

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Movement and Transfer of Horses and Other Equidae

I.D. No. AAM-04-12-00010-P

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

Proposed Action: Repeal of sections 64.1, 64.2 and 64.3; and addition of new sections 64.1, 64.2, 64.3 and 64.12 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18(6), 72(3), 74(5) and (9)

Subject: Movement and transfer of horses and other equidae.

Purpose: To establish an Equine Interstate Passport Program.

Public hearing(s) will be held at: 11:00 a.m., March 15, 2012 at Department of Agriculture and Markets, 10B Airline Dr., 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Text of proposed rule: 1 NYCRR section 64.1 is repealed and a new 1 NYCRR section 64.1 is added to read as follows:

§ 64.1 General Requirements.

(a) No horse or other equidae shall be imported into the State, unless:

(1) Exempted by the provisions of section 64.5 or 64.9 of this Part or
(2) Accompanied by a certificate of veterinary inspection signed by a veterinarian licensed and accredited by the state or country in which a physical examination of the animal was made and, further provided, that no such animal shall enter the State until the original of said certificate has been placed in the mail for delivery first class to the chief veterinarian of the state or country where the examination was made, or

(3) If imported into New York for a purpose other than breeding or sale, it is accompanied by a valid Equine Interstate Passport or the equivalent issued under the authority of the state of origin and bearing the signature of the state veterinarian, chief animal health officer or the equivalent of the state of origin.

1 NYCRR section 64.2 is repealed and a new section 64.2 is adopted to read as follows:

§ 64.2 Form of certificate, permit or equivalent.

(a) The information on the aforesaid certificate of veterinary inspection, Equine Interstate Passport or the equivalent shall include the name of the owner or trainer of the animal or animals, together with the complete address, date of examination, and name, breed or association registration number if any, breed, brand, tattoo if any, sex, age, color and markings of each animal listed on the certificate. In addition, a certificate of veterinary inspection shall include the consignee or destination in New York with the address, number of animals examined, and the establishment or premises where the animals were examined.

(b) Said certificate of veterinary inspection, Equine Interstate Passport or the equivalent shall also include, or have attached thereto, a report of a USDA approved negative agar gel immunodiffusion test, ELISA test or other U.S.D.A. - approved test for equine infectious anemia which complies with the provisions of section 64.4 of this Part.

(c) The Commissioner, when he or she deems it appropriate, such as in the case of an outbreak of an infectious or contagious disease, may require that the certificate of veterinary inspection, Equine Interstate Passport or the equivalent, include additional certifications concerning the health status of the herd or state of origin.

1 NYCRR section 64.3 is repealed and a new 1 NYCRR section 64.3 is added to read as follows:

§ 64.3 Time limitation of certificate.

(a) The aforesaid Equine Interstate Passport or the equivalent shall be valid for the purposes of this Part, for six (6) months following the date of examination appearing on the permit or twelve (12) months after the date of the negative equine infectious anemia test, whichever is earlier.

(b) The aforesaid certificate of veterinary inspection shall be valid for the purposes of this Part, until and including the 30th day following the date of examination appearing on the certificate.

A new 1 NYCRR section 64.12 is added to read as follows:

§ 64.12 New York Equine Interstate Passport.

(a) A New York Equine Interstate Passport will be issued to certify the existence of an official negative EIA test within the previous twelve (12) months and a valid New York Equine Certificate of Veterinary Inspection (Equine) within the previous six (6) months, for a specifically identified New York origin horse provided that:

(1) The purpose of the Equine Interstate Passport is solely to allow routine interstate movement, between New York and the other states that have mutually agreed to recognize such Equine Interstate Passport or the equivalent, for the purpose of participation in certain equine events for which the Passport or the equivalent has been approved by the state of destination.

(2) The application for the New York Equine Interstate Passport shall include:

(i) An electronic copy of digital photographs including full views of both sides and a front view of the head of the horse and

(ii) A New York State Origin Certificate of Veterinary Inspection that includes the following:

(a) The horse owner's name, complete address and telephone number;

(b) *The date of qualifying veterinary examination, name, address and federally assigned premises number of the premises where the veterinary examination occurred;*

(c) *The name, accreditation number, and signature of the veterinarian doing the qualifying examination;*

(d) *A complete description of the horse including name, breed, color, age, sex and, if present, microchip, tattoo, brand or other manmade identification numbers; and*

(e) *For the qualifying ELA test, the date of the test, test results, laboratory name and accession number.*

(3) *The New York Equine Interstate Passport shall be valid for six (6) months following the date of examination appearing on the permit or twelve (12) months after the date of the negative equine infectious anemia test, whichever is earlier.*

(4) *The owner or owner's agent must maintain a log of all interstate movements of the horse during the duration of the Equine Interstate Passport, including the name and complete address of the premises, and the arrival and departure dates. This interstate log shall be available for examination by any agent of the New York State Department of Agriculture and Markets or the United States Department of Agriculture. This interstate log shall be sent to the New York State Department of Agriculture and Markets within 30 days of the expiration of the Equine Interstate Passport.*

(5) *In the event there is a change in the ownership of a horse or other equidae for which a New York Equine Interstate Passport has been issued, the passport shall no longer be valid and the previous owner in whose name the passport was issued shall, within 48 hours, notify the Department of such change in ownership and send the passport, together with the interstate log, to the Department.*

(6) *Failure to submit required information, falsification of required information or the failure to produce the interstate log when requested will result in the cancellation of the Equine Interstate Passport.*

(7) *The Commissioner or his or her authorized agent may decline to issue an Equine Interstate Passport for an owner, owner's agent, or horse which has been the subject of the cancellation of an Equine Interstate Passport, or the equivalent.*

(8) *An Equine Interstate Passport or the equivalent does not supersede or replace State or local laws or regulations governing specific equine events.*

(9) *Information regarding applying for an Equine Passport may be obtained from the Division of Animal Industry, New York Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235-0001.*

Text of proposed rule and any required statements and analyses may be obtained from: David Smith, D.V.M., Director, Division of Animal Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3502

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.

Regulatory Impact Statement

1. Statutory authority:

Agriculture and Markets Law section 18(6) provides that subject and in conformity to said Law and the Constitution and laws of the State, the Commissioner may enact, amend and repeal necessary rules, including rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in said Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules enacted. Pursuant to this authority, this rule establishes an Equine Interstate Passport Program to facilitate the importation of healthy horses and other equidae into New York State. In so doing, it provides for the exercise of the powers and performance of the duties of the Department as set forth in Agriculture and Markets Law section 74 relating to the importation of domestic animals and as set forth in Agriculture and Markets Law section 72 relating to the control and suppression of disease in domestic animals.

Agriculture and Markets Law section 74(9) authorizes the Commissioner, after public hearing, to adopt and promulgate rules and regulations to implement and give full force and effect to the provisions of section 74 of said Law relating to the importation of domestic animals, including rules and regulations requiring a permit for the importation of domestic or feral animals into the State. Pursuant to this authority, the proposed rule provides for the importation of horses and other equidae into the State accompanied by Equine Interstate Passports, or the equivalent, or health certificates.

Agriculture and Markets Law section 72(3) provides that, among other things, the Commissioner may adopt and enforce rules and regulations for the control, suppression or eradication of communicable diseases in domestic animals or for the purpose of preventing the spread of infection and

contagion among such animals, or from such animals to humans. Pursuant to this authority, the proposed rule requires that horse or other equidae imported into the State must be accompanied by a certificate of veterinary inspection signed by a veterinarian licensed and accredited by the state or country in which a physical examination of the animal was made or by a valid Equine Interstate Passport or the equivalent issued under the authority of the state of origin and bearing the signature of the state veterinarian, chief animal health officer or the equivalent of the state of origin. In so doing, the rule will help to ensure that only healthy horses or other equidae that have been examined by a qualified veterinarian are imported into the State.

2. Legislative objectives:

The public policy objectives the Legislature sought to advance by enacting Agriculture and Markets Law sections 74 and 72 include providing for the regulation of the importation of domestic animals, such as horses and other equidae, and preventing the introduction of infectious and communicable disease into the State. The proposed rule accords with these objectives by requiring that horses and other equidae imported into the State be accompanied by a Certificate of Veterinary Inspection signed by a veterinarian licensed and accredited by the state or country in which a physical examination of the animal was made or by a valid Equine Interstate Passport or the equivalent issued under the authority of the state of origin and bearing the signature of the state veterinarian, chief animal health officer or the equivalent of the state of origin. This will help to ensure that only healthy horses and other equidae are imported into the State.

3. Needs and benefits:

In recent years states throughout the United States have entered into cooperative, voluntary programs designed to facilitate the interstate movement of horses between participating states by means of documents commonly known as equine interstate passports or entry permits. States participating in these programs permit a qualified horse to enter their state for certain purposes if the horse is accompanied by a passport or permit issued under the authority of the regulatory authorities of the participating state which is the horse's home.

The web-based systems utilized by the Department to issue Equine Interstate Passports will be operated by private companies or governmental entities authorized by the Department. They will require that a testing veterinarian apply for access to the system and for the system administrator to confirm the veterinarian's identity and qualifications. The veterinarian will then test the horse, submit the blood to a laboratory, fill out the test chart and upload digital photographs of the horse to the system. The testing laboratory will then put the accession information and test results on a health chart and make it available to the testing veterinarian and the Department online. The testing veterinarian will complete the certificate of veterinary inspection and sign it electronically. The system administrator will then produce the Equine Interstate Passport, mail it to either the horse owner or the veterinarian and notify the Department electronically.

Equine Interstate Passports or Permits are valid for six months and may be used in place of the interstate health certificates that must otherwise accompany horses moving interstate and which are valid for only thirty days. By reducing the frequency of the renewal of the documents required for the interstate movement of horses, equine passport programs reduce the costs associated with such movement, including the cost of the veterinary health examinations required for the issuance of interstate certificates or passports. Additional passport requirements such as digital photographs or identifier microchips help to verify the identity of horses moving interstate and to deter the illegal movements of such horses.

States throughout the United States have implemented equine interstate permit programs. In 1994, Missouri implemented such a program and in 1995, California, Nevada, Oregon, Idaho, Washington and Montana followed suit by establishing such a program. In 2000 Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Virginia and West Virginia agreed to accept six month interstates. Arkansas in 2002 implemented such a program. In 2007 the nine of the ten states of the United States Animal Health Association: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island and Vermont agreed to the use of six month equine interstates. Most recently in 2011, Texas implemented such a program.

The proposed rule maintains existing provisions permitting the importation of horses or other equidae into the State accompanied by a certificate of veterinary inspection. It adds a provision permitting the importation of horses accompanied by a valid Equine Interstate Passport or the equivalent issued under the authority of the state in which the horses originated and bearing the signature of the state veterinarian, chief animal health officer or the equivalent of the state of origin. This provision will help to ensure that the information upon which the passport has been issued has been verified by a responsible official with animal health expertise. Like a certificate of veterinary inspection, the Equine Interstate Passport is

required to include the name of the owner or trainer of the animal or animals, together with the complete address, date of examination, and name, breed or association number, if any, breed, brand, tattoo if any, sex, age, color and markings of each animal listed on the certificate, passport or equivalent. This provision will permit verification that the animal or animals being imported into the State accompanied by a passport, are, in fact, the animals for which the passport was issued and which met the qualification for such issuance.

A certificate of veterinary inspection must also include the consignee or destination in New York with the address, number of animals examined, and the establishment or premises where the animals were examined. This provision will permit animals imported accompanied by a certificate of veterinary inspection to be located at their destination within New York.

A certificate of veterinary inspection, Equine Interstate Passport or the equivalent must also include or have attached a report of a USDA approved negative agar gel immunodiffusion test, ELISA test or other USDA approved test for equine infectious anemia. This provision will help to ensure that horses being imported into New York are not infected with equine infectious anemia, a potentially fatal viral disease that affects horses and is transmitted by biting insects.

The Commissioner, when he or she deems it appropriate, such as in the case of an outbreak of an infectious or contagious disease may require that the certificate of veterinary inspection, Equine Interstate Passport or the equivalent include additional certifications concerning the health status of the herd or state of origin. This provision will help to ensure that horses entering New York from states where there is an outbreak of an infectious or contagious disease are not affected by that disease.

The proposed rule provides that an Equine Interstate Passport or the equivalent shall be valid for six months following the date of examination appearing on the permit or twelve months after the date of the negative equine infectious anemia test, whichever is earlier. This provision will reduce the frequency of the renewal of documents required for the interstate movement of horses and the costs associated herewith, while helping to ensure a Equine Interstate Passport accurately reflects the health status of the horse for which it was issued.

The proposed rule provides that a certificate of veterinary inspection shall be valid until and including the 30th day following the date of examination appearing on the certificate. This provision will help to ensure that horses from states which do not issue Equine Interstate Passports or the equivalent may be imported into New York accompanied by certificates of veterinary inspection and that certificates accurately reflect the health status of such horses.

The proposed rule establishes conditions for the issuance of New York Interstate Passports to allow the movement of horses between New York and the other states that have mutually agreed to recognize such Passports or the equivalent including applications containing digital photographs of the horse, a New York State Origin Certificate of Veterinary Inspection that includes the horses owner's name, address and telephone, information regarding the qualifying veterinary examination, information regarding the veterinarian who conducted the qualifying examination, a complete description of the horse, and information regarding the qualifying Equine Infectious Anemia test. These conditions will help to ensure that the horse for which each Passport has been issued is clearly identified and that Passports are issued only for horses that have been properly examined and found to qualify for Passports.

The proposed rule requires that the owner of a horse or the owner's agent must maintain a log of all interstate movements of the horse during the duration of an Equine Passport. Such logs must be made available for examination by agents of the Department or the USDA and must be sent to the Department within 30 days of the expiration of the Passport. These requirements will help to ensure that the interstate movements of horses for which Passports have been issued can be traced. This information will help regulatory authorities to verify that horses have been moved under the authority of the Passports only to destinations and events authorized under the Passport program.

The proposed rule provides that in the event there is a change in the ownership of a horse or other equidae for which a New York Interstate Passport has been issued, the passport shall no longer be valid and the previous owner in whose name the passport was issued shall, within 48 hours, notify the Department of such change in ownership and send the passport, together with the interstate log, to the Department.

The proposed rule provides that an Equine Interstate Passport will be cancelled in the event of the failure to submit required information, the falsification of required information or the failure to produce an interstate log when requested. Such a cancellation may result in the Commissioner declining to issue an Equine Interstate Passport for an owner, owner's agent or horse which was the subject of the cancellation. This requirement will help to ensure that only those who are willing and able to comply with the conditions of the Equine Interstate Passport program are accorded the privilege of participating in the Program.

The proposed rule provides that the Equine Interstate Passport or the equivalent does not supersede or replace State or local laws or regulations governing specific equine events. This requirement will help to ensure that equine events may impose additional requirements such as the issuance of a Certificate of Veterinary Inspection, on horses participating in said events. This requirement will help to ensure that horses are transported using Equine Interstate Passports only to equine events for which such Passports have been approved.

4. Costs:

(a) Costs: Approximately 5,000 horses are legally imported into New York State each year. A similar number are exported. Assuming that each horse owner who obtains a certificate of veterinary inspection averages two horse exports a year, approximately 6,000 horse owners and trainers currently obtain certificates of veterinary inspection. Equine Interstate Passport cards currently cost \$25.00. The costs associated with the veterinary health examination and certificate of veterinary inspection will remain between \$50.00 and \$150.00, but the use of Equine Interstate Passports will eliminate the need to obtain such examinations and certificates every thirty days, resulting in savings to the owners of horses that travel interstate monthly or more often, of between \$100.00 and \$875.00 over the six month duration of an Equine Interstate Passport.

(b) Costs to agency, state and local governments: There will be no costs to local governments or the State other than the cost to the Department. The cost to the Department to administer the program will be minimal since the Department's Division of Animal Industry is already utilizing a similar system to issue Equine Infectious Anemia test/rabies vaccination cards for use within the State. The minimal cost of time and materials will be offset by the savings associated with receiving and maintaining information in electronic format rather than via paper records. It is anticipated that multiple interstate trips will be made using each Passport. Since under the present system each movement of a horse into or out of the State generates a certificate of veterinary inspection, it is anticipated that the Equine Interstate Passport System will reduce by half the approximately 5,000 paper certificates currently handled by the Department each year, resulting in annual savings of \$5,000 in clerical services.

(c) Source: Costs are based upon data from the records of the Department's Division of Animal Industry.

5. Local government mandates:

The proposed rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork:

The rule provides for horses to be imported into New York State accompanied by either a certificate of veterinary inspection or, for purposes other than breeding or sale, an Equine Interstate Passport or the equivalent. It also provides for the issuance of New York Equine Interstate Passports. Certificates of Veterinary Inspection and Equine Interstate Passports or the equivalent are required to include or have attached thereto a report of a USDA approved negative agar gel immunodiffusion test, ELISA test or other USDA approved test for equine infectious anemia. When the Commissioner deems it appropriate, such as in the case of an outbreak of an infectious or contagious disease, he or she may also require that additional health certifications be provided concerning the health status of the herd or state of origin. The application for a New York Equine Interstate Passport shall include an electronic copy of digital photographs of the horse and a New York State Origin Certificate of Veterinary Inspection. The horse owner or owner's agent must maintain a log of all interstate movements during the duration of the Equine Interstate Passport, including the name and complete address of the premises and the arrival and departure dates. The interstate log must be sent to the New York State Department of Agriculture and Markets within 30 days of the expiration of the Equine Interstate Passport. In the event there is a change in the ownership of a horse or other equidae for which New York Interstate Passport has been issued, the passport shall no longer be valid and the previous owner in whose name the passport was issued shall, within 48 hours, notify the Department of such change in ownership and send the passport, together with the interstate log, to the Department. Applications for Equine Passports will be available from the Department.

7. Duplication:

None.

8. Alternatives:

The requirements established for Equine Interstate Passports by this rule are similar to those established by the other states that issue and recognize such Passports. In order for New York Equine Interstate Passports to be used for the routine interstate movement of horses between New York State and the other states that have mutually agreed to recognize such Passports, the requirements established by New York must be similar to those of the other participating states. Developing a unique system for New York was considered an alternative that was considered, but rejected due to the cost savings from utilizing the existing technology that is cur-

rently available from commercial vendors. In addition, by conforming to the standards that have been established by other states, New York will ensure that passports written for New York will be accepted in other states.

9. Federal standards:

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

10. Compliance schedule:

It is anticipated that regulated parties can immediately comply with the rule.

Regulatory Flexibility Analysis

1. Effect of Rule:

The small businesses that will be affected by the rule are the approximately 6,000 horse owners who export horses from New York each year. The rule would have no impact on local governments.

2. Compliance Requirements:

The rule provides for horses to be imported into New York State accompanied by either a Certificate of Veterinary Inspection or, for purposes other than breeding or sale, an Equine Interstate Passport or the equivalent.

The rule also provides for the issuance of a New York Equine Interstate Passports for horses being exported to states that recognize such passports. Applications for such Passports may be obtained from the Department. Certificates of Veterinary Inspection and Equine Interstate Passports or the equivalent are required to include or have attached thereto a report of a USDA approved negative agar gel immunodiffusion test, ELISA test or other USDA approved test for equine infectious anemia.

The application for a New York Equine Interstate Passport must include an electronic copy of digital photographs of the horse and a New York State Origin Certificate of Veterinary Inspection.

The horse owner or the owner's agent must maintain a log of all interstate movements of the horse during the duration of the Equine Interstate Passport, including the name and complete address of the premises, and the arrival and departure dates. The interstate log shall be available for examination by any agent of the Department or the United States Department of Agriculture. Within 30 days of the expiration of the Equine Interstate Passport the interstate log shall be sent to the Department. In the event there is a change in the ownership of a horse or other equidae for which a New York Equine Interstate Passport has been issued, the passport shall no longer be valid and the previous owner in whose name the passport was issued shall, within 48 hours, notify the Department of such change in ownership and send the passport, together with the interstate log, to the Department.

3. Professional Services:

Horse owners who wish to obtain Equine Interstate Passports will need the professional services of accredited veterinarians to examine and test their horses and issue Certificates of Veterinary Inspection. Horse owners currently need these services when they import horses using a Certificate of Veterinary Inspection.

4. Compliance Costs:

(a) Costs to regulated parties:

Equine Interstate Passport cards currently cost \$25.00.

The total cost associated with the Equine Interstate Passport will be the cost of the card, together with the cost of veterinary examination and testing which is estimated to be between \$50.00 and \$150.00, depending upon the number of animals examined. Since the cards are valid for up to six months and the current certificates are only valid for 30 days, owners who take their horses on multiple trips will save between \$100 and \$875 depending upon how often their horse is moved.

(b) Costs to local governments:

There will be no costs to local governments.

5. Economic and Technological Feasibility:

The economic and technological feasibility of complying with the proposed amendments has been assessed. The rule is economically feasible. Equine Interstate Passport cards currently cost \$25.00. The costs associated with the veterinary health examination and certificate of veterinary inspection will remain between \$50.00 and \$150.00, but the use of Equine Interstate Passports will eliminate the need to obtain such examinations and certificates every thirty days, resulting in savings to owners of horses that travel interstate monthly or more often of between \$100.00 and \$875.00 over the six month duration of an Equine Interstate Passport. The rule is technologically feasible. Horse owners who wish to import or export horses are already obtaining the examinations and testing for their horses that are prerequisites for obtaining the required Certificate of Veterinary Inspection. The Department is already utilizing a system similar to the Equine Interstate Passport system to issue Equine Infectious Anemia test/rabies vaccination cards for use within the State.

6. Minimizing Adverse Impact:

The rules will have no impact on local government.

In conformance with State Administrative Procedure Act § 202-b(1), the rule was drafted to minimize economic import and reporting requirements for all regulated parties, including small businesses by limiting the

requirements that must be met in order to obtain an Equine Interstate Passport to those necessary to establish the identity and health status of the horse for which the Passport is sought, while reducing the frequency of the veterinary health examination and Certificate of Veterinary Inspection necessary for the interstate movement of horses.

7. Small Business and Local Government Participation:

In developing this rule the Department solicited comments from the following representatives of horse owners and other interested parties: the 4-H Youth Development Office, the New York State Association of Agricultural Fairs, Inc., the Empire State Arabian Horse Association, the Harness Horse Association of Central New York, the New York Horse Breeding Development Fund, the New York State Horse Council, the Jockey Club, the New York State Morgan Horse Society, the New York Thoroughbred Breeders, Inc., the New York State Veterinary Medical Society and the New York State Racing and Wagering Board.

Comments were received from the Racing and Wagering Board and the New York Thoroughbred Breeders, Inc. They supported the proposed rule. In addition, the proposed rule was discussed in person and via telephone with the State Veterinarians of Florida, Tennessee, Maine, Rhode Island, Connecticut, Massachusetts, New Hampshire, Vermont, New Jersey and Pennsylvania, who were all in agreement with the proposal.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas:

The owners of horses for which Equine Interstate Passports will be issued are located throughout the rural areas of New York State.

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

The rule provides for horses to be imported into New York State accompanied by either a Certificate of Veterinary Inspection or, for purposes other than breeding or sale, an Equine Interstate Passport or the equivalent.

The rule also provides for the issuance of a New York Equine Interstate Passports for horses being exported to states that recognize such Passports. Information regarding applying for such Passports may be obtained from the Department. Certificates of Veterinary Inspection and Equine Interstate Passports or the equivalent are required to include or have attached thereto a report of a USDA approved negative agar gel immunodiffusion test, ELISA test or other USDA approved test for equine infectious anemia.

The application for a New York Equine Interstate Passport must include an electronic copy of digital photographs of the horse and a New York State Origin Certificate of Veterinary Inspection.

The horse owner or the owner's agent must maintain a log of all interstate movements of the horse during the duration of the Equine Interstate Passport, including the name and complete address of the premises, and the arrival and departure dates. The interstate log shall be available for examination by any agent of the Department or the United States Department of Agriculture. Within 30 days of the expiration of the Equine Interstate Passport the interstate log shall be sent to the Department.

In the event there is a change in the ownership of a horse or other equidae for which a New York Equine Interstate Passport has been issued, the passport shall no longer be valid and the previous owner in whose name the passport was issued shall, within 48 hours, notify the Department of such change in ownership and send the passport, together with the interstate log, to the Department.

3. Costs:

Equine Interstate Passport cards currently cost \$25.00.

The total cost associated with the Equine Interstate Passport will be the cost of the card, together with the cost of veterinary examination and testing which is estimated to be between \$50.00 and \$150.00, depending upon the number of animals examined. Since the cards are valid for up to six months and the current certificates are only valid for 30 days, owners who take their horses on multiple trips will save between \$100 and \$875 depending upon how often their horse is moved.

4. Costs to local governments:

There will be no cost to local government.

5. Minimizing adverse impact:

The rule was designed to minimize any adverse impact on rural areas and consideration was given to the approaches suggested by State Administrative Procedure Act § 202-bb(2) and other similar approaches. The rule limits the requirements that must be met in order to obtain an Equine Interstate Passport to those necessary to establish the identity and health status of the horse for which the passport is sought, while reducing the frequency with which veterinary health examinations are conducted and certificates of Veterinary Inspection are issued in connection with the interstate movement of horses.

6. Rural area participation:

In developing this rule the Department has complied with State Administrative Procedure Act § 202-bb(7) by consulting with the following representatives of the horse owners and other interested parties af-

ected by this rule, most of whom are located in the rural areas of the State: the 4-H Youth Development Office, the New York State Association of Agricultural Fairs, Inc., the Empire State Arabian Horse Association, the Harness Horse Association of Central New York, the New York Horse Breeding Development Fund, the New York State Horse Council, the Jockey Club, the New York State Morgan Horse Society, the New York Thoroughbred Breeders, Inc., the New York State Veterinary Medical Society and the New York State Racing and Wagering Board.

Comments were received from the Racing and Wagering Board and the New York Thoroughbred Breeders, Inc. They supported the proposed rule. In addition, the proposed rule was discussed in person and via telephone with the State Veterinarians of Florida, Tennessee, Maine, Rhode Island, Connecticut, Massachusetts, New Hampshire, Vermont, New Jersey and Pennsylvania, who were all in agreement with the proposal.

Job Impact Statement

1. Nature of Impact:

It is not anticipated that there will be an impact on jobs and employment opportunities.

2. Categories and Numbers Affected:

Approximately 6,000 horse owners and trainers currently obtain certificates of veterinary inspection each year.

3. Regions of Adverse Impact:

The horse owners and trainers are located throughout the State.

4. Minimizing Adverse Impact:

The requirements established for Equine Interstate Passports by this rule are similar to those established by the other states that issue and recognize such Passports. In order for New York Equine Interstate Passports to be used for the routine interstate movement of horses between New York State and the other states that have mutually agreed to recognize such Passports, the requirements established by New York must be similar to those of other participating states. The six month duration of the Equine Interstate Passport will eliminate the need to have horses moving interstate examined by a veterinarian every thirty days for the issuance of a certificate of veterinary inspection. This will result in a substantial savings for the owners of such horses and in so doing help to preserve the jobs of those employed in the State's equine industry.

Department of Corrections and Community Supervision

NOTICE OF ADOPTION

Inmate Grievance Program

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

Filing No. 6

Filing Date: 2012-01-10

Effective Date: 2012-01-25

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

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

Statutory authority: Correction Law, section 139

Subject: Inmate Grievance Program.

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

Text or summary was published in the November 2, 2011 issue of the Register, I.D. No. CCS-44-11-00013-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Education Department

EMERGENCY RULE MAKING

Teaching Certificate in Earth Science, Biology, Chemistry, Physics, Mathematics or a Closely Related Field

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

Filing No. 3

Filing Date: 2012-01-06

Effective Date: 2012-01-07

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

Action taken: Renumbering of section 80-1.1(b)(45)-(47) to section 80-1.1(b)(46)-(48); addition of sections 80-1.1(b)(45) and 80-5.22; and amendment of sections 80-3.3(b)(2)(i) and 80-3.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 305(1), (2), 3001(2), 3004(1), (6) and 3006(1)

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

Specific reasons underlying the finding of necessity: Supply and demand data has shown that in many regions of New York there is a shortage of certified teachers in the areas of science and mathematics. To address this issue, the proposed regulations have been developed to create an expedited pathway for individuals with advanced degrees in STEM and related teaching experience at the postsecondary level to become certified teachers in mathematics or one of the sciences or a closely related field.

The proposed rule provides eligible candidates with advanced degrees in the STEM areas and teaching experience at the postsecondary level with two certification options. The candidate could obtain a Transitional G certificate to teach math or one of the sciences at the secondary level without completing additional pedagogical study for two years. The district would commit to providing mentoring and appropriate professional development in the areas of pedagogy during the period that the teacher is employed on a Transitional G certificate. After two years of successful teaching experience with the district on a Transitional G certificate the teacher would be eligible for the initial certificate in that subject area.

The other option is for individuals who meet the other requirements but do not have an offer of employment by a school district they would still have the option of completing six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study.

The proposed rule was adopted as an emergency action at the February 2011 Regents meeting, effective February 15, 2011, and readopted as an emergency rule at the May, June, July and October 2011 meetings. A Notice of Proposed Rule Making was published in the State Register on March 2, 2011 and a Notice of Revised Rule Making was published on June 1, 2011. The October emergency rule will expire on January 6, 2012. However, additional time is needed for the Department to explore the possible use of Transfer Fund grant funds under the federal Race To The Top program to encourage STEM faculty to work in high-need schools. Emergency action is necessary to ensure that the emergency rule remains continuously in effect until such time as it can be adopted as a permanent rule.

Subject: Teaching certificate in Earth Science, Biology, Chemistry, Physics, Mathematics or a Closely Related Field.

Purpose: To allow individuals with advanced degrees in the STEM areas and related teaching experience to teach certain subjects in 7-12.

Text of emergency rule: 1. Paragraphs (45) through (47) of subdivision (b) of Section 80-1.1 of the Regulations of the Commissioner of Education should be renumbered (46) through (48) of Section 80-1.1 of the Regulations of the Commissioner of Education, effective January 7, 2012.

2. A new paragraph (45) of subdivision (b) is added to Section 80-1.1 of the Regulations of the Commissioner of Education, effective January 7, 2012, to read as follows:

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

initial certificate, transitional A certificate, transitional B certificate and transitional C certificate.

3. Subparagraph (i) of paragraph (2) of subdivision (b) of section 80-3.3 of the Regulations of the Commissioner of Education is amended, effective January 7, 2012, to read as follows:

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

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

4. Section 80-3.7 of the Regulations of the Commissioner of Education is amended, effective January 7, 2012, to read as follows:

This section prescribes requirements for meeting the education requirements for classroom teaching certificates through individual evaluation. [This] *Except as otherwise provided in this section*, this option for meeting education requirements shall only be available for candidates who apply for a certificate in childhood education by February 1, 2007 and for candidates who apply for any other certificate in the classroom teaching service by February 1, 2012, and who upon application qualify for such certificate. *Candidates with a graduate degree in science, technology, engineering or mathematics who apply for an initial teaching certificate under 80-3.7(a)(3)(ii)(c)(3) may continue to meet the education requirements for classroom teaching certificates through individual evaluation after February 1, 2012.* The candidate must have achieved a 2.5 cumulative grade point average or its equivalent in the program or programs leading to any degree used to meet the requirements for a certificate under this section. In addition, a candidate must have achieved at least a C or its equivalent in any undergraduate level course and at least a B- or its equivalent in any graduate level course in order for the semester hours associated with that course to be credited toward meeting the content core or pedagogical core semester hour requirements for a certificate under this section. All other requirements for the certificate, including but not limited to, examination and/or experience requirements, as prescribed in this Part, must also be met.

(a) Satisfaction of education requirements through individual evaluation for initial certificates in all titles in classroom teaching service, except in specific career and technical subjects within the field of agriculture, business and marketing and consumer services, health, a technical area, or a trade (grades 7 through 12).

- (1) . . .
- (2) . . .
 - (i) . . .
 - (ii) . . .
 - (iii) . . .
 - (iv) . . .
 - (v) . . .

(3) Additional requirements. A candidate seeking to fulfill the education requirement for the initial certificate through individual evaluation of education requirements shall meet the additional requirements in this paragraph or their substantial equivalent as determined by the commissioner, if so prescribed for that certificate title, in addition to the general requirements prescribed in paragraph (2) of this subdivision.

- (i) . . .
- (ii) Specialist in middle childhood education (5-9) and adolescence education (7-12).
 - (a) . . .
 - (b) . . .

(c) *For candidates with a graduate degree in science, technology, engineering or mathematics and two years of postsecondary teaching experience in the certificate area to be taught or in a closely related subject area acceptable to the Department, who apply for a certificate or license in (grades 7-12) on or after February 2, 2011 in earth science, biology, chemistry, physics, mathematics or a closely related field, the candidate shall not be required to meet the general requirements in paragraph (2) (iii), (iv) or (v) of subdivision (a) of this section. However, the candidate shall meet the following requirements:*

(1) *Degree completion. The candidate shall possess a graduate degree in science, technology, engineering or mathematics from a*

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

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

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

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

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

- (iii) . . .
- (iv) . . .
- (v) . . .
- (vi) . . .
- (vii) . . .
- (viii) . . .
- (ix) . . .
- (x) . . .
- (xi) . . .
- (xii) . . .

- (b) . . .
- (c) . . .

5. Section 80-5.22 of the Regulations of the Commissioner is added, effective January 7, 2012 as follows:

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

(a) *General requirements.*

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

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

(i) *Education. A candidate shall hold a graduate degree in science, technology, engineering or mathematics from a regionally or nationally accredited institution of higher education, a higher education institution that the Commissioner deems substantially equivalent, or from an institution authorized by the Board of Regents to confer degrees. A candidate shall complete study in the means for identifying and reporting suspected child abuse and maltreatment, which shall include at least two clock hours of coursework or training in the identification and reporting of suspected child abuse or maltreatment in accordance with the requirements of section 3004 of the Education Law. In addition, the candidate shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider approved or deemed approved by the Department pursuant to Subpart 57-2 of this Title.*

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

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

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

This notice is intended to serve only as a notice of emergency adoption.

This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-09-11-00005-EP, Issue of March 2, 2011. The emergency rule will expire March 5, 2012.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

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

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

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

4. COSTS:

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

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

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

(d) Costs to the regulatory agency. As stated above in Costs to State

Government, the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

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

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternative proposals were considered.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

(a) Small Businesses:

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

(b) Local Governments:

1. Effect of the rule:

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

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

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

2. Compliance requirements:

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

The proposed amendment establishes a transitional G certificate which authorizes a qualified applicant, upon meeting the prescribed requirements, a certification to teach at the 7-12 grade level in science, mathematics, or a closely related field as determined by the Commissioner. School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, with a plan for mentoring and appropriate instructional support as determined

by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

3. Professional services:

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

4. Compliance costs:

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Local government participation:

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

Rural Area Flexibility Analysis

1. Types and estimate of number of rural areas:

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

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

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

School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, which shall include a plan for appropriate mentoring and instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

The purpose of the proposed amendment is to establish requirements for an expedited certification pathway for individuals with advanced

degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science and mathematics in grades 5-9 and 7-12.

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

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

Assessment of Public Comment

The agency received no public comment.

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

Instruction in Civility, Citizenship and Character Education and the Dignity for All Students Act

I.D. No. EDU-04-12-00002-P

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

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

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1), (2) and 801-a(1) (not subdivided); and L. 2010, ch. 482, section 3

Subject: Instruction in civility, citizenship and character education and the Dignity for All Students Act.

Purpose: Conform Commissioners Regulations to the Dignity for All Students Act (ch. 482, L. 2010).

Text of proposed rule: Subdivision (c) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective July 1, 2012, as follows:

(c) Instruction in certain subjects. Pursuant to articles 17 and 65 of the Education Law, instruction in certain subjects in elementary and secondary school shall be provided as follows:

(1) for all students, instruction in patriotism and citizenship, as required by section 801 of the Education Law;

(2) for all public school students, other than students in charter schools, instruction in civility, citizenship and character education as required by section 801-a of the Education Law, including, but not limited to, awareness and sensitivity to discrimination or harassment and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes;

[(2)] (3) for all students in the eighth and higher grades, instruction in the history, meaning, significance and effect of the provisions of the Constitution of the United States and the amendments thereto, the Declaration of Independence, the Constitution of the State of New York and the amendments thereto, as required by section 801 of the Education Law;

[(3)] (4) for all students, health education regarding alcohol, drugs and tobacco abuse, as required by section 804 of the Education Law;

[(4)] (5) for all students, instruction in highway safety and traffic regulation, as required by section 806 of the Education Law;

[(5)] (6) for all students, instruction in fire drills and in fire and arson prevention, injury prevention and life safety education, as required by sections 807 and 808 of the Education Law. Such course of instruction shall include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe, or a life safety emergency;

[(6)] (7) for all students in grades one through eight, instruction in New York State history and civics as required by section 3204(3) of the Education Law;

[(7)] (8) for public school students, instruction relating to the flag and certain legal holidays, as required by section 802 of the Education Law;

[(8)] (9) for all public elementary school students, instruction in the humane treatment of animals and birds, as required by section 809 of the Education Law; and

[(9)] (10) for all public school students, instruction relating to the conservation of the natural resources of the State, as required by section 810 of the Education Law.

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: Ken Slentz, Deputy Commissioner P-12 Education, State Education Department, State Education Building 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

Education Law section 801-a requires the Regents to ensure that the course of instruction in grades kindergarten through twelve includes a component on civility, citizenship and character education and instruct students on the principles of honesty, tolerance, personal responsibility, respect for others, observance of laws and rules, courtesy, dignity and other traits that will enhance the quality of their experiences in, and contributions to, the community.

Chapter 482 of the Laws of 2010 added a new Article 2 to the Education Law, relating to Dignity for All Students. Section 3 of Chapter 482 amended Education Law section 801-a to provide that instruction regarding “tolerance”, “respect for others” and “dignity” shall include awareness and sensitivity to discrimination or harassment and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and will conform the Commissioner’s regulations to Education Law section 801-a, as amended by section 3 of Chapter 482 of the Laws of 2010.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement provisions of the Dignity for All Students Act (“Dignity Act”, Chapter 482 of the Laws of 2010) by including provisions in Commissioner’s regulation section 100.2(c), relating to courses of instruction in civility, citizenship and character education, to ensure compliance Education Law section 801-a, as amended by the Dignity Act, which provides that instruction on “tolerance”, “respect for others” and “dignity” shall include awareness and sensitivity to discrimination or harassment and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes.

4. COSTS:

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

The proposed amendment is necessary to conform the Commissioner’s Regulations with the Dignity Act and will not impose any additional costs beyond those imposed by the statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform the Commissioner’s Regulations with the Dignity Act and will not impose any additional program, service, duty or responsibility beyond those by the statute.

Consistent with Education Law section 801-a, as amended by section 3 of Chapter 482 of the Laws of 2010, instruction in civility, citizenship and character education, shall include awareness and sensitivity to discrimination or harassment and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes.

6. PAPERWORK:

The proposed amendment will not impose any additional reporting requirements, forms or other paperwork.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or Federal regulations, and is necessary to implement Chapter 482 of the Laws of 2010, by amending Commissioner’s Regulation section 100.2(c), relating to courses of instruction in civility, citizenship and character education, to ensure compliance Education Law section 801-a, as amended by the Dignity Act.

8. ALTERNATIVES:

The proposed amendment is necessary to implement provisions of the Dignity Act by amending Commissioner’s Regulation section 100.2(c), relating to courses of instruction in civility, citizenship and character education, to ensure compliance with Education Law section 801-a, as amended by the Dignity Act. Consistent with Education Law section 801-a, as amended, instruction in civility, citizenship and character education shall include awareness and sensitivity to discrimination or harassment and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes. There are no viable alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no related Federal standards.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Commissioner’s Regulations with the Dignity Act and will not impose any additional compliance requirements or costs on regulated parties beyond those imposed by the statute. It is anticipated that regulated parties will be able to achieve compliance with proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to instruction in civility, citizenship and character education in grades kindergarten through twelve pursuant to Education Law section 801-a, as amended by Chapter 452 of the Laws of 2010 (the Dignity for All Students Act). The proposed amendment does not impose any adverse economic impact, reporting, record keeping 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 further measures were 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 each school district and board of cooperative educational services (BOCES) in the State. At present, there are 695 school districts (including New York City) and 37 BOCES.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to implement provisions of the Dignity for All Students Act (“Dignity Act”, Chapter 482 of the Laws of 2010) by including provisions in Commissioner’s regulation section 100.2(c), relating to courses of instruction in civility, citizenship and character education, to ensure compliance Education Law section 801-a, as amended by the Dignity Act, which provides that instruction on “tolerance”, “respect for others” and “dignity” shall include awareness and sensitivity to discrimination or harassment and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes.

Consistent with Education Law section 801-a, as amended by section 3 of Chapter 482 of the Laws of 2010, instruction in civility, citizenship and character education, shall include awareness and sensitivity to discrimination or harassment and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner’s Regulations with the Dignity Act and will not impose any additional costs beyond those imposed by the statute.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements. Economic feasibility is addresses under the Compliance Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner’s Regulations to the Dignity Act and will not impose any additional compliance requirements or costs beyond those imposed by the statute. Because these statutory requirements specifically apply, it is not possible to provide

exemptions from the proposed amendment's requirements or impose a lesser standard. The proposed amendment has been carefully drafted to meet statutory requirements and Regents policy while minimizing its impact. Consistent with Education Law section 801-a, as amended, instruction in civility, citizenship and character education under Commissioner's Regulation section 100.2(c) shall include awareness and sensitivity to discrimination or harassment and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes.

7. LOCAL GOVERNMENT PARTICIPATION:

The proposed amendment was developed in cooperation with the Dignity Act Task Force State Policy Work Group which is comprised of other State agencies, the New York City Department of Education, and several not-for-profit organizations. Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

The proposed amendment is necessary to implement provisions of the Dignity for All Students Act ("Dignity Act", Chapter 482 of the Laws of 2010) by including provisions in Commissioner's regulation section 100.2(c), relating to courses of instruction in civility, citizenship and character education, to ensure compliance Education Law section 801-a, as amended by the Dignity Act, which provides that instruction on "tolerance", "respect for others" and "dignity" shall include awareness and sensitivity to discrimination or harassment and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes.

Consistent with Education Law section 801-a, as amended by section 3 of Chapter 482 of the Laws of 2010, instruction in civility, citizenship and character education, shall include awareness and sensitivity to discrimination or harassment and civility in the relations of people of different races, color, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes.

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

3. COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations with the Dignity Act and will not impose any additional costs beyond those imposed by the statute.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to the Dignity Act and will not impose any additional compliance requirements or costs on entities in rural areas beyond those imposed by the statute. Because these statutory requirements specifically apply, it is not possible to provide an exemption from the proposed amendment's requirements or impose a lesser standard. The proposed amendment has been carefully drafted to meet statutory requirements and Regents policy while minimizing its impact on entities in rural areas. Consistent with Education Law section 801-a, as amended, instruction in civility, citizenship and character education under Commissioner's Regulation section 100.2(c) shall include awareness and sensitivity to discrimination or harassment and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes. The statute which the proposed amendment implements applies to all school districts and BOCES throughout the State, including those in rural areas. Therefore, it was not possible to establish different requirements for entities in rural areas, or to exempt them from the rule's provisions.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas. The proposed amendments were developed in cooperation with the Dignity Act Task Force State Policy Work Group which is comprised of other State agencies, the New York City Department of Education, and several not-for-profit organizations.

Job Impact Statement

The proposed amendment relates to instruction in civility, citizenship and character education in grades kindergarten through twelve pursuant to Education Law section 801-a, as amended by Chapter 452 of the Laws of

2010 (the Dignity for All Students Act). The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Certified Public Accountants

I.D. No. EDU-45-11-00011-RP

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

Proposed Action: Repeal of sections 29.10(h) and 70.7; addition of new sections 29.10(h) and 70.7; and amendment of section 70.8(a), (d)(2) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6506(1), 6507(2)(a); and L. 2011, ch. 456

Subject: Certified Public Accountants.

Purpose: To implement chapter 456 of the Laws of 2011.

Text of revised rule: 1. Subdivision (h) of section 29.10 of the Rules of the Board of Regents is repealed and a new subdivision (h) is added, effective April 11, 2012 to read as follows:

(h) *Practice privilege.*

(1) *Anyone practicing public accountancy under a practice privilege pursuant to subdivision 2 of section 7406 of the Education Law shall be subject to all applicable provisions of the Education Law and of this title relating to professional misconduct as if he or she is licensed to practice in New York.*

(2) *Unprofessional conduct in the practice of public accountancy shall include the failure to provide notice as required by paragraph (6) or paragraph (7) of subdivision (b) of section 70.7 of this title.*

2. Section 70.7 of the Regulations of the Commissioner of Education is repealed and a new section 70.7 is added, effective April 11, 2012, to read as follows:

§ 70.7 *Practice by certain out-of-state individuals and firms.*

(a) *Practice by certain out-of-state firms.*

(1) *A firm that holds a valid license, registration, or permit in another state shall register with the Department if the firm offers to engage or engages in the practice of public accountancy pursuant to subdivision 1 or 2 of section 7401 of the Education Law;*

(2) *A firm that holds a valid license, registration, or permit in another state that is not required to register with the Department pursuant to paragraph (1) of this subdivision, including those out-of-state firms that use the title "certified public accountant" or "certified public accountants" or the designation "CPA" or "CPAs" but do not have an office in New York, may practice in this state without a firm registration with the Department, if the firm's practice is limited to the practice of public accountancy pursuant to subdivision 3 of section 7401 of the Education Law;*

(3) *A firm may register and perform services pursuant to this subdivision only if:*

(i) *at least one partner of a partnership or limited liability partnership, member of a limited liability company or shareholder of a professional service corporation or the sole proprietor is licensed as a certified public accountant engaged within the United States in the practice of public accountancy and is in good standing as a certified public accountant of one or more of the states of the United States;*

(ii) *the firm complies with the Department's mandatory quality review program pursuant to section 7410 of the Education Law; and*

(iii) *the services are performed by an individual who is licensed and in good standing as a certified public accountant of one or more states of the United States.*

(b) *Practice by certain out-of-state individuals.*

(1) *An individual who holds a certificate or license as a certified public accountant issued by another state, who is in good standing in the state where certified or licensed, and whose principal place of business is not in this state may practice public accountancy in this state without obtaining a license pursuant to section 7404 of the Education Law, if:*

(i) *the Department has determined that the other state has education, examination, and experience requirements for certification or licensure that are substantially equivalent to or exceed the requirements for licensure in this state; or*

(ii) *the Department has verified that the individual possesses*

licensure qualifications that are substantially equivalent to or exceed the requirements for licensure in this state.

(2) Except as otherwise provided in paragraph (6) or (7) of this subdivision, an individual who meets the requirements of paragraph (1) of this subdivision and who offers or renders professional services in person or by mail, telephone, or electronic means may practice public accountancy in this state without notice to the Department. An individual who wishes to practice public accountancy in this state, but does not meet the requirements of paragraph (1) of this subdivision is subject to the full licensing and registration requirements of the education law and of this title.

(3) An individual licensee or individual practicing under this subdivision who signs or authorizes someone to sign the accountant's report on the financial statement on behalf of a firm shall meet the competency requirements set out in the professional standards for such services and as set out in paragraph (13) of subdivision (a) of section 29.10 of this title.

(4) An individual practicing under this section shall practice through a firm that is registered with the Department pursuant to section 7408 of the Education Law if the individual performs any attest or compilation service as defined in section 7401-a of the Education Law.

(5) Each certified public accountant who practices in this state pursuant to this section and each firm that employs such certified public accountant to provide services in New York consent to all of the following as a condition of the exercise of such practice privilege:

(i) to the personal and subject matter jurisdiction and disciplinary authority of the Board of Regents as if the practice privilege is a license and an individual with a practice privilege is a licensee;

(ii) to comply with Article 149 of the Education Law and the provisions of this Title relating to public accountancy; and

(iii) to the appointment of the Secretary of State or other public official acceptable to the Department, in the certified public accountant's state of licensure or the state in which the firm has its principal place of business, as the certified public accountant's or firm's agent upon whom process may be served in any action or proceeding by the Department against such certified public accountant or firm.

(6) In the event the license from the state of the certified public accountant's principal place of business is no longer valid or in good standing, or that the certified public accountant has had any final disciplinary action taken by the licensing or disciplinary authority of any other state concerning the practice of public accountancy that has resulted in any of the dispositions specified in subparagraphs (i) or (ii) of this paragraph, the certified public accountant shall so notify the Department, on a form prescribed by the Department, and shall immediately cease offering to perform or performing such services in this state individually and on behalf of his or her firm, until he or she has received from the Department written permission to do so:

(i) the suspension or revocation of his or her license; or

(ii) other disciplinary action against his or her license that arises from:

(a) gross negligence, recklessness or intentional wrongdoing relating to the practice of public accountancy; or

(b) fraud or misappropriation of funds relating to the practice of public accountancy; or

(c) preparation, publication, or dissemination of false, fraudulent, or materially incomplete or misleading financial statements, reports or information relating to the practice of public accountancy.

(7) Any certified public accountant who, within the seven years immediately preceding the date on which he or she wishes to practice in New York, has been subject to any of the actions specified in subparagraphs (i), (ii), (iii), or (iv) of this paragraph shall so notify the Department, on a form prescribed by the Department, and shall not practice public accountancy in this state pursuant to Education Law section 7406(2) and this section, until he or she has received from the Department written permission to do so. In determining whether the certified public accountant shall be allowed to practice in this state, the Department shall follow the procedure to determine whether an applicant for licensure is of good moral character. Anyone failing to provide the notice required by this paragraph shall be subject to the personal and subject matter jurisdiction and disciplinary authority of the Board of Regents as if the practice privilege is a license, and an individual with a practice privilege is a licensee, and may be deemed to be practicing in violation of Education Law section 6512:

(i) has been the subject of any final disciplinary action taken against him or her by the licensing or disciplinary authority of any other jurisdiction with respect to any professional license or has any charges of professional misconduct pending against him or her in any other jurisdiction; or

(ii) has had his or her license in another jurisdiction reinstated after a suspension or revocation of said license; or

(iii) has been denied issuance or renewal of a professional license

or certificate in any other jurisdiction for any reason other than an inadvertent administrative error; or

(iv) has been convicted of a crime or is subject to pending criminal charges in any jurisdiction.

(8) Notwithstanding paragraph (1) of this subdivision or any other inconsistent law or rule to the contrary, a certified public accountant licensed by another state and in good standing, who otherwise meets the practice privilege requirements under this section and files an application for licensure under Education Law section 7404, may continue to practice under such privilege for a period coterminous with the period during which his or her application for licensure remains pending with the Department, including any period after the certified public accountant establishes a principal place of business in New York, while his or her application is pending.

3. Subdivision (a) of section 70.8 of the Regulations of the Commissioner of Education is amended, effective April 11, 2012, as follows:

(a) Pursuant to the provisions of Education Law section 7408, a firm shall register with the department if:

(1) ...

(2) except as otherwise provided in section 70.7(a)(2) of this Part, the firm uses the title "CPA" or "CPA firm" or the title "PA" or "PA firm."

4. Paragraph (2) of subdivision (d) of section 70.8 of the Regulations of the Commissioner of Education is amended, effective April 11, 2012, as follows:

(2) \$10 for the sole proprietor or each general partner of a partnership or partner of a limited liability partnership, member of a limited liability company or shareholder of a professional service corporation whose principal place of business is located in New York [or who is otherwise authorized to practice in New York through a temporary practice permit issued pursuant to section 70.7 of this part] and for each certified public accountant or public accountant licensed in New York State that signs or authorizes someone to sign an engagement on behalf of a New York State client but whose principal place of business is not located in New York State. Any firm that registers with the Department pursuant to the provisions of Education Law section 7408, but does not have a sole proprietor or a general partner of a partnership or a partner of a limited liability partnership, or a member of a limited liability company or a shareholder of a professional service whose principal place of business is in NYS, shall pay \$10 for the firm.

Revised rule compared with proposed rule: Substantial revisions were made in sections 70.7(b)(1)(i), (ii) and 70.8(d)(2).

Text of revised 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: Office of the Professions, Office of the Deputy Commissioner, State Education Department, 89 Washington Avenue, 2M, Albany, NY 12234, (518) 474-1941, email: opdepcom@mail.nysed.gov

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

Revised Regulatory Impact Statement

Subparagraphs (i) and (ii) of paragraph (1) of subdivision (b) of section 70.7 of the Regulations of the Commissioner of Education are amended to follow statutory language. Subdivision (d) of section 70.8 of the Regulations of the Commissioner of Education was amended to clarify that firms need to pay a \$10 fee where firm owners whose principal place of business is in New York, or for New York licensees whose principal place of business is not in New York, but who authorize someone else to sign off on New York State engagements. The language has also been changed to clarify that all firms must pay a minimum of \$10 for this component of the registration fee.

The above revisions to the proposed rule do not require any revisions to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

The above revisions to the proposed rule do not require any revisions to the previously published Statement in Lieu of Regulatory Flexibility Analysis. The proposed revised rule does not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or other compliance requirements on small business or local governments beyond those inherent in the statute, or have any adverse economic effect on them. Because it is evident from the nature of the proposed revised rule that it does not affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Revised Rural Area Flexibility Analysis

The aforesaid revisions do not require any additional revisions to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

The purpose of the proposed rule is to implement chapter 456 of the Laws of 2011. The proposed revised rule will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the revised proposed amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Amendment to Limitations of Operating Certificates

I.D. No. HLT-49-11-00007-E

Filing No. 5

Filing Date: 2012-01-10

Effective Date: 2012-01-10

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

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

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

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

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

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

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

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

Subject: Amendment to Limitations of Operating Certificates.

Purpose: To allow Public Health Law article 28 facilities to operate at sites not designated on their operating certificate during an emergency.

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt 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-49-11-00007-P, Issue of December 7, 2011. The emergency rule will expire March 9, 2012.

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

Regulatory Impact Statement**Statutory Authority:**

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

Legislative Objective:

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

Needs and Benefits:

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

COSTS:

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

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

Cost to the Department of Health:

There will be no costs to the Department.

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis**Effect on Small Businesses and Local Governments:**

No impact on small businesses or local governments is expected.

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Small Business Participation:

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

No Amelioration or Cure Period Necessary:

This amendment does not involve the establishment or modification of a violation or of penalties associated with a violation. It merely gives operators of hospitals as defined under Article 28 of the Public Health Law the ability to temporarily operate at sites not designated on their operating certificates in times of emergency. Therefore, as no new penalty could be imposed as a result of this amendment, no cure period was included.

Rural Area Flexibility Analysis**Types and Estimated Number of Rural Areas:**

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

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

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

Compliance Costs:

There are no direct costs associated with compliance.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Rural Area Participation:

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

Job Impact Statement**Nature of Impact:**

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

Categories and Numbers Affected:

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

Regions of Adverse Impact:

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

Minimizing Adverse Impact:

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

Self-Employment Opportunities:

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

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Methodology to Determine the Allowable Costs of Continuing Lease Arrangements

I.D. No. PDD-45-11-00016-A

Filing No. 8

Filing Date: 2012-01-10

Effective Date: 2012-01-25

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

Action taken: Amendment of section 635-6.3 and Subpart 635-99 of Title 14 NYCRR.

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

Subject: Methodology to determine the allowable costs of continuing lease arrangements.

Purpose: To modify the method of determining allowable costs of continuing lease arrangements.

Text of final rule: • Section 635-6.3 is amended as follows:

Section 635-6.3. Leases for real property.

(a) *This subdivision applies to allowability of costs for leases for real property except for continuing residential lease arrangements as specified in subdivision (b) of this section.*

(1) In order for lease costs to be considered for allowability, the provider or [consumer] *individual lessee* must submit the lease to [OMRDD] *OPWDD* for approval. In deciding whether to approve a lease, [OMRDD] *OPWDD* shall consider whether the lease is in the best interests of the programs and the persons it serves and whether the lease in any way violates public policy. In deciding whether to approve an amount for rent, [OMRDD] *OPWDD* shall consider whether the provider's rate, fee or price, as a whole, including the amount of rent to be approved, would result in payment which is consistent with efficiency and economy.

[(b)] (2) If an approved lease (see glossary, Subpart 635-99 of this Part) or approved proprietary lease (see glossary, Subpart 635-99 of this Part) is between the provider or [consumer] *individual lessee* and a party which is not a related party, allowable lease costs shall be the lesser of contract rent or fair market [rental] *rent*.

[(c)] (3) If an approved lease or approved proprietary lease is between the provider or [consumer] *individual lessee* and a related party, allowable lease costs shall be the least of:

[(1)] (i) contract rent (see glossary, Subpart 635-99 of this Part);

[(2)] (ii) fair market [rental] *rent* (see glossary, Subpart 635-99 of this Part); or

[(3)] (iii) the landlord's net cost (see glossary, Subpart 635-99 of this Part).

[(d)] (4) The commissioner may waive the limitations on allowable costs as stated in [subdivision (c)] *paragraph (3)* of this section upon a showing that such limitations would jeopardize the opening or continued operation of the program or services and that the negotiations for the lease or proprietary lease were conducted as though the parties were not related.

[(e)] (5) The commissioner may, upon application from a provider, allow lease costs in an amount equal to contract rent and greater than fair market rent if the following conditions are met. The commissioner will allow such lease costs only for as long as it is necessary for the provider to relocate the program or services located on the lease property.

[(1)](i) The lease is a renewal which is not pursuant to an option to renew.

[(2)] (ii) The lease is a renewal of a lease for an existing program or services.

[(3)] (iii) The provider has shown that:

[(i)] (a) the provider has made diligent efforts to negotiate a lease renewal for fair market rent or less;

[(ii)] (b) the provider has been unable to negotiate a lease renewal for less than the current rent;

[(iii)] (c) the parties to the lease renewal are not related; and

[(iv)] (d) allowance of lease costs in the amount of contract rent is necessary to ensure the continued operation of the program of services.

[(f)] [From the effective date of this regulation until January 1, 2001, allowable costs under leases between related parties in effect on September 1, 1984 shall be determined in accordance with the regulation in effect immediately preceding the effective date of this Subpart. On and after January 1, 2001, allowable costs under leases between related parties in effect on September 1, 1984 shall be determined in accordance with subdivision (c) of this section.]

[(g)] (6) Contract rent incurred pursuant to an approved lease or approved proprietary lease which is renewed pursuant to an option to renew is allowable.

[(h)] (7) Costs incurred pursuant to an approved lease or approved proprietary lease which is renewed other than pursuant to an option to renew (see glossary, Subpart 635-99 of this Part) shall be allowable as follows:

[(1)] (i) If the lease is between parties who are not related, allowable costs are determined in accordance with [subdivision (b)] *paragraph (2)* of this [section] *subdivision*.

[(2)] (ii) If the lease is between parties who are related, allowable costs are determined in accordance with [subdivision (c)] *paragraph (3)* of this [section] *subdivision*.

[(3)] (iii) [OMRDD] OPWDD shall decide whether to approve any such renewal at least 30 days before the last day the lease may be renewed, if the provider or [consumer] *individual lessee* has notified [OMRDD] OPWDD in accordance with [paragraph (4)] *subparagraph (iv)* of this [subdivision] *paragraph*.

[(4)] (iv) Whenever possible, the provider or [consumer] *individual lessee* shall submit to [OMRDD] OPWDD a request for approval of lease renewals at least 120 days prior to the last date for renewing the lease.

(b) *This subdivision governs the allowability of lease costs applicable to continuing residential lease arrangements for periods after December 31, 2011, for which periods OPWDD has not approved lease costs for an entire calendar year. This subdivision applies to residential lease renewals which are not renewals pursuant to an option to renew.*

(1) *There shall be an allowable lease cost, exclusive of any ancillary costs, for an entire calendar year. The allowable lease cost, exclusive of any ancillary costs, for a calendar year shall be the base lease amount for such calendar year increased by the annual increase percentage for such calendar year.*

(2) *Base lease amount. The base lease amount for a calendar year shall be the allowable lease cost calculated in accordance with this section in effect on December 31 of the prior calendar year, exclusive of any ancillary costs (see paragraph (4) of this subdivision).*

(3) *Annual increase percentage. The annual increase percentage for 2012 is 1.97%.*

(4) *Ancillary costs. Ancillary costs are those charges identified in a lease in addition to monthly rent. These include but are not limited to: special assessments, taxes, co-op or condominium maintenance fees, utility payments assessed to the lessee by the lessor pursuant to the terms of the lease, and lessor-financed renovations billed as additional rent.*

(5) *For ancillary costs under the terms of the lease to be allowable the lessee must submit an application to OPWDD specifying the nature and amounts of the ancillary costs. OPWDD may approve or disapprove the request or adjust the amount to be reimbursed based on whether the ancillary costs are reasonable and necessary.*

• New subdivision 635-99.1(h) is added as follows and the rest of the section is renumbered accordingly:

(h) *Ancillary costs. Ancillary costs are those charges identified in a lease in addition to monthly rent. These include but are not limited to: special assessments, taxes, co-op or condominium maintenance fees, utility payments assessed to the lessee by the lessor pursuant to the terms of the lease, and lessor-financed renovations billed as additional rent.*

• New subdivision 635-99.1(as) is amended as follows:

(as) Fair market [rental] *rent*. The [rental] *rent* that the property would most probably command on the open market as indicated by [rentals] *rents* being paid and asked for comparable properties in the same geographic area as of the date of the appraisal.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 635-6.3(b).

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

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.

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

In response to comments received, OPWDD made a minor non-substantive change in the final regulations compared to the proposed regulations. The change in subdivision 635-6.3(b) clarifies that the new methodology is applied to lease periods after December 31, 2011.

This change does not necessitate revisions to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Business and Local Governments, Rural Area Flexibility Analysis or Job Impact Statement.

Assessment of Public Comment

OPWDD received comments concerning the proposed regulation from a provider association and two voluntary agencies which provide services to people with developmental disabilities.

COMMENT: The provider association and the voluntary agencies expressed concerns about the treatment of ancillary costs, which are those charges identified in a lease in addition to the monthly rent. The proposed regulation specified that OPWDD may approve or disapprove reimbursement of ancillary costs based on whether the costs are reasonable and necessary. The provider association and a voluntary agency were concerned that the decision-making process gives the appearance of being an arbitrary one. They recommended that language be added to provide some parameters regarding how these decisions will be made. The provider association and voluntary agencies stated that landlord imposed building-wide costs which are outside the control of the tenant (or costs associated with accommodations necessary due to the disability of the resident) should always be approved. The provider association and voluntary agencies also advocated that the ancillary costs be treated in the rate methodology in the same manner as they are currently treated. The provider association also suggested adding wording which states that the method of reimbursement for maintenance fees associated with cooperative apartments is not changed. One of the voluntary agencies stated that ancillary costs are beyond a provider's ability to negotiate, and it requested that the language be changed to establish that all ancillary costs would be reimbursed.

RESPONSE: OPWDD disagrees with the suggestions to eliminate its discretion in reviewing the ancillary costs. The review of ancillary costs is important in the interests of economy and efficiency in the expenditure of government funds. OPWDD also notes that the treatment of ancillary costs in this regulation, including cooperative apartment maintenance fees, reflects prior OPWDD practice, and that no changes in these practices are contemplated as a result of this regulatory change.

COMMENT: The provider association and the voluntary agencies were concerned that the language in the regulation could be interpreted as applying to lease periods that begin prior to Jan. 1, 2012. They advocated modifying the language to clarify that these situations are "grandfathered in" and that the new methodology would not apply in these situations.

RESPONSE: OPWDD has added additional language to clarify that the new methodology applies to continuing lease arrangements for periods after December 31, 2011, for which period OPWDD has not approved lease costs for an entire calendar year.

COMMENT: One of the voluntary agencies suggested that the proposed regulations include a differentiation factor for residential leased property in the downstate region that considers the higher cost of real property in this region.

RESPONSE: OPWDD convened a workgroup to develop the proposed regulations which consisted of representatives of providers and provider associations and OPWDD staff. The workgroup was unable to identify any independent, verifiable index that separated upstate and downstate rents. Accordingly, the most geographically relevant Rental of Primary Residence component of the Consumer Price Index (CPI) was adopted by the workgroup as the most viable solution. This was used to generate the annual increase percentage for 2012 which was incorporated into the regulation. OPWDD observes that the commenter did not suggest an alternative index.

OPWDD notes that the index used in the calculation of the annual increase percentage is actually weighted in favor of downstate over upstate. This is because the preponderance of rental housing in New York State is in the downstate metropolitan area. The use of this same index in the calculation of the annual increase percentage for future years will accommodate any higher increases in downstate rental costs over upstate rental costs. In addition, this same index has been used in the past to adjust OPWDD's rent approval guidelines, so its use in the context is consistent with prior practice.

COMMENT: The same voluntary agency suggested that the regulations grandfather in all rents associated with Prior Property Approval (PPA) requests that were submitted to OPWDD prior to 12/31/2011 for which approval from OPWDD is pending, so that the new methodology would not be applicable in these situations.

RESPONSE: OPWDD disagrees. OPWDD has not established a closing date for submission of PPAs for renewal leases that would be affected by this regulation, nor has OPWDD told any providers that they could exempt themselves from the new regulation by submitting a PPA request by December 31. It would be unfair to create a new exemption now.

COMMENT: The same voluntary agency noted that a large percentage of residential programs are housed in rent regulated/subsidized apartments for which all rent increases are established and determined by the NYC Rent Guidelines Board. The provider suggested that these residences be exempt from the application of the new methodology. The voluntary agency suggested that other independent indices be used in this situation.

RESPONSE: OPWDD disagrees. The workgroup which developed the regulation considered the use of the Rent Guidelines Board index for some or all leases, but determined that the index was not representative of lease cost changes across the region. It is also noteworthy that the Rent Guidelines Board index was lower than the relevant CPI sub-index over the ten years through 2010.

COMMENT: The same voluntary agency suggested that any Major Capital Improvement (MCI) increases be exempt from the new methodology.

RESPONSE: OPWDD notes that MCI costs are considered to be ancillary costs which are eligible for approval outside of the base rent calculation. This is the same regardless of whether the new or old methodology is applied. OPWDD notes that the annual increase percentage is not applied to MCI costs.

COMMENT: The same voluntary agency stated that many of the individuals it serves are medically fragile, multiply disabled and use wheelchairs for mobility, and that finding accessible housing in NYC for these individuals is difficult. The voluntary agency expressed concerns that the imposition of the new methodology could adversely impact these individuals by jeopardizing its ability to negotiate long term leases.

RESPONSE: OPWDD disagrees. Existing rules will apply to allowability of rent costs for initial lease terms, i.e., OPWDD will approve rent amounts for each lease based on the factors in subdivision

635-6.3(a). Rent amounts for initial terms of long-term leases will still be approved at inception for the entire term for which the rent amount is specified, as will subsequent renewals for sites involving significant renovations at the end of a long initial term. The only long-term leases that would be affected by the new regulations are renewals that do not involve renovations. OPWDD therefore does not expect that the new regulations will affect the ability of providers to negotiate long-term leases.

COMMENT: The same voluntary agency expressed concerns that the new methodology threatens continued occupancy in locations for which the rent increase would be within Fair Market Rental but the percentage increase would be insufficient to cover the rent increase. In the event that the actual rent exceeds the reimbursement the provider might not be able to afford to pay the difference.

RESPONSE: OPWDD intends to review the overall impact of this change with respect to market conditions and provider costs across their lease portfolios over time and will make necessary adjustments, down or up, if warranted.

COMMENT: The same voluntary provider questioned whether OPWDD would provide reimbursement for all costs in the event that relocation becomes necessary because of the new methodology.

RESPONSE: OPWDD does not intend to change its existing policy, which provides that OPWDD will provide funding associated with the reasonable costs of a relocation necessary to protect the health and safety of individuals being served.

COMMENT: The same voluntary agency suggested that the effective date be delayed for six months in order to give OPWDD additional time to conduct a comprehensive review of comments received and to make any necessary revisions.

RESPONSE: OPWDD notes that only three sets of comments were received, and that it has been able to comprehensively review the comments since their receipt. Since no substantive revisions were necessary in the regulations based on the comments received, OPWDD is able to promulgate the regulation without delaying the effective date.

Public Service Commission

NOTICE OF ADOPTION

Revised Electric Revenue Decoupling Mechanism Revenue Targets Applicable to SC No. 8

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

Filing Date: 2012-01-10

Effective Date: 2012-01-10

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

Action taken: On 1/10/12, the PSC adopted an order approving on a permanent basis, Rochester Gas and Electric Corporation's Revising Rate Plan Targets as issued on 10/14/11 for revised electric Revenue Decoupling Mechanism revenue targets applicable to SC No. 8.

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

Subject: Revised electric Revenue Decoupling Mechanism revenue targets applicable to SC No. 8.

Purpose: To approve revised electric Revenue Decoupling Mechanism revenue targets applicable to SC No. 8 on a permanent basis.

Substance of final rule: The Public Service Commission adopted an order approving on a permanent basis, targets as issued October 14, 2011 for revising electric Revenue Decoupling Mechanism revenue targets applicable to Rochester Gas and Electric Corporation's Service Classification No. 8 Subtransmission-Industrial and Subtransmission-Commercial subclasses, 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-0717SA4)

NOTICE OF ADOPTION

Emergency Economic Development Programs

I.D. No. PSC-47-11-00010-A

Filing Date: 2012-01-10

Effective Date: 2012-01-10

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

Action taken: On 1/10/12, the PSC adopted an order approving on a permanent basis, with modifications Niagara Mohawk Power Corporation d/b/a National Grid's Emergency Economic Development Programs to provide immediate assistance to qualifying customers, as modified.

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

Subject: Emergency Economic Development Programs.

Purpose: To approve Emergency Economic Development Programs to provide immediate assistance to qualifying customers on a permanent basis.

Substance of final rule: The Public Service Commission adopted an order approving on a permanent basis Niagara Mohawk Power Corporation d/b/a National Grid's four new Emergency Economic Development Programs, as modified and issued September 23, 2011, to provide immediate assistance to qualifying customers in its service area recovering from the effects of Hurricane Irene and Tropical Storm Lee, 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.

(10-E-0050SA10)

NOTICE OF ADOPTION

Emergency Economic Development Programs

I.D. No. PSC-47-11-00011-A

Filing Date: 2012-01-10

Effective Date: 2012-01-10

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

Action taken: On 1/10/12, the PSC adopted an order approving on a permanent basis, with modifications New York State Electric & Gas Corporation's Emergency Economic Development Programs to provide immediate assistance to qualifying customers, as modified on 10/19/11.

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

Subject: Emergency Economic Development Programs.

Purpose: To approve Emergency Economic Development Programs to provide immediate assistance to qualifying customers on a permanent basis.

Substance of final rule: The Public Service Commission adopted an order approving on a permanent basis, New York State Electric & Gas Corporation's Emergency Economic Development Programs, as modified and issued October 19, 2011, to provide immediate assistance to qualifying customers in its service area recovering from the effects of Hurricane Irene and Tropical Storm Lee, 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.

(10-E-0559SA1)

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

Availability of Telecommunications Services in New York State at Just and Reasonable Rates

I.D. No. PSC-04-12-00004-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 recommended decision that it establish a State universal service high-cost fund to help ensure the availability of affordable telecommunications services throughout all parts of New York State.

Statutory authority: Public Service Law, sections 4, 5, 90, 91, 92, 94, 96 and 97

Subject: Availability of telecommunications services in New York State at just and reasonable rates.

Purpose: Providing funding support to help ensure availability of affordable telecommunications services throughout New York State.

Public hearing(s) will be held at: 10:00 a.m., March 13, 2012 at Public Service Commission, Three Empire State Plaza, 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.

Substance of proposed rule: By notice dated August 3, 2009, the Commission established a proceeding to examine issues related to the advisability of modifications to the existing universal service funding regimes to support telecommunications services in New York in a rapidly changing industry. The existing regimes include a fund established to ease potential pressure on local telephone service rates of rural local exchange carriers affected by phase-out of intrastate access charge pooling. On July 16, 2010, the Commission issued an order in Phase I of the proceeding providing for extension of that fund, including an additional \$600,000 in funding, through September 30, 2011. On September 16, 2011, the Commission issued an order providing for further extension of that fund pending exhaustion of that \$600,000 in additional funding or further Commission order. In the current Phase II of the proceeding, a recommended decision by an administrative law judge recommends establishment of a longer term State universal service high-cost fund to help support availability of affordable telecommunications service throughout New York State. Among other things, the recommended decision recommends that the Commission terminate the suspension of the application of the Public Service Law (PSL), pursuant to PSL § 5(6)(a), to cellular telephone services to the extent of requiring providers of cellular telephone services to contribute to a State universal service high-cost fund. The Commission may approve, reject, or modify the various proposals in the recommended decision, in whole or in part, or adopt alternative measures to help ensure universal availability of affordable telecommunications service in New York.

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.
(09-M-0527SP5)

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

Availability of Telecommunications Services in New York State at Just and Reasonable Rates

I.D. No. PSC-04-12-00003-P

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

Proposed Action: The Commission is considering increasing the amount of the Temporary Transition Fund Extension to extend further the temporary support that helps ensure the availability of affordable telecommunications services throughout all parts of New York State.

Statutory authority: Public Service Law, sections 4, 5, 90, 91, 92, 94 and 96

Subject: Availability of telecommunications services in New York State at just and reasonable rates.

Purpose: Providing funding support to help ensure availability of affordable telecommunications services throughout New York State.

Substance of proposed rule: By notice dated August 3, 2009, the Commission established a proceeding to examine issues related to the advisability of modifications to the existing universal service funding regimes to support telecommunications services in New York in a rapidly changing industry. The existing regimes include a fund established to ease potential pressure on local telephone service rates of rural local exchange carriers affected by phase-out of intrastate access charge pooling. On July 16, 2010, the Commission issued an order in Phase I of the proceeding providing for extension of that fund, including an additional \$600,000 in contributions, through September 30, 2011. On September 16, 2011, the Commission issued an order providing for further extension of that fund pending exhaustion of that \$600,000 or further Commission order. In the current Phase II of the proceeding, a recommended decision by an administrative law judge recommends a longer term State universal service high-cost fund be created to help support availability of affordable telecommunications service throughout New York State. The existing temporary support fund, including the \$600,000 in additional funding, is currently anticipated to become exhausted in May 2012. The Commission is now considering whether to increase the amount of contributions to the existing temporary fund. The additional contributions are proposed to be no greater than \$350,000 and are designed to be sufficient to continue current Fund obligations on a monthly basis until the Commission acts on the recommended decision on a longer term State universal service high-cost fund. The Commission may approve, reject, or modify this proposal, in whole or in part, or adopt alternative measures to help ensure universal availability of affordable telecommunications service in New York.

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.
(09-M-0527SP4)

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

Restructuring Petition of Warwick Valley Telephone Company

I.D. No. PSC-04-12-00005-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 approve, deny or modify, in whole or in part, a petition by Warwick Valley Telephone Company to undertake a proposed restructuring plan.

Statutory authority: Public Service Law, sections 108 and 110

Subject: Restructuring petition of Warwick Valley Telephone Company.

Purpose: To allow Warwick Valley Telephone Company to implement a restructuring plan.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition by Warwick Valley Telephone Company to implement a proposed restructuring plan under Sections 108 and 110 of the New York Public Service Law. Under the plan, Warwick Valley Telephone Company would separate its regulated local exchange operations from its other non-regulated business units. Both the regulated local exchange company and the non-regulated business units would be subsidiaries under a newly established holding company. A copy of the company's petition can be found at: <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=12-C-0003>

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, Three 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, Three 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.
(12-C-0003SP1)

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

Petition to Modify Ordering Clause 5 of the Commission's Order Issued in June 6, 1988 in Case 29724

I.D. No. PSC-04-12-00006-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 whether to accept, reject or modify the request by Warwick Valley Telephone Company to receive relief from Ordering Clause 5 in the Commission's Order issued June 6, 1988 in Case 29724.

Statutory authority: Public Service Law, section 107

Subject: Petition to modify Ordering Clause 5 of the Commission's Order issued in June 6, 1988 in Case 29724.

Purpose: To allow Warwick Valley Telephone to treat revenues received from the Orange-Poughkeepsie Partnership as non-regulated revenues.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition by Warwick Valley Telephone Company to receive relief from the restrictions on the investment of proceeds from its limited cellular partnership found in Ordering Clause 5 in the Commission's Order issued June 6, 1988 in Case 29724.

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.

(12-C-0004SP1)

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

On-Bill Recovery Program Reporting Requirements**I.D. No.** PSC-04-12-00007-P

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

Proposed Action: The Commission is considering a proposal by Staff of the Department of Public Service regarding reporting requirements for the New York State Energy Research and Development Authority and various utilities relating to the On-Bill Recovery program.

Statutory authority: Public Service Law, sections 5(2) and 66-m

Subject: On-Bill Recovery program reporting requirements.

Purpose: To establish reporting requirements related to the On Bill Recovery 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 proposal by the Department of Public Service Staff (Staff) made in compliance with the Commission's December 15, 2011 order in Case 11-E-0450 et al. and concerning reporting requirements applicable to the New York State Energy Research and Development Authority (NYSERDA) and various utilities regarding the On-Bill Recovery program. The applicable utilities are Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

Chapter 7 of the Laws of 2010, which became effective on August 4, 2011, amended a number of sections of the Public Service Law (PSL) regarding the establishment of an On-Bill Recovery program. The amendments provide for the billing and collection of charges through a customer's utility bill in payment of obligations to the NYSERDA Green Jobs-Green New York revolving loan fund established pursuant to Title 9-A of Article VIII of the Public Authorities Law. The statute also provides for the Commission's monitoring and possible suspension of the On-Bill Recovery program if, after a hearing, the Commission finds that there is a significant increase in customer arrears or service disconnections related to the On-Bill Recovery program or for other good cause. Similarly, the statute provides for an expansion of the program if NYSERDA petitions for such and the Commission finds that the program has not caused significant harm to the utilities or their ratepayers. The proposed reporting requirements are designed to provide the Commission with the various program statistics necessary to conduct these monitoring duties.

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.

(12-M-0007SP1)

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

Whether to Direct Consolidated Edison to Use Customer Credits to Offset the Surcharge for Rate Year Three**I.D. No.** PSC-04-12-00008-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 whether to direct

Consolidated Edison Company of New York, Inc. to use customer credits, or a portion thereof, to offset the surcharge for rate year three provided for in the 2010 Rate Order.

Statutory authority: Public Service Law, sections 4(1), 5(b), 64, 65(1), 66(1), (9), (12)(a) and (b)

Subject: Whether to direct Consolidated Edison to use customer credits to offset the surcharge for rate year three.

Purpose: Whether to direct Consolidated Edison to use customer credits to offset the surcharge for rate year three.

Substance of proposed rule: The Public Service Commission is considering which, if any, customer credits may be available in accordance with the 2010 Rate Order in Case 09-E-0428 (issued March 26, 2010) to offset all or a portion of the surcharge for rate year three provided for Consolidated Edison Company of New York, Inc. in the 2010 Rate Order and is further considering whether to use all or a portion of such credits for such purpose.

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.

(12-E-0008SP1)

Racing and Wagering Board

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

The Testing of Horses in a Claiming Race**I.D. No.** RWB-04-12-00001-P

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

Proposed Action: Amendment of sections 4038.17 and 4109.5 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101 and 301

Subject: The testing of horses in a claiming race.

Purpose: To remove the requirement that all claiming horses be tested and allow the Board to test based on race results or integrity.

Text of proposed rule: Section 4038.17 of 9 NYCRR is amended to read as follows:

4038.17 Horses claimed-testing

[Each horse claimed in a race shall be designated by the stewards for post-race blood and urine testing.] *In the event a horse is claimed, and the claimant has indicated on the claiming form, an election to have the horse tested for drugs pursuant to Part 4012, and has paid the prescribed fee therefore, the horse shall be subject to drug testing. In the event the claimed horse is otherwise subject to testing based upon order of finish or designation by the stewards, the prescribed fee shall be returned to the claimant.* The original trainer shall remain responsible for the claimed horse until the on-track post-race sample collection has been completed.

Section 4109.5 of 9 NYCRR is amended to read as follows:

4109.5 Horses claimed-testing

[Each horse claimed in a race shall be designated by the judges for post-race blood and urine testing.] *In the event a horse is claimed, and the claimant has indicated on the claiming form, an election to have*

the horse tested for drugs pursuant to Part 4120, and has paid the prescribed fee therefore, the horse shall be subject to drug testing. In the event the claimed horse is otherwise subject to testing based upon order of finish or designation by the judges, the prescribed fee shall be returned to the claimant. The original trainer shall remain responsible for the claimed horse until the on-track post-race sample collection has been completed.

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

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The Board is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 101(1), 301(1) and 301(2)(a). Under section 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel thoroughbred racing activities. Section 301, subdivision (1), authorizes the Board to prescribe rules and regulations for harness racing. Section 301, subdivision (2), paragraph (a) directs the Racing and Wagering Board to prescribe rules and regulations for effectually preventing the administration of drugs or improper acts for the purpose of affecting the speed of harness horses in races in which they are about to participate.

2. Legislative objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to allow the Board the flexibility to determine which claiming horses should be tested consistent with current enforcement needs and realities. Both the harness and thoroughbred claiming test rules were adopted in 1983 and require revision to reflect current equine testing priorities.

Under the current rules, the Board must test all horses that are claimed, which is problematic given the cost of testing when weighed against realistic fiscal limitations and the priorities of the Board's equine drug testing program. All claiming horses have to be tested whether there is a basis for testing or not and Board has no flexibility in determining which claiming horses should be tested, nor is there any discretion granted to withhold testing in the absence of any basis for testing a claiming horse.

In claiming, testing is not directly related to the integrity of the racing contest as is other drug testing. A claiming horse is, in effect, offered for sale at a designated price within the range of the claiming race at which they are entered by their owners. The potential buyer of a horse in a claiming race must enter his claim before the race. By entering a horse in a claiming race, the owner is offering his horse up for sale to another other individual. There is no rationale for testing every claiming horse simply because it was sold to another owner.

Since the new owner can nullify a claim in the event of a positive drug test, the testing program appears to only serve as a distinct benefit to new owner of a claimed horse who is a private party to what amounts to a sale.

The Board's other equine testing rules are more directly related to the results, and therefore the integrity, of a race. Under thoroughbred rule 4012.3 and harness rule 4120.8, equine drug testing is conducted on every winner and at least one other horse designated by the respective steward or judge. These equine testing rules will still apply to winners and steward/judge designated horses from claiming races if the proposed amendments are adopted.

This amendment to 9 NYCRR 4109.5 is also necessary to bring the harness rule into uniformity with the thoroughbred rule by including the clause, "The original trainer shall remain responsible for the claimed horse until the on-track post-race sample collection has been completed." This amendment is necessary to expressly assign responsibility, which, although it has been done in practice, it has not been included in the harness rule.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. This rule amendment will have no effect on the cost of testing by the New York State Racing and Wagering Board. It will merely permit it to reallocate limited equine testing funds to various types of equine drug testing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Board relied on the studies and/or advice provided by its Director of the New York State Racing and Wagering Board's Drug Testing and Research Program, Dr. George A. Maylin.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Not applicable.

5. Local government mandates: None. The New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork. The Board will utilize the existing documents for administrative adjudication to determine whether the suspension of a pre-race detention order is appropriate.

7. Duplication: None.

8. Alternatives. The Board considered the recommendation of the Empire State Harness Horsemen's Alliance that would preserve the current method of equine testing of claiming horses, but create general fiscal savings by testing one horse randomly in all races. This alternative was not considered feasible given the fact that random testing has no bearing on the results of a race nor was the alternative considered adequate to justify testing claiming horses merely because the horses to be tested were involved in a claiming race.

The Board originally considered adopting a rule that did not include a provision that allows the new horse owner to obtain testing for a fee. Based upon public comments, the Board decided that such testing should be made available so long as the costs of the testing are borne by the person requesting the testing.

9. Federal standards: None.

10. Compliance schedule: The rule can be implemented immediately upon publication as an adopted rule.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment merely enables the Board to describe the regulatory requirements pertaining to the claiming of thoroughbred and harness race horses in accordance with sections 101 and 301 of the New York Racing Wagering Pari-Mutuel and Breeding Law. Consequently, the rule does not adversely affect small business, local governments, jobs nor rural areas. Prescribing testing requirements associated with claiming does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8). Nor does it negatively affect employment. The proposal will not impose adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any technological changes on the industry either.

The rule allows owners of claimed horses to elect to have their horse tested for a fee. The testing is not required under the rule, and therefore the fee is not imposed by this rulemaking.

Pursuant to the requirements of Chapter 524 of the Laws of 2011, this rulemaking will neither establish nor modify a violation, nor will it require a provision for a period of time to afford small businesses or local governments a period of time to come into compliance with the rule before it is enforced.

Urban Development Corporation

EMERGENCY RULE MAKING

Downstate Revitalization Fund Program

I.D. No. UDC-04-12-00009-E

Filing No. 7

Filing Date: 2012-01-10

Effective Date: 2012-01-10

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

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

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

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

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

Subject: Downstate Revitalization Fund Program.

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

Text of emergency rule: PART 4249

DOWNSTATE REVITALIZATION FUND PROGRAM

Section 4249.1 General

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

Section 4249.2 Definitions

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

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

(b) "Distressed community" shall mean a census tract, or defined portion thereof, that, according to the most recent census data available, has (1) a poverty rate of at least 20% for the year to which the data relate; and (2) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relate.

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

Section 4249.3 Types of Assistance

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

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

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

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

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

4249.4 Eligibility

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

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

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

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

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

(4) Projects authorized under this subdivision whether developed by the Corporation or a private developer, must be located in distressed communities, for which there is demonstrated demand within the particular community.

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

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

(2) Infrastructure Investment The Funds will finance infrastructure investments in order to attract new businesses and expand existing businesses, thereby fostering further investment. Infrastructure investments are capital expenditures for infrastructure including transportation, water and sewer, communication, and energy generation and distribution. Infrastructure also includes the construction of parking garages. Unlike the other two Tracks, Infrastructure Investment may be used to finance planning or feasibility studies relating to capital expenditures. The Infrastructure Investment Track is appropriate only for infrastructure activity for unidentified end-users or for

multiple users; infrastructure projects that will serve a single identified entity must apply for assistance under the Business Investment Track, which may be used to fund infrastructure expenses. Although projects without identified users may be funded under the Infrastructure Investment Track, preference under this Track will be given to projects with identified tenants.

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

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

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

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

Section 4249.5 Evaluation criteria

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

- (1) with significant private financing or matching funds through other public entities;
- (2) likely to produce a high return on public investment;
- (3) with existence of significant support from the local business community, local government, community organizations, academic institutions and other regional parties;
- (4) deemed likely to increase the community's economic and social viability;
- (5) with cost benefit analysis that demonstrates increased economic activity, sustainable job creation and investments;
- (6) located in distressed communities;
- (7) whose application is submitted by multiple entities, both public and private; or
- (8) such other requirements as determined by the Corporation as are necessary to implement the provisions of the Program.
- (9) Applications for assistance will be scored competitively, using a point system. Applications under each Track will be scored separately; requests for assistance under one Track thus will not be scored against requests for assistance under another Track.

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

Criterion	Business	Infrastructure	Downtown
Private financing leveraged	10	10	5

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

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

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

Section 4249.6 Application and Approval Process

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

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

(c) If the proposal satisfies the applicable requirements and initiative funding is available, the proposal may be presented to the Corporation's directors for adoption consideration in accordance with applicable law and regulations. The directors normally meet once a month. If the project is approved for funding and if it involves the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of any property, the Corporation will schedule a public hearing in accordance with the Act and will take such further action as may be required by the Act and applicable law and regulations. After approval by the Corporation and a public hearing the project may then be reviewed by the State Public Authorities Control Board ("PACB"), which also generally meets once a month, in accordance with PACB requirements and policies. Following directors' approval, and PACB approval, if required, documentation will be prepared by the Corporation. Notwithstanding the foregoing, no

initiative project shall be funded if sufficient initiative monies are not received by the Corporation for such project.

Section 4249.7 Confidentiality

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

Section 4249.8 Expenses

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

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

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

Section 4249.9 Affirmative action and non-discrimination

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires April 8, 2012.

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

Regulatory Impact Statement

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

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

Section 16-r of the Act provides for the creation of the Downstate Revitalization Fund. The corporation is authorized, within available appropriations, to provide financial, project development, or other assistance from such fund to eligible entities as set forth in this subdivi-

sion for the purposes of supporting investment in distressed communities in the downstate region, and in support of such projects that focus on: encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

2. Legislative Objectives: Section 16-r of the Act sets forth the Legislative intent of the Downstate Revitalization Fund to provide financial assistance to eligible entities in New York with particular emphasis on: supporting investment in distressed communities in the downstate region, and in support of projects that focus on encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation, and small business growth.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Regulations should be drafted to give priority to projects in

developed areas that use smart growth principles, and that promote energy efficiency and conservation.

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

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

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

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

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

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

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

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

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

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

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

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

Regulatory Flexibility Analysis

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

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

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

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

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

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

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

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

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

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

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

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Rural Area Flexibility Analysis

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

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

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

4. Minimizing Adverse Impact: The purpose of the Downstate

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

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

Job Impact Statement

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

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