets, which are based on the Supplemental Security Income (SSI) per diem levels and which are a component of OPWDD's pricessetting methodology for Individualized Residential Alternatives (IRAs) and community residences. Since the amendments do not increase or decrease funding for the affected facilities, OPWDD expects that their adoption will not have adverse effects on regulated parties. Further, the amendments will have no adverse fiscal impact on providers as a result of the location of their operations (rural/urban), because the overall reimbursement methodologies are primarily based upon reported budgets and costs of individual facilities, or of similar facilities operated by the provider or similar providers in the same area. Thus, the reimbursement methodology has been developed to reflect variations in cost and reimbursement which could be attributable to urban/rural and other geographic and demographic factors.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have an impact on jobs and/or employment opportunities. This finding is based on the fact that the amendments are concerned with updating the rent offsets, which are based on the Supplemental Security Income (SSI) per diem levels and which are a component of OPWDD's pricessetting methodology for Individualized Residential Alternatives (IRAs) and community residences. Since the amendments do not increase or decrease funding for the affected facilities, OPWDD expects that their adoption will not have any adverse impacts on jobs or employment opportunities in New York State.

Public Service Commission

NOTICE OF ADOPTION

Denying the Petition of Utility Rate Analysis Consultants for a Cease and Desist Order

I.D. No. PSC-33-11-00009-A

Filing Date: 2011-12-21

Effective Date: 2011-12-21

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

Action taken: On 12/15/11, the PSC adopted an order denying the petition of Utility Rate Analysis Consultants for a Cease and Desist Order against Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2(11), (13), 4(1), 5(1)(b), 65(1), 66(1), (5), (27)(a) and (b)

Subject: Denying the petition of Utility Rate Analysis Consultants for a Cease and Desist Order.

Purpose: To deny the petition of Utility Rate Analysis Consultants for a Cease and Desist Order.

Substance of final rule: The Commission, on December 15, 2011 adopted an order denying the petition of Utility Rate Analysis Consultants for a Cease and Desist Order against Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.ny.gov 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-0326SA1)

NOTICE OF ADOPTION

Customer Contact Satisfaction Survey

I.D. No. PSC-37-11-00012-A

Filing Date: 2011-12-21

Effective Date: 2011-12-21

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

Action taken: On 12/15/11, the PSC adopted an order approving New York State Electric & Gas Corporation's (NYSEG) proposed new Contact Satisfaction Survey targets, to become effective January 1, 2012.

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

Subject: Customer contact satisfaction survey.

Purpose: To approve NYSEG's proposed new Contact Satisfaction Survey targets, to become effective January 1, 2012.

Substance of final rule: The Commission, on December 15, 2011, adopted an order approving New York State Electric & Gas Corporation's proposed new Contact Satisfaction Survey targets, to become effective January 1, 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.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(09-E-0715SA2)

NOTICE OF ADOPTION

Approve the Petition to Guarantee Credit Facilities Up to a Maximum Amount of \$1.25 Billion

I.D. No. PSC-40-11-00009-A

Filing Date: 2011-12-21

Effective Date: 2011-12-21

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

Action taken: On 12/15/11, the PSC adopted an order approving the petition of Sithe/Independence Power Partners, L.P. under Public Service Law 9 and 2, to guarantee credit facilities up to a maximum amount of \$1.25 billion.

Statutory authority: Public Service Law, sections 69 and 82

Subject: Approve the petition to guarantee credit facilities up to a maximum amount of \$1.25 billion.

Purpose: To approve the petition to guarantee credit facilities up to a maximum amount of \$1.25 billion.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving the petition of Sithe/Independence Power Partners, L.P. under Public Service Law § 69 and § 82, to guarantee credit facilities up to a maximum amount of \$1.25 billion, 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.ny.gov 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-0483SA1)

NOTICE OF ADOPTION

Denying a Refund of \$67,870.22 and Grant a Limited Waiver for Letters of Credit Prior to 3/1/10

I.D. No. PSC-40-11-00011-A

Filing Date: 2011-12-21

Effective Date: 2011-12-21

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

Action taken: On 12/15/11, the PSC adopted an order denying the request of Oot Bros., Inc. for a refund of \$67,870.22 from Niagara Mohawk Power Corporation d/b/a National Grid, and granting a limited waiver for those letters of credit prior to 3/1/10.

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

Subject: Denying a refund of \$67,870.22 and grant a limited waiver for letters of credit prior to 3/1/10.

Purpose: To deny a refund of \$67,870.22 and grant a limited waiver for letters of credit prior to 3/1/10.

Substance of final rule: The Commission, on December 15, 2011 adopted an order denying the request of Oot Bros., Inc. for a refund of \$67,870.22 from Niagara Mohawk Power Corporation d/b/a National Grid, and granting Oot Bros., Inc. a limited waiver for those letters of credit posted prior to March 1, 2010, for the tariff permitting Oot Bros., Inc. to extend each of these letters of credit for up to five years from the date of this order, 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.ny.gov 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-0486SA1)

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

Modification of Commission EEPS Orders

I.D. No. PSC-02-12-00006-P

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

Proposed Action: The Commission is considering a petition of the New York State Energy Research and Development Authority for authorization to use available interest earned on unexpended System Benefits Charge funds to pay the NYS Cost Recovery Fee applicable to the EEPS.

Statutory authority: Public Service Law, sections 4(1), 5(2), 66(1) and (2)
Subject: Modification of Commission EEPS Orders.

Purpose: To provide funds for NYS Cost Recovery Fees applicable to EEPS programs.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part the petition of the New York State Energy Research and Development Authority. The petition is seeking to authorization to use interest earned on unexpended Systems Benefits Charge funds to pay the NYS Cost Recovery Fee applicable to the Energy Efficiency Portfolio Standard programs.

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.ny.gov

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

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.

(08-E-1132SP4)

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

Whether to Grant, Deny, or Modify, in Whole or in Part, the Petition for Rehearing

I.D. No. PSC-02-12-00007-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny, or modify, in whole or in part, the petition by Consolidated Edison Company of New York, Inc. seeking rehearing of the Commission's Order in Case 11-E-0299 issued November 17, 2011.

Statutory authority: Public Service Law, sections 22, 64, 65(1), (2), 66(1), (12)(a) and (e)

Subject: Whether to grant, deny, or modify, in whole or in part, the petition for rehearing.

Purpose: Whether to grant, deny, or modify, in whole or in part, the petition for rehearing.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, a petition dated December 19, 2011 by Consolidated Edison Company of New York, Inc. seeking rehearing of the Commission's Order in Case 11-E-0299 issued November 17, 2011, approving tariff amendments with modifications.

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.ny.gov

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

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

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

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

(11-E-0299SP2)

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

Electronic Tariff Schedule

I.D. No. PSC-02-12-00008-P

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

Proposed Action: The Commission is considering a proposed tariff filing by Orange and Rockland Utilities, Inc. to convert its electric tariff schedule P.S.C. No. 2—Electricity tariff schedule into electronic format.

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

Subject: Electronic Tariff Schedule.

Purpose: To convert its P.S.C. No. 2 electric tariff schedule into electronic format.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Orange and Rockland Utilities, Inc. to convert its electric tariff schedule, P.S.C. No. 2—Electricity, to a new electricity rate schedule, P.S.C. No. 3—Electricity. The proposed filing is being made to convert its electric tariffs into electronic format in compliance with Commission Order issued June 17, 2011 in Case 10-E-0362. The proposed filing contains substantive changes. The proposed filing has an effective date of April 1, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

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

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

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

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

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

(10-E-0362SP3)

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

Revenue Sharing Agreements (RSA)

I.D. No. PSC-02-12-00009-P

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

Proposed Action: The Commission is considering a proposed tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to make revisions to electric tariff schedule, P.S.C. No. 220—Electricity.

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

Subject: Revenue Sharing Agreements (RSA).

Purpose: To approve tariff modifications to reflect refunds of RSA in its Legacy Transition Charge.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to revise its tariff to amend language to reflect how Revenue Sharing Agreement refunds will be calculated in the Legacy Transition Charge. The proposed filing has an effective date of March 19, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

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

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.ny.gov

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

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

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

(11-E-0698SP1)

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

Energy Efficiency Programs Administered by New York State Electric & Gas Corp. and Rochester Gas and Electric Corp.

I.D. No. PSC-02-12-00010-P

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

Proposed Action: The Commission is considering a November 22, 2011 amended petition filed by New York State Electric & Gas Corp. and Rochester Gas and Electric Corp. in Case 07-M-0548 et al. for approval of a Home Energy Reports Demonstration Program.

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

Subject: Energy efficiency programs administered by New York State Electric & Gas Corp. and Rochester Gas and Electric Corp.

Purpose: To approve Home Energy Reports energy efficiency program.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a petition submitted on November 22, 2011 by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation in the Energy Efficiency Portfolio Standard (EEPS) proceeding, Cases 07-M-0548 et al. The petition seeks Commission approval to implement a revised Home Energy Reports (HER) Demonstration program. An original petition, dated January 25, 2011, was approved by the Commission. The utilities determined that the HER program could not be administered with the approved energy savings targets and budgets, therefore requested a waiver from the program on April 15, 2011. In August 2011, the utilities notified the Commission that it could implement a HER program with amended program targets and budgets. In its November 22, 2011 petition, the utilities request permission to: (1) implement a HER program with revised savings targets and budgets; (2) provide the Commission with achievable savings targets and budgets after reviewing vendor proposals; and (3) to be relieved of the 2011 electric and gas savings targets.

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.ny.gov

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.ny.gov

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

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

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

(07-M-0548SP47)

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

Rehearing of Capital Expenditure Credits and Deferrals Established in an Order Issued in Case 07-M-0906

I.D. No. PSC-02-12-00011-P

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

Proposed Action: The Commission is considering a petition from New York State Electric & Gas Corporation and others requesting rehearing of an Order issued November 18, 2011 in Case 07-M-0906 establishing capital expenditure credits and deferrals.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (2), (5), (8) and (12)

Subject: Rehearing of capital expenditure credits and deferrals established in an Order issued in Case 07-M-0906.

Purpose: Consideration of rehearing of capital expenditure credits and deferrals established in an Order issued in Case 07-M-0906.

Substance of proposed rule: The Public Service Commission is considering a petition filed on December 19, 2011 by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (together, the Companies) requesting rehearing of the Order issued November 18, 2011 in Case 07-M-0906 establishing capital expenditure credits and deferrals for the Companies and addressing compliance with prior Orders issued in Case 07-M-0906. The Commission may approve, modify or reject, in whole or in part, the relief proposed by the Companies.

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

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.ny.gov

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

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

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

(07-M-0906SP8)

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

Balancing Provisions Applicable to SC No. 14

I.D. No. PSC-02-12-00012-P

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

Proposed Action: The Commission is considering a proposed tariff filing by Central Hudson Gas & Electric Corporation to revise its Balancing Provisions Applicable to Service Classification (SC) No. 14 to tariff schedule P.S.C. No. 14—Gas.

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

Subject: Balancing Provisions Applicable to SC No. 14.

Purpose: To revise Central Hudson Gas and Electric Corporation's Balancing Provisions to its SC No. 14.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas & Electric Corporation to revise its balancing provisions applicable to S.C. 14 consistent with the other service classifications. The proposed filing has an effective date of April 1, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

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

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

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

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

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

(11-G-0696SP1)

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

Modification of an Existing Renewable Portfolio Standard Maintenance Tier Contract

I.D. No. PSC-02-12-00013-P

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

Proposed Action: The Commission is considering the petition of Boralex New York L.P. for a modification of an existing Renewable Portfolio Standard maintenance tier contract.

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

Subject: Modification of an existing Renewable Portfolio Standard maintenance tier contract.

Purpose: To encourage electric energy generation for renewable resources in the state.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part the petition of Boralex New York LP. The petition is seeking to modify its existing Renewable Portfolio Standard Maintenance Tier contract. The petitioner seeks to increase the premium paid under this contract from \$15/MWh to \$35/MWh.

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.ny.gov

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

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

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

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

(11-E-0706SP1)

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

Expanded Low Income Assistance Program

I.D. No. PSC-02-12-00014-P

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

Proposed Action: The Commission is considering a proposed tariff filing by National Fuel Gas Distribution Corporation to increase customer enrollment in its Expanded Low Income Assistance Program to tariff schedule P.S.C. No. 8—Gas.

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

Subject: Expanded Low Income Assistance Program.

Purpose: To increase customer enrollment in National Fuel Gas Distribution Corporation's Expanded Low Income Assistance Program.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by National Fuel Gas Distribution Corporation to revise its tariff to reflect its plan to increase customer enrollment in its Expanded Low Income Assistance

Program. The proposed filing has an effective date of February 6, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

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

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

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

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

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

(11-G-0700SP1)

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

Gas Retail Access Program

I.D. No. PSC-02-12-00015-P

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

Proposed Action: The Commission is considering a revision to Central Hudson Gas & Electric Corporation's proposed tariff filing to revise its rules and regulations contained in P.S.C. No. 12—Gas regarding its Retail Access Program.

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

Subject: Gas Retail Access Program.

Purpose: To revise its Retail Access Program.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas & Electric Corporation to 1) remove the propane demand determinant for the requirements used to meet Retail Access customers' estimated peak day requirements, and 2) require all Retail Suppliers to take Winter Bundled Sales Service. The proposed filing has an effective date of April 1, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

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

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

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

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

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

(11-G-0697SP1)

Department of State

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

Children's Product Safety and Recall Effectiveness Act

I.D. No. DOS-02-12-00001-P

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

Proposed Action: Addition of Part 4607 to Title 21 NYCRR.

Statutory authority: General Business Law, section 490-h, as added by L. 2011, ch. 62

Subject: Children's Product Safety and Recall Effectiveness Act.

Purpose: Implement the Children's Product Safety and Recall Effectiveness Act.

Substance of proposed rule (Full text is not posted on a State website): Section 4607.1 Purpose and Scope.

Oversight and enforcement. It is the responsibility of the New York State Department of State (Department) to:

- a. enforce the provisions of Article 28-E of the General Business Law;
- b. set requirements for children's and durable juvenile products; and
- c. distinguish which requirements apply to the various affected entities within the children's and durable juvenile products marketplace.

Section 4607.2 Definitions.

For the purposes of this Part, the following terms shall have the following meanings:

- a. "Children's product" means a toy or other article, other than clothing, primarily intended for use by a child under twelve years of age.
- b. "Commercial dealer" means any person who is in the business of manufacturing, remanufacturing, retrofitting, distributing, importing, or selling at wholesale children's products in New York State.
- c. "Defect" or "Defective" means a hazard or imperfection that restricts the product from functioning according to design, patent or advertised intended function. Such term shall not include packaging or labeling imperfections.
- d. "Durable juvenile product" means products intended for use, or that may be reasonably expected to be used, by children under the age of five years as defined in subsection (f) of section 104 of the United States Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314.
- e. "Initial consumer" means a person who purchases a children's product or durable juvenile product for any purpose other than resale.
- f. "Knowledge" means (1) the receipt of notice or having actual knowledge or (2) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care.
- g. "Person" means a natural person and any entity, including but not limited to a sole proprietorship, partnership, firm, corporation, limited liability company, or association, and any employee or agent.
- h. "Recall" means a request to return a product to the manufacturer due to a defect in the product.
- i. "Retailer" means any person who as a business or for-profit venture sells or leases children's products or durable juvenile products for-profit in New York to initial consumers.
- j. "Secondhand dealer" means a person who sells as a primary source of income reconditioned, remanufactured, refurbished, previously owned, or consignment items.

Section 4607.3 Durable Juvenile Product Manufacturers; Responsibilities.

a. Owner safety card. No manufacturer of durable juvenile products shall introduce for sale or distribution a juvenile product without a product owner safety card, as prescribed by the United States Consumer Product Safety Commission, pursuant to subsection (d) of section 104 of the United States Consumer Product Safety Improvement Act of 2008, Public Law No. 110-314 and the rules promulgated therein.

b. Disclosure Form. The Department shall prescribe a form requiring manufacturers of durable juvenile products that are distributed, sold or made available in the State to report at a minimum the following:

1. Current contact information for the durable juvenile products manufacturer;
 2. Information identifying the types and variety of durable juvenile products sold or offered in the State; and
 3. Any other information deemed relevant by the Department.
- c. Reporting and Record Keeping.

1. Manufacturers of durable juvenile products shall complete and file the disclosure form with the Division biennially, unless any of the information provided in the biennial disclosure has changed. If any information provided during the biennial period changes, the disclosure form shall be amended and filed with the Division within 30 days of the occurrence of such change.

2. All filings shall be transmitted to the Division via:

1. Email to product.safety@dos.ny.gov; or
2. Mail to the Division of Consumer Protection; One Commerce Plaza, 99 Washington Avenue, Suite 650; Albany, New York 12231.

3. Manufacturers of durable juvenile products responsible for receiving any returned product safety owner cards shall maintain the contact information received for a period of six years.

Section 4607.4 Commercial Dealers; Responsibilities.

a. Labeling of products. Products for sale or distribution in New York must be labeled in accordance with label requirements as prescribed by 15 USC 2063 and the United States Consumer Product Safety Commission rules promulgated in accordance with the United States Consumer Product Safety Improvement Act of 2008. No commercial dealer or agent shall obscure or allow such label to be obscured.

b. Defective Children's or Durable Juvenile Products Recalls and Warnings; Requirements. Upon notice of, or reason to believe that, a product is defective and a recall or warning has been issued due to such defect then a commercial dealer shall, within twenty-four hours of issuing or receiving a recall or warning notification from the Consumer Product Safety Commission:

1. Contact in writing all known retailers, and any other distributing entity within the commercial dealer's distribution pool, to which it sold or otherwise made available such defective product.

2. If a dealer maintains a website, the dealer shall place on its website home page or first point of entry a link to the recall or warning information.

3. Contact all consumers who returned the product owner's safety card.

4. File an incident form, prescribed by the Department, and a copy of the recall notice or warning issued or distributed; and send such filings to the Division of Consumer Protection via:

- i. Email to product.safety@dos.ny.gov; or
- ii. Mail to the Division of Consumer Protection; One Commerce Plaza, 99 Washington Avenue, Suite 650; Albany, New York 12231.

c. Disposition of Defective Children's or Durable Juvenile Products; Requirements. When a commercial dealer receives the recalled product back from the consumer, the dealer shall:

1. Dispose of the recalled product in a manner that is compliant with state and federal environmental standards, and precludes the product from being re-entered into the marketplace.

2. File a certificate of disposition of recalled products form, prescribed by the Department, within 90 days.

3. Request extensions for filing certificate of disposition, at least 10 days prior to 90-day deadline.

4. Send filings and requests for extension to the Division of Consumer Protection via email to product.safety@dos.ny.gov; or mail to One Commerce Plaza, 99 Washington Avenue, Suite 650; Albany, New York 12231.

Section 4607.5 Retailers; Responsibilities.

a. A retailer shall not take delivery of, nor introduce for sale, any product that does not have an appropriate label in accordance with this Part.

b. No retailer shall obscure, in part or in full, any label required under this Part.

c. Upon knowledge of a commercial dealer, or a State or federal agency's issuance of a recall or warning regarding a children's product or a durable juvenile product, a retailer who has sold or is offering such product for sale shall:

1. Within one business day of knowledge of the recall notice:
 - i. Removing the defective children's product or durable juvenile product from the store shelves; and
 - ii. Taking steps to ensure that such defective product is not sold or otherwise made available.
2. Within one business day of knowledge of either a recall or warning notice:

i. Post the recall or warning notice conspicuously for at least 60 days at all of the retailer's locations where such item had been or was being sold. Conspicuous recall and warning posting shall include notices that are:

- a. Placed by the retailer onto a sign that is:
 1. Affixed to each cash register or point of sale;
 2. Posted at each store entrance used by the public;
 3. Prominently posted at the customer service area; or
 4. Affixed on the retail shelf planogram where the product was or would be sold.
- b. Offered in electronic format in a retail store, if the retailer:

1. Posts an electronic recall and warning availability sign at each store entrance utilized by the public, and prominently at the customer service area;

2. Utilizes an electronic device that is accessible to persons with physical disabilities;
3. Provides direct customer assistance for consumers; and
4. Provides for an alternative for consumers.

ii. Post a link to the specific recall or warning information on the home page or first point of entry to the retailer's website for at least 60 days, if a website is maintained.

3. When contact information was provided by the consumer and remains available at the time of the recall or warning notice, the retailer shall contact the consumer to provide the recall or warning information. The information shall include:

- i. A description of the product;
- ii. The reason for the recall or warning; and

iii. Instructions on how to exchange, return for a refund or otherwise respond to the children's product involved in the recall or warning.

Section 4607.6 Non-Retail Sales; Responsibilities.

Conspicuous Internet Resale Notice. A person that operates or manages a website that serves as a platform to facilitate by a competitive bidding process, or solely between third parties, the resale, sale or distribution of children's products or durable juvenile products shall:

1. Post clear advisory language in a distinct type style on;
i. The website's first webpage and point of entry; or
ii. The first webpage or point of entry for a seller, a bidder or a purchaser of children's products or durable juvenile products.

2. The first webpage or point of entry for a seller, bidder or purchaser shall include an operational hyperlink to the list of recalls. The operational hyperlink shall be:

i. Made available in a color that is a high degree of contrast from the color of the background of the webpage; and
ii. Provided in advance of any sale, bid or purchase information being transmitted by the seller, bidder or purchaser.

b. Prominent Secondhand Dealer Notice. A secondhand dealer who sells children's products or durable juvenile products shall prominently post a notice instructing consumers on how to obtain recall information.

1. The Department shall prescribe the notice required to be posted by a secondhand dealer.

2. The Department shall make such notice available in an electronic format, or any other format prescribed by the Department.

3. For purposes of this subsection, "prominently post" shall mean:

i. Affixed at the register or point of sale;
ii. At a location that is in plain and unobstructed view of the register or point of sale; or
iii. At the entrance or entrances of the premises used by the public.

Section 4607.7 Violations; penalties; enforcement.

a. Violations.

1. Failure to comply with any provision of this Part;
2. Allow a violation through omission of any provision of this Part;
3. Refuse to allow Department investigators to inspect premises;
4. Fail to respond to a request or a subpoena from the Department.

b. Penalties. For each violation, the Department shall impose a penalty of no greater than \$5,000. Upon the occasion of a second violation or subsequent violations of this Part, the Department shall impose a penalty of no greater than \$50,000.

c. Enforcement.

1. Administrative Hearing. The administrative hearing shall be conducted in accordance with Article 3 of the State Administrative Procedure Act ("SAPA") and 19 NYCRR Part 400. The Department shall, before imposing any fine pursuant to this Part and/or Article 28-E of the General Business Law, and at least 10 days prior to the date set for the hearing, notify in writing the person or entity alleged to be in violation with a statement of charges made.

Text of proposed rule and any required statements and analyses may be obtained from: Paula J. O'Brien, Esq., NYS Department of State, Counsel's Office, 99 Washington Ave., Suite 1120, Albany, NY 12231, (518) 474-6740, email: paula.o'brien@dos.state.ny.us

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

Public comment will be received until: 60 days after publication of this notice.

Summary of Regulatory Impact Statement

1. STATUTORY AUTHORITY:

In response to a lack of strong State or federal statutory oversight of toxic and hazardous children's toys and products entering the marketplace at a significant pace in 2007, various legislative measures were introduced in Congress during 2007 and 2008. On July 29, 2008 the Conference Committee Report on HR 4040, the Consumer Product Safety Improvement Act (CPSIA) of 2008, was issued and Congress approved the measure. President George W. Bush later signed the CPSIA into law on August 14, 2008.

Various policymakers in the State worked to protect the State's children from dangerous products being sold in the marketplace. The result was the Children's Product Safety and Recall Effectiveness Act of 2008, which passed the Senate and Assembly on June 23, 2008. Governor David A. Paterson later signed Chapter 553 of the Laws of 2008 on September 4, 2008.

The effect of the new Chapter 553 was short lived because the federal CPSIA of 2008 preempted many of the provisions of the new State law. An amendment to Chapter 553, which served to update the law to comport with the federal CPSIA, passed the State Legislature and Governor David A. Paterson signed Chapter 483 of the Laws of 2009 on October 9, 2009.

Accordingly, section 490-h of the General Business Law gives the New York State Department of State ("Department") authority to prescribe rules and regulations to administer Article 28-E of the General Business

Law relating to the Children's Product Safety and Recall Effectiveness program.

2. LEGISLATIVE OBJECTIVES:

The objective of Article 28-E of the General Business Law, the Children's Product Safety and Recall Effectiveness Act, is to prohibit the sale of recalled durable juvenile products and children's products in this State. The Act established various mechanisms to help ensure that such recalled products are not made available in the marketplace. The Act also requires responsible parties to provide notification of any recalls to New York consumers of durable juvenile products and children's products that are subject to such recalls.

The Department will enforce the Act upon its own initiative and by responding to complaints of violations. The Department may conduct inquiries into the sufficiency or an allegation. Upon finding of a violation, the Department shall impose a penalty of no greater than \$5,000. Upon the occasion of a second violation or subsequent violations, the Department shall impose a penalty of no greater than \$50,000.

3. NEEDS AND BENEFITS:

The Children's Product Safety and Recall Effectiveness Act of 2008 was drafted in response to the lack of strong State or federal statutory oversight of toxic and hazardous children's toys and products entering the marketplace at a significant pace in 2007. Subsequently, the Children's Product Safety and Recall Effectiveness Act was enacted to prevent dangerous children's items from entering the marketplace; identify and remove dangerous, recalled items from the State's marketplace; and enhance safety within the marketplace for children.

The proposed implementation rules benefit both those consumers engaged in the children's product marketplace and the regulated parties.

4. COSTS:

(a) Costs to State government: The Department is responsible for the administration and enforcement of the Children's Product Safety and Recall Effectiveness Act. The Department is recommending one full-time employee to implement, administer and enforce the Children's Product Safety and Recall Effectiveness Act. Additional costs, such as technology, travel and administrative hearings, vary dramatically depending on a variety of factors, including but not limited to location and complexity.

(b) Costs to private parties: There will be a slight cost to private parties to maintain information, prepare and provide relevant information requested by the Department, and/or post and notify consumers of recalls relating to children's products. The Department solicited an estimated cost for implementing the proposed rules from the Toy Industry Association (TIA), the Juvenile Product Manufacturers Association (JPMA), the Retail Council of New York State (Retail Council), and eBay.

i. TIA was unable to provide an estimated cost for the implementation of the proposed rules. The Department estimates that the cost will not be significant as many of the requirements that affect the TIA members under the proposed rules are the same as the requirements the members are already responding to under the CPSIA of 2008.

ii. JPMA was unable to provide an estimated cost for the implementation of the proposed rules. The Department estimates the cost will not be significant as many of the requirements that affect the JPMA members under the proposed rules are the same requirements the members are already responding to under the CPSIA of 2008.

iii. The Retail Council was unable to provide an estimated cost for the implementation of the proposed rules. The Department estimates that the costs to retailers should not be significant as the ongoing requirements upon retailers include posting notice, pulling recalled items from the shelves, and if they have contact information, notifying initial consumers of a recalled item that the item has been recalled. A one-time expense will be incurred by retailers to implement a mechanism at the point of sale to prevent the sale of a recalled item.

iv. eBay was responsive and advised that it has just fewer than 3.3 million active eBay users registered in the State. "Active" is defined as one who has bought, sold, or bid on an item on eBay at least once in the last year. 98,000 of the 3.3 million active users in the State are a top seller, which means they sell at least \$1,000 worth of goods per month for three or more consecutive months. Thus, these sellers make all or part of their income from eBay sales, and many of them are small businesses employing 2-4, or more to help list goods and ship to buyers.

eBay furthered that for the past two years it has been prominently providing notice to prospective sellers and buyers to advise of the importance of checking the CPSC recall website prior to engaging in a transaction for durable juvenile or children's products. The cost from this undertaking has been minimal. According to eBay, it will continue to be minimal expense and undertaking to implement prescribed language and develop a filter to flag whether a user is registered in New York State, and if that user is selling or purchasing a durable juvenile product or children's product.

v. The proposed rules seek to require secondhand dealers obtain and post an advisory sign from the New York State Department of State Divi-

sion of Consumer Protection. While the Department was unable to obtain a contact in the secondhand dealer industry, it estimates that the cost imposed is a de minimus one time labor cost to obtain and post the prescribed sign.

(c) Costs to local governments: The proposed new regulations do not impose any program, service, duty or responsibility upon local governments.

5. PAPERWORK:

(a) Durable Juvenile Product Manufacturers are required to provide a durable juvenile product safety owners card with each durable juvenile product distributed, sold or made available in the State. The Department also requires manufacturers of durable juvenile products to file biennially with the New York State Department of State Division of Consumer Protection a durable juvenile product manufacturer's product safety owner's card disclosure form, which will be prescribed by the Department.

(b) Commercial dealers of children's products or durable juvenile products, which have been sold in this State and are the subject of a recall, shall complete (i) an incident form notifying the New York State Department of State Division of Consumer Protection of a recall or warning and include in such notice a copy of the recall or warning issued, and (ii) a Certification of Disposition, as prescribed by the Department, and file with the New York State Department of State Division of Consumer Protection within 90 days of the date of issuance of the recall.

(c) Secondhand dealers are required under this regulation to obtain a copy of the Department's prescribed notice instructing consumers on how to obtain recall information and advisory language notifying buyers and sellers of children's products or durable juvenile products of the importance of checking recall lists before purchasing used products.

6. DUPLICATION:

This regulation does not duplicate any existing New York State rule or statute.

7. ALTERNATIVE:

In contemplation of the proposed rules, the former New York State Consumer Protection Board, now the New York State Department of State Division of Consumer Protection, (hereinafter referred to as the Department to articulate the change in law) met several times with the Toy Industry Association (TIA), which is based in New York City with 550 members, of which twenty percent are based in New York State.

The TIA advocated that the Certification of Disposition of goods only be made available upon demand by the Department. The Department declined this proposal and instead chose to require commercial dealers to affirmatively file a Certification of Disposition of recalled products, via a form prescribed by the Department, due to the clear language of the statute requiring the commercial dealer of a recalled durable juvenile product or children's product to provide a certification within 90 days of the date of the recall issuance.

The TIA also advocated for, and the Department agreed to provide for, a narrower definition of recall, and passive enforcement of the requirements upon such commercial dealers to provide appropriate tracking labels on the products, and notification to the Department of any recall or warning, within twenty-four hours of issuance. The TIA explained that the definition of recall being used was so broad that it may be interpreted to include any items recalled from the distribution chain due to a packaging error or any other concern not related to a defect in the operation of the item.

The Department also met with the Retail Council of New York State, whose membership includes nearly 5,000 stores ranging in size from sole proprietor businesses to national retail chains throughout the Empire State. The Retail Council advocated for the conspicuously posted recall notice requirement to include a computer kiosk where a consumer could find the most recent CPSC recall information. Target stores currently provide for such an electronic recall and warning information portal. In recognizing the advancement of technology in the retail sector, the Department agreed to permit such kiosks.

The Department referred to General Business Law section 218-a, which provides for the posting of retail return policies, as a guide in determining where a recall or warning sign should be posted to satisfy the law's conspicuous requirement. In addition, the Department met on several occasions with eBay, an international California based third-party internet sales and auction platform that is a fee-based service provider, to discuss the conspicuous internet resale notification advisory language requirement under the Act. eBay provided the advisory language it currently used to inform both bidders and sellers of the importance of checking the United States Consumer Product Safety Commission website for recalls. The parameters of this language are included in the Department's proposed rules.

8. LOCAL GOVERNMENT MANDATES:

The proposed amendments do not impose any additional program, service, duty, or responsibility upon local government, other than what is set forth in the Executive Law already.

9. FEDERAL STANDARDS:

The federal Consumer Product Safety Improvement Act of 2008, Public Law No. 110-314 and its subsequent implementation rules executed by the Consumer Product Safety Commission.

10. COMPLIANCE SCHEDULE:

The effective date of the proposed regulations is 120 days from the publication of the notice of adoption in the State Register.

Summary of Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The proposed amendments will have no effect 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 proposed new regulations are directed at businesses that are engaged in the manufacture, remanufacture, retrofitting, importing, distribution or sale of products for children under 12 years of age.

The proposed additions will have an effect on small businesses, which are defined as business which employ 100 or fewer individuals (SAPA § 102(8)). Small businesses within the durable juvenile products and children's products manufacturing, distribution and sales industries are required to comply with Article 28-E of the General Business Law and will also be required to comply with the proposed rules.

The proposed rules impose reporting, record-keeping and other compliance requirements on commercial dealers and sellers of durable juvenile products and children's products. If any such enterprise operates as a small business, the proposed rules require minimal record keeping and reporting to the New York State Department of State Division of Consumer Protection (Department). The minimal requirements include: (1) for durable juvenile products manufacturers to maintain any returned product safety owners card information; (2) for retailers to post recall and warning notices, pull recalled items from the shelves, notify initial customers of a recalled item, for whom the retailer has contact information, that such item has been recalled, and implement a mechanism to prevent the sale of a recalled item; (3) for internet platforms and secondhand stores to provide notice to buyers and sellers of the importance of checking the United States Consumer Product Safety Commission (CPSC) recall website before engaging in the purchase or sale of a durable juvenile product or a children's product; and (4) for all commercial dealers of durable juvenile products or children's products to report to the Department any recall or warning issued on a product sold in the State, and (5) report on the disposition of any such recalled product returned to the manufacturer or importer.

The proposed rules benefit affected individuals and small business by providing guidance about compliance with the Children's Product Safety and Recall Effectiveness Act, Article 28-E of the General Business Law.

2. COMPLIANCE REQUIREMENT:

This regulation requires manufacturers of durable juvenile products to provide a durable juvenile product safety owners card with each durable juvenile product distributed, sold or made available in the State. If an initial consumer responds to the manufacturer with their contact information, the manufacturer must maintain such information for no less than six years. Manufacturers of durable juvenile products must also file biennially with the Department a durable juvenile product manufacturer's product safety owner's card disclosure form, which will be prescribed by the Department.

This regulation also requires a commercial dealer of children's products or durable juvenile products, which have been subject to a recall and the dealer has accepted the return of such recalled item from the purchaser to complete a Certification of Disposition, as prescribed by the Department, and file with the New York State Department of State Division of Consumer Protection within 90 days of the date of issuance of the recall.

Secondhand dealers are required under this regulation to obtain a copy of the Department prescribed notice instructing consumers on how to obtain recall information and advisory language notifying buyers and sellers of children's products or durable juvenile products of the importance of checking recall lists before purchasing used products, and to post the notice.

3. PROFESSIONAL SERVICES:

It is not anticipated that affected small businesses will need to retain additional professional services to comply with the proposed rule additions.

4. COMPLIANCE COSTS:

(a) Costs to small businesses: There will be a slight cost to small businesses to maintain information, prepare and provide relevant information requested by the Department, and/or post and notify consumers of recalls relating to children's products. The former State Consumer Protection Board, now New York State Department of State Division of Consumer Protection (hereinafter referred to as the Department to articulate the change in law) solicited an estimated cost for implementing the proposed rules from the Toy Industry Association (TIA), the Juvenile Product Manufacturers Association (JPMA), the Retail Council of New York State (Retail Council), and eBay, all of which include small businesses within

their membership. The Department was unable to obtain a contact in the secondhand dealer industry, which is comprised of many small businesses.

i. TIA was unable to provide an estimated cost for the implementation of the proposed rules. The Department estimates that the cost will not be significant as many of the requirements that affect the TIA members under the proposed rules are the same as the requirements the members are already responding to under the CPSIA of 2008.

ii. JPMA was unable to provide an estimated cost for the implementation of the proposed rules. The Department estimates the cost will not be significant as many of the requirements that affect the JPMA members under the proposed rules are the same requirements the members are already responding to under the CPSIA of 2008.

iii. The Retail Council was unable to provide an estimated cost for the implementation of the proposed rules. The Department estimates that the costs to retailers should not be significant as the ongoing requirements upon retailers include posting notice, pulling recalled items from the shelves, and if they have contact information, notifying initial consumers of a recalled item that the item has been recalled. A one-time expense will be incurred by retailers to implement a mechanism at the point of sale to prevent the sale of a recalled item.

iv. eBay was responsive and advised that it has just fewer than 3.3 million active eBay users registered in the State. "Active" is defined as one who has bought, sold, or bid on an item on eBay at least once in the last year. 98,000 of the 3.3 million active users in the State are a top seller, which means they sell at least \$1,000 worth of goods per month for three or more consecutive months. Thus, these sellers make all or part of their income from eBay sales, and many of them are small businesses employing 2-4, or more to help list goods and ship to buyers.

eBay furthered that for the past two years it has been prominently providing notice to prospective sellers and buyers to advise of the importance of checking the CPSC recall website prior to engaging in a transaction for durable juvenile or children's products. The cost from this undertaking has been minimal. According to eBay, it will continue to be a minimal expense and undertaking to implement prescribed language and develop a filter to flag whether a user is registered in New York State, and if that user is selling or purchasing a durable juvenile product or children's product.

v. The proposed rules seek to require secondhand dealers obtain and post an advisory sign from the New York State Department of State Division of Consumer Protection. While the Department was unable to obtain a contact in the secondhand dealer industry, it estimates that the cost imposed is a de minimis one time labor cost to obtain and post the prescribed sign.

(b) Costs to local governments: No additional costs to local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed additions do not impose new technological changes.

6. MINIMIZING ADVERSE IMPACT:

By working with and seeking input from industry participants in drafting these rules, any adverse impact to small businesses has been minimized, if not completely eliminated. There is no adverse impact to local governments.

In contemplation of the proposed rules, the Department met several times with the Toy Industry Association (TIA), which is based in New York City with 550 members, of which twenty percent are based in New York State. The TIA advocated for, and the Department agreed to provide for, a narrower definition of recall, and passive enforcement of the requirements upon such commercial dealers to provide appropriate tracking labels on the products, and notification to the Department of any recall or warning within twenty-four hours of issuance. The TIA explained that the definition of recall being used was so broad that it may be interpreted to include any items recalled from the distribution chain due to a packaging error or any other concern not related to a defect in the operation of the item. It was clearly not the intention of the Act or the Department to engage in regulating non-dangerous, administrative errors. Likewise, the Department agreed to passive enforcement of the commercial dealer requirements because it was the most efficient and cost-effective means for the Board to enforce the Act.

The Department also met with the Retail Council of New York State, whose membership includes nearly 5,000 stores ranging in size from sole proprietor businesses to national retail chains throughout the Empire State. The Retail Council advocated for the conspicuously posted recall notice requirement to include a computer kiosk where a consumer could find the most recent CPSC recall information. Target stores currently provide for such an electronic recall and warning information portal. In recognizing the advancement of technology in the retail sector, the Department agreed to permit such kiosks. However, any retail outlet utilizing an electronic kiosk shall post signage at each store entrance used by the public and prominently at the customer service area advising consumers that recall information can be found at the electronic kiosk and where such kiosk is

located in the store. Any retailer utilizing an electronic kiosk shall provide direct customer assistance for any consumer who needs assistance operating the electronic device.

The Department also considered prescribing the size and color of the recall or warning notification sign, along with the font size used therein. However, upon discussion with the Retail Council, the Department learned that retailers as part of their unique branding are adverse to such requirements. Thus, the Department deferred on this point as to not overburden retailers. However, retailers must use a standard of reasonableness in their conspicuous posting signage and font size.

In addition, the Department met on several occasions with eBay, an international California based third-party internet sales and auction platform that is a fee-based service provider, to discuss the conspicuous internet resale notification advisory language requirement under the Act. eBay provided the advisory language it currently used to inform both bidders and sellers of the importance of checking the United States Consumer Product Safety Commission website for recalls. The parameters of this language is included in the Department's proposed rules, along with an additional requirement that such advisory language be provided before a bidder or seller engages in the actual entering of any personal or financial information to prepare a bid or sale.

While the Department was unable to solicit the input of the secondhand dealer industry, the proposed rules pose no foreseeable adverse impact to secondhand retailers.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The proposed additions have no unique features which would require the participation of local governments. As indicated previously, the Department solicited participation from affected industry participants.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

Regulated businesses covered by the proposed rules do business in every county in the State. There are forty-four rural counties in New York State, which are defined in the Executive Law § 481(7) as counties within the state having less than a population of two hundred thousand. The New York State Department of State does not possess statistics relating to the number of affected commercial dealers and sellers of products for children under the age of 12 that operate in a designated rural area in the State.

The proposed additions will have an effect on small businesses, which are defined as business which employ 100 or fewer individuals (SAPA § 102(8)), and often represents large employers in the State's rural areas. Small businesses within the durable juvenile products and children's products manufacturing, distribution and sales industries are required to comply with Article 28-E of the General Business Law and will also be required to comply with the proposed rules.

2. REPORTING, RECORDKEEPING OR OTHER COMPLIANCE REQUIREMENTS:

The proposed rules impose reporting, record-keeping and other compliance requirements on commercial dealers and sellers of durable juvenile products and children's products. If any such enterprise operates in a rural area, the proposed rules require minimal record keeping and reporting to the New York State Department of State Division of Consumer Protection. The minimal requirements include: (1) for durable juvenile products manufactures to maintain any returned product safety owners card information; (2) for retailers to post recall and warning notices, pull recalled items from the shelves, notify initial customers of a recalled item, for whom the retailer has contact information, that such item has been recalled, and implement a mechanism to prevent the sale of a recalled item; (3) for internet platforms and secondhand stores to provide notice to buyers and sellers of the importance of checking the United States Consumer Product Safety Commission (CPSC) recall website before engaging in the purchase or sale of a durable juvenile product or a children's product; and (4) for all commercial dealers of durable juvenile products or children's products to report to the New York State Department of State Division of Consumer Protection any recall or warning issued on a product sold in the State, and (5) report on the disposition of any such recalled product returned to the manufacturer or importer.

Finally, paperwork will also be required in defense of a claim of an alleged violation.

3. Costs:

Costs to businesses: There will be a slight cost to businesses throughout the State to maintain information, prepare and provide relevant information requested by the New York State Department of State, and/or post and notify consumers of recalls relating to children's products. The former State Consumer Protection Board, now New York State Department of State Division of Consumer Protection (hereinafter referred to as the Department) to articulate the change in law) solicited an estimated cost for implementing the proposed rules from the Toy Industry Association (TIA), the Juvenile Product Manufacturers Association (JPMA), the Retail Council of New York State (Retail Council), and eBay, all of which

include small businesses within their membership. The Department was unable to obtain a contact in the secondhand dealer industry, which is comprised of many small businesses.

a) TIA was unable to provide an estimated cost for the implementation of the proposed rules. The Department estimates that the cost will not be significant as many of the requirements that affect the TIA members under the proposed rules are the same as the requirements the members are already responding to under the CPSIA of 2008.

The State specific requirements include (a) filing an incident form upon the issuance of a children's product recall or warning, which shall include a copy of the applicable recall or warning notice and transmit such to the New York State Department of State Division of Consumer Protection, and (b) if a manufacturer receives a recalled children's product back from the consumer, then the manufacturer must properly dispose of the recalled item and file a certificate of disposition form with the New York State Department of State Division of Consumer Protection. Thus, the costs imposed upon the manufacturers will be minimal as they are associated with recordkeeping and filing, which may be completed electronically.

b) JPMA was unable to provide an estimated cost for the implementation of the proposed rules. The Department estimates that the cost will not be significant as many of the requirements that affect the JPMA members under the proposed rules are the same requirements the members are already responding to under the CPSIA of 2008.

The State specific requirements include (a) filing a disclosure form identifying the durable juvenile products that are sold, distributed or made available in the State, with the New York State Department of State Division of Consumer Protection biennially (b) filing an incident form upon the issuance of a durable juvenile product recall or warning, which shall include a copy of the recall or warning notice and transmit such to the New York State Department of State Division of Consumer Protection, and (c) if a manufacturer receives a recalled durable juvenile product back from the consumer, then the manufacturer must properly dispose of the recalled item and file a certificate of disposition form with the New York State Department of State Division of Consumer Protection. Thus, the costs imposed upon the manufacturers will be minimal, as they are associated with recordkeeping and filing, which may be completed electronically.

c) The Retail Council was unable to provide an estimated cost for the implementation of the proposed rules. The Department estimates that the costs to retailers should not be significant as the ongoing requirements upon retailers include posting notice, pulling recalled items from the shelves, and if they have contact information, notifying initial consumers of a recalled item that the item has been recalled. A one-time expense will be incurred by retailers to implement a mechanism at the point of sale to prevent the sale of a recalled item.

d) eBay was responsive and advised that it has just fewer than 3.3 million active eBay users registered in the State. "Active" is defined as one who has bought, sold, or bid on an item on eBay at least once in the last year. 98,000 of the 3.3 million active users in the State are a top seller, which means they sell at least \$1,000 worth of goods per month for three or more consecutive months. Thus, these sellers make all or part of their income from eBay sales, and many of them are small businesses employing 2-4, or more to help list goods and ship to buyers.

eBay furthered that for the past two years it has been prominently providing notice to prospective sellers and buyers to advise of the importance of checking the CPSC recall website prior to engaging in a transaction for durable juvenile or children's products. The cost from this undertaking has been minimal. According to eBay, it will continue to be minimal expense and undertaking to implement prescribed language and develop a filter to flag whether a user is registered in New York State, and if that user is selling or purchasing a durable juvenile product or children's product.

e) The proposed rules seek to require secondhand dealers obtain and post an advisory sign from the New York State Department of State Division of Consumer Protection. While the Department was unable to obtain a contact in the secondhand dealer industry, it estimates that the cost imposed is a de minimis one time labor cost to obtain and post the prescribed sign from the New York State Department of State Division of Consumer Protection webpage and post it prominently at the point of sale or at the entrance to the secondhand dealers premises.

4. MINIMIZING ADVERSE IMPACT:

By working with and seeking input from industry participants in drafting these rules, any adverse impact to small businesses has been minimized, if not completely eliminated. There is no adverse impact to local governments.

In contemplation of the proposed rules, the former State Consumer Protection Board, now New York State Department of State Division of Consumer Protection (hereinafter referred to as the Department to articulate the change in law), met several times with the Toy Industry Association (TIA), which is based in New York City with 550 members, of which

twenty percent are based in New York State. The TIA advocated for, and the Department agreed to provide for, a narrower definition of recall, and passive enforcement of the requirements upon such commercial dealers to provide appropriate tracking labels on the products, and notification to the Department of any recall or warning within twenty-four hours of issuance. The TIA explained that the definition of recall being used was so broad that it may be interpreted to include any items recalled from the distribution chain due to a packaging error or any other concern not related to a defect in the operation of the item. It was clearly not the intention of the Act or the Department to engage in regulating non-dangerous, administrative errors. Likewise, the Department agreed to passive enforcement of the requirements because it was the most efficient and cost-effective means for the Board to enforce the Act.

The former State Consumer Protection Board, now New York State Department of State Division of Consumer Protection (hereinafter referred to as the Department to articulate the change in law) also met with the Retail Council of New York State, whose membership includes nearly 5,000 stores ranging in size from sole proprietor businesses to national retail chains throughout the Empire State. The Retail Council advocated for the conspicuously posted recall notice requirement to include a computer kiosk where a consumer could find the most recent CPSC recall information. Target stores currently provide for such an electronic recall and warning information portal. In recognizing the advancement of technology in the retail sector, the Department agreed to permit such kiosks. However, any retail outlet utilizing an electronic kiosk shall post signage at each store entrance used by the public and prominently at the customer service area advising consumers that recall information can be found at the electronic kiosk and where such kiosk is located in the store. Any retailer utilizing an electronic kiosk shall provide direct customer assistance for any consumer who needs assistance operating the electronic device.

The Department also considered prescribing the size and color of the recall or warning notification sign, along with the font size used therein. However, upon discussion with the Retail Council, the Department learned that retailers as part of their unique branding are adverse to such requirements. Thus, the Department deferred on this point as to not overburden retailers. However, retailers must use a standard of reasonableness in their conspicuous posting signage and font size.

In addition, the former State Consumer Protection Board, now the New York State Department of State Division of Consumer Protection, met on several occasions with eBay, an international California based third-party internet sales and auction platform that is a fee-based service provider, to discuss the conspicuous internet resale notification advisory language requirement under the Act. eBay provided the advisory language it currently used to inform both bidders and sellers of the importance of checking the United States Consumer Product Safety Commission website for recalls. The parameters of this language is included in the Department's proposed rules, along with an additional requirement that such advisory language be provided before a bidder or seller engages in the actual entering of any personal or financial information to prepare a bid or sale.

While the Department was unable to solicit the input of the secondhand dealer industry, the proposed rules pose no foreseeable adverse impact to secondhand retailers.

Accordingly, the proposed rule additions apply uniformly to all those companies who manufacture, import, remanufacture, retrofit, distribute, or sell, new or used, durable juvenile products or children's products. The proposed additions do not impose any additional burden on persons or businesses located in rural areas and the Department does not believe that the proposed amendments will have an adverse impact on rural areas.

5. RURAL AREA PARTICIPATION:

The proposed rule additions have no unique features such that are specific to rural area participation. The Department did obtain and utilize the active participation of the Retail Council and eBay, which both include members located in rural areas.

The Department 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 proposed regulations should not have a substantial adverse impact defined as a decrease of 100 jobs (SAPA § 201-a (6)(c)). The additions clarify existing State law. As it is evident from the nature of these amendments that they would not have an adverse impact on the number of jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required.

Department of Taxation and Finance

ERRATUM

A Notice of Proposed Rule Making, I.D. No. TAF-51-11-00020-P, pertaining to Location of the Division of Tax Appeals and the Tax Appeals Tribunal, published in the December 21, 2011 issue of the *State Register* contained an incorrect contact address. Following is the correct address:

Text of proposed rule and any required statements and analyses may be obtained from: Nicholas A. Behuniak, Division of Tax Appeals/Tax Appeals Tribunal, 500 Federal Street, Troy, New York 12180-2893, (518) 266-3052, email: NBehuniak@NYSFTA.org

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York State and City of Yonkers Withholding Tables and Other Methods

I.D. No. TAF-02-12-00002-EP

Filing No. 1397

Filing Date: 2011-12-22

Effective Date: 2011-12-22

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

Proposed Action: Repeal of Appendixes 10, 10-A and addition of new Appendixes 10, 10-A; and amendment of sections 171.4 and 251.1(b) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First; 671(a)(1); 697(a); 1321; 1329(a); 1332(a); Code of the City of Yonkers, sections 15-105, 15-108(a) and 15-111; City of Yonkers Local Laws No. 3-2011 and No. 9-2011; and L. 2011, ch. 255 and L. 2011, ch. 56

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

Specific reasons underlying the finding of necessity: Recent amendments to the Tax Law effected by Part A of Chapter 56 of the Laws of 2011 adjusted the rates of personal income tax and the tax table benefit recapture for certain taxpayers effective for taxable years after 2011. Chapter 56 requires the Commissioner to adjust the withholding tables and methods accordingly and requires that a rule to implement the change for 2012 be adopted and effective as soon as practicable. Section 11 of Part A specifically authorizes the rule to be adopted by emergency action. This rule is being adopted on an emergency basis in accordance with the requirement that a rule be adopted and effective as soon as practicable and consistent with the explicit legislative authorization to adopt the rule on an emergency basis.

Subject: New York State and City of Yonkers withholding tables and other methods.

Purpose: To provide current New York State and City of Yonkers withholding tables and other methods.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.tax.ny.gov): Section 671(a)(1) and section 1329(a) of the Tax Law require that employers withhold from employee wages amounts that are substantially equivalent to the amount of New York State personal income tax and City of Yonkers income tax surcharge reasonably estimated to be due for the taxable year. The provisions authorize the Commissioner of Taxation and Finance to provide for withholding of these taxes through regulations promulgated by the Commissioner.

This rule repeals Appendixes 10 and 10-A and adds new Appendixes 10 and 10-A of Title 20 NYCRR, to provide new New York State and City of Yonkers withholding tables and other methods. The amendments to the Appendixes reflect revisions to the New York State and City of Yonkers personal income tax rates and tax table benefit recapture effected by Chapter 56 of the Laws of 2011. The rule also reflects the changes to the New York State and City of Yonkers supplemental withholding tax rates to be applied to supplemental wage payments.

The new City of Yonkers withholding tax tables also reflect amendments to the Code of the City of Yonkers enacted by Local Law No. 3-2011 pursuant to Tax Law section 1321 that increased the City of

Yonkers income tax surcharge rate from 10 to 15 percent of net state income tax, effective January 1, 2011. Specifically, the amendments to the City of Yonkers withholding tax tables reflect the implementation of the 15 percent surcharge rate over a twelve-month period, rather than the shorter implementation period required for tax year 2011. Chapter 255 of the Laws of 2011 extended the authority contained in section 1321 to taxable years beginning before 2014. City of Yonkers Local Law No. 9-2011 extended the City of Yonkers resident income tax surcharge and its non-resident earnings tax to taxable years ending on or before December 31, 2013.

The rule applies to wages and other compensation subject to withholding paid on or after January 1, 2012.

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 March 20, 2012.

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 671(a)(1) provides that the method of determining the amounts of New York State personal income tax to be withheld will be prescribed by regulations promulgated by the Commissioner; section 697(a) provides the authority for the Commissioner to make such rules and regulations as are necessary to enforce the personal income tax; section 1329(a) of the Tax Law and section 15-105 of the Code of the City of Yonkers provide that the City of Yonkers income tax surcharge shall be withheld in the same manner and form as that required for State income tax; section 1332(a) of the Tax Law and section 15-108(a) of the Code of the City of Yonkers provide that the income tax surcharge shall be administered and collected by the Commissioner in the same manner as the tax imposed by Article 22 of the Tax Law. Section 1321 authorizes the City of Yonkers to adopt and amend local laws imposing a city income tax surcharge to be administered, collected and distributed by the Commissioner. City of Yonkers Local Law No. 3-2011 amended section 15-111 of the Code of the City of Yonkers to increase the city income tax surcharge from 10 to 15 percent of net state income tax. Chapter 255 of the Laws of 2011 extended the authority contained in Section 1321 to taxable years beginning before 2014. City of Yonkers Local Law No. 9-2011 extended the City of Yonkers resident income tax surcharge and its non-resident earnings tax to taxable years ending on or before December 31, 2013. Chapter 56 of the Laws of 2011 adjusted the rates of personal income tax and the tax table benefit recapture for certain taxpayers. Chapter 56 requires the Commissioner to adjust the withholding tax tables and methods accordingly and requires that a rule to implement the change for 2012 be adopted and effective as soon as practicable, specifically authorizing adoption of an emergency rule.

2. Legislative objectives: New Appendixes 10 and 10-A contain the revised New York State and City of Yonkers withholding tables and other methods applicable to wages and other compensation paid on or after January 1, 2012. Specifically, the emergency rule reflects the revision of the personal income tax rates and the tax table benefit recapture effected by Chapter 56 of the Laws of 2011. New Appendix 10-A also reflects the increase in the City of Yonkers income tax surcharge rate from 10 to 15 percent of net state income tax, pursuant to amendments to section 15-111 of the Code of the City of Yonkers made by Local Law No. 3-2011 of the City of Yonkers, which was enacted under the authority of Section 1321 of the Tax Law. Specifically, the amendments to the City of Yonkers withholding tax tables reflect the implementation of the 15 percent surcharge rate over a twelve-month period, rather than the shorter implementation period required for tax year 2011. Amendments to provisions regarding withholding on supplemental wages are also made to reflect the new rates of withholding. The amendments also reflect minor technical corrections and cosmetic changes to Appendixes 10 and 10-A.

3. Needs and benefits: This rule sets forth amendments to the New York State and City of Yonkers withholding tables and other methods, applicable to wages and other compensation paid on or after January 1, 2012, reflecting the revision of New York State personal income tax rates and the tax table benefit recapture contained in Chapter 56 of the Laws of 2011, and implementing the new City of Yonkers income tax surcharge rate pursuant to section 15-111 of the Code of the City of Yonkers as amended by City of Yonkers Local Law 3-2011 over a twelve-month period, rather than over the shorter period required for tax year 2011. This

rule benefits taxpayers by providing New York State and City of Yonkers withholding rates that more accurately reflect the current income tax rates.

4. Costs:

(a) Costs to regulated parties for the implementation and continuing compliance with this rule: Since (i) the Tax Law and the Code of the City of Yonkers already mandate withholding in amounts that are substantially equivalent to the amounts of New York State and City of Yonkers personal income tax on residents reasonably estimated to be due for the taxable year, and (ii) this rule conforms Appendixes 10 and 10-A of Title 20 NYCRR to the rates of the New York State income tax and the City of Yonkers income tax surcharge on residents, as required by Chapter 56 of the Laws of 2011, any compliance costs to employers associated with implementing the revised withholding tables and other methods are due to such statutes, and not to this rule.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to make amendments to the New York State Personal Income Tax Regulations under Article 22 of the Tax Law, the City of Yonkers Income Tax Surcharge on Residents Regulations, and to Appendixes 10 and 10-A, arises due to the statutory changes in the rates of the New York State personal income tax for wages and other compensation paid on or after January 1, 2012, and due to the statutory change in the City of Yonkers income tax surcharge rate applied over a twelve-month period, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

(c) Information and methodology: This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department's Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis Bureau of Tax and Fiscal Studies, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: Local governments, as employers, would be required to implement the new withholding tables and other methods in the same manner and at the same time as any other employer.

6. Paperwork: This rule will not require any new forms or information. The reporting requirements for employers are not changed by this rule. Employers will be notified of the changed tables and other methods and directed to the Department's Web site for the new tables and other methods.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since sections 671(a) and 1329(a) of the Tax Law, section 15-105 of the Code of the City of Yonkers and Chapter 56 of the Laws of 2011 require that withholding tables and other methods be promulgated, there are no viable alternatives to providing such tables and other methods.

9. Federal standards: This rule does not exceed any minimum standards of the federal government for the same or similar subject area.

10. Compliance schedule: The required information will be made available to affected employers in sufficient time to implement the revised New York and City of Yonkers withholding tables and other methods for wages and other compensation paid on or after January 1, 2012.

Regulatory Flexibility Analysis

1. Effect of rule: Small businesses, within the meaning of the State Administrative Procedure Act, that are currently subject to the New York State and City of Yonkers withholding requirements will continue to be subject to these requirements. This rule should, therefore, have little or no effect on small businesses other than the requirement of conforming to the new withholding tables and other methods. All small businesses that are employers or are otherwise subject to the withholding requirements must comply with the provisions of this rule.

2. Compliance requirements: This rule requires small businesses and local governments that are already subject to the New York State and City of Yonkers withholding requirements to continue to deduct and withhold amounts from employees using the revised New York State and City of Yonkers withholding tables and other methods. The promulgation of this rule will not require small business or local governments to submit any new information, forms, or paperwork.

3. Professional services: Many small businesses currently utilize bookkeepers, accountants and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of such services.

4. Compliance costs: Small businesses and local governments are already subject to the New York State and City of Yonkers withholding requirements. Therefore, small businesses and local governments are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York, and City of Yonkers purposes. As such, these changes should place no additional burdens on small businesses and local governments. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

5. Economic and technological feasibility: This rule does not impose

any economic or technological compliance burdens on small businesses or local governments.

6. Minimizing adverse impact: Section 671(a)(1) of the Tax Law mandates that New York State withholding tables and other methods be promulgated. Section 1332(a) of the Tax Law mandates, in part, that the City of Yonkers withholding of tax on wages shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law. There are no provisions in the Tax Law that exclude small businesses and local governments from the withholding requirements. The regulation provides some relief to small businesses and local government with respect to the methods allowed to comply with the withholding requirements by continuing to provide employers with more than one method of computing the amount to withhold from their employees. Look-up tables are provided for employers who prepare their payrolls manually, and an exact calculation method is provided for employers with computer-based systems.

7. Small business and local government participation: The following organizations were given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of the New York State Department of State; the Division for Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Committee of the New York State Business Council; the Retail Council of New York State; and the New York Association of Convenience Stores. In addition, the City of Yonkers was consulted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Every employer, including any public or private employer located in a rural area as defined in section 102(10) of the State Administrative Procedure Act, that is currently subject to the New York State and City of Yonkers withholding requirements will continue to be subject to such requirements and will be required to comply with the provisions of this rule. There are 44 counties throughout this State that are rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 or fewer people per square mile).

2. Reporting, recordkeeping and other compliance requirements; and professional services: This rule requires employers that are already subject to the New York and City of Yonkers withholding requirements to continue to deduct and withhold amounts from employees using the revised withholding tables and other methods. The promulgation of this rule will not require employers to submit any new information forms or other paperwork.

Further, many employers currently utilize bookkeepers, accountants, and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of any such services.

3. Costs: Employers are already subject to the New York State and City of Yonkers withholding requirements. Therefore, employers are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York, and City of Yonkers purposes. As such, these New York State and City of Yonkers changes should place no additional burdens on employers located in rural areas. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

4. Minimizing adverse impact: Section 671(a)(1) of the Tax Law requires that the New York State withholding tables and other methods be promulgated. Section 1329(a) of the Tax Law requires that the City of Yonkers withholding of tax on wages shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law. There are no provisions in the Tax Law that exclude employers located in rural areas from the withholding requirements.

5. Rural area participation: The following organizations are being given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Division of Local Government Services of New York State Department of State; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Committee of the New York State Business Council; the Retail Council of New York State; the New York Association of Convenience Stores; the Tax section of the New York State Bar Association; the Association of the Bar of the City of New York State and Local Tax Committee; the National Tax Committee for the National Conference of CPA Practitioners; the New York State Society of CPAs; and the Business Council of New York State.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse

impact on jobs and employment opportunities. The purpose of the rule is to provide New York State and City of Yonkers withholding tables and other methods, applicable for compensation paid on or after January 1, 2012, which reflect revisions to the New York State personal income tax rates and tax table benefit recapture enacted by Chapter 56 of the Laws of 2012. The rule also reflects the implementation of the City of Yonkers 15 percent income tax surcharge over a twelve-month period, rather than the shorter implementation period required for tax year 2011. Amendments to provisions regarding withholding on supplemental wages are also made to accord with the new rates of withholding.

NOTICE OF WITHDRAWAL

New York State and City of Yonkers Withholding Tables and Other Methods

I.D. No. TAF-41-11-00003-W

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

Action taken: Notice of proposed rule making, I.D. No. TAF-41-11-00003-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on October 12, 2011.

Subject: New York State and City of Yonkers withholding tables and other methods.

Reason(s) for withdrawal of the proposed rule: Recent legislative action requires promulgation of a superseding rule.

Urban Development Corporation

EMERGENCY RULE MAKING

Innovate NY Fund

I.D. No. UDC-02-12-00003-E

Filing No. 1401

Filing Date: 2011-12-22

Effective Date: 2011-12-22

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

Action taken: Addition of Part 4252 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, sections 9-c and 16-u; L. 1968, ch. 174

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

Specific reasons underlying the finding of necessity: The current economic crisis, including high unemployment and the immediate lack of seed stage capital for job generating small business, are the reasons for the emergency adoption of this Rule which is required for the immediate implementation of the Innovate NY Fund Program in order to promptly provide assistance to the State's small businesses engaged in one or more emerging technology fields and demonstrating a potential for substantial growth and job development. These businesses shall be in the pre-revenue, recently established revenue stream phase or not yet in receipt of institutional investments. This assistance will sustain and increase employment generated by these businesses.

Subject: Innovate NY Fund.

Purpose: Provide the basis for administration of The Innovate NY Fund.

Text of emergency rule: INNOVATE NY FUND

Section 4252.1 Purpose

The purpose of these regulations is to facilitate administration of the Innovate NY Fund (the "Fund" or the "Program") authorized pursuant to section sixteen-u of the New York State Urban Development Corporation Act (the "Act").

Section 4252.2 Definitions

The following terms shall have the meanings given below:

1. "Beneficiary Company" shall mean a Seed Stage Business that an

Investment Entity selects for a Fund investment (also referred to as a "Portfolio Company" after the Fund investment is made).

2. "Carried Interest on Capital Gains" shall mean the share of any profits that the owners, partners or members of an Investment Entity receive as compensation.

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

4. "Disbursement Process" means the process for disbursing Program funds to Investment Entities.

5. "Due Diligence" shall mean an in-depth investigative approach to evaluating the Beneficiary Company and verifying an investment opportunity, which may include assessment of the management team, business plan, financial history, financial projections, and the Beneficiary Company's technology and products/services.

6. "Emerging Technology Field" shall mean one or more of the emerging technologies, as defined in section thirty-one hundred two-e of the Public Authorities Law, or any field, area or technology that is achieving or has the potential to achieve contemporary technological advances, innovation, transformation or development.

7. "Equity" shall mean common stock, convertible preferred stock, stock warrants or convertible notes or bonds that can also convert to common stock, and similar types of securities.

8. "Follow-on Investment" shall mean a subsequent investment made by an investor after an initial round of investment in a Portfolio Company.

9. "Hybrid Investment" shall mean an investment that combines Equity and debt features, such as preferred stocks, convertible bonds, and convertible notes.

10. "Investment Entity" shall mean a regional and local economic development organization, technology development organization, research university, or investment fund that provides or is otherwise qualified to make seed-stage investments in companies located in the State of New York.

11. "Leveraging" or "leverage" shall mean utilizing investment assets alongside other sources of capital.

12. "Matching Investment Funds" shall mean monies secured in addition to Program funds.

13. "Portfolio Company" shall mean a Beneficiary Company after the Fund investment is made.

14. "Seed-Stage Business" shall mean a Small Business, located in New York State and working in one or more Emerging Technology Fields, which demonstrates a potential for substantial growth and job development, has the potential to generate additional economic activity in New York State, and that is pre-revenue, has only begun to earn revenue, or has not yet received institutional investments.

15. "Small Business" shall have the meaning as set forth in section 131 of the Economic Development Law.

16. "State" shall mean the State of New York.

Section 4252.3 Investment Objectives

The Fund objective is to invest in Seed Stage Businesses through Investment Entities that are selected by and are under contract to the Corporation. Investment priority shall be given to Seed Stage Businesses involved in commercialization of research and development or high technology manufacturing.

Section 4252.4 Selection of Investment Entities

The Corporation shall identify and select Investment Entities through one or more competitive statewide, regional or local solicitations. Investment Entity applicants shall be evaluated on criteria including, but not limited to, the applicant's: (a) record of success in raising investment funds and successfully investing them; (b) capacity to perform Due Diligence and to provide management expertise and other value-added services to Beneficiary Companies; (c) financial resources for identifying and investing in seed-stage and early-stage companies; (d) ability to secure non-State Matching Investment Funds at a ratio that is equal to or greater than one-to-one (1:1); (e) ability to evaluate the commercial potential of emerging technologies; (f) ability to secure partnerships with local or regional investors; (g) conflict of interest policy acceptable to the Corporation; (h) investment record and capacity to invest in the State; (i) management fees, promotes, share of return and other fees and charges and; (j) other criteria that the Corporation determines is relevant to making investment decisions consistent with the purposes of the Fund. Applicants must specify particular industry sector, regional or other investment strategies. The Corporation shall determine the amount of the Program funds to commit to an Investment Entity. After an Investment Entity is under contract to the Corporation, the Corporation may award additional Program funds to an Investment Entity without an additional solicitation.

Section 4252.5 General Requirements

1. The Corporation and each Investment Entity receiving Program funds shall enter into one or more written agreements governing the Corporation's investment, which may include a Limited Partnership Agreement, that are consistent and in compliance with the Act, including section 16-u thereof, this rule, and other applicable laws and regulations.

2. The Corporation shall distribute Program funds promptly pursuant to a Disbursement Process agreed to between the Corporation and the Investment Entity in order to enable the Investment Entity to fulfill its commitments to Beneficiary Companies in a timely manner.

3. The commitment period for an Investment Entity to make investments with the Program funds shall typically be three years or less.

4. Returns on investments or interest accrued with respect to Program funds received by an Investment Entity through the Fund shall be returned to the Corporation in accordance with the agreements entered into between the Investment Entity and the Corporation.

Section 4252.6 Eligible Investments in Beneficiary Companies

In order to be eligible for an investment, including a Follow-on Investment, that includes Program funds, a Beneficiary Company must be a Seed-Stage Business. Prior to the investment of Program funds in a Beneficiary Company, the Beneficiary Company must agree, pursuant to a written agreement satisfactory to the Corporation, that the Beneficiary Company will be located and remain located within the State for a period satisfactory to the Corporation and that in the event that the Beneficiary Company breaches such obligation, the Corporation shall have all remedies at law and such other remedies as the Corporation may set forth in the agreement with the Beneficiary Company, which may include recovery or recapture, if full or in part, of the Program funds investment.

Investment Entities shall not invest Program funds in a Beneficiary Company in an amount greater than five hundred thousand dollars, or seven hundred fifty thousand dollars in the case of a biotechnology-related Beneficiary Company, at any one time, unless the Beneficiary Company and the Investment Entity can demonstrate to the satisfaction of the Corporation that exceeding the applicable investment limit significantly increases the potential of the investment to result in substantially greater growth, job development, and additional economic activity in New York State and the Corporation consents to such greater investment in writing. Program funds may be used for Follow-on Investments in Portfolio Companies, subject to the investment amount limits and exceptions set forth above. Investments in Beneficiary Companies may take the form of Equity or Hybrid Investments.

Section 4252.7 Fund Accounts

Each participating Investment Entity shall deposit Program funds and program related investment proceeds (including, without limiting the foregoing, returns and interest) into a bank account in a State or Federally chartered banking institution, satisfactory to the Corporation, or as otherwise agreed in writing between the Corporation and the Investment Entity.

Section 4252.8 Matching Investment Funds Requirements

At such time as an Investment Entity has invested fifty percent of the Program funds committed to such Investment Entity and annually thereafter, the aggregate investments of Program funds by the Investment Entity in Beneficiary Companies shall be leveraged with Matching Investment Funds from private sources of capital, excluding investments after the initial funding round, at a ratio equal to or greater than two to one (2:1). Investments made in funding rounds prior to the date of the initial investment of Program Funds shall not be counted toward satisfying this Matching Investment Funds requirement. Funding provided by the State of New York, including, but not limited to, Small Business Technology Investment Fund proceeds, does not satisfy this Matching Investment Funds requirement.

Section 4252.9 Fees and Capital Gains

The Investment Entities may charge fees, pursuant to a written schedule of fees, and receive Carried Interest on Capital Gains with the prior written approval of the Corporation. The amount of any fees and the amount of the Carried Interest on Capital Gains will be detailed in the agreements to be entered into between the Investment Entity and the Corporation. Returns to the Corporation, such as capital gains and the return of the investment, will be detailed in the agreements to be entered into between the Investment Entity and the Corporation.

Section 4252.10 Auditing, Compliance and Reporting

The Corporation shall evaluate the investment activities of each participating Investment Entity in conformance with the agreements to be entered into between the Corporation and the Investment Entity, in accordance with the criteria set forth in section 16-u of the Act, and this rule and in accordance with other applicable law and regulations. Each Investment Entity will be required to provide quarterly and annual reports outlining the impact and effectiveness of the investments made, current status, leveraged funds, business revenue, numbers of jobs created, and other items as determined by Corporation. These annual reports and additional reports as requested at the discretion of the Corporation may be required to include:

- a. The number of investments made;
- b. The type of each investment;
- c. The location of each Beneficiary Company;
- d. The amount of Program funds and private funds invested in each Beneficiary Company;
- e. The projected and actual number of jobs created or retained by each Beneficiary Company receiving Program funds;
- f. The type of product or technology being developed or produced by each Beneficiary Company; and
- g. Such other information as the Corporation may require.

The Corporation may conduct or request audits of the Investment Entities in order to ensure compliance with the provisions of section 16-u of the Act, any regulations promulgated with respect thereto and agreements between the Investment Entities and the Corporation of all aspects of the use of Program funds and investment transactions.

In the event that the Corporation finds substantive noncompliance at any time, the Corporation may terminate the Investment Entity's participation in the Program. The agreements between the Corporation and the Investment Entity shall provide that, upon termination of an Investment Entity's participation in the Program, the Investment Entity shall return to the Corporation, promptly after its demand thereof, all Program funds held by the Investment Entity, and provide to the Corporation, promptly after its demand thereof, an accounting of all Program funds, including all currently outstanding investments that were made using Program funds. Notwithstanding such termination, the Investment Entity shall remain liable to the Corporation with respect to any unpaid amounts due from the Investment Entity pursuant to the terms of the agreements between the Corporation and the Investment Entity. In the event that an Investment Entity's participation in the Program is terminated, the Corporation, in its discretion, may transfer to one or more of the other participating Investment Entities without an additional solicitation all or part of the award made to such Investment Entity.

Section 4252.11 Confidentiality and State Employees

To the extent permitted by law, all information regarding the financial condition, marketing plans, customer lists, or other trade secrets and proprietary information of a Beneficiary Company shall be confidential and exempt from public disclosures.

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

Section 4252.12 Non-Discrimination and Affirmative Action

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires March 20, 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 16-i of the Act established the Economic Development Fund and authorizes the New York State Urban Development Corporation d/b/a Empire State Development Corporation (the "Corporation"), within available appropriations, to provide grants for the purpose of creating or retaining jobs or preventing, reducing or eliminating unemployment or underemployment. The proposed regulations modify Chapter L, Part 4243 of Title 21 NYCRR.

2. Legislative Objectives: Section 16-i of the Act sets forth the legislative objective of authorizing the Corporation, within available appropriations, to provide grants and loans in order to promote the economic health of New York state by facilitating the creation or retention of jobs or would increase business activity within a municipality or region of the state. The adoption of 21 NYCRR Part 4243.36 and 4243.37 will further these goals

by modifying 21 NYCRR Part 4243 in order to provide General Development Financing assistance on an emergency basis (i) retail and service businesses (“Retail and Service Businesses”) located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York (“Agricultural Manufacturing Businesses”) and adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York and adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011, in order to facilitate the retention of jobs and increase business activity within those municipalities and the affected region.

3. Needs and Benefits: The Governor declared a state of emergency in Essex County and surrounding areas due to the emergency closure of the unsafe Lake Champlain Bridge (which was subsequently demolished). For nearly eighty years, the bridge had been a major transportation route between the Ticonderoga, Crown Point and Port Henry areas of the State and the Vergennes, Middlebury and Burlington areas of Vermont. The loss of the bridge resulted in a 100 mile detour until a new bridge could be designed and constructed. Even with an emergency ferry service to handle limited traffic, local businesses lost customers and incurred increase costs that would cause business closures, and require layoffs and firing. The Governor also declared a state of emergency in Essex County and surrounding areas due to the storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011. The modifications to the rule would allow affected businesses to receive economic assistance in order to retain jobs and mitigate layoffs and firings and increase business activity.

4. Costs: The Program is funded by a State appropriation for the Economic Development Fund and there are no other costs.

5. Paperwork / Reporting: There are no additional reporting or paperwork requirements as a result of this rule on businesses participating in the Program. Standard applications and loan and grant documents used for most other assistance by the Corporation will be employed in keeping with the Corporation’s overall effort to facilitate the application process for all of the Corporation’s clients.

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

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

8. Alternatives: There are no alternatives to this regulation for providing emergency assistance for business affected by the storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011 and the closing of the Lake Champlain Bridge in order to retain jobs in the affected area.

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

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

Regulatory Flexibility Analysis

1. Effects of Rule: In the rule: “Small business” is defined as a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis; “Investment Entity” is defined as a regional and local economic development organization, technology development organization, research university, or investment fund that provides or is otherwise qualified to make seed-stage investments in companies located in the State of New York and “Seed-Stage Business” is defined as a small business, located in New York State and working in one or more emerging technology fields, which demonstrates a potential for substantial growth and job development, has the potential to generate additional economic activity in New York State, and that is pre-revenue, has only begun to earn revenue, or has not yet received institutional investments. The rule will facilitate the statutory Program’s purpose of having New York State Urban Development Corporation d/b/a Empire State Development (the “Corporation”) make investments in investment entities in order to provide funding in principal amounts equal to or less than five hundred thousand dollars to small businesses, or seven-hundred fifty thousand to biotechnology-related small businesses, with the possibility of additional funding under prescribed circumstances, located within the State, that are engaged in one or more emerging technology fields and demonstrating a potential for substantial growth and job development. These businesses shall be in the pre-revenue, recently established revenue stream phase or not yet in receipt of institutional investments.

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

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

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

5. Economic and Technological Feasibility: There are no compliance costs for small businesses and local governments in these regulations so there is no basis for determining the economic and technological feasibility for compliance with the rule by small businesses and local governments.

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide funds to investment entities in order to enhance the ability of such organizations to invest in small businesses.

7. Small Business and Local Government Participation: A number of investment entities that equity or quasi-equity investing in small businesses responded to a survey circulated by the Corporation regarding implementation of the program as reflected in the rule.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: Investment entities serving all of the 44 counties defined as rural by the Executive Law § 481(7), are eligible to apply for the Innovate NY Fund (the “Program”) assistance pursuant to a State-wide request for proposals.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The rule will not impose any new or additional reporting or recordkeeping requirements other than those that would be required of any investment entity receiving similar equity investments, on such matters as financial condition, required matching funds, and utilization of Program funds, and the statutorily required annual report on the use of Program funds, and the statutorily required annual report on the use of Program funds; no additional acts will be needed to comply other than the said reporting requirements and the making of equity investments in small businesses in the normal course of the business for any investment entity that receives Program assistance; and, it is not anticipated that applicants will have to secure any additional professional services in order to comply with this rule.

3. Costs: The costs to investment entities that participate in the Program would depend on the size of their existing fund and their particular structure for sourcing, evaluating, and monitoring investments. The investment entities will propose a compensation structure for administering the Innovate NY funds, and that structure is likely to include both a management fee and a component of carried interest on capital gains. While industry standard is 20% carried interest in capital gains and a 2.5% yearly management fee that declines over time, we expect that respondents may be more competitive.

4. Minimizing Adverse Impact: The purpose of the Program is to provide funds to investment entities which will invest in seed-stage companies. This rule provides a basis for cooperation between the State and investment entities, including investment entities that serve rural areas of the State, in order to maximize the Program’s effectiveness and minimize any negative impacts for such investment entities and the small businesses, including small businesses located in rural areas of the State, that such investment entities serve.

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those located only in urban areas or only in rural areas.

Job Impact Statement

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of New York by providing greater access to capital for small businesses working in one or more emerging technology fields. The Program includes minorities, women and other New Yorkers who have difficulty accessing regular credit markets.

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