RULE MAKING ACTIVITIES

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

AAM -the abbreviation to identify the adopting agency

01 -the *State Register* issue number

96 -the year

00001 -the Department of State number, assigned upon receipt of notice.

E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

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

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-15-12-00001-A
Filing No. 321
Filing Date: 2013-03-21
Effective Date: 2013-04-10

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the April 11, 2012 issue of the Register, I.D. No. CVS-15-12-00001-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-15-12-00002-A
Filing No. 320
Filing Date: 2013-03-21
Effective Date: 2013-04-10

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

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

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

Subject: Jurisdictional Classification.

Purpose: Delete and classify subheading in the exempt class; delete and classify positions in the exempt class.

Text of final rule: At a meeting of the State Civil Service Commission held March 13, 2012, the following resolution was adopted pursuant to Section 6 of the Civil Service Law:

RESOLVED, That subject to the approval of the Governor, Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of State, be and hereby is amended as follows:

1. by deleting therefrom the subheading "Commission on Public Integrity," and the following positions:

Administrative Officer
Associate Counsel (4)
Compliance Auditor (CPI) (3)
Confidential Assistant (4)
Confidential Clerk (5)
Confidential Legal Assistant
Confidential Stenographer (4)
Counsel
Deputy Counsel (2)
Director Public Information
Executive Director
Filings Examiner (CPI) (11)
Hearing Examiner
Information Technology Specialist (CPI) (4)
Investigator (5)
Manager Information Services
Manager of Training
Program Manager (3)
Secretary (2)
Training Assistant
Training Associate (2)

2. by adding thereto the subheading "Joint Commission on Public Ethics," and the following positions:

Administrative Officer
Associate Counsel (4)
Compliance Auditor (JCOPE) (3)
Confidential Assistant (4)
Confidential Clerk (5)
Confidential Legal Assistant
Confidential Stenographer (4)
Counsel
Deputy Counsel (2)
Director Public Information
Executive Director
Filings Examiner (JCOPE) (11)
Hearing Examiner
Information Technology Specialist (JCOPE) (4)
Investigator (4)

Manager Information Services
Manager of Training
Program Manager (2)
Secretary (2)
Training Assistant
Training Associate (2)

it having been determined that competitive or non-competitive examination is not practicable for filling these positions.

Final rule as compared with last published rule: Nonsubstantive changes were made in the subheading "Joint Commission on Public Ethics."

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

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Revised Job Impact Statement.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-15-12-00003-A

Filing No. 319

Filing Date: 2013-03-21

Effective Date: 2013-04-10

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the April 11, 2012 issue of the Register, I.D. No. CVS-15-12-00003-P.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Supplemental Military Leave Benefits

I.D. No. CVS-15-13-00009-P

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

Proposed Action: This is a consensus rule making to amend sections 21.15 and 28-1.17 of Title 4 NYCRR.

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

Subject: Supplemental military leave benefits.

Purpose: To extend the availability of supplemental military leave benefits for certain New York State employees until December 31, 2013.

Substance of proposed rule: The proposed rule amends sections 21.15 and 28-1.17 of the Attendance Rules for Employees in New York State Departments and Institutions to continue the availability of the single grant of supplemental military leave with full pay and further leave at reduced pay through December 31, 2013, and to provide for separate grants of the greater of 22 working days or 30 calendar days of training leave at reduced pay during calendar year 2013. The proposed rule amends section 21.15 of the Attendance Rules consistent with the current Memoranda of Understanding (MOUs) providing such benefits for employees in represented positions, and amends section 28-1.17 to extend equivalent benefits to employees serving in positions designated managerial or confidential (m/c).

New York State Military Law section 242 provides that public officers and employees who are members of the organized militia or any reserve force or reserve component of the armed forces of the United States may receive the greater of 22 working days or 30 calendar days of leave with pay to perform ordered military duty in the service of New York State or the United States during each calendar year or any continuous period of absence.

During on the ongoing war on terror, certain State employees have been ordered to extended active military duty, or frequent periods of intermittent active military duty. These employees face the loss of State salary, with attendant loss of benefits for their dependents, upon exhaustion of the annual grant of Military Law paid leave. Accordingly, supplemental military leave, leave at reduced pay and training leave at reduced pay have been made available to such employees pursuant to MOUs negotiated with the employee unions. Corresponding amendments to the Attendance Rules extend equivalent military leave benefits to employees in m/c designated positions.

With respect to supplemental military leave, eligible State employees federally ordered, or ordered by the Governor, to active military duty (other than for training) in response to the war on terror receive a single, non-renewable grant of the greater of 22 working days or 30 calendar days of supplemental military leave with full pay.

With respect to military leave at reduced pay, upon exhaustion of the military leave benefit conferred by the Military Law, and the single grant of supplemental military leave with pay, and any available accruals (other than sick leave) which an employee elects to use, employees who continue to perform qualifying military duty are eligible to receive military leave at reduced pay. The rules set forth the manner of calculating the rate of reduced pay, which is offset by pay and allowances received for ordered military duty. These leave benefits are available even for employees who do not receive supplemental pay because their military salaries (as defined) exceed their regular State pay.

With respect to training leave at reduced pay, many employees ordered to military duty in response to the war on terror also continue to perform other required military service unrelated to the war on terror. Eligible employees receive the greater of 22 work days or 30 calendar days of training leave at reduced pay following qualifying military duty in response to the war on terror, and after depleting the annual Military Law grant of leave with pay and any leave credits (other than sick leave) that they elect to use. Training leave at reduced pay may then be used for any ordered military duty during the calendar year that is not related to the war on terror. The rules set forth the pay rate calculations applicable to such leave.

The proposed amendment provides that in no event shall supplemental military leave, leave at reduced pay or training leave at reduced pay be granted for military service performed after December 31, 2013, nor shall such leaves be available to employees who have voluntarily separated from State service or who are terminated for cause.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Consensus Rule Making Determination

Section 6(1) of the Civil Service Law authorizes the State Civil Service Commission to prescribe and amend suitable rules and regulations concerning leaves of absence for employees in the Classified Service of the State.

Since September 11, 2001, certain State employees have been federally ordered, or ordered by the Governor, to active military duty. The New York State Military Law provides for the greater of 22 working days or 30 calendar days of military leave at full (State) pay for ordered service during each calendar year or continuous period of absence. Employees ordered to prolonged active duty, or repeatedly ordered to intermittent periods of active duty, faced exhaustion of the Military Law leave with pay benefit. Further periods of military service would then subject these employees to economic hardship from the loss of their regular State salaries and deprive their dependents of needed benefits derived from State employment.

To support State employees called to military duty after September 11, 2001, the Governor's Office of Employee Relations (GOER) executed memoranda of understanding (MOUs) with the employee unions to provide for a supplemental grant of military leave with pay and leave at reduced pay. Subsequent MOUs established a new benefit entitled training leave at reduced pay. These military leave benefits have been repeatedly renewed in the wake of the ongoing War on Terror, including homeland security activities and military operations in Afghanistan and Iraq.

The Governor's Office of Employee Relations has executed new MOUs with the Classified Service employee unions extending the availability of the single grant of supplemental military leave with pay and leave at reduced pay, and training leave at reduced pay through December 31, 2013. The State Civil Service Commission shall amend the Attendance Rules in accordance with the MOUs and extend equivalent benefits to employees serving in m/c designated positions.

The Civil Service Commission has received no public comments after publication of prior amendments to the Attendance Rules establishing or re-authorizing the benefits now put forward for renewal. Previous re-adoptions of the proposed amendments have been proposed and adopted as consensus rules. As no person or entity is likely to object to the rule as written, the proposed rule is advanced as a consensus rule pursuant to State Administrative Procedure Act (SAPA) § 202(1)(b)(i).

Job Impact Statement

By amending Title 4 of the NYCRR to extend the availability of supplemental military leave, leave at reduced pay and training leave at reduced pay for eligible employees subject to the Attendance Rules for Employees in New York State Departments and Institutions, these rules will positively impact jobs or employment opportunities for eligible employees, as set forth in section 201-a(2)(a) of the State Administrative Procedure Act (SAPA). Therefore, a Job Impact Statement (JIS) is not required by section 201-a of such Act.

Education Department

EMERGENCY RULE MAKING

Interpretation and Translation for Prescription Drugs, Standardized Labeling and Patient-Centered Data Elements for Medications

I.D. No. EDU-12-13-00014-E

Filing No. 350

Filing Date: 2013-03-26

Effective Date: 2013-03-30

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

Action taken: Addition of sections 63.11 and 63.12 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6829(1), (6), (7) and 6830(1); and L. 2012, ch. 57, part V

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

Specific reasons underlying the finding of necessity: The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement Section V of Chapter 57 of the Laws of 2012, which amended Education Law sections 6829 and 6830 to require pharmacies to provide certain interpretation and translation services, free of charge, to patients with Limited English Proficiency and to require the Commissioner of Education to establish standardized patient-centered data elements for prescription drug labels.

Because the Board of Regents meets at fixed intervals, and the statute is effective on March 30, 2013, the earliest the proposed amendment can be presented for adoption on a non-emergency basis, after expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the May 2013 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the May meeting, would be June 5, 2013, the date a Notice of Adoption would be published in the State Register. However, the provisions of Part V of Chapter 57 of the Laws of 2012 will become effective on March 30, 2013.

Emergency action is necessary for the preservation of the public health and general welfare in order to immediately conform the Regulations of the Commissioner of Education to the requirements of the Part V of Chapter 57 of the Laws of 2012, in order to timely implement the provisions of the new law which becomes effective March 30, 2013.

It is anticipated that the proposed amendments will be presented for adoption as a permanent rule at the May 2013 meeting of the Board of Regents, after publication in the State Register and expiration of the 45-day public comment period on proposed rule makings required by the State Administrative Procedure Act.

Subject: Interpretation and translation for prescription drugs, standardized labeling and patient-centered data elements for medications.

Purpose: To implement part V of chapter 57 of the Laws of 2012.

Text of emergency rule: Sections 63.11 and 63.12 of the Regulations of the Commissioner of Education are added, effective March 30, 2013, to read as follows:

§ 63.11 Interpretation and translation requirements for prescription drugs.

(a) Definitions. As used in this section:

(1) Covered pharmacy shall mean any pharmacy that is part of a group of eight or more pharmacies, located within New York State and owned by the same corporate entity.

(2) Corporate entity shall include related subsidiaries, affiliates, successors, or assignees doing business as or operating under a common name or trading symbol of the covered pharmacy.

(3) Limited English proficient individual or LEP individual shall mean an individual who identifies as being, or is evidently, unable to speak, read or write English at a level that permits such individual to understand health-related and pharmaceutical information communicated in English.

(4) Translation shall mean the conversion of a written text from one language into an equivalent written text in another language by an individual competent to do so and utilizing all necessary pharmaceutical and health-related terminology. Such translation may occur, where appropriate, in a separate document provided to an LEP individual that accompanies his or her medication.

(5) Competent oral interpretation shall mean an oral communication in which a person acting as an interpreter comprehends a message and re-expresses that message accurately in another language, utilizing all necessary pharmaceutical and health-related terminology, so as to enable an LEP individual to receive all necessary information in the LEP individual's preferred pharmacy primary language.

(6) Pharmacy primary languages shall mean those languages, up to a maximum of seven languages other than English, spoken by one percent or more of the population of the State, as determined by the U.S. Census. If more than seven languages other than English are spoken by one percent or more of the population, the pharmacy primary languages shall be limited to seven most spoken languages, as determined by the U.S. Census.

(b) Provision of competent oral interpretation services and translation services. Except as otherwise provided in subdivision (e) of this section:

(1) For purposes of counseling an individual about his or her prescription medications or when soliciting information necessary to maintain a patient medication profile, each covered pharmacy shall provide free, competent oral interpretation services and translation services in such individual's preferred pharmacy primary language to each LEP individual requesting such services or when filling a prescription that indicates that the individual is limited English proficient at such covered pharmacy, unless the LEP individual is offered and refuses such services.

(2) With respect to prescription medication labels, warning labels and other written materials, each covered pharmacy shall provide free, competent oral interpretation services and translation services to each LEP individual filling a prescription at such covered pharmacy in such individual's preferred pharmacy language, unless the LEP individual is offered and refuses such services or the medication labels, warning labels and other written materials have already been translated into the language spoken by the LEP individual.

(3) Translation and competent oral interpretation shall be provided in the preferred pharmacy primary language of each LEP individual, provided that no covered pharmacy shall be required to provide translation or competent oral interpretation of more than seven languages.

(4) The services required by this subdivision may be provided by a staff member of the pharmacy or a third-party contractor. Such services shall be provided on an immediate basis but need not be provided in-person or face-to-face.

(c) Notification relating to language assistance services. Except as otherwise provided in subdivision (e) of this section:

(1) In accordance with Education Law section 6829(3), each covered pharmacy shall conspicuously post a notice to inform LEP individuals of their rights to free, competent oral interpretation services and translation services. Such notice shall include the following statement in English and in each of the pharmacy primary languages: ''Point to your language. Language assistance will be provided at no cost to you.''

(2) The statement in each of the pharmacy primary languages shall be in 20 point bold face, Arial type in a color that sharply contrasts with the background color of the sign. Each such statement shall be enclosed in a box, and there shall be at least a 1/4 inch clear space between adjacent boxes.

(3) The statements in each of the pharmacy primary languages shall

be printed on one sign that shall be conspicuously displayed at or adjacent to each counter where prescription drug orders are dropped off and where prescriptions are picked up, and near every cash register at which payment is received for prescription drugs. Such signs shall be positioned so that a consumer can easily point to the statement identifying the language in which such person is requesting assistance.

(d) Waivers. An application for a waiver of the provisions of subdivisions (b) and (c) of this section shall be made on a form prescribed by the department. The burden of substantiating the validity of a request for a waiver shall be on the applicant.

(1) Each application shall be specific to a registered covered pharmacy, regardless of common ownership.

(2) The applicant shall clearly document the financial or physical constraints, threat to other services provided, or other circumstances upon which the request is based.

(3) No waiver shall be granted in the absence of a showing that implementation of the provisions of subdivisions (b) and (c) of this section would be unnecessarily burdensome when compared to the need for the translation and competent oral interpretation services.

(4) The applicant shall identify alternative sources of competent oral interpretation services or translation services available for LEP individuals within a reasonable distance.

(5) In the event a request for waiver is approved, the pharmacy shall post a notice in the pharmacy primary languages informing LEP individuals of alternative sources.

(6) The duration of a waiver shall be one year and may be renewed upon approval of a new waiver application by the department.

(e) In accordance with Part V of Chapter 57 of the Laws of 2012, the provisions of this section shall preempt any contrary local law or ordinance; provided, however, that cities with a population of 100,000 or more may retain or promulgate such local laws or ordinances imposing additional or stricter requirements relating to interpretation services or translation services in pharmacies. Nothing in this section shall diminish or impair any requirement that any pharmacy or pharmacist provide any language assistance, interpretation, or translation under any applicable federal or state law, local law or ordinance (unless preempted by this section), consent decree, or judicial settlement, judgment or order.

§ 63.12 Standardized patient-centered data elements to be used on all drug labels. In accordance with section 6830 of the Education Law, all prescription medicine dispensed to patients in this State must include standardized patient-centered data elements as prescribed by in this section.

(a) Definitions. As used in this section:

(1) Critical elements shall consist of:

(i) patient name;

(ii) directions for use by the patient, which directions shall be structured in full sentences; and

(iii) drug name and strength.

(2) Important elements shall consist of:

(i) name, address and telephone number of the pharmacy;

(ii) patient's address;

(iii) name of prescriber;

(iv) the date of filling or refilling of the prescription; and

(v) the prescription number or other identifying number assigned to the prescription.

(b) All prescription drug labels shall contain all of the critical elements and all of the important elements.

(1) Critical elements of each prescription label shall be:

(i) emphasized by being highlighted in color, in bold type, or both: and

(ii) printed in a minimum of a 12-point font.

(2) Important elements of each prescription label and any other information contained on the label shall not be highlighted in color or in bold type, shall be legible and shall not be presented in a fashion that undermines the emphasis on the critical elements.

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-12-13-00014-P, Issue of March 20, 2013. The emergency rule will expire June 23, 2013.

Text of 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) 474-6400, 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.

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

Subparagraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner to promulgate regulations in administering the admission to the practice of the professions.

Subdivisions (1)(e), (6), and (7) of section 6829 of the Education Law, as added by section 3 of Part V of Chapter 57 of the Laws of 2012, requires all covered pharmacies that are part of a group of eight or more pharmacies to provide competent oral interpretation and translation services to persons of Limited English Proficiency (LEP) and requires that pharmacies provide these services in those languages spoken by 1% or more of the population in a given region, as defined by the Commissioner.

Subdivision (1) of section 6830 of the Education Law, as added by section 4 of Part V of Chapter 57 of the Laws of 2012, requires the Commissioner to promulgate regulations requiring standardized patient-centered data elements to be used on all prescription medicine dispensed in New York State.

2. LEGISLATIVE OBJECTIVES:

The proposed amendments implement Part V of Chapter 57 of the Laws of 2012, which requires all pharmacies that are within a which requires all covered pharmacies that are part of a group of eight or more pharmacies to provide competent oral interpretation and translation services to persons of Limited English Proficiency (LEP). Pharmacies must provide these services in those languages spoken by 1% or more of the population in a given region, as defined by the Education Department. The proposed regulations define the State as one region, thereby requiring LEP services throughout the State in four languages other than English, those being Chinese, Italian, Russian and Spanish. The proposed regulations also establish a process for covered pharmacies to seek a waiver of the interpretation and translation requirements.

The proposed regulations also fulfill the legislative direction to define the elements of patient-centered labels that will be required for all prescriptions filled in New York State.

3. NEEDS AND BENEFITS:

The 2012 New York State budget legislation included amendments to the Education Law, which amendments are commonly referred to as the SafeRx Law (L. 2012, c. 57, Part V). This new law, which becomes effective March 30 2013, includes provisions to assist Limited English Proficient (LEP) individuals who need interpretation and translation services when filling prescriptions at pharmacies. The law also requires the Commissioner of Education to develop rules and regulations to provide more patient-friendly prescription labels for all patients.

Over the course of the months following passage of this legislation the Office of the Professions sought input from interested stakeholders. In addition to receiving written comments, there were three opportunities for oral presentations, one each in Buffalo, Albany and New York City. This input, and advice from the State Board of Pharmacy, assisted in the development of the proposed regulations.

Section 6829 of the Education Law, as added by section 3 of Part V of Chapter 57 of the Laws of 2012, includes the following provisions:

- The legislation applies to covered pharmacies, which the legislation defines as a pharmacy that is part of a group of eight of eight or more pharmacies, located within New York State and owned by the same corporate entity.
- Covered pharmacies are required to provide interpretation and translation services to LEP individuals in their preferred pharmacy primary language, free of charge.
- The legislation defines the preferred pharmacy primary languages as those that are spoken by 1% or more of the population, as determined by the U.S. Census, for each region, as established by the Department, provided that no pharmacy need provide services in more than seven languages.
- Interpretation and translation services may be provided by pharmacy staff or third-party contractors.
- Pharmacies will not be liable for injuries resulting from the actions of a third party as long as the pharmacy entered into the contract reasonably and in good faith.
- Every covered pharmacy must conspicuously display a notice, in the pharmacy primary languages, notifying patients of the available interpretation and translation services.
- The legislation requires the Department to develop a process whereby a covered pharmacy may seek a waiver from these requirements if it can demonstrate that implementation is unnecessarily burdensome when compared to the need for services.
- The legislation also requires the Commissioner, in consultation with the Department of Health, to establish translation and interpretation requirements for mail-order pharmacies; such requirements will be effective March 30, 2014. The Department anticipates that it will come before the Regents with these regulations sometime early next year.

As noted above, the law delegated to the Department the responsibility

of establishing the regions to be used in determining the languages in which translation and interpretation services must be provided. The Board of Pharmacy and Department staff considered a number of options, such as dividing the State into 6-8 regions, dividing the State into an upstate and a downstate region only, dividing the State on a county-by-county basis, and considering the State in its entirety as one region. After discussions with stakeholders representing both covered pharmacies and LEP individuals, it was determined that the last option was preferred because it provided services to a large portion of the LEP population in an efficient and cost-effective manner. Establishing the State as a single region will result in four pharmacy primary languages statewide – Chinese, Italian, Russian and Spanish. This approach will expedite the adoption of standardized interpretation and translation services by covered pharmacies and will provide for more languages to be covered in nearly all upstate communities than other options.

It should be noted that New York City has a local law regarding the provision of language assistance, interpretation, and translation services to LEP individuals. Both the enacting statute and the proposed regulations contain provisions that make it clear that neither the new law nor the regulations promulgated to implement it will diminish requirements existing pursuant to this New York City law.

Additionally, in the course of the development of the proposed regulations, the Civil Rights Bureau of the State Attorney General's Office provided information concerning settlement agreements it has with seven large retail pharmacy chains pursuant to which those chains have been providing language assistance, interpretation, and translation services in approximately 10 different languages to LEP individuals throughout the state. While all but one of those agreements will be expiring in 2013, there is nothing in the law or the proposed regulation that would prohibit any pharmacy from providing language assistance, interpretation, and translation services in additional languages.

Education Law § 6830, as added by section 4 of Part V of Chapter 57 of the Laws of 2012, requires the Commissioner to develop regulations requiring the use of standardized patient-centered data elements on all prescription medication labels. It also requires the Commissioner to obtain input from its Boards of Pharmacy and Medicine, consumer groups, advocates for special populations, pharmacists physicians, other health care professionals authorized to prescribe, and other interested parties, in the development of patient-centered prescription labels. Such labeling is intended to increase patient understanding and compliance with medication regimens.

Regarding patient-centered labeling, the Boards of Pharmacy and Medicine relied, in part, on previous studies conducted by the United States Pharmacopeia and by the National Association of Boards of Pharmacy. Based on these studies, the proposed amendment requires that prescription labels must have certain, critical elements, including patient name, the drug name and directions, that must be bolded and/or highlighted and be in at least 12-point font. The proposed regulation also requires that directions for patient use be written in full sentences. Other important information must also be included on the label, including among other things, the patient's address, the pharmacy address and the name of the prescriber, but the manner in which such information is included on the label must not detract from the critical elements.

4. COSTS:

(a) There are no additional costs to state under the statute.

(b) There are no additional costs to local government.

(c) Cost to private regulated parties. The proposed amendments do not impose any additional costs on regulated parties beyond those required under the statute.

(d) There are no additional costs to the regulating agency.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any programs, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment does not imposes any new paperwork or reporting requirements beyond those required by statute.

7. DUPLICATION:

The proposed amendment does not duplicate other existing state or federal requirements.

8. ALTERNATIVES:

See Needs and Benefits section, above.

9. FEDERAL STANDARDS:

Federal standards do not apply, nor does the proposal exceed federal standards.

10. COMPLIANCE SCHEDULE:

The proposed amendment becomes effective on March 30, 2013, which is the effective date of the relevant portions of the new law. Covered pharmacies and registered pharmacists must comply with the proposed amendment on its stated effective date.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF THE RULE: This rule will affect all pharmacies registered by the State Education Department. The State Education Department estimates that of the 5,044 registered pharmacies in New York State, approximately 2,506 are small businesses.

2. COMPLIANCE REQUIREMENTS: There are no compliance requirements beyond those imposed by Part V of Chapter 57 of the Laws of 2012.

The 2012 New York State budget legislation included amendments to the Education Law, which amendments are commonly referred to as the SafeRx Law (L. 2012, c. 57, Part V). This new law, which becomes effective March 30 2013, includes provisions to assist Limited English Proficient (LEP) individuals who need interpretation and translation services when filling prescriptions at pharmacies. The law also requires the Commissioner of Education to develop rules and regulations to provide more patient-friendly prescription labels for all patients.

Over the course of the months following passage of this legislation the Office of the Professions sought input from interested stakeholders. In addition to receiving written comments, there were three opportunities for oral presentations, one each in Buffalo, Albany and New York City. This input, and advice from the State Board of Pharmacy, assisted in the development of the proposed regulations.

Section 6829 of the Education Law, as added by section 3 of Part V of Chapter 57 of the Laws of 2012, includes the following provisions:

- The legislation applies to covered pharmacies, which the legislation defines as a pharmacy that is part of a group of eight of eight or more pharmacies, located within New York State and owned by the same corporate entity.
- Covered pharmacies are required to provide interpretation and translation services to LEP individuals in their preferred pharmacy primary language, free of charge.
- The legislation defines the preferred pharmacy primary languages as those that are spoken by 1% or more of the population, as determined by the U.S. Census, for each region, as established by the Department, provided that no pharmacy need provide services in more than seven languages.
- Interpretation and translation services may be provided by pharmacy staff or third-party contractors.
- Pharmacies will not be liable for injuries resulting from the actions of a third party as long as the pharmacy entered into the contract reasonably and in good faith.
- Every covered pharmacy must conspicuously display a notice, in the pharmacy primary languages, notifying patients of the available interpretation and translation services.
- The legislation requires the Department to develop a process whereby a covered pharmacy may seek a waiver from these requirements if it can demonstrate that implementation is unnecessarily burdensome when compared to the need for services.
- The legislation also requires the Commissioner, in consultation with the Department of Health, to establish translation and interpretation requirements for mail-order pharmacies; such requirements will be effective March 30, 2014. The Department anticipates that it will come before the Regents with these regulations sometime early next year.

As noted above, the law delegated to the Department the responsibility of establishing the regions to be used in determining the languages in which translation and interpretation services must be provided. The Board of Pharmacy and Department staff considered a number of options, such as dividing the State into 6-8 regions, dividing the State into an upstate and a downstate region only, dividing the State on a county-by-county basis, and considering the State in its entirety as one region. After discussions with stakeholders representing both covered pharmacies and LEP individuals, it was determined that the last option was preferred because it provided services to a large portion of the LEP population in an efficient and cost-effective manner. Establishing the State as a single region will result in four pharmacy primary languages statewide – Chinese, Italian, Russian and Spanish. This approach will expedite the adoption of standardized interpretation and translation services by covered pharmacies and will provide for more languages to be covered in nearly all upstate communities than other options.

It should be noted that New York City has a local law regarding the provision of language assistance, interpretation, and translation services to LEP individuals. Both the enacting statute and the proposed regulations contain provisions that make it clear that neither the new law nor the regulations promulgated to implement it will diminish requirements existing pursuant to this New York City law.

Additionally, in the course of the development of the proposed regulations, the Civil Rights Bureau of the State Attorney General's Office provided information concerning settlement agreements it has with seven large retail pharmacy chains pursuant to which those chains have been providing language assistance, interpretation, and translation services in approximately 10 different languages to LEP individuals throughout the state. While all but one of those agreements will be expiring in 2013, there

is nothing in the law or the proposed regulation that would prohibit any pharmacy from providing language assistance, interpretation, and translation services in additional languages.

Education Law § 6830, as added by section 4 of Part V of Chapter 57 of the Laws of 2012, requires the Commissioner to develop regulations requiring the use of standardized patient-centered data elements on all prescription medication labels. It also requires the Commissioner to obtain input from its Boards of Pharmacy and Medicine, consumer groups, advocates for special populations, pharmacists physicians, other health care professionals authorized to prescribe, and other interested parties, in the development of patient-centered prescription labels. Such labeling is intended to increase patient understanding and compliance with medication regimens.

Regarding patient-centered labeling, the Boards of Pharmacy and Medicine relied, in part, on previous studies conducted by the United States Pharmacopeia and by the National Association of Boards of Pharmacy. Based on these studies, the proposed amendment requires that prescription labels must have certain, critical elements, including patient name, the drug name and directions, that must be bolded and/or highlighted and be in at least 12-point font. The proposed regulation also requires that directions for patient use be written in full sentences. Other important information must also be included on the label, including among other things, the patient's address, the pharmacy address and the name of the prescriber, but the manner in which such information is included on the label must not detract from the critical elements.

3. PROFESSIONAL SERVICES: The proposed amendment will not require pharmacies to obtain professional services in order to comply, beyond those services required by the statute.

4. COMPLIANCE COSTS: The proposed amendment will not impose any additional costs on pharmacies beyond those imposed by Part V of Chapter 57 of the Laws of 2012.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY: The proposed amendment does not impose any additional technological requirements on small businesses.

6. MINIMIZING ADVERSE IMPACT: See Compliance section, above.

7. SMALL BUSINESS PARTICIPATION: Comments on the proposed regulations were solicited from the Department of Health, statewide organizations representing parties having an interest in providing services to persons of Limited English Proficiency and stakeholders in providing more clear direction to patients regarding their medication regimens. Included in this group were representatives of the State Boards of Pharmacy, Medicine, Nursing, Dentistry, Podiatry, and Midwifery, and professional associations representing the pharmacy profession, such as the Pharmacists Society of the State of New York and the New York State Council of Health System Pharmacists and the New York Chain Pharmacy Association. These groups have representation from small businesses.

(b) Local Governments:

The proposed amendment implements the provisions of Part V of Chapter 57 of the Laws of 2012, which requires all covered pharmacies that are part of a group of eight or more pharmacies to provide competent oral interpretation and translation services to persons of Limited English Proficiency (LEP). Pharmacies must provide these services in those languages spoken by 1% or more of the population in a given region, as defined by the Education Department. The proposed regulations define the State as one region, thereby requiring LEP services in four languages other than English, those being Chinese, Italian, Russian and Spanish. The proposed regulations also define the elements of patient-centered labels that will be required for all prescriptions filled in New York State. Because it is evident from the nature of the proposed amendment that it does not effect local governments, no regulatory flexibility analysis for local governments has been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The regulations will apply to 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. Of the 24,162 pharmacists registered by the State Education Department, 2,971 pharmacists report their permanent address of record is in a rural county. Likewise, of the 5,044 registered pharmacies in New York State, 782 are located in rural counties.

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

The proposed amendment implements the provisions of Part V of Chapter 57 of the Laws of 2012, which requires all covered pharmacies that are part of a group of eight or more pharmacies to provide competent oral interpretation and translation services to persons of Limited English Proficiency (LEP). Pharmacies must provide these services in those languages spoken by 1% or more of the population in a given region, as defined by the Education Department. The proposed regulations define the State as one region, thereby requiring LEP services in four languages other than English, those being Chinese, Italian, Russian and Spanish. The proposed regulations also define the elements of patient-centered labels that will be required for all prescriptions filled in New York State.

3. COSTS:

The proposed amendments do not impose any additional costs on regulated parties beyond those required under the statute.

4. MINIMIZING ADVERSE IMPACT:

In developing the proposed amendments, the Department obtained input from representatives of the professions of nursing, medicine, podiatry, midwifery and dentistry. In addition, it held public hearings in Buffalo, Albany, and New York City. More than 20 public advocacy groups and representatives of the retail pharmacy chains have commented on the proposals. Further discussions were then held with representatives of the advocacy groups and of the retail pharmacy chains. The concerns of those commenting on the proposals were taken into account in modifying the original proposal, and the proposal represented in the proposed regulations was acceptable to both the advocacy groups and the chain retail pharmacies. The proposals make no exception for individuals who live in rural areas, as the legislation did not permit such an exception.

5. RURAL AREAS PARTICIPATION:

Comments on the proposed regulations were solicited from the Department of Health, statewide organizations representing parties having an interest in providing services to persons of Limited English Proficiency and stakeholders in providing more clear direction to patients regarding their medication regimens. Included in this group were representatives of the State Boards of Pharmacy, Medicine, Nursing, Dentistry, Podiatry, and Midwifery, and professional associations representing the pharmacy profession, such as the Pharmacists Society of the State of New York and the New York State Council of Health System Pharmacists and the New York Chain Pharmacy Association. These groups have representation from rural areas.

Job Impact Statement

The proposed amendment implements the provisions of Part V of Chapter 57 of the Laws of 2012, which becomes effective March 30 2013 and includes provisions requiring certain large pharmacy chains to provide competent oral interpretation and translation services to persons of Limited English Proficiency when filling prescriptions in such individual's preferred pharmacy language, as defined by the Commissioner in regulations. The law also requires the Commissioner of Education to develop rules and regulations to provide more patient-friendly prescription labels for all patients. The proposed amendment implements these provisions.

Because it is evident from the nature of the proposed amendments that they will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Accessing Public or Private Benefits and Insurance to Pay for Special Education Programs and Services Under the IDEA

I.D. No. EDU-15-13-00020-P

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

Proposed Action: Amendment of section 200.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 4402(2) and 4403(3)

Subject: Accessing public or private benefits and insurance to pay for special education programs and services under the IDEA.

Purpose: Conforms Commissioner's Regulations to federal parental notice and consent requirements in 34 CFR 300.154.

Public hearing(s) will be held at: 3:00 p.m. – 5:00 p.m., May 14, 2013 at Education Department, Education Bldg., Seminar Rm. 5A/B, Albany, NY, Rm. Capacity: 70 (approx.), Directions: http://usny.nysed.gov/contact/driving.html, Parking: http://ogs.ny.gov/BU/BA/Parking/Visitor/; 3:00 p.m. – 5:00 p.m.*, May 14, 2013 at Education Department, Hughes State Office Bldg., Second Fl. - Video Rm., 333 E. Washington St., Syracuse, NY, Rm. Capacity: 20 (approx.), Directions: http://www.dhr.ny.gov/doc/syracuse.pdf; 3:00 p.m. – 5:00 p.m., May 13, 2013 at Shirley A. Chisholm State Office Bldg., 55 Hanson Place, Rm. 416, Brooklyn, NY, Rm. Capacity: 60 (approx.), Directions: http://www.acces.nysed.gov/vr/brooklyn/directions.htm

*The Syracuse and New York City public hearings will be conducted by videoconference.

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. Subparagraph (v) of paragraph (1) of subdivision (b) of section 200.5 of the Regulations of the Commissioner of Education is repealed, effective July 3, 2013.

2. Paragraphs (8) and (9) of subdivision (b) of section 200.5 of the Regulations of the Commissioner of Education are added, effective July 3, 2013, as follows:

8. Students with disabilities who are covered by public benefits or insurance.

(i) Consent. Prior to accessing a student's or parent's public benefits or insurance for the first time, after providing notification to the student's parents consistent with subparagraph (ii) of this paragraph, the school district must obtain the written consent of the parent, consistent with the confidentiality requirements of sections 99.30 and 300.622 of the Code of Federal Regulations (Code of Federal Regulations, 2013 edition, title 34, sections 99.30 and 300.622, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2013 - available at the Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234), which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular student), the purpose of the disclosure (e.g., billing for special education services), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program, such as Medicaid or Supplemental Security Insurance); and specify that the parent understands and agrees that the public agency may access the parent's or student's public benefits or insurance to pay for services under this Part.

(ii) Notification. Prior to accessing a student's or parent's public benefits or insurance for the first time, and annually thereafter, the school district must provide the student's parents with written notification, consistent with the requirements of subdivision (a)(4) of this section, that includes:

(a) a statement of the parental consent provisions in subparagraph (i) of this paragraph;

(b) a statement that the parents are not required to sign up for or enroll in public benefits or insurance programs in order for their child to receive a free appropriate public education under Part B of the Individuals with Disabilities Education Act;

(c) a statement that the parents are not required to incur an out-of-pocket expense, such as the payment of a deductible or co-pay amount, incurred in filing a claim for services pursuant to this Part;

(d) a statement that the school district may not use the student's benefits under a public benefits or insurance program if that use would:

(1) decrease available lifetime coverage or any other insured benefit;

(2) result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;

(3) increase premiums or lead to the discontinuation of benefits or insurance; or

(4) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;

(e) a statement that the parents have the right, pursuant to Parts 99 and 300 of Title 34 of the Code of Federal Regulations, to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

(f) a statement that the withdrawal of consent or refusal to provide consent under Parts 99 and 300 of Title 34 of the Code of Federal Regulations to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(9) Students with disabilities who are covered by private insurance. With regard to services required to provide a free appropriate public education to an eligible student under this Part, a school district may access the parents' private insurance proceeds only if the parents provide consent consistent with section 200.1(l) of this Part. Each time the school district proposes to access the parents' private insurance proceeds, the school district must obtain such parental consent, and inform the parents that their refusal to permit the school district to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

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) 474-6400, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: James P. DeLorenzo, Assistant Commissioner P-12, State Education Department, Office of Special Education, State Education Building, Room 309, 89 Washington Ave., Albany, NY 12234, (518) 402-3353, email: spedpubliccomment@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 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) and (2) provide the Commissioner, as chief executive officer of the State education system, with general supervision over schools and institutions subject to the provisions of education law, and responsibility for executing Regents policies. Section 305(20) authorizes the Commissioner with such powers and duties as are charged by the Regents.

Education Law section 4402 establishes school district duties for the education of students with disabilities.

Education Law section 4403 establishes Department duties concerning education programs and services to students with disabilities. Section 4403(3) authorizes the Department to formulate rules and regulations as the Commissioner deems in their best interests.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives in the aforementioned statutes to ensure that students with disabilities are provided with a free appropriate public education consistent with federal law and regulations.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to recent changes in federal regulation regarding the conditions for which a school district must comply prior to accessing a child's or parent's public or private benefits or insurance to pay for special education and related services necessary to provide a free appropriate public education (FAPE). On March 18, 2013, amendments to 34 CFR section 300.154 became effective to authorize school districts to obtain a one-time written consent from a student's parents prior to accessing a child's or parent's public benefits or insurance for the first time, provided that school districts provide written notification prior to accessing public benefits or insurance for the first time and annually thereafter.

School districts are expected to benefit from this change because it provides administrative relief of the requirement to obtain parent consent each time prior to billing a public benefit or insurance program. As a result, school districts are expected to be able to bill public insurance (e.g., Medicaid) for more students.

4. COSTS:

a. Costs to State government: None.

b. Costs to local government: None.

c. Costs to regulated parties: None.

d. Costs to the State Education Department of implementation and continuing compliance: None.

The proposed amendment merely conforms the Regulations of the Commissioner of Education to recent changes in federal law regarding the provision of written notice and obtaining written informed consent prior to accessing a child's or parent's public benefits or insurance to pay for special education and related services necessary to provide FAPE. It does not impose any additional costs on the State, local governments, private regulated parties or the State Education Department beyond those imposed by federal and State statutes and regulations. The proposed amendment will decrease administrative burdens and costs for school districts while protecting parental rights.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment merely conforms the Commissioner's Regulations to a recent change in federal law, and does not impose any additional program, service, duty or responsibility upon local governments beyond those imposed by federal and State statutes and regulations. The proposed amendment reflects recent changes in federal law regarding the provision of written notice and obtaining written informed consent prior to accessing a child's or parent's public benefits or insurance to pay for special education and related services necessary to provide FAPE, and ensures that the Regulations of the Commissioner of Education are consistent with these changes. The proposed amendment will require school districts to provide written notice to parents prior to accessing a child's or parent's public benefits or insurance for the first time and annually there-

after and to obtain written consent prior to accessing a child's or parent's public benefits or insurance for the first time. Consistent with federal requirements, the proposed amendment further provides that, a school district may access the parents' private insurance proceeds only if it obtains the parents' written consent, consistent with section 200.1(l) of the Commissioner's Regulations, each time the school district proposes to access such proceeds, and informs the parents that their refusal to permit the school district to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

6. PAPERWORK:

The proposed amendment merely conforms the Commissioner's Regulations to a recent change in federal law, and does not impose any additional paperwork requirements beyond those imposed by federal and State statutes and regulations.

7. DUPLICATION:

The proposed amendment does not duplicate, overlap or conflict with any other State or federal statute or regulation, and is necessary to conform the Commissioner's Regulations to 34 CFR section 300.154, as amended.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Commissioner's Regulations to a recent change in federal law. There are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum standards of the federal government for the same or similar subject areas and is necessary to conform the Commissioner's Regulations to a recent change in federal law.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to parental consent and notification requirements for a local educational agency to use public benefits or insurance to pay for special education and related services under the Individuals with Disabilities Education Act, and is necessary to conform the Commissioner's Regulations to the amendment of 34 CFR section 300.154(d), which became effective on March 18, 2013.

The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. No affirmative steps are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required, and one has not been prepared.

Local Government:

The proposed amendment applies to all public school districts in the State that serve students with disabilities and access children's or parents' public benefits or insurance to pay for special education and related services necessary to provide a free appropriate public education.

1. COMPLIANCE REQUIREMENTS:

The proposed amendment merely conforms the Commissioner's Regulations to a recent change in federal law, and does not impose any compliance requirements upon local governments, beyond those imposed by federal and State statutes and regulations. The proposed amendment reflects recent changes in federal law regarding the provision of written notice and obtaining written informed consent prior to accessing a child's or parent's public benefits or insurance to pay for special education and related services necessary to provide FAPE, and ensures that the Regulations of the Commissioner of Education are consistent with these changes.

The proposed amendment will require school districts to provide written notice to parents prior to accessing a child's or parent's public benefits or insurance for the first time and annually thereafter and to obtain written consent prior to accessing a child's or parent's public benefits or insurance for the first time. Consistent with federal requirements, the proposed amendment further provides that, a school district may access the parents' private insurance proceeds only if it obtains the parents' written consent, consistent with section 200.1(l) of the Commissioner's Regulations, each time the school district proposes to access such proceeds, and informs the parents that their refusal to permit the school district to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

2. PROFESSIONAL SERVICES:

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

3. COMPLIANCE COSTS:

The proposed amendment merely conforms the Regulations of the Commissioner of Education to recent changes in federal law regarding the provision of written notice and obtaining written informed consent prior to accessing a child's or parent's public benefits or insurance to pay for special education and related services necessary to provide FAPE. It does not impose any additional costs on local governments beyond those imposed by federal and State statutes and regulations.

4. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements or additional costs on local governments. The proposed amendment will decrease administrative burdens and costs for school districts while protecting parental rights.

5. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to a recent change in federal law and does not impose any additional compliance requirements or costs on local governments. The proposed amendment will decrease administrative burdens and costs for school districts while protecting parental rights.

6. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute it to schools within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five large city districts.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OR RURAL AREAS:

The proposed amendment applies to all public school districts in the State that serve students with disabilities and access children's or parents' public benefits or insurance to pay for special education and related services necessary to provide a free appropriate public education, 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 merely conforms the Commissioner's Regulations to a recent change in federal law, and does not impose any compliance requirements upon entities in rural areas, beyond those imposed by federal and State statutes and regulations. The proposed amendment reflects recent changes in federal law regarding the provision of written notice and obtaining written informed consent prior to accessing a child's or parent's public benefits or insurance to pay for special education and related services necessary to provide FAPE, and ensures that the Regulations of the Commissioner of Education are consistent with these changes.

The proposed amendment will require school districts to provide written notice to parents prior to accessing a child's or parent's public benefits or insurance for the first time and annually thereafter and to obtain written consent prior to accessing a child's or parent's public benefits or insurance for the first time. Consistent with federal requirements, the proposed amendment further provides that, a school district may access the parents' private insurance proceeds only if it obtains the parents' written consent, consistent with section 200.1(l) of the Commissioner's Regulations, each time the school district proposes to access such proceeds, and informs the parents that their refusal to permit the school district to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

3. COSTS:

The proposed amendment merely conforms the Regulations of the Commissioner of Education to recent changes in federal law regarding the provision of written notice and obtaining written informed consent prior to accessing a child's or parent's public benefits or insurance to pay for special education and related services necessary to provide FAPE. It does not impose any additional costs on entities in rural areas beyond those imposed by federal and State statutes and regulations.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to a recent change in federal law and does not impose any additional compliance requirements or costs on entities in rural areas. The proposed amendment will decrease administrative burdens and costs for school districts while protecting parental rights.

The federal law to which the proposed amendment conforms the Commissioner's Regulations applies to all school districts and BOCES throughout the State that serve students with disabilities and access children's or parents' public benefits or insurance to pay for special education and related services necessary to provide a free appropriate public education, 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:

The proposed amendment was submitted for review and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

Job Impact Statement

The proposed amendment relates to prior written notice and parental consent for the use of public benefits or insurance to pay for special educa-

tion services and related services required under the Individuals with Disabilities Act, and is necessary to conform the Commissioner's Regulations to the amendment of 34 CFR section 300.154(d), which became effective on March 18, 2013.

The proposed amendment will not have an impact on jobs and employment opportunities. Because it is evident from the nature of the amendment that it will not affect job 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.

Department of Financial Services

NOTICE OF ADOPTION

Excess Line Placements Governing Standards

I.D. No. DFS-45-12-00002-A

Filing No. 323

Filing Date: 2013-03-21

Effective Date: 2013-04-10

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

Action taken: Amendment of Part 27 (Regulation 41) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 307, 308, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2130, 3103, 5907, 5909, 5911 and 9102

Subject: Excess Line Placements Governing Standards.

Purpose: To update the ''Export List'' of coverages pursuant to Insurance Law section 2118(b)(4).

Text or summary was published in the November 7, 2012 issue of the Register, I.D. No. DFS-45-12-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Sally Geisel, NYS Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-5287, email: sallygeisel@dfs.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2016, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

In response to the proposed thirteenth amendment to 11 NYCRR 27, the Department received one public comment from an organization representing insurance agents and brokers, which indicated that certain risks, about which it had testified during the public hearing were appropriate for addition to the export list, had been omitted from this rulemaking. These risks include alcohol and/or drug rehabilitation centers; alcohol and/or drug rehabilitation programs; residential facilities including convalescent centers, nursing homes, and assisted care facilities; day care centers for adults, children or the physically or mentally disabled; halfway houses for adults, children and/or the physically or mentally disabled; hospice care service providers; social services agencies; foster care service providers; and home health care providers. These risks are actually already on the export list, but subject to a revised number of declinations, instead of the three declinations that are usually required. The Superintendent determined that there is selective capacity for these coverages in the authorized market, and thus that they should remain subject to the partial reduction in the number of requisite declinations currently in place.

Accordingly, the amendment to Section 27.3(g) is being adopted as proposed.

AMENDED NOTICE OF ADOPTION

Consolidation of the New York State Insurance and Banking Departments into a New Department of Financial Services

I.D. No. DFS-29-12-00004-AA

Filing No. 324

Filing Date: 2013-03-21

Effective Date: 2013-06-01

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

Action taken: Amendment of Parts 9 (Regulation 46), 65-3 (Regulation 68-C), 216 (Regulation 64), 218 (Regulation 90) and 241 (Regulation 71) of Title 11 NYCRR.

Amended action: This action amends the rule that was filed with the Secretary of State on February 27, 2013, to be effective April 1, 2013, File No. 233. The notice of adoption, I.D. No. DFS-29-12-00004-A, was published in the February 27, 2013 issue of the *State Register*.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, section 301

Subject: Consolidation of the New York State Insurance and Banking Departments into a new Department of Financial Services.

Purpose: Revise hyperlinks and references that are outdated due to Insurance and Banking Department consolidation, and for new addresses.

Text of amended rule: Section 9.1 is amended as follows:

Section 9.1. Distribution and sale of publications of the [Insurance] Department *of Financial Services*

(a) Except as otherwise provided in subdivisions (b) and (c) of this section, a fee shall be charged in accordance with the itemized schedule attached hereto (see Appendix 6) for any blank, report, pamphlet, document or other publication of the [Insurance] Department furnished or distributed to the public. Many of the current year publications listed in Appendix 6 are also available electronically ([with] *at* no charge) through the [Insurance] Department's Web site located at [http://www.ins.state.ny.us/mailing.htm] *http://www.dfs.ny.gov/reportpub/dfs__reportpub.htm*.

(b) No fee shall be charged for furnishing a report or other document to the Governor, the Legislature, any of the State departments or representatives of the press. The Director of the Budget may prescribe other cases in which no fee shall be charged.

(c) No charge shall be made for blank forms, reports, pamphlets and other printed documents necessary or proper in the conduct of the official business of the [Insurance] Department.

Section 65-3 is amended as follows:

NYS Form NF-10 to Appendix 13 is repealed and a new NYS Form NF-10 to Appendix 13 is added.

Section 216.6(h) is amended as follows:

(h) Any notice rejecting any element of a claim involving personal property insurance shall contain the identity and the claims processing address of the insurer, the insured's policy number, the claim number, and the following statement prominently set [out] *forth*:

"Should you wish to take this matter up with the New York State [Insurance] Department *of Financial Services*, you may file with the Department either on its website at [www.ins.state.ny.us/complhow.htm] *http://www.dfs.ny.gov/consumer/fileacomplaint.htm* or you may write to or visit the Consumer [Services Bureau] *Assistance Unit*, *Financial Frauds and Consumer Protection Division,* New York State [Insurance] Department *of Financial Services*, at: [25 Beaver] *One State* Street, New York, NY 10004; One Commerce Plaza, Albany, NY 12257; [200 Old Country Road, Suite 340] *163B Mineola Boulevard*, Mineola, NY 11501; or Walter J. Mahoney Office Building, 65 Court Street, Buffalo, NY 14202."

Section 216.7(d) is amended as follows:

(d) Unreasonable delay.

(1) Unless clear justification exists, no more than 20 percent of a representative sample of the physical damage claims selected by [Insurance] Department *of Financial Services* examiners at any office or offices of the insurer shall have a payment period in excess of 30 calendar days. A payment period is the period between the date of receipt of notice of loss by the insurer and:

(i) the date the settlement check is mailed; or

(ii) the date on which the damaged motor vehicle is replaced by the insurer.

If an insurer is in violation of this overall standard, then each such claim in excess of 30 calendar days may be treated as a separate violation.

(2) If any element of a physical damage claim remains unresolved

more than 30 calendar days from the date of receipt of notice by the insurer, the insurer shall provide the insured with a written explanation of the specific reasons for delay in the claim settlement. Unless the matter is in litigation, an updated letter of explanation shall be sent every 30 calendar days thereafter until all elements of the claim are either honored or rejected.

(3) Any letter of explanation or rejection of any element of a claim shall contain the identity and claims processing address of the insurer, the insured's policy number, the claim number and the following statement, prominently set [out] *forth*:

"Should you wish to take this matter up with the New York State [Insurance] Department *of Financial Services*, you may file with the Department either on its website at [www.ins.state.ny.us/complhow.htm] *http://www.dfs.ny.gov/consumer/fileacomplaint.htm* or you may write to or visit the Consumer [Services Bureau] *Assistance Unit*, *Financial Frauds and Consumer Protection Division,* New York State [Insurance] Department *of Financial Services*, at: [25 Beaver] *One State* Street, New York, NY 10004; One Commerce Plaza, Albany, NY 12257; [200 Old Country Road, Suite 340] *163B Mineola Boulevard*, Mineola, NY 11501; or Walter J. Mahoney Office Building, 65 Court Street, Buffalo, NY 14202."

Section 218.5(a) is amended as follows:

(a) The following notice shall be clearly and prominently set out in boldface type on the front (except that the company name, company representative, company address and company phone number may be stamped, or typed in the appropriate place in the notice), so that it draws the reader's attention on all notices of refusal to issue, cancellation or nonrenewal, except where the cancellation is for nonpayment of premium; and on all notices of termination of agents' and brokers' contracts or accounts, which are subject to this Part:

If you have any questions in regard to this termination, please contact this company's representative at (company phone number, name of company representative, company address). The New York Insurance Law prohibits insurers from engaging in redlining practices based upon geographic location of the risk or the producer. If you have reason to believe that we have acted in violation of such law, you may file your complaint with the Department either on its website at [www.ins.state.ny.us/complhow.htm] *http://www.dfs.ny.gov/consumer/fileacomplaint.htm* or by writing to the State of New York [Insurance] Department *of Financial Services*, Consumer [Services Bureau] *Assistance Unit*, *Financial Frauds and Consumer Protection Division,* at either [25 Beaver] *One State* Street, New York, NY 10004 or One Commerce Plaza, Albany, NY 12257.

Section 241.2(a) is amended as follows:

(a) Requests for access to records available to the public under the Insurance Law and the Freedom of Information Law shall be made to the records access officers in the office of general counsel in the Albany or New York City office of the department. Such request for access shall be made on a form prescribed by the department for such purpose, which may be obtained from the department's *Public Affairs* Bureau [of Public Affairs and Research] in Albany or in New York City, or from the department's web site at [www.ins.state.ny.us] *http://www.dfs.ny.gov/legal/foil.htm*.

Amended rule as compared with adopted rule: Nonsubstantive changes were made in Form NF-10 and sections 216.6(h), 216.7(d)(3) and 218.5(a).

Text of amended rule and any required statements and analyses may be obtained from: Sally Geisel, NYS Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-5287, email: sally.geisel@dfs.ny.gov

Revised Regulatory Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement ("RIS") for the Amendment of Part 9 (Insurance Regulation 46); Amendment of Part 65-3 (Insurance Regulation 68-C); Amendment of Part 216 (Insurance Regulation 64); Amendment of Part 218 (Insurance Regulation 90); Amendment of Part 241 (Insurance Regulation 71).

The amendment to the adopted rule merely changes the effective date of the rule from April 1, 2013 to June 1, 2013 and corrects a zip code and an address included on the NYS form NF-10 that accompanies Appendix 13, which requires no change to the Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments ("RFASBLG") for the Amendment of Part 9 (Insurance Regulation 46); Amendment of Part 65-3 (Insurance Regulation 68-C); Amendment of Part 216 (Insurance Regulation 64); Amendment of Part 218 (Insurance Regulation 90); Amendment of Part 241 (Insurance Regulation 71).

The amendment to the adopted rule merely changes the effective date of the rule from April 1, 2013 to June 1, 2013 and corrects a zip code and an address included on the NYS form NF-10 that accompanies Appendix 13, which requires no change to the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Revised Rural Area Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis ("RAFA") for the Amendment of Part 9 (Insurance Regulation 46); Amendment of Part 65-3 (Insurance Regulation 68-C); Amendment of Part 216 (Insurance Regulation 64); Amendment of Part 218 (Insurance Regulation 90); Amendment of Part 241 (Insurance Regulation 71).

The amendment to the adopted rule merely changes the effective date of the rule from April 1, 2013 to June 1, 2013 and corrects a zip code and an address included on the NYS form NF-10 that accompanies Appendix 13, which requires no change to the Rural Area Flexibility Analysis.

Revised Job Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published Job Impact Statement ("JIS") for the Amendment of Part 9 (Insurance Regulation 46); Amendment of Part 65-3 (Insurance Regulation 68-C); Amendment of Part 216 (Insurance Regulation 64); Amendment of Part 218 (Insurance Regulation 90); Amendment of Part 241 (Insurance Regulation 71).

The amendment to the adopted rule merely changes the effective date of the rule from April 1, 2013 to June 1, 2013 and corrects a zip code and an address included on the NYS form NF-10 that accompanies Appendix 13, which requires no change to the Job Impact Statement.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Brokers and Agents - Generally

I.D. No. DFS-15-13-00010-P

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

Proposed Action: Amendment of Part 20 (Regulation 29) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301 and 2120

Subject: Brokers and Agents - Generally.

Purpose: To permit producers to establish premium accounts in Internet banks and other banks that are not physically located in New York.

Text of proposed rule: Subdivision 20.3(a) is hereby amended to read as follows:

(a) This section is issued for the purpose of interpreting, and facilitating compliance with, section 2120(a) and (c) of the Insurance Law. *For purposes of this section:*

(1) "Bank" means a federally or state-chartered commercial bank, trust company, savings bank, savings and loan association or other depository institution.

(2) "Premium account" means an account as defined in subdivision (b)(1) of this section.

(3) "FDIC" means the Federal Deposit Insurance Corporation.

(4) "Principal" means the person or other entity for whom the funds are held in a fiduciary capacity.

Subdivision 20.3(b) is hereby amended to read as follows:

(b) Every insurance agent and every insurance broker *acting as such in this State* is responsible as a fiduciary for funds received by such agent or broker in such capacity; all such funds shall be held in accordance with the following paragraphs:

(1) An *insurance* agent or broker [who] that does not make immediate remittance to insurers [and] *or* [assureds] *insureds* of such funds shall deposit them in one or more appropriately identified accounts *(hereinafter, "premium accounts")* in [a bank] *one* or *more FDIC-insured* banks [duly authorized to do business in this State, from which no]. *No* withdrawals shall be made *from a premium account* except as hereinafter specified [(any such account is hereinafter referred to as "a premium account")].

(2) All of the funds of each principal held by the insurance agent or broker in a premium account must be fully insured by the FDIC. However, an insurance agent or broker may hold funds for a principal in a premium account in an amount that exceeds the FDIC coverage limit, provided that the insurance agent or broker obtains the written consent of the principal that the funds in excess of the FDIC coverage limits will not be so insured. Such consent may be obtained on a blanket basis at the initiation of the principal's relationship with the agent or broker or thereafter, and in such circumstances need not subsequently be obtained every time a principal's funds held will exceed the FDIC coverage limit, provided that the blanket consent clearly specifies its scope and extent.

(3) An insurance agent or broker may not maintain a premium ac-

count in a bank that imposes a membership or similar requirement on the principal.

(4) The title of each premium account shall reflect the fiduciary nature of the bank account; for example, "[name of insurance agent or broker] - Premium Account."

[(2)] *(5)* An *insurance* agent or broker [who] *that* makes immediate remittance to insurers and [assureds] *insureds* of such funds need not maintain a premium account for such funds.

[(3)] *(6)* Deposits in a premium account in excess of aggregate net premiums received but not remitted may be made to maintain a minimum balance, to guarantee the adequacy of the account, or to pay premiums due but uncollected ([any such deposit is] hereinafter, [referred to as] "[a*/* voluntary deposits").

[(4)] *(7)* No withdrawals from a premium account shall be made other than for payment of premiums to insurers[,]; payment of return premiums to [assureds] *insureds*[,]*;* transfer to an operating account of (i) interest, if the principals have consented thereto in writing [and] *or* (ii) commissions[,]*; and* withdrawal of voluntary deposits; provided, however, that no withdrawal may be made if the balance remaining in the premium account thereafter is less than aggregate net premiums received but not remitted.

[(5)] *(8)* Deposit of [a] premium in a premium account shall not be construed as a commingling of the net premium and of the commission portion of the premium.

[(6)] *(9)* In the case of an agent operating under an "account current system", maintenance at all times in one or more premium accounts of at least the net balance of premiums received but not remitted shall be construed as compliance with section 2120(a) and (c) of the Insurance Law, provided that the funds so held for each such principal are reasonably ascertainable from the agent's records.

Text of proposed rule and any required statements and analyses may be obtained from: Pascale Jean-Baptiste, New York State Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-5289, email: pascale.jeanbaptiste@dfs.ny.gov

Data, views or arguments may be submitted to: Paul Zuckerman, New York State Department of Financial Services, 25 Beaver Street, New York, New York 10004, (212) 480-5286, email: paul.zuckerman@dfs.ny.gov

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

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the adoption of the fourth amendment to 11 NYCRR 20 is derived from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301 and 2120 of the Insurance Law.

Section 202 of the Financial Services Law establishes the office of the Superintendent and designates the Superintendent of Financial Services as the head of the Department of Financial Services ("Department").

FSL section 302 and section 301 of the Insurance Law, in relevant part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law.

Section 2120 of the Insurance Law establishes, among other things, that insurance agents and brokers are responsible in a fiduciary capacity for the insurance funds that they receive or collect in their capacity as agents and brokers, and may not, without the express consent of the principal, commingle such funds with any funds held in any other capacity.

2. Legislative objectives: The proposed amendment furthers the goals of Section 2120 by ensuring that insurance agents and brokers ("producers"), as fiduciaries, will maintain their principals' funds in a safe and secure manner.

3. Needs and benefits: Regulation 29 establishes minimum requirements for bank accounts when producers hold fiduciary funds, including premium monies, before the funds are remitted to insurers or insureds. The proposed amendment will modernize Regulation 29 by permitting producers to place premium accounts in banks that are not physically located in New York, and permitting producers to hold premium amounts in excess of the FDIC insurance limit of $250,000 in defined circumstances.

The impetus for the proposed amendment was a proposal submitted to the Department by Independent Insurance Agents & Brokers of New York, Inc. ("IIABNY"). The proposal states that IIABNY's national association, the Independent Insurance Agents & Brokers of America ("IIABA"), had established a federally chartered savings bank, InsurBanc, headquartered in Connecticut and authorized to do business in all 50 states, including New York, and the District of Columbia. InsurBanc does business primarily via the Internet and does not have a physical location in New York, and IIABNY urged the Department to modify existing requirements to allow producers to maintain their premium accounts in InsurBanc. The Department had also been asked in the past to allow premium accounts to be held in other out-of-state banks, particularly with respect to non-resident producers.

Regulation 29 has had the same requirements for premium accounts for nearly 50 years and was originally written in a time when banking business was conducted more locally. The proposed amendment modernizes Regulation 29 to reflect current business practices, including Internet banking. To that end, the proposed amendment would permit insurance producers to maintain their premium accounts in banks (including internet and out-of-state banks) that are duly authorized to do business in New York by virtue of a state or federal charter, regardless of whether such banks are physically located or licensed in New York, provided that the banks are United States, and not foreign, banks.

Prior OGC opinions have concluded that fiduciary funds in premium accounts must be fully FDIC-insured. See OGC Opinion No. 07-02-12 and OGC Opinion No. 07-03-06. These opinions have interpolated such a requirement, relying upon the trustworthiness standard that producers must maintain under Insurance Law § 2110. The Department recognizes, however, that although the FDIC requirement is applied to the funds of each principal separately, for large producers, who routinely collect premiums from principals that exceed $250,000, the current FDIC insurance limit of $250,000 may create an undue administrative burden. In order to meet this requirement, producers may need to open many premium accounts in different banks to ensure that all fiduciary funds are FDIC-insured. This proposal would allow an insurance producer to hold the funds in a premium account in an amount that exceeds the FDIC insurance coverage limit, provided that the insurance producer first obtains the written consent of the principal. However, the producer need not obtain the principal's consent each time the principal's funds would exceed the FDIC insurance coverage limit. The producer may choose to modify existing agreements that were entered into at the inception of the producer's relationship with the principal to obtain the principal's consent on a blanket basis.

This amendment also makes it clear that producers may not open premium accounts in depository institutions, such as credit unions, that impose membership restrictions on the principal, because producers may not require principals to become members of such depository institutions as a condition of obtaining insurance.

4. Costs: The proposed amendment imposes no compliance costs upon state or local governments. With regard to the requirement that the funds of the principal must be fully FDIC-insured, the Department does not anticipate that this proposal will impose significant additional costs upon producers, since the existing regulation already requires producers to keep records identifying who the principal is and to track the funds of each principal. Producers should already have the information necessary for them to ensure that the funds of each principal are fully FDIC-insured. However, any producer that has not been complying with existing tracking requirements could incur minor additional costs. Additionally, producers should not incur significant additional costs to modify existing agreements in order to obtain the principal's written consent for funds above $250,000 not to be fully FDIC-insured. Further, given the membership restrictions that credit unions typically impose, it is unlikely that a large number of producers currently maintain their premium accounts in credit unions and will have to open new accounts. For those producers that do use credit unions, the Department anticipates that the cost to individual producers to move an account from a credit union to a bank will likely be negligible.

5. Local government mandates: The proposed amendment imposes no new mandates on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The proposed amendment requires no additional paperwork. The record keeping requirements are the same as before the amendment. Some producers may need to modify existing agreements with their principals to specifically obtain the principal's written consent that their funds may not be fully FDIC-insured.

7. Duplication: There are no known federal or other states' requirements that duplicate, overlap, or conflict with this regulation.

8. Alternatives: The Department conducted several rounds of outreach to the insurance industry and consumer groups, and considered multiple design alternatives, including the following:

a) Use of a Bank that is Duly Authorized in New York:

Under the current regulation, an insurance producer that does not immediately remit fiduciary funds to an insurer or insured must deposit such funds in a premium account that must be located in a "bank that is duly authorized to do business in New York". See 11 NYCRR § 20.3(b)(1). The Department's Office of General Counsel ("OGC") has historically interpreted this language to mean that producers' premium accounts must be placed in banks that are physically located in New York.

After examining industry comments on this issue, the Department has reconsidered the requirement that producers must maintain their accounts in banks that are duly authorized to do business in New York, since banks are not required to be separately licensed in each state to do business therein, but are authorized to do business in the United States by virtue of

a state or federal charter. Moreover, the concept of physical presence in a state does not reflect the current business practices of banks, including Internet banking. However, because the proposed amendment requires all fiduciary funds to be FDIC-insured unless the producer obtains the written consent of the principal, and the FDIC does not insure the deposits of foreign banks, producers must maintain their premium accounts in United States banks.

Also, the Department received industry comments arguing that requiring non-resident producers to maintain accounts in this state may be inconsistent with reciprocity standards. After careful review of industry comments, and based on discussions with the National Association of Insurance Commissioners ("NAIC"), the Department has eliminated the requirement that non-resident producers must maintain accounts in this state.

b) Bank Consent Requirement:

A prior draft allowed producers to maintain their premium accounts in banks that are not duly authorized to do business in New York, provided that the bank files a notarized statement with the superintendent that it consents to be subject to the jurisdiction of New York State and federal courts and to comply with the superintendent's subpoenas or orders as they relate to such premium accounts. The purpose of this requirement was to ensure that the Department would have full access to producer premium account records should there be cause to bring a disciplinary proceeding against the producer. Upon further review, and in light of industry comments, the Department has eliminated this requirement because, in the past, the Department has not encountered significant problems with producers refusing to provide the Department with premium account records.

c) Credit Unions:

The Department has reconsidered whether credit unions should be eligible depository institutions for producer premium accounts. The Department understands that generally under both Federal and State law, all principals must be members of a federal credit union for the principal's premium funds to be included in a premium account and for the National Credit Union Share Insurance Fund to insure the principal's share of the premium funds in the premium account. See 12 U.S.C.A. § 1759; New York Banking Law § 451; 12 CFR § § 745.0 and 745.1. The Department believes that with respect to producer premium accounts, such a membership requirement would be impractical at best and would raise significant public policy concerns. Insurance Law §§ 2324 and 4224 prohibit producers from requiring an insured to become a member of a credit union as a condition of purchasing insurance through the producer.

In light of the above, the proposed amendment clarifies that an insurance agent or broker may not maintain a premium account in a bank that imposes a membership or similar requirement on the principal.

d) FDIC Insurance Requirement:

OGC opinions interpreting Insurance Law § 2120 have historically concluded that fiduciary funds held in premium accounts must be fully insured by the Federal Deposit Insurance Corporation ("FDIC"). Although the FDIC insurance requirement applies to the funds of each principal separately, for large insurance agents and brokers, who routinely collect premiums from principals that exceed $250,000, the current FDIC insurance limit of $250,000 may create administrative burdens. In order to meet this requirement, producers may need to open many premium accounts in different banks for the same principal to ensure that the fiduciary funds of each principal are FDIC-insured. Therefore, the proposed amendment would allow insurance producers to hold the funds in premium accounts in amounts that exceed the FDIC insurance coverage limit, provided that the insurance producer first obtains the written consent of the principal. The producer may obtain such consent on a blanket basis at the inception of the principal's relationship with the producer or thereafter. In such circumstances, the producer need not obtain the principal's consent each time a principal's funds in the premium account will exceed the FDIC coverage limit, provided that the consent clearly specifies that it applies to the premium account on an ongoing, blanket, basis.

9. Federal standards: There are no applicable federal standards.

10. Compliance schedule: Producers are required to comply immediately.

Regulatory Flexibility Analysis

1. Effect of rule: There are approximately 248,234 producers licensed in New York, of which 196,765 are insurance agents and 51,469 are insurance brokers. Most of these producers are considered to be small businesses within the meaning of section 102(8) of SAPA.

2. Compliance requirements: This proposal does not impose any new reporting requirements on regulated entities. The Department does not currently require producers to report to the Department on the minimum records that they are required to keep. However, if the Department chooses to examine the producer for compliance with applicable provisions of the Insurance Law and regulations, the producer must make those records available at the Department's request. Also, this proposal does not impose any new record keeping requirements on producers. Producers may use their existing records to identify and track a principal's funds to ensure that the funds are fully FDIC-insured.

3. Professional services: This proposal does not require the use of any professional services.

4. Compliance costs: This proposal imposes no compliance costs on local governments. The Department does not anticipate that this proposal will impose significant additional costs on producers, since the existing regulation already requires producers to keep records to identify who the principal is and to track the funds of each principal. However, any producer that has not been complying with existing requirements could incur additional costs. Producers should not incur significant additional costs to modify current agreements to obtain a principal's consent that the principal's funds above $250,000 will not be fully FDIC-insured, since a producer may obtain the consent of the principal on a blanket basis at the inception of the relationship. Under those circumstances, the producer need not obtain the principal's consent each time the principal's funds will exceed the FDIC insurance coverage limit. Nor should producers incur significant additional costs to move a premium account from a credit union to an eligible depository institution.

5. Economic and technological feasibility: This proposal does not impose any new compliance requirements that are economically or technologically unfeasible. Producers may continue to choose methods of compliance that are economically or technologically feasible based upon the needs and capabilities of each particular producer.

6. Minimizing adverse impact: This proposal applies equally to all producers, since Section 2120 of the Insurance Law applies to all producers, regardless of their size.

7. Small business and local government participation: The Department informally circulated a number of drafts of the proposal to various trade associations representing affected licensees, many of which are small businesses, and received comments on these drafts. After careful consideration of industry comments, the Department revised the proposal, where feasible. This notice is intended to provide small businesses with an additional opportunity to participate in the rule-making process.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurance agents and brokers to which this regulation is applicable do business in every county of the State, including rural areas as defined under section 102(13) of the State Administrative Procedure Act. The proposed regulation will apply to all agents and brokers ("producers") licensed by this Department, regardless of whether they are in rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The proposed amendment requires no additional paperwork. The paperwork associated with this amendment should already be available in the records of each regulated entity. Some producers may need to modify existing agreements with their principals to obtain the principals' written consent that funds over $250,000 will not be fully FDIC-insured.

3. Costs: The Department does not anticipate that this proposal will impose significant additional costs upon producers, since the existing regulation already requires producers to keep records identifying who the principal is and to track the funds of each principal. However, any producer that has not been complying with existing requirements could incur minor additional costs. Additionally, producers should not incur significant additional costs to modify existing agreements in order to obtain a principal's written consent. Further, given the membership restrictions that credit unions typically impose, it is unlikely that a large number of producers currently maintain their premium accounts in credit unions and will have to open new accounts. For those producers that do use credit unions, the Department anticipates that the cost to individual producers to move the account from a credit union to a bank will likely be negligible.

4. Minimizing adverse impact: The requirements of Section 2120 of the Insurance Law apply equally to all producers, irrespective of whether they are located in rural or non-rural areas. Because the same requirements apply to both rural and non-rural entities, the proposed amendment will have the same impact on all affected entities.

5. Rural area participation: The Department informally circulated a number of drafts of the proposal to various trade associations representing producers in both rural and non-rural areas, and received comments on these drafts. After careful consideration of industry comments, the Department revised the proposal, where feasible.

Job Impact Statement

The proposed amendment should have no significant impact on jobs and economic opportunities in this State. The requirements imposed upon producers are not so onerous that they would discourage individuals from working or creating jobs and economic opportunities in New York.

Department of Health

EMERGENCY RULE MAKING

Personal Care Services Program (PCSP) and Consumer Directed Personal Assistance Program (CDPAP)

I.D. No. HLT-15-13-00008-E
Filing No. 322
Filing Date: 2013-03-21
Effective Date: 2013-03-21

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

Action taken: Amendment of sections 505.14 and 505.28 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 201(1)(v); and Social Services Law, sections 363-a(2), 365-a(2)(e) and 365-f

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

Specific reasons underlying the finding of necessity: Pursuant to the authority vested in the Commissioner of Health by Social Services Law § 365-a(2)(e), the Commissioner is authorized to adopt standards, pursuant to emergency regulation, for the provision and management of services for individuals whose need for such services exceeds a specified level to be determined by the Commissioner.

Subject: Personal Care Services Program (PCSP) and Consumer Directed Personal Assistance Program (CDPAP).

Purpose: To establish definitions, criteria and requirements associated with the provision of continuous PC and continuous CDPA services.

Text of emergency rule: Paragraph (3) of subdivision (a) of section 505.14 is repealed and a new paragraph (3) is added to read as follows:

(3) Continuous personal care services means the provision of uninterrupted care, by more than one person, for more than 16 hours per day for a patient who, because of the patient's medical condition and disabilities, requires total assistance with toileting, walking, transferring or feeding at times that cannot be predicted.

Paragraph (4) of subdivision (a) of section 505.14 is amended by adding new subparagraph (iii) to read as follows:

(iii) Personal care services shall not be authorized if the patient's need for assistance can be met by either or both of the following:

(a) voluntary assistance available from informal caregivers including, but not limited to, the patient's family, friends or other responsible adult; or formal services provided by an entity or agency; or

(b) adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers and wheelchairs, when such equipment or supplies can be provided safely and cost-effectively.

Paragraph (5) of subdivision (a) of section 505.14 is repealed and a new paragraph (5) is added to read as follows:

(5) Live-in 24-hour personal care services means the provision of care by one person for a patient who, because of the patient's medical condition and disabilities, requires some or total assistance with one or more personal care functions during the day and night and whose need for assistance during the night is infrequent or can be predicted.

Clause (b) of subparagraph (i) of paragraph (6) of subdivision (a) of section 505.14 is amended to read as follows:

(b) The [initial] authorization for Level I services shall not exceed eight hours per week. [An exception to this requirement may be made under the following conditions:

(1) The patient requires some or total assistance with meal preparation, including simple modified diets, as a result of the following conditions:

(i) informal caregivers such as family and friends are unavailable, unable or unwilling to provide such assistance or are unacceptable to the patient; and

(ii) community resources to provide meals are unavailable or inaccessible, or inappropriate because of the patient's dietary needs.

(2) In such a situation, the local social services department may authorize up to four additional hours of service per week.]

Clause (b) of subparagraph (ii) of paragraph (6) of subdivision (a) of section 505.14 is amended to read as follows:

(b) When continuous [24-hour care] *personal care services* is indicated, additional requirements for the provision of services, as specified in clause (b)(4)(i)(c) of this section, must be met.

Clause (c) of subparagraph (ii) of paragraph (3) of subdivision (b) of section 505.14 is relettered as clause (d) and a new clause (c) is added to read as follows:

(c) When live-in 24-hour personal care services is indicated, the social assessment shall evaluate whether the patient's home has adequate sleeping accommodations for a personal care aide.

Subclauses (5) and (6) of clause (b) of subparagraph (iii) of paragraph (3) of subdivision (b) of section 505.14 are renumbered as subclauses (6) and (7), and new subclause (5) is added to read as follows:

(5) an evaluation whether adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers and wheelchairs, can meet the patient's need for assistance with personal care functions, and whether such equipment or supplies can be provided safely and cost-effectively;

Subclause (7) of clause (a) of subparagraph (iv) of paragraph (3) of subdivision (b) of section 505.14 is amended to read as follows:

(7) whether the patient can be served appropriately and more cost-effectively by using *adaptive or* specialized medical equipment *or supplies* covered by the MA program including, but not limited to, *bedside commodes, urinals, walkers, wheelchairs and* insulin pens; and

Clause (c) of subparagraph (iv) of paragraph (3) of subdivision (b) of section 505.14 is amended to read as follows:

(c) A social services district may determine that the assessments required by subclauses (a)(1) through *(6) and* (8) of this subparagraph may be included in the social assessment or the nursing assessment.

Clause (c) of subparagraph (i) of paragraph (4) of subdivision (b) of section 505.14 is amended to read as follows:

(c) the case involves the provision of continuous [24-hour] personal care services as defined in paragraph (a)(3) of this section. Documentation for such cases shall be subject to the following requirements:

Subclause (2) of clause (c) of subparagraph (i) of paragraph (4) of subdivision (b) of section 505.14 is amended to read as follows:

(2) The nursing assessment shall document that: the functions required by the patient[,]*;* the degree of assistance required for each function*, including that the patient requires total assistance with toileting, walking, transferring or feeding;* and the time of this assistance require the provision of continuous [24-hour care] *personal care services*.

Subparagraph (ii) of paragraph (4) of subdivision (b) of section 505.14 is amended to read as follows:

(ii) The local professional director, or designee, must review the physician's order and the social, nursing and other required assessments in accordance with the standards for levels of services set forth in subdivision (a) of this section, and is responsible for the final determination of the level and amount of care to be provided. *The local professional director or designee may consult with the patient's treating physician and may conduct an additional assessment of the patient in the home.* The final determination must be made [within five working days of the request] *with reasonable promptness, generally not to exceed seven business days after receipt of the physician's order and the completed social and nursing assessments, except in unusual circumstances including, but not limited to, the need to resolve any outstanding questions regarding the level, amount or duration of services to be authorized.*

Paragraph (4) of subdivision (b) of section 505.28 is amended to read as follows:

(4) "continuous [24-hour] consumer directed personal assistance" means the provision of uninterrupted care, by more than one consumer directed personal assistant, *for more than 16 hours per day* for a consumer who, because of the consumer's medical condition [or] *and* disabilities, requires total assistance with toileting, walking, transferring or feeding at [unscheduled times during the day and night] *at times that cannot be predicted*.

Paragraphs (8) through (13) of subdivision (b) of section 505.28 are renumbered as paragraphs (9) through (14) and the renumbered paragraph (9) is amended to read as follows:

(9) "personal care services" means the nutritional and environmental support functions, personal care functions, or both such functions, that are specified in Section 505.14(a)(6) of this Part *except that, for individuals whose needs are limited to nutritional and environmental support functions, personal care services shall not exceed eight hours per week.*

A new paragraph (8) of subdivision (b) of section 505.28 is added to read as follows:

(8) "live-in 24-hour consumer directed personal assistance" means the provision of care by one consumer directed personal assistant for a consumer who, because of the consumer's medical condition and disabilities, requires some or total assistance with personal care functions, home health aide services or skilled nursing tasks during the day and night and whose need for assistance during the night is infrequent or can be predicted.

Subparagraph (iii) of paragraph (2) of subdivision (d) of section 505.28

is amended, and new subparagraphs (iv) and (v) of such paragraph are added, to read as follows:

(iii) an evaluation of the potential contribution of informal supports, such as family members or friends, to the individual's care, which must consider the number and kind of informal supports available to the individual; the ability and motivation of informal supports to assist in care; the extent of informal supports' potential involvement; the availability of informal supports for future assistance; and the acceptability to the individual of the informal supports' involvement in his or her care [.] *and;*

(iv) for cases involving continuous consumer directed personal assistance, documentation that: all alternative arrangements for meeting the individual's medical needs have been explored or are infeasible including, but not limited to, the provision of consumer directed personal assistance in combination with other former services or in combination with contributions of informal caregivers; and

(v) for cases involving live-in 24-hour consumer directed personal assistance, an evaluation whether the individual's home has adequate sleeping accommodations for a consumer directed personal assistant.

Subparagraph (i) of paragraph (3) of subdivision (d) of section 505.28 is repealed and a new subparagraph (i) is added to read as follows:

(i) The nursing assessment must be completed by a registered professional nurse who is employed by the social services district or by a licensed or certified home care services agency or voluntary or proprietary agency under contract with the district.

Clauses (g) and (h) of subparagraph (ii) of paragraph (3) of subdivision (d) of section 505.28 are relettered as clauses (h) and (i) and a new clause (g) is added to read as follows:

(g) for continuous consumer directed personal assistance cases, documentation that: the functions the consumer requires; the degree of assistance required for each function, including that the consumer requires total assistance with toileting, walking, transferring or feeding; and the time of this assistance require the provision of continuous consumer directed personal assistance;

Paragraph (5) of subdivision (d) of section 505.28 is amended to read as follows:

(5) Local professional director review. If there is a disagreement among the physician's order, nursing and social assessments, or a question regarding the level, amount or duration of services to be authorized, or if the case involves continuous [24-hour] consumer directed personal assistance, an independent medical review of the case must be completed by the local professional director, a physician designated by the local professional director or a physician under contract with the social services district. The local professional director or designee must review the physician's order and the nursing and social assessments and is responsible for the final determination regarding the level and amount of services to be authorized. *The local professional director or designee may consult with the consumer's treating physician and may conduct an additional assessment of the consumer in the home*. The final determination must be made with reasonable promptness, generally not to exceed [five] *seven* business days after receipt of the physician's order and the completed social and nursing assessments, except in unusual circumstances including, but not limited to, the need to resolve any outstanding questions regarding the level, amount or duration of services to be authorized.

Paragraph (1) of subdivision (e) of section 505.28 is amended to read as follows:

(1) When the social services district determines pursuant to the assessment process that the individual is eligible to participate in the consumer directed personal assistance program, the district must authorize consumer directed personal assistance according to the consumer's plan of care. The district must not authorize consumer directed personal assistance unless it reasonably expects that such assistance can maintain the individual's health and safety in the home or other setting in which consumer directed personal assistance may be provided. *Consumer directed personal assistance shall not be authorized if the consumer's need for assistance can be met by either or both of the following:*

(i) voluntary assistance available from informal caregivers including, but not limited to, the consumer's family, friends or other responsible adult; or formal services provided by an entity or agency; or

(ii) adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers and wheelchairs, when such equipment or supplies can be provided safely and cost-effectively.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 18, 2013.

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:

Social Services Law ("SSL") § 363-a(2) and Public Health Law § 201(1)(v) provide that the Department has general rulemaking authority to adopt regulations to implement the Medicaid program.

The Commissioner has specific rulemaking authority under SSL § 365-a(2)(e)(ii) to adopt standards, pursuant to emergency regulation, for the provision and management of personal care services for individuals whose need for such services exceeds a specified level to be determined by the Commissioner.

Under SSL § 365-a(2)(e)(iv), personal care services shall not exceed eight hours per week for individuals whose needs are limited to nutritional and environmental support functions.

Legislative Objectives:

The Legislature sought to reform the Medicaid personal care services program by controlling expenditure growth and promoting self-sufficiency.

The Legislature authorized the Commissioner of Health to adopt standards for the provision and management of personal care services for Medicaid recipients whose need for such services exceeds a specified level. The regulations adopt such standards for Medicaid recipients who seek continuous personal care services or continuous consumer directed personal assistance for more than 16 hours per day.

The Legislature additionally sought to promote the goal of self-sufficiency among Medicaid recipients who do not need hands-on assistance with personal care functions such as bathing, toileting or transferring. It determined that recipients whose need for personal care services is limited to nutritional and environmental support functions, such as shopping, laundry and light housekeeping, could receive no more than eight hours per week of such assistance.

Needs and Benefits:

The regulations have two general purposes: to conform the Department's personal care services and consumer directed personal assistance program (CDPAP) regulations to State law limiting the amount of services that can be authorized for individuals who require assistance only with nutritional and environmental support functions; and, to implement State law authorizing the Department to adopt standards for the provision and management of personal care services for individuals whose need for such services exceeds a specified level that the Commissioner may determine.

The term "nutritional and environmental support functions" refers to housekeeping tasks including, but not limited to, laundry, shopping and meal preparation. Department regulations refer to these support functions as "Level I" personal care services. Department regulations have long provided that social services districts cannot initially authorize Level I services for more than eight hours per week; however, an exception permitted authorizations for Level I services to exceed eight hours per week under certain circumstances.

The Legislature has nullified this regulatory exception. The regulations conform the Department's personal care services regulations to the new State law. They repeal the regulatory exception that permitted social services districts to authorize up to 12 hours of Level I services per week, capping such authorizations at no more than eight hours per week.

The regulations similarly amend the Department's CDPAP regulations. Some CDPAP participants are authorized to receive only assistance with nutritional and environmental support functions. Since personal care services are included within the CDPAP, it is consistent with the Legislature's intent to extend the eight hour weekly cap on nutritional and environmental services to that program.

The regulations also implement the Department's specific statutory authority to adopt standards pursuant to emergency regulation for the provision and management of personal care services for individuals whose need for such services exceeds a specified level. The Commissioner has determined to adopt such standards for individuals whose need for continuous personal care services or continuous consumer directed personal assistance exceeds 16 hours per day.

The regulations repeal the definition of "continuous 24-hour personal care services," replacing it with a definition of "continuous personal care services." The prior definition applied to individuals who required total assistance with certain personal care functions for 24 hours at unscheduled times during the day and night. The new definition applies to individuals who require such assistance for more than 16 hours per day at times that cannot be predicted.

Cases in which continuous personal care services are indicated must be referred to the local professional director or designee. Such referrals would now be required in additional cases: those involving provision of continuous care for more than 16 hours per day.

The regulations permit the local professional director or designee to consult with the recipient's treating physician and conduct an additional assessment of the recipient in the home.

The regulations amend the documentation requirements for nursing assessments in continuous personal care services cases.

The regulations add a definition of live-in 24 hour personal care services. This level of service has long existed, primarily in New York City, but has never been explicitly set forth in the Department's regulations. The regulations also require that, for recipients who may be eligible for such services, the social assessment evaluate whether the recipient's home has adequate sleeping accommodations for the live-in aide.

The regulations provide that personal care services shall not be authorized when the recipient's need for assistance can be met by the voluntary assistance of informal caregivers or by formal services or by adaptive or specialized equipment or supplies that can be provided safely and cost-effectively. The regulations require that the nursing assessments that districts currently complete or obtain include an evaluation whether adaptive or specialized equipment or supplies can meet the recipient's need for assistance and whether such equipment or supplies can be provided safely and cost-effectively.

The regulations adopt conforming amendments to the Department's CDPAP regulations.

Costs to Regulated Parties:

Regulated parties include entities that voluntarily contract with social services districts to provide personal care services to, or to perform certain CDPAP functions for, Medicaid recipients. These entities include licensed home care services agencies, agencies that are exempt from licensure, and CDPAP fiscal intermediaries.

Social services districts may no longer authorize certain Medicaid recipients to receive more than eight hours per week of assistance with nutritional and environmental support functions. To the extent that regulated parties were formerly reimbursed for more than eight hours per week for these services, their Medicaid revenue will decrease. This is a consequence of State law, not the regulations. The regulations do not impose any additional costs on these regulated parties.

Costs to State Government:

The regulations impose no additional costs on State government.

The statutory cap on nutritional and environmental support functions will result in cost-savings to the State share of Medicaid expenditures. The estimated annual personal care services and CDPAP cost-savings for subsequent State fiscal years are approximately $3.4 million.

This estimate is based on 2010 recipient and expenditure data for the personal care services program. According to such data, 2,377 New York City recipients received more than eight hours per week of Level I services, the average being 11 weekly hours of such service. The number of Level I hours that exceeded eight hours per week was thus approximately 370,800 hours (2,377 recipients x 3 hours per week x 52 weeks). Multiplying this hourly total by the 2010 average hourly New York City personal care aide cost ($17.30) results in total annual savings of $6.4, or $3.2 million in State share savings. Application of this calculation to the Rest of State recipient and expenditure data yields an additional $200,000 in State share savings, or $3.4 million.

State Medicaid cost-savings are also projected to occur as a result of changes to continuous personal care services authorizations. It is not possible to accurately estimate such savings. However, the Department anticipates that most recipients currently authorized for continuous 24-hour personal care services will continue to receive that level of care. Others may be authorized for continuous services for 16 hours per day or live-in 24 hour personal care services. Still others may be authorized for services for more than 16 hours per day but fewer than 24 hours per day.

The estimated State share savings for this portion of the regulations are $33.1 million. This comprises approximately $17.1 million in personal care savings and $15.9 million in CDPAP savings. This estimate is based on 2010 personal care services and CDPAP recipient and expenditure data. In 2010, 1,809 Medicaid recipients were authorized to receive more than 16 hours of services per day. The assumption is that these recipients were authorized for continuous 24-hour services, which has an average annual per person cost of approximately $166,000. Assuming that 20 percent were authorized for live-in 24-hour services at an average annual per person cost of approximately $83,000, and 15 percent were authorized for 16 hours per day at an average hourly cost of between approximately $17.00 and $22.00, depending on service and location, the annual State share savings per recipient would range from approximately $28,000 to $35,000.

Costs to Local Government:

The regulation will not require social services districts to incur new costs. State law limits the amount that districts must pay for Medicaid services provided to district recipients. Districts may claim State reimbursement for any costs they may incur when administering the Medicaid program.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

The regulations require social services districts to refer additional cases to their local professional directors or designees. Currently, the regulations require that such referrals be made for continuous 24 hour care and certain other cases. Under the proposed regulations, such referrals must also be made for recipients who may require continuous services for more than 16 hours.

Paperwork:

The regulations specify additional documentation requirements for the social and nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients. For persons who may be eligible for live-in 24 hour services, the social assessment must evaluate whether the recipient's home has adequate sleeping accommodations for the live-in aide. The nursing assessments for all personal care services and CDPAP cases, including those not involving continuous services, must include an evaluation whether adaptive or specialized equipment or supplies can meet the recipient's need for assistance and whether such equipment or supplies can be used safely and cost-effectively. The amendments to the CDPAP regulations also specify additional documentation requirements for the social and nursing assessments for cases involving continuous consumer directed personal assistance. These requirements mirror long-standing documentation requirements in the personal care services regulations.

Duplication:

The regulations do not duplicate any existing federal, state or local regulations.

Alternatives:

With respect to the regulation that caps authorizations for nutritional and environmental support functions to eight hours per week, no alternatives exist. The regulation must conform to State law that imposes this weekly cap. With respect to the regulation that establishes new requirements for continuous services, alternatives existed but were not now pursued. One such alternative may be the repeal of the regulatory authorization for continuous 24-hour services. The Department determined to promulgate further regulatory controls regarding the provision and management of continuous services, rather than repeal such services in their entirety.

Federal Standards:

This rule does not exceed any minimum federal standards.

Compliance Schedule:

The Department has issued instructions to social services districts advising them of the new State law that limits nutritional and environmental support functions to no more than eight hours per week for certain recipients. Districts should not now be authorizing more than eight hours per week of such assistance and should thus be able to comply with the regulations when they become effective. With regard to the remaining regulations, social services districts should be able to comply with the regulations when they become effective. For applicants, social services districts would apply the regulations when assessing applicants' eligibility for personal care services and the CDPAP. For current recipients, districts would apply the regulations upon reassessing these recipients' continued eligibility for services.

Regulatory Flexibility Analysis

Effect of Rule:

The regulation limiting authorizations of nutritional and environmental support functions to no more than eight hours per week primarily affects licensed home care services agencies and exempt agencies that provide only such Level I services. These entities are the primary employers of individuals providing Level I services. Most recipients of Level I personal care services are located in New York City. There are currently eight Level I only personal care service providers in New York City, none of which employ fewer than 100 persons.

Fiscal intermediaries that are enrolled as Medicaid providers and that facilitate payments for the nutritional and environmental support functions provided to consumer directed personal assistance program (CDPAP) participants may also experience slight reductions in service hours reimbursed. There are approximately 46 fiscal intermediaries that contract with social services districts. Fiscal intermediaries are typically non-profit entities such as independent living centers but may also include home care services agencies.

With respect to continuous care, a significant majority of existing 24-hour a day continuous care cases are located in New York City. There are currently 60 Level II personal care service providers in New York City, none of which employ fewer than 100 persons.

The regulations also affect social services districts. There are 62 counties in New York State, but only 58 social services districts. The City of New York comprises five counties but is one social services district.

Compliance Requirements:

Social services districts currently assess whether Medicaid recipients are eligible for personal care services and the CDPAP. When 24 hour continuous care is indicated, districts are currently required to refer such cases to the local professional director or designee for final determination.

The regulations would require districts to refer additional continuous care cases to the local professional director or designee; namely, those cases in which continuous care for more than 16 hours a day is indicated would also be referred to the local professional director or designee. The local professional director or designee would be required to consult with the recipient's treating physician before approving continuous care for more than 16 hours per day.

In addition, the nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients would be required to include an evaluation of whether adaptive or specialized equipment or supplies would be appropriate and could be safely and cost-effectively provided. In cases involving the authorization of live-in 24 hour services, the social assessments that districts currently are required to complete would have to include an evaluation whether the recipient's home had sufficient sleeping accommodations for a live-in aide.

Professional Services:

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

Compliance Costs:

No capital costs will be imposed as a result of this rule, nor are there any annual costs of compliance.

Economic and Technological Feasibility:

There are no additional economic costs or technology requirements associated with this rule.

Minimizing Adverse Impact:

The regulations should not have an adverse economic impact on social services districts. Districts currently assess Medicaid recipients to determine whether they are eligible for personal care services or the CDPAP. The regulations modify these assessment procedures. Should districts incur administrative costs to comply with the regulation, they may seek State reimbursement for such costs.

Small businesses providing Level I personal care services and consumer directed environmental and nutritional support functions may experience slight reductions in service hours provided. This is a consequence of State law limiting these services to no more than eight hours per week.

Small businesses currently providing continuous 24-hour services may experience some reductions in service hours provided.

Small Business and Local Government Participation:

The Department solicited comments on the regulations from the New York City Human Resources Administration, which administers the personal care services program and CDPAP for New York City Medicaid recipients who are not enrolled in managed care. Most of the State's personal care services and CDPAP recipients reside in New York City. Personal care services provided to New York City recipients comprises approximately 84 percent of Medicaid personal care services expenditures.

Small business and local governments also have the opportunity to provide input into the redesign of New York State's Medicaid program. The Medicaid Redesign Team (MRT) was tasked by Governor Cuomo to find ways to reduce costs and increase quality and efficiency in the Medicaid program for the 2011-12 Fiscal Year. As part of its work, the MRT sought and continues to seek ideas from the public at large, as well as experts in health care delivery and insurance, the health care workforce, economics, business, consumer rights and other relevant areas. The MRT conducted regional public hearings across the State to solicit ideas from the public on ways to reduce costs and improve the quality of the Medicaid program. Additionally, a web page was established, providing a vehicle for all individuals and organizations to provide ideas, comments and recommendations.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 persons or less per square mile. In 2010, only 6% of all continuous care cases resided in the counties listed below. Currently there are 34 organizations which maintain contracts with local districts to provide consumer directed environmental and nutritional support functions, and 50 individual licensed home care services agencies which maintain contracts with local districts to provide Level I personal care services, within the following 43 counties having populations of less than 200,000:

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

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

Social services districts would be required to refer additional cases to their local professional directors or designees. Currently, the personal care services and CDPAP regulations require that such referrals be made for recipients seeking continuous 24-hour services and in certain other cases. Under the regulations, such referrals must also be made for recipients who require continuous care for more than 16 hours. The regulations also specify additional documentation requirements for the social and nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients.

Costs:

There are no new capital or additional operating costs associated with the rule.

Minimizing Adverse Impact:

It is anticipated the rule will have minimal impact on rural areas as the Department has determined that the preponderance of Level I services in excess of eight hours per week occur in downstate urban areas. Additionally, in 2010, only 6% of all individuals receiving continuous care services resided in those counties listed above. To the extent that social services districts incur administrative costs to comply with the regulations' requirements for referral of continuous care cases and social and nursing assessment documentation requirements, they may seek State reimbursement of such expenses.

Rural Area Participation:

Individuals and organizations from rural areas have the opportunity to provide input into the redesign of New York State's Medicaid program. The Medicaid Redesign Team (MRT) is tasked by Governor Cuomo to find ways to reduce costs and increase quality and efficiency in the Medicaid program for the 2011-12 Fiscal Year. As part of its work, the MRT sought and continues to seek ideas from the public at large, as well as experts in health care delivery and insurance, the health care workforce, economics, business, consumer rights and other relevant areas. The MRT conducted regional public hearings across the State to solicit ideas from the public on ways to reduce costs and improve the quality of the Medicaid program. Additionally, a web page was established, providing a vehicle for all individuals and organizations to provide ideas, comments and recommendations.

Job Impact Statement

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Limits on Executive Compensation and Administrative Expenses in Agency Procurements

I.D. No. HLT-22-12-00012-RP

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

Proposed Action: Addition of Part 1002 to Title 10 NYCRR.

Statutory authority: Social Services Law, section 363-a(2); Public Health Law, sections 201(1)(o), (p), 206(3), (6); and Not-For-Profit Corporation Law, section 508

Subject: Limits on Executive Compensation and Administrative Expenses in Agency Procurements.

Purpose: Ensure state funds and state authorized payments are expended in the most efficient manner and appropriate use of funds.

Substance of revised rule: The revised rule would add a new Part 1002 to

10 NYCRR titled Limits on Administrative Expenses and Executive Compensation.

Section 1002.1 Contains definitions for purposes of this Part, including definitions for administrative expenses, covered operating expenses, covered executive, covered provider, executive compensation, program services, program services expenses, related organization, reporting period, State-authorized payments, and State funds. The regulations have been amended since the last Notice of Revised Rulemaking to specifically include those providing early intervention services among the defined "covered providers."

Section 1002.2 Limits on Administrative Expenses. Contains limits on the use of State funds or State-authorized payments for administrative expenses.

The restriction will apply to subcontractors and agents of covered providers which meet the specified criteria.

The restriction will apply to covered providers receiving State funds or State-authorized payments from county or local governments, rather than directly from a State agency, pursuant to specified criteria.

The revised regulation addresses how the restriction will apply in the event that a covered provider has multiple sources of State funds or State-authorized payments.

Section 1002.3 Limits on Executive Compensation. Contains restrictions on executive compensation provided to covered executives.

The restriction will apply to subcontractors and agents of covered providers which meet the specified criteria.

The restriction will apply to covered providers receiving State funds or State-authorized payments from county or local governments, rather than directly from a State agency, pursuant to specified criteria.

The revised rule addresses the application of this limit if the covered provider has multiple sources of State funds or State-authorized payments.

Section 1002.4 Waivers. Processes are established for covered providers to seek waivers of the limit on administrative expenses and the limits on executive compensation.

Section 1002.5 Reporting by Covered Providers. Covered providers are required to report information on an annual basis for each covered reporting period.

Section 1002.6 Penalties. A process is established for the imposition of penalties in the event of non-compliance with the limit on administrative expenses or the limits on executive compensation.

A copy of the full text of the regulatory proposal is available on the Department of Health website (www.health.ny.gov).

Revised rule making(s) were previously published in the State Register on October 31, 2012 and March 13, 2013.

Revised rule compared with proposed rule: Substantial revisions were made in section 1002.1(d)(3).

Text of revised proposed 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

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

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

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The agency received no public comment.

New York State Joint Commission on Public Ethics

EMERGENCY RULE MAKING

Source of Funding Reporting

I.D. No. JPE-37-12-00010-E

Filing No. 311

Filing Date: 2013-03-20

Effective Date: 2013-03-20

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

Action taken: Addition of Part 938 to Title 19 NYCRR.

Statutory authority: Executive Law, section 94(9)(c); Legislative Law, sections 1-h(c)(4) and 1-j(c)(4)

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

Specific reasons underlying the finding of necessity: The Public Integrity Reform Act of 2011 ("PIRA") was enacted in August 2011. PIRA established and included the new "source of funding" disclosure requirement, which became effective on June 1, 2012. The public, therefore, has been on notice since August 2011 that this new disclosure requirement was imminent. Furthermore, the purpose of source of funding is to promote transparency so that the public can appreciate the actual parties in interest who are substantially influencing the governmental decision making process.

In sum, the Source of Funding disclosure requirement was created by amending the Legislative Law to include a requirement that Client Filers, which are lobbyists and clients of lobbyists who spend at least $50,000 in reportable compensation and expenses and 3% of total expenditures on lobbying activities in New York State in a calendar year or twelve-month period (the "$50,000/3% expenditure threshold"), disclose the sources of funding over $5,000 from each single source used for such lobbying activities in New York State. PIRA mandates that JCOPE promulgate regulations implementing this new disclosure requirement. PIRA also provides that JCOPE shall specify a procedure for filers to seek an exemption if disclosure of a particular single source—or, in the case of certain organizations with tax-exempt status under I.R.C. § 501(c)(4), a class of sources—would cause harm, threats, harassment, or reprisals to the single source or to individuals or property affiliated with the single source, as well as an appeal procedure from denials of requests for such exemptions.

On December 21, 2012, notices for this emergency rule and proposed revised rule were filed with the DOS. This emergency rule clarified that source of funding reporting commenced on January 15, 2013, which was the filing deadline for the Client Semi Annual Report for the reporting period July 1, 2012 through December 31, 2012. Given that the source of funding statutory provision provides that a Client Filer shall look back up to 12 months to determine if it meets the "$50,000/3% expenditure threshold" and that the public and regulated population were on notice since at least January 1, 2012 that source of funding reporting would become effective, adopting this rule on an emergency basis on December 21, 2012 was necessary for the general welfare.

Similarly, this initial emergency re-adoption is necessary because the source of funding reporting requirement is continuous and ongoing. The next filing deadline is July 15, 2013 covering the period January 1, 2013 through June 30, 2013. JCOPE seeks to keep this emergency rule effective and in place until it adopts as final a version of the rules that is informed by the revised rulemaking process and JCOPE's review of the actual filings it received after the January 15, 2013 deadline that were based on the emergency rules.

By setting forth when and how sources of funding must be disclosed by Client Filers, as well as the narrow standards for exempting single sources from disclosure, this emergency rule provides the clarity that is imminently needed by the public and regulated population to ensure compliance with PIRA's statutory provisions and effective dates.

Subject: Source of Funding reporting.

Purpose: To implement reporting that will inform the public of efforts to influence government decision making by lobbying entities.

Substance of emergency rule: The Public Integrity Reform Act of 2011 ("PIRA") authorizes JCOPE to exercise the powers and duties set forth in Executive Law Section 94 with respect to lobbyists and clients of lobbyists as such terms are defined in article one-A of the Legislative Law. PIRA also amended the Legislative Law to include a requirement that lobbyists and clients of lobbyists who spend at least $50,000 in reportable compensation and expenses and 3% of total expenditures on lobbying activities in New York State in a calendar year or twelve-month period (the "expenditure threshold"), disclose the sources of funding over $5,000 from each single source used for such lobbying activities in New York State. PIRA mandates that JCOPE promulgate regulations implementing this new disclosure requirement. PIRA also provides that JCOPE shall specify a procedure in these regulations for filers to seek an exemption if disclosure of a particular single source - or, in the case of certain organizations with tax-exempt status under I.R.C. § 501(c)(4), a class of sources - would cause harm, threats, harassment, or reprisals to the single source or to individuals or property affiliated with the single source, as well as an appeal procedure from denials of requests for such exemptions. Thus, these regulations provide comprehensive reporting requirements that set forth when and how sources of funding must be disclosed by lobbyists and clients who meet the expenditure threshold, articulate narrow standards for exempting single sources from disclosure and establish an appeal process for denials from such exemptions.

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. JPE-37-12-00010-P, Issue of September 12, 2012. The emergency rule will expire May 18, 2013.

Text of rule and any required statements and analyses may be obtained from: Shari Calnero, Associate Counsel, Joint Commission on Public Ethics, 540 Broadway, Albany, NY 12207, (518) 408-3976, email: scalnero@jcope.ny.gov

Regulatory Impact Statement

1. Statutory authority: Legislative Law Section 1-h(c)(4) requires certain registered lobbyists whose lobbying activity is performed on its own behalf and not pursuant to retention by a client, and who meet the "$50,000-3% Expenditure Threshold" (referred to herein), to report the names of each source of funding over $5,000 from a single source used to fund lobbying activities in New York State. Similarly, Legislative Law Section 1-j(c)(4) requires certain clients who have retained, employed or designated a registered lobbyist, and who meet the "$50,000-3% Expenditure Threshold," to report the names of each source of funding over $5,000 from a single source used to fund lobbying activities in New York State. These lobbyists and clients are referred to in the proposed revised regulation and herein as "Client Filers." The statute also provide that, in certain circumstances, Client Filers can seek an exemption from disclosing one or more of their single sources provided certain criteria for exemption are met. Legislative Law Sections 1-h(c)(4) and 1-j(c)(4) direct the Joint Commission on Public Ethics ("JCOPE") to promulgate regulations to implement these requirements. More generally, Executive Law Section 94(9)(c) directs JCOPE to adopt, amend, and rescind rules and regulations to govern JCOPE procedures.

2. Legislative objectives: The Public Integrity Reform Act of 2011 ("PIRA") established JCOPE. PIRA authorizes JCOPE to exercise the powers and duties set forth in Executive Law Section 94 with respect to lobbyists and clients of lobbyists as such terms are defined in article one-A of the Legislative Law. PIRA also amended the Legislative Law to include a requirement that Client Filers who spend at least $50,000 in reportable compensation and expenses and 3% of total expenditures on lobbying activities in New York State in a calendar year or twelve-month period (the "$50,000/3% Expenditure Threshold"), disclose the sources of funding over $5,000 from each single source used for such lobbying activities in New York State. PIRA mandates that JCOPE promulgate regulations implementing this new disclosure requirement. PIRA also provides that JCOPE shall specify a procedure for filers to seek an exemption if disclosure of a particular single source—or, in the case of certain organizations with tax-exempt status under I.R.C. § 501(c)(4), a class of sources—would cause harm, threats, harassment, or reprisals to the single source or to individuals or property affiliated with the single source, as well as an appeal procedure from denials of requests for such exemptions. By setting forth when and how sources of funding must be disclosed by lobbyists and clients who meet the statutory conditions, as well as the narrow standards for exempting single sources from disclosure, these rules provide comprehensive reporting requirements for lobbyists and clients.

3. Needs and benefits: The proposed revised rulemaking is necessary to fulfill JCOPE's statutory mandate under PIRA. The revised regulations incorporate, in part, alternatives suggested by commenters in order to strike a reasonable balance between meaningful disclosure and the burden on filers by requiring a Client Filer to disclose in a client semi-annual report the identity of any single source who has contributed more than $5,000 to the Client Filer over the course of a calendar year and also the amount of that contribution based on a formula that is now incorporated into the revised regulation.

Part 938.2 defines key terms in the proposed revised regulations. Among other definitions, it sets forth the two calculation methods for determining when a lobbyist or client has met the statutorily prescribed $50,000/3% Expenditure Threshold for lobbying activity in New York State: a twelve-month calculation and a calendar-year calculation. The twelve-month calculation looks to the twelve-month period preceding and including the last day of the applicable client semi-annual reporting period. The calendar-year calculation spans from January 1 to the last day of the applicable client semi-annual reporting period. If the $50,000-3% Expenditure Threshold is met using either calculation, a client or lobbyist will be deemed to have met the financial spending threshold, triggering the disclosure requirement. This will provide for comprehensive disclosure as the Legislature intended. The proposed revised regulation does not amend the original proposal's definition of "Twelve-Month Calculation" or "Calendar-Year Calculation."

Based on public comments received, the Commission determined there was a need to revise the original proposal with respect to the amount of revenues from a single source reported by Client Filers to support lobbying activity within the state. Therefore, the proposed revised rule is substantially changed by adding the term "Amount of Contribution."

Part 932.2 defines a "Contribution" as any payment to, or for the benefit of, a lobbyist or client filer and which is intended to fund, in whole or in part, the filer's activities or operations. A payment in exchange for goods or services rendered or delivered directly to the individual or entity making the payment is not a contribution under these regulations.

The revised regulation utilizes a formula in the definition of "Amount of Contribution," which is provided herein verbatim:

Amount of Contribution(s) shall mean, for each Contribution not specifically designated for lobbying in New York, the product of (i) the dollar amount of the Contribution and (ii) Reportable Compensation and Expenses divided by Total Expenditures. The Amount of Contribution shall also include, in addition to the amount yielded by this formula, any Contribution specifically designated for lobbying in New York.

Therefore, under the proposed revised regulatory scheme, a Client Filer must still disclose the identity of any single source that contributes in excess of $5,000. The amount of contribution that is required to be reported, however, is now determined by the calculation contained in the definition of "Amount of Contribution." Like the previously proposed regulation, the proposed revised regulation recognizes that money is fungible, and that even if contributions to Client Filer are not expressly designated for lobbying activities in New York, those contributions can allow the Client Filer to spend other funds on lobbying activities. Thus, by disclosing the identity of qualifying single sources, the proposal advances the important governmental interest of promoting transparency in disclosing entities that support Client Filers, which are organizations and individuals that the Legislature has determined are engaged in significant lobbying activities (the $50,000-3% Expenditure Threshold) in New York.

Moreover, the proposed revised regulation promotes the disclosure called for in the law while giving effect to the specific language of the statue. Specifically, the "Amount of Contribution" definition recognizes that PIRA mandates disclosure of Contributions that "were used to fund lobbying activities" in New York. Legislative Law § 1-j(c)(4)(ii).

Part 938.2 defines a single source to include not only individuals and entities that make contributions to a client or lobbyist who must disclose its sources of funding, but also deems a single source two or more people living in the same house, two or more entities related in certain ways, such as parent/subsidiary, and a sole proprietorship and its sole proprietor. Such individuals and entities must only be reported as a single source if the filer has actual knowledge of the relationship in the case of people or entities, or reason to know of the relationship in the case of entities. This regulation will minimize incentives to evade disclosure through structured or coordinated contributions that individually do not total in excess of $5,000 but that exceed $5,000 when aggregated. The knowledge standards strike a reasonable balance that prevents this regulation from imposing too onerous of a burden on filers.

Part 938.3 specifies the reporting requirements for Contributions. Thus, under the reporting scheme set forth in both the original and revised proposal, Client Filers shall disclose the name, address and date that any such Contribution in excess of $5,000 is received from a single source. This revised proposal provides, however, that a Client Filer is required to report the Amount of the Contribution as defined in 938.2 and not necessarily the entire dollar amount of Contribution.

Part 938.3 also explains the methods by which contributions from a single source must be aggregated over a calendar year, and details how such contributions should be reported. Aggregating contributions over a calendar year to determine whether a single source has contributed more than $5,000 will provide the public with useful information, impose a reasonable burden on filers, and minimize instances where single sources could attempt to structure contributions across a calendar year in order to avoid disclosure.

Part 938.3 also clarifies that a lobbyist whose lobbying activity is performed on its own behalf and not pursuant to retention by a client need only report contributions received from a single source in a client semi-annual report and is not additionally required to report those contributions on a lobbyist bimonthly report. This determination is reasonable because it will require lobbyist-filers—who are also clients—to provide data more accurately and usefully through client semi-annual reports. The regulations simplify the reporting requirement and avoid the potential confusion that would be caused by dual reporting.

As required by statute, Parts 938.4 through 938.8 specify the standards and procedures that will be used by JCOPE in responding to filers' requests for exempting particular single sources from disclosure where disclosure of the single source will cause harm, threats, harassment or reprisals to the single source or individuals or property affiliated with the single source. The statute and regulations set out two tests for exemptions: one for those entities that have tax-exempt status under I.R.C. § 501(c)(4) and whose primary activities relate to an area of public concern, and one for all other clients or lobbyists required to disclose their sources of funding.

In the case of organizations with tax-exempt status under I.R.C.

§ 501(c)(4), a class of sources can be exempt from disclosure if the filer shows that its primary activities involve areas of public concern that create a substantial likelihood that disclosure of its single sources will cause harm, threats, harassment or reprisals to the single sources or individuals or property affiliated with the single sources. This standard is consistent with the statutory language and allows such organizations to more easily meet their burden to show that an entire class of contributors, as opposed to individual contributors, could suffer harm from disclosure.

All other filers must show by clear and convincing evidence that the same harms would result to a particular single source or single sources. For both types of filers, the proposed regulations provide a non-exclusive list of factors that JCOPE will consider in making this determination. These standards will ensure that the exemptions are only granted in narrow and compelling circumstances and will not be used as a means to avoid otherwise proper disclosure.

Part 938.5 explains the procedure for applying for an exemption from disclosure. Making such an application with respect to particular single sources does not relieve a filer from the obligation to disclose information about any other single sources that it is otherwise required to disclose.

Part 938.6 identifies the requirements for filing an appeal from a denial of an application for an exemption from disclosure. Part 938.7 sets forth the appeal procedure and the standard of review on appeal. An independent judicial hearing officer will review the entire record and will only reverse JCOPE's denial of an exemption if that denial is clearly erroneous in view of the evidence in the record. A decision by the judicial hearing officer to affirm or reverse the Commission's denial of an exemption will be considered a final determination by JCOPE. The requirements for filing an appeal create a streamlined process and provide filers with prompt determinations as to what single sources, if any, are exempt from disclosure.

Part 938.8 specifies that all exemption-related materials submitted by a filer will be kept confidential, but the fact that a filer has submitted such an application or that such an application has been granted will not, in itself, be confidential. This satisfies the need for confidentiality to protect the single sources at issue but also fulfills the objective of informing the public as to how the exemption process is used by filers.

Part 938.9 states that the penalties for filing a late or false, misleading, or knowingly inaccurate client semi-annual report or failing to file a client semi-annual report in accordance with these regulations are set forth in either Legislative Law § 1-j or § 1-o.

Part 938.10 imposes a duty to correct oversights or inaccuracies with respect to the sources of funding within 10 days of discovery.

As required by the statute, Part 938.11 exempts from disclosure any corporation registered pursuant to article seven-A of the executive law that has tax-exempt status under. § 501(c)(3) and any governmental entity.

4. Costs:

a. costs to regulated parties for implementation and compliance: Minimal.

b. costs to the agency, state and local government: No costs to state and local governments. Moderate administrative costs to the agency during the implementation phase.

c. cost information is based on the fact that there will be no costs to regulated parties and state and local government. The cost to the agency is based on the estimated increase in staff resources to implement the regulations.

5. Local government mandate: The proposed revised regulation does not impose new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This proposed revised regulation may require the preparation of additional forms or paperwork. Such additional paperwork is expected to be minimal, and many filers will complete any additional forms online.

7. Duplication: This proposed revised regulation does not duplicate any existing federal, state or local regulations.

8. Alternatives: PIRA created an affirmative duty on JCOPE's part to promulgate these regulations, therefore there is no alternative to conducting a formal rulemaking.

9. Federal standards: The proposed revised rulemaking pertains to a new lobbying disclosure requirement that specifically relates to lobbying activity in New York State. These regulations do not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: Compliance will take effect upon adoption.

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The agency received no public comment.

Department of Motor Vehicles

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Motor Vehicle Inspection

I.D. No. MTV-15-13-00001-P

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

Proposed Action: Amendment of section 79.7 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 302(a), (e), 303(a)(1) and (2)

Subject: Motor vehicle inspection.

Purpose: Allows for the application of an official inspection station provisional license.

Text of proposed rule: A new subdivision (j) is added to section 79.7 to read as follows:

(j) A new motor vehicle dealer who is applying for a provisional dealer registration may concurrently apply for an official inspection station provisional license (hereinafter referred to as provisional license). The application for a provisional license shall be filed in such form and detail as the Commissioner shall prescribe, and shall be filed concurrently with the original application for an official inspection station license and new motor vehicle dealer and repair shop registration. If an application for a provisional license is denied, the applicant shall not be entitled to an appeal or hearing regarding the denial.

(1) The holder of a provisional license shall be granted the same rights and privileges as are granted to the holder of an official inspection station license, except that the Commissioner may suspend a provisional license for the same reasons that an official inspection station license is subject to suspension for a violation or violations of this Part or of sections 303 or 306 of the vehicle and traffic law. If the provisional license is suspended pursuant to the provisions of this paragraph, the Commissioner shall provide the provisional licensee with actual notice of the suspension at least seven calendar days prior to the effective date. The holder of the provisional license shall not be entitled to an appeal or hearing if such provisional license is suspended. The holder of a provisional license shall be subject to the same rules and regulations that apply to the holder of an official inspection station license, except if such rules and regulations are inconsistent with the provisions of this subdivision.

(2) The holder of a provisional license who has purchased or acquired, or who plans to purchase or acquire, the place of business from a registered new motor vehicle dealer:

(i) shall not conduct inspections in the name of the selling or transferring new motor vehicle dealer;

(ii) shall not use any unused certificate of inspection that had been issued to the selling or transferring registered new motor vehicle dealer by the Department;

(iii) shall display the provisional license in a conspicuous manner.

(3) If a new motor vehicle dealer with a provisional license purchases or acquires a place of business from a registered new motor vehicle dealer, then within thirty business days of the issuance of the provisional license, the dealer must ensure that the official inspection station license and all unused certificates of inspection that had been issued to the selling or transferring inspection station are surrendered to the Department or are accounted for.

(4) If the Commissioner has suspended a provisional license, or if a provisional license has expired, and the dealer that held such provisional license has not obtained a valid official inspection station license, then all official inspection station operations at that location shall immediately cease, and the dealer shall surrender the provisional license, and all unused certificates of inspection to the Department.

(5) The holder of a provisional license must meet all of the remaining requirements for the issuance of an official inspection station license within thirty days of the issuance of the provisional license.

(6) The provisional license shall expire sixty days from the date of issuance of such license or when the Department completes its investigation related to the application for an inspection station license, whichever is later.

(7) The holder of a provisional license must notify the Department immediately if the opening of the dealership is cancelled and such holder must return all supplies within ten days.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Data, views or arguments may be submitted to: Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: ida.traschen@dmv.ny.gov

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

Regulatory Impact Statement

1. Statutory authority: Section 215(a) of the Vehicle and Traffic Law (VTL) authorizes the Commissioner to promulgate regulations which regulate and control the exercise of the powers of the Department of Motor Vehicles (DMV). VTL Section 302(a) authorizes the Commissioner to administer the provisions of Article V, Periodic Inspection of Motor Vehicles. VTL Section 302(e) authorizes the Commissioner to make reasonable rules and regulations to administer Article V. VTL Section 303(a)(1) authorizes the Department of Motor Vehicles to collect evidence as may be required to ascertain the identity, qualifications, and character of the applicant for an inspection station license. VTL Section 303(a)(2) authorizes the Commissioner to issue a temporary permit to any applicant for an inspection station license pending final action on an application for such a license. VTL Section 415(3) authorizes the Commissioner to issue registrations to new motor vehicle dealers. VTL Section 415(5) authorizes the Commissioner to obtain all necessary information from an applicant for a new dealer registration.

2. Legislative objectives: The Legislature enacted Article 16 of the Vehicle and Traffic Law, Registration of Dealers and Transporters, to protect consumers from fraudulent business practices and to assist the dealers in the sale of motor vehicles. This proposed rule accords with the legislative objectives by assisting new motor vehicle dealers who purchase a place of business from another dealer to obtain a provisional registration from DMV and, therefore, immediately commence the sale of motor vehicles. In addition, since the holder of a provisional registration must comply with the Commissioner's regulations, consumers who purchase vehicles from such dealer will be afforded the protections provided for in such regulations.

The Legislature enacted Article 5 of the Vehicle and Traffic Law, Periodic Inspection of Motor Vehicles, to protect consumers from fraudulent practices and to assist inspection stations in the inspection of motor vehicles. The proposed rule, in association with the amendments to Part 78, will permit a new motor dealer that has obtained a provisional registration to immediately sell and inspect motor vehicles to the public. This enhances the business opportunities for the dealers, while protecting the public that purchases vehicles from such dealers.

3. Needs and benefits: The proposed regulation provides that when a new motor vehicle dealer transfers a place of business to a new motor vehicle applicant, DMV may issue a provisional dealer registration and provisional inspection station license to such applicant pending a full investigation of the applications by the Department. In addition to meeting the Department's requirements regarding an application for a new dealer's license, such applicant must meet the automobile manufacturer's stringent requirements for the sale and transfer of the business. The issuance of the provisional registration and license will permit the dealer-applicant to seamlessly commence business operations while DMV processes its application.

When a new motor vehicle dealer applies for a registration and license, DMV's Office of Vehicle Safety must review extensive paperwork and make an on-site visit to the place of business before approving the application. This prevents the new business from selling vehicles, to its fiscal detriment. By granting the dealer–applicant a provisional registration, the applicant may sell vehicles while DMV conducts its investigation. By granting a provisional inspection station license, such dealer will be able to inspect the vehicles and consummate the sale. The public will be protected because the dealer/inspection station-applicant must comply with the Commissioner's regulations and if such dealer/inspection station-applicant violates the regulations, its registration/license will be suspended.

In sum, these proposed regulations would benefit a vital business in the State by providing for the seamless transfer of a business from one dealer to another, while maintaining vigorous consumer protections.

4. Costs: a. to regulated parties: Applicants for an original dealer registration must pay the statutory fee of $37.50. (VTL Section 415(6)) This fee would be paid by applicants for the provisional registration. Applicants for a provisional inspection station license would pay the statutory fee of $25. (VTL Section 303(a)(1))

b. Costs to the agency/local governments: There shall be minimal costs to the DMV to produce a paper provisional registration/inspection document. Since this is not a DMV fee, there are no changes required to DMV forms or systems. There are no costs to local governments.

c. Source: DMV's Office of Vehicle Safety.

5. Local government mandates: There are no local government mandates associated with this proposal.

6. Paperwork: An applicant shall file an application in such form and detail as the Commissioner shall prescribe, and will do so concurrently with the Original Facility/Inspection Station Application. The additional application will not duplicate information provided on the Original Facility/Inspection Station Application, unless absolutely necessary.

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

8. Alternative: The Department weighed the pros and cons of issuing a provisional registration/license document and determined that the benefits to industry outweighed any additional work for the Department.

9. Federal standards: This rule does not exceed any minimum standards of the Federal government.

10. Compliance: Immediate.

Regulatory Flexibility Analysis

1. Effect of rule: These proposed regulations would affect only new motor vehicle dealers. It has no impact on local governments. In calendar year 2011, DMV's Office of Vehicle Safety approved 48 original facility applications for new motor vehicle dealers. Therefore, the amendment is expected to affect approximately 50 dealers per year.

2. Compliance requirements: New motor vehicle dealer applicants would be required to apply to the Commissioner for a provisional dealer registration and provisional inspection station license in accordance with the Commissioner's procedures.

3. Professional services: This regulation would not require new professional services.

4. Compliance costs: Applicants for an original dealer registration must pay the statutory fee of $37.50. (VTL Section 415(6)) This fee would be paid by applicants for the provisional registration. Applicants for the provisional inspection station license would pay the statutory fee of $25. (VTL Section 303(a)(1))

5. Economic and technological feasibility: This proposal adds no new economic or technological requirements on new motor vehicle dealers.

6. Minimizing adverse impact: This proposal has no adverse impact on new motor vehicle dealers. In fact, it will help such dealers to seamlessly transfer business operations while continuing to sell motor vehicles.

7. Small business and local government participation: The Department canvassed the following associations for comment. They include: The Eastern New York Coalition of Automotive Retailers, Inc (ENYCAR), the Greater New York Automobile Dealers Association (GNYADA), the New York State Automobile Dealers Association, Inc (NYSADA, the Rochester Automobile Dealers Association (RADA), the Syracuse Automobile Dealers Association (SADA), Niagara Frontier Automobile Dealers Association (NFADA).

Rural Area Flexibility Analysis

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

Job Impact Statement

A Job Impact Statement is not submitted with this proposed regulation because it has no negative impact on job creation or development in the State.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

New Motor Vehicle Dealer Registration

I.D. No. MTV-15-13-00002-P

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

Proposed Action: Addition of section 78.4 to Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 415(3) and (5)

Subject: New motor vehicle dealer registration.

Purpose: Allows a new motor vehicle dealer to apply for a provisional motor vehicle dealer registration.

Text of proposed rule: A new section 78.4 is added to read as follows:

78.4 New motor vehicle dealer provisional registration.

(a) A new motor vehicle dealer may apply for a new motor dealer provisional registration (hereinafter referred to as provisional registration). The application for a provisional registration shall be filed in such form and detail as the Commissioner shall prescribe, and shall be filed concurrently with the original application for a new motor vehicle dealer registration. If an application for a provisional registration is denied, the applicant shall not be entitled to an appeal or hearing regarding the denial.

(b) The holder of a provisional registration shall be granted the same rights and privileges as are granted to the holder of a new motor vehicle dealer registration, except that the Commissioner may suspend a provisional registration for the same reasons that a dealer registration is subject to suspension for a violation or violations of this Part or of section 415 of the vehicle and traffic law. If the provisional registration is suspended pursuant to the provisions of this subdivision, the Commissioner shall provide the provisional registrant with actual notice of the suspension at least seven calendar days prior to the effective date. The holder of the provisional registration shall not be entitled to an appeal or hearing if such provisional registration is suspended. The holder of a provisional registration shall be subject to the same rules and regulations that apply to the holder of a new motor vehicle dealer registration, except if such rules and regulations are inconsistent with the provisions of this section.

(c) The holder of a provisional registration who has purchased or acquired, or who plans to purchase or acquire, the place of business from a registered new motor vehicle dealer:

(1) shall not sell or transfer a vehicle unless it has in its possession a proof of ownership or transfer document in its name;

(2) shall not engage in business in the name of the selling or transferring new motor vehicle dealer registration;

(3) shall not use any dealer plate, dealer issued plate, or unused certificate of sale that had been issued to the selling or transferring registered new motor vehicle dealer by the Department;

(4) shall display the provisional registration in a conspicuous manner.

(d) If a new motor vehicle dealer with a provisional registration purchases or acquires a place of business from a registered new motor vehicle dealer, then within thirty business days of the issuance of the provisional registration, the dealer must ensure that (i) a certificate of sale is issued transferring ownership of all vehicles included in the sale or transfer and (ii) the new motor vehicle dealer registration, all dealer plates, dealer issued plates, and unused certificates of sale that had been issued to the selling or transferring dealer are surrendered to the Department or are accounted for.

(e) If the Commissioner has suspended a provisional registration, or if a provisional registration has expired, and the dealer that held such provisional registration has not obtained a valid new motor vehicle dealer registration, then all dealer business operations at that location shall immediately cease, and the dealer shall surrender the provisional registration, all dealer plates, and all certificates of sale to the Department.

(f) The holder of a provisional dealer registration must provide to the Department within thirty days of the issuance of the provisional registration all information necessary for review of the dealer registration application and all required documentation relative to the sale and transfer of the business.

(g) The provisional dealer registration shall expire sixty days from the date of issuance of such registration or when the Department completes its investigation related to the application for a new motor vehicle registration, whichever is later.

(h) The holder of a provisional dealer registration must notify the Department immediately if the opening of the dealership is cancelled and such holder must return all supplies within ten days.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Data, views or arguments may be submitted to: Ida. L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: ida.traschen@dmv.ny.gov

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

Regulatory Impact Statement

1. Statutory authority: Section 215(a) of the Vehicle and Traffic Law (VTL) authorizes the Commissioner to promulgate regulations which regulate and control the exercise of the powers of the Department of Motor Vehicles (DMV). VTL Section 302(a) authorizes the Commissioner to administer the provisions of Article V, Periodic Inspection of Motor Vehicles. VTL Section 302(e) authorizes the Commissioner to make reasonable rules and regulations to administer Article V. VTL Section 303(a)(1) authorizes the Department of Motor Vehicles to collect evidence as may be required to ascertain the identity, qualifications, and character of the applicant for an inspection station license. VTL Section 303(a)(2) authorizes the Commissioner to issue a temporary permit to any applicant for an inspection station license pending final action on an application for such a license. VTL Section 415(3) authorizes the Commissioner to issue registrations to new motor vehicle dealers. VTL Section 415(5) authorizes the Commissioner to obtain all necessary information from an applicant for a new dealer registration.

2. Legislative objectives: The Legislature enacted Article 16 of the Vehicle and Traffic Law, Registration of Dealers and Transporters, to protect consumers from fraudulent business practices and to assist the dealers in the sale of motor vehicles. This proposed rule accords with the legislative objectives by assisting new motor vehicle dealers who purchase a place of business from another dealer to obtain a provisional registration from DMV and, therefore, immediately commence the sale of motor vehicles. In addition, since the holder of a provisional registration must comply with the Commissioner's regulations, consumers who purchase vehicles from such dealer will be afforded the protections provided for in such regulations.

The Legislature enacted Article 5 of the Vehicle and Traffic Law, Periodic Inspection of Motor Vehicles, to protect consumers from fraudulent practices and to assist inspection stations in the inspection of motor vehicles. The proposed rule, in association with the amendments to Part 78, will permit a new motor dealer that has obtained a provisional registration to immediately sell and inspect motor vehicles to the public. This enhances the business opportunities for the dealers, while protecting the public that purchases vehicles from such dealers.

3. Needs and benefits: The proposed regulation provides that when a new motor vehicle dealer transfers a place of business to a new motor vehicle applicant, DMV may issue a provisional dealer registration and provisional inspection station license to such applicant pending a full investigation of the applications by the Department. In addition to meeting the Department's requirements regarding an application for a new dealer's license, such applicant must meet the automobile manufacturer's stringent requirements for the sale and transfer of the business. The issuance of the provisional registration and license will permit the dealer-applicant to seamlessly commence business operations while DMV processes its application.

When a new motor vehicle dealer applies for a registration and license, DMV's Office of Vehicle Safety must review extensive paperwork and make an on-site visit to the place of business before approving the application. This prevents the new business from selling vehicles, to its fiscal detriment. By granting the dealer–applicant a provisional registration, the applicant may sell vehicles while DMV conducts its investigation. By granting a provisional inspection station license, such dealer will be able to inspect the vehicles and consummate the sale. The public will be protected because the dealer/inspection station-applicant must comply with the Commissioner's regulations and if such dealer/inspection station-applicant violates the regulations, its registration/license will be suspended.

In sum, these proposed regulations would benefit a vital business in the State by providing for the seamless transfer of a business from one dealer to another, while maintaining vigorous consumer protections.

4. Costs: a. to regulated parties: Applicants for an original dealer registration must pay the statutory fee of $37.50. (VTL Section 415(6)) This fee would be paid by applicants for the provisional registration. Applicants for a provisional inspection station license would pay the statutory fee of $25. (VTL Section 303(a)(1))

b. Costs to the agency/local governments: There shall be minimal costs to the DMV to produce a paper provisional registration/inspection document. Since this is not a DMV fee, there are no changes required to DMV forms or systems. There are no costs to local governments.

c. Source: DMV's Office of Vehicle Safety.

5. Local government mandates: There are no local government mandates associated with this proposal.

6. Paperwork: An applicant shall file an application in such form and detail as the Commissioner shall prescribe, and will do so concurrently with the Original Facility/Inspection Station Application. The additional application will not duplicate information provided on the Original Facility/Inspection Station Application, unless absolutely necessary.

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

8. Alternative: The Department weighed the pros and cons of issuing a provisional registration/license document and determined that the benefits to industry outweighed any additional work for the Department.

9. Federal standards: This rule does not exceed any minimum standards of the Federal government.

10. Compliance: Immediate.

Regulatory Flexibility Analysis

1. Effect of rule: These proposed regulations would affect only new motor vehicle dealers. It has no impact on local governments. In calendar year 2011, DMV's Office of Vehicle Safety approved 48 original facility applications for new motor vehicle dealers. Therefore, the amendment is expected to affect approximately 50 dealers per year.

2. Compliance requirements: New motor vehicle dealer applicants would be required to apply to the Commissioner for a provisional dealer registration and provisional inspection station license in accordance with the Commissioner's procedures.

3. Professional services: This regulation would not require new professional services.

4. Compliance costs: Applicants for an original dealer registration must pay the statutory fee of $37.50. (VTL Section 415(6)) This fee would be paid by applicants for the provisional registration. Applicants for the provisional inspection station license would pay the statutory fee of $25. (VTL Section 303(a)(1))

5. Economic and technological feasibility: This proposal adds no new economic or technological requirements on new motor vehicle dealers.

6. Minimizing adverse impact: This proposal has no adverse impact on new motor vehicle dealers. In fact, it will help such dealers to seamlessly transfer business operations while continuing to sell motor vehicles.

7. Small business and local government participation: The Department canvassed the following associations for comment. They include: The Eastern New York Coalition of Automotive Retailers, Inc (ENYCAR), the Greater New York Automobile Dealers Association (GNYADA), the New York State Automobile Dealers Association, Inc (NYSADA, the Rochester Automobile Dealers Association (RADA), the Syracuse Automobile Dealers Association (SADA), Niagara Frontier Automobile Dealers Association (NFADA).

Rural Area Flexibility Analysis

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

Job Impact Statement

A Job Impact Statement is not submitted with this proposed regulation because it has no negative impact on job creation or development in the State.

Public Service Commission

NOTICE OF ADOPTION

Approving the Petition of the New York State Utilities, in Part and Modifying Electric Safety Standards

I.D. No. PSC-41-12-00015-A

Filing Date: 2013-03-22

Effective Date: 2013-03-22

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

Action taken: On 3/14/13, the PSC adopted an order approving a petition, filed by the New York State utilities, in part; and modifying Electric Safety Standards.

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

Subject: Approving the petition of the New York State utilities, in part and modifying Electric Safety Standards.

Purpose: To approve the petition of the New York State utilities, in part and modifying Electric Safety Standards.

Substance of final rule: The Commission, on March 14, 2013 adopted an order approving the petition, in part, filed on September 20, 2012 by the New York State utilities (Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, Orange & Rockland Utilities, Inc., New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation) and modifying Electric Safety Standards, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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.

(04-M-0159SA7)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Authorization to Transfer Certain Real Property

I.D. No. PSC-15-13-00011-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 authorize the transfer of street lighting facilities located in the Town of Plattsburgh, Clinton County, New York owned by New York State Electric and Gas Corporation to the Town of Plattsburgh.

Statutory authority: Public Service Law, section 70

Subject: Authorization to transfer certain real property.

Purpose: To decide whether to approve the transfer of certain real property.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by New York State Electric and Gas Corporation seeking approval to transfer to the Town of Plattsburgh, Clinton County, New York, the system of street lighting poles, luminaires, lamps, mast arms, electrical connections and wiring, which are installed throughout the Town of Plattsburgh. The Commission may adopt, reject or modify, in whole or in part, the relief proposed, and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, 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.

(13-E-0138SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rehearing of a Gas Transportation Rate

I.D. No. PSC-15-13-00012-P

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

Proposed Action: The Commission is considering a petition for rehearing filed by Alliance Energy Transmissions LLC and Seneca Power Partners LLC requesting rehearing of the gas transportation rate set in an Order issued February 15, 2013.

Statutory authority: Public Service Law, sections 66(1), (2), (3), (5), (8), (9), (10), (12) and 72

Subject: Rehearing of a gas transportation rate.

Purpose: Consideration of rehearing of a gas transportation rate.

Substance of proposed rule: The Public Service Commission is considering a petition for rehearing filed on March 18, 2013 by Alliance Energy Transmissions LLC and Seneca Power Partners LLC requesting rehearing of the Order Determining Gas Transportation Rate issued February 15, 2013 on the grounds that the most recent property tax billings and a return on investment based on valuation of 11.2 miles of 8-inch steel gas pipeline were not used in setting a gas transportation rate. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, 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-G-0256SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-15-13-00013-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Macedonia Plaza Development LLC to submeter electricity at 37-22 Union Street, Flushing, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Macedonia Plaza Development LLC to submeter electricity at 37-22 Union Street, Flushing, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Macedonia Plaza Development LLC to submeter electricity at 37-22 Union Street, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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.ny.gov/f96dir.htm. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, 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.

(13-E-0102SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-15-13-00014-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Victor at Fifth, LLC to submeter electricity at 241 5th Avenue, New York, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Victor at Fifth, LLC to submeter electricity at 241 5th Avenue, New York, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Victor at Fifth, LLC to submeter electricity at 241 5th Avenue, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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.ny.gov/f96dir.htm. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, 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.

(13-E-0101SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Adopting a Uniform Policy of Minimum Utility Practices That Would be Applicable As a Result of Prolonged Outages

I.D. No. PSC-15-13-00015-P

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

Proposed Action: The Commission will decide whether to adopt, modify or reject a proposal setting forth outage credit and other consumer protection policies relating to prolonged outages of electric or natural gas services.

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

Subject: Adopting a uniform policy of minimum utility practices that would be applicable as a result of prolonged outages.

Purpose: To consider adopting a uniform policy of minimum utility practices that would be applicable as a result of prolonged outages.

Text of proposed rule: PROPOSED CONSUMER POLICIES RELATING TO PROLONGED OUTAGES

I. Customer Credits and Recovery of Lost Delivery Revenue

A. For any event resulting from an emergency in which utility customers are out of service for a period exceeding three days resulting from an emergency,[1] utilities should credit customer charges incurred during the period of the outage, for any customer who was out of service for a period exceeding three days with the exception of interruptible gas customers. For gas service, and for electric service classes that do not have a customer charge (e.g., Con Edison's SC8), credits should be based on the "functional equivalent" of the customer charge (e.g., for gas service, the monthly minimum charge). Credits should be applied automatically for any customer the utility knows was out of service for a period exceeding three days, and upon customer request for other customers who contact the Company to credibly claim they suffered outages of such duration. The credit would be calculated on a proportional basis (e.g., customers out of service for six days would receive a credit in the amount of 6/30ths of the customer charge for that service classification) and applied to customer bills within 60 days of the outage.

The purpose of this policy is to avoid the imposition of charges to customers who did not receive service.

B. Two alternative proposals for the treatment of lost delivery revenues resulting from prolonged outages are offered for comment.[2] Parties should address in their comments the pros and cons of each alternative and identify which alternative is preferred, and why.

1. RDMs should be designed so that the volumetric portion of delivery bills that was not collected from customers who were out of service more than three days for outages identified above, as well as the lost revenue from customer credits identified above, is excluded from the RDM targets. The purpose of this policy is to re-establish incentives for prompt service restoration that were in place before RDMs. This policy change may alter the balance of risk between utilities and customers that is reflected in Commission-approved rate plans. Parties should discuss in their comments at what level the duration and scope of the outages and the amount of lost utility revenue may materially alter the balance struck in Commission-approved rate plans. Parties should also comment on how the amount of lost revenues for outages should be calculated.

2. The Commission should maintain the present design of RDMs and allow utilities to recover the lost revenues associated with lost delivery revenue as well as storm-related customer credits, unless the Commission finds fault with a particular utility's restoration activities.

II. Other Policies Applicable to Customers Affected by Outages

Utilities may assess late payment charges on amounts due after the date designated on a customer's bill, as detailed in utility tariffs. Utilities also conduct a range of activities to collect amounts owed by customers, including making outbound calls to customers, issuing service termination notices and, where consistent with the Public Service Law, terminating service. Assessment of late payment charges as prescribed in utility tariffs, as well as business-as-usual collection and service termination practices, may not be appropriate during prolonged outages and immediately after restoration of such outages.

A. For all outages for which The Federal Emergency Management Agency (FEMA) declares a region as eligible for Individual and Public Assistance, utilities should take the actions listed in the table below, both for all residential customers located in the designated area, and for any residential or non-residential customer who notifies the utility and provides credible support that his/her financial circumstances have changed as a result of the underlying emergency (e.g., permanent or temporary loss of job or income, or damage to home or business). Concerning the non-tariff issues of collection activities and suspension of service for non-payment, this proposal is to be construed as guidance that could be modified in consultation with Department of Public Service (DPS) Staff as circumstances dictate, such as to ensure customer accessibility to heating-related financial assistance. The purpose of this policy is to provide customers affected by prolonged outages, a reasonable amount of time to recover from those outages.

Table:

Suspend late payment charges for 30 days

Suspend all collection activity[3] and assessment of security deposits for 30 days

Suspend termination for non-payment for 30 days

B. For all outages where utility customers are out of service for more than three days resulting from an emergency event (consistent with 16 NYCRR Part 105), utilities should take the actions described below, for all residential customers who suffered such outages, and for any residential or non-residential customer who notifies the utility and provides credible support that his/her financial circumstances have changed as a result of the underlying emergency (e.g., permanent or temporary loss of job or income, or damage to home or business). The Commission could direct utilities to extend the duration of these actions, on a case-by-case basis. The purpose of this policy is to provide customers affected by prolonged outages, a reasonable amount of time to recover from the prolonged outages.

Action: All collection-related activities,[4] terminations of service for non-payment, and assessments of late payment charges should be suspended during the outage, and for an additional number of days, equal to the duration of the outage. For example, normal collection-related activity for customers who were out of service for five days, would resume after the fifth day following service restoration. The Commission could direct utilities to extend the duration of suspended collection activity, service termination and assessment of late payment charges on an event specific basis. Concerning the non-tariff issues of collection activities and suspension of service for non-payment, this proposal is to be construed as guidance that could be modified in consultation with DPS Staff to address special circumstances.

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[1] This criterion is consistent with the Commission's reporting requirements as specified in 16 NYCRR Part 105 - Electric Utility Emergency Plan. As specified in that regulation, emergencies include storms and other causes of electrical emergencies with storm-like characteristics.

[2] The Commission has established Revenue Decoupling Mechanisms (RDMs) that true-up forecast and actual delivery service revenues thus eliminating potential disincentives to utilities' promoting and implementing more efficient energy use. The true-up includes, among other things, net lost revenues attributable to achievement of more efficient energy use as well as net lost revenues from prolonged outages. The true-ups are calculated no less frequently than once per year.

[3] With the exception of issuance of service termination notices.

[4] With the exception of issuance of service termination notices.

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.ny.gov/f96dir.htm. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: deborah.swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, 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.

(13-M-0061SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Consideration of a Proposal to Allow Customers to Combine Certain Economic Development Electric Supply and Delivery Discounts

I.D. No. PSC-15-13-00016-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 New York Power Authority's proposal to allow customers to combine their awarded Preservation Power, Replacement Power or Expansion Power low-cost supply allocation with their Zone or Excelsior Jobs delivery discount.

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

Subject: Consideration of a proposal to allow customers to combine certain economic development electric supply and delivery discounts.

Purpose: To allow customers to receive the benefit of both supply discounts and unrelated delivery discounts on the same electric load.

Substance of proposed rule: On February 11, 2013, The New York Power Authority (NYPA), submitted comments in Case 11-E-0176 on the Commission's consideration of a petition seeking to combine certain electric delivery and supply discounts on the same electric load. NYPA's comments requested that the Commission allow customers that were eligible for other NYPA economic development supply discounts to be allowed to also supply their delivery discounts on that same electric load. Some of the programs involved in NYPA's request were different than those under consideration by the Commission in Case 11-E-0176. On March 18, 2013, the Commission instituted a new proceeding, Case 13-E-0109 to consider NYPA's request. The Commission is considering whether to approve, reject or modify, in whole or in part, the relief requested in NYPA's comments.

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.ny.gov/f96dir.htm. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, 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.

(13-E-0109SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

High Load Factor Power Delivery Rates and Billing Formula

I.D. No. PSC-15-13-00017-P

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

Proposed Action: The Commission is considering whether to grant, modify or deny a petition, with related tariff amendments, by Niagara

Mohawk Power Corporation d/b/a National Grid proposing revisions to its High Load Factor Power Delivery Rates and Billing Formula.

Statutory authority: Public Service Law, sections 65 and 66(12)

Subject: High Load Factor Power Delivery Rates and Billing Formula.

Purpose: To grant, modify or deny a petition to revise High Load Factor Power Delivery Rates, Billing Formula and tariff amendments.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a revised petition filed on March 21, 2013 by Niagara Mohawk Power Corporation d/b/a National Grid (Company) in which it proposes certain changes to its High Load Factor (HLF) Power Delivery Rates and Billing Formula. The Company filed revised tariff amendments along with its petition. The amendments have an effective date of July 1, 2013.

The Company proposes to transition HLF delivery service rates to standard retail tariff rate levels over a period starting July 1, 2013 and ending January 1, 2016. The Company states the proposed transition will result in greater consistency and parity of the HLF program with other New York Power Authority power programs under the Company's Service Classification No. 4 – Untransformed Service to Certain Customers Taking Power from Projects of the New York Power Authority, while also providing HLF customers ample time to prepare for its rate changes. The Commission may apply its decision here to other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, 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.

(13-E-0121SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Transfer of Property with an Original Cost of Less Than $100,000

I.D. No. PSC-15-13-00018-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 provide its written consent, pursuant to Public Service Law (PSL) Section 70 for a proposed transfer of property from Orange and Rockland Utilities, Inc. to the Town of Goshen.

Statutory authority: Public Service Law, section 70(1)

Subject: Transfer of property with an original cost of less than $100,000.

Purpose: To determine wither the to provide written consent, pursuant to Public Service Law section 70, for the proposed transfer of property.

Substance of proposed rule: On February 26, 2013, Orange and Rockland Utilities, Inc (O&R) filed a notification, pursuant to Public Service Law (PSL) Section 70 of a proposed transfer of property by O&R to the Town of Goshen (Town). As a part of securing necessary approvals from the Town for the construction of O&R's Hartley Road Substation, O&R proposes to grant the Town a conservation easement over 28.74 acres of property and transfer.647 acres of land along the frontage of Hartley Road and.22 acres of property along Cheechunk Road to the Town in fee simple. O&R states that value of the easement and the property that would be transferred in fee simple has been appraised at $48,000. O&R also states that the easement and transfer of property would be at no cost to the Town. As the proposed transfers have an original value of less than $100,000, PSL Section 70(1) provides that O&R may proceed with the transaction 90 days after providing notification to the Commission, unless the Commission determines within that 90 days that the public interest requires the Commission's review and written consent before the transfer can occur. The Commission is considering whether the public interest requires its review and written consent for the proposed transfer. Furthermore, the Commission is considering whether to provide its written consent to the transfer on the terms specified in O&R's notification, or predicated on different terms, or to withhold its written consent. The Commission may also address related matters and may apply its decision here to other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: deborah.swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, 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.

(13-E-0146SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

NYSEG's Implementation of a Vegetation Management Program and Recovery of Its Costs

I.D. No. PSC-15-13-00019-P

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

Proposed Action: The Commission is considering a petition filed by New York State Electric & Gas Corporation (NYSEG) requesting authorization to implement, and recover the costs of, a full-cycle distribution vegetation management program.

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

Subject: NYSEG's implementation of a vegetation management program and recovery of its costs.

Purpose: Consideration of NYSEG's implementation of a vegetation management program and recovery of its costs.

Substance of proposed rule: The Public Service Commission is considering a petition filed on March 15, 2013 by New York State Electric & Gas Corporation (NYSEG) requesting authorization to implement, and recover the costs of, a full-cycle vegetation management program for its overhead electric distribution system. NYSEG would recover the incremental costs of the program, estimated at $16.8 million in 2014 and $46.5 million in 2015 for the program's first two full years, through a separate monthly surcharge until a new rate plan is adopted. The Commission may adopt, reject or modify, in whole or in part, the relief proposed, may resolve related matters, and may take this action for other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, 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.

(13-E-0117SP1)

Urban Development Corporation

EMERGENCY RULE MAKING

Bonding Guarantee Assistance Program

I.D. No. UDC-15-13-00003-E
Filing No. 312
Filing Date: 2013-03-20
Effective Date: 2013-03-20

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

Action taken: Addition of Part 4253 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); L. 1994, ch. 169, section 16-f; and L. 1968, ch. 174

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

Specific reasons underlying the finding of necessity: The current economic crisis, including high unemployment and the immediate lack of capital for job generating small business, are the reasons for the emergency adoption of this Rule which is required for the immediate implementation of the Bonding Guarantee Assistance Program. The Program will provide surety companies the additional financial backing needed in order to induce such companies to issue payment and performance bonds for contractors that are small businesses, certified minority-owned enterprises or women-owned business enterprises, in order for such contractors to meet payment and performance bonding requirements for construction projects, including but not limited to, government sponsored, transportation related construction projects and to provide technical assistance in completing bonding applications for such contractors seeking surety bonding in preparation for bidding on construction projects, including transportation related projects. This assistance will sustain and increase employment generated by these businesses.

Subject: Bonding Guarantee Assistance Program.

Purpose: Provide the basis for administration of the Bonding Guarantee Assistance Program.

Substance of emergency rule: The Bonding Guarantee Assistance Program (the "Program") was created pursuant to Chapter 169 of the Laws of 1994 (the "Enabling Legislation"). The general purpose of the Program is to improve the economy of New York by providing small businesses greater access to surety bonds required to participate in the construction industry.

The Enabling Legislation creates Section 16-f of the New York State Urban Development Corporation Act (the "UDC Act") which governs the Program. The Enabling Legislation requires the New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation") to promulgate rules and regulations for the Program (the "Rules") in accordance with the provisions of the State Administrative Procedure Act. The Rules set forth the framework for the eligibility, evaluation criteria, application and project process and administrative procedures of the Program.

1. Program Assistance:

(a) Provide eligible surety companies the additional financial backing needed in order to induce such companies to issue bid, payment and performance bonds for eligible contractors that are small businesses, as defined in the Rule, and certified, pursuant to article fifteen-A of the Executive Law, eligible minority-owned business enterprises or eligible women-owned business enterprises, in order for such contractors to meet bid, payment and performance bonding requirements for construction projects, including but not limited to government sponsored transportation related construction projects; and

(b) Provide technical assistance in completing bonding applications for such contractors seeking surety bonding in preparation for bidding on construction projects, including transportation related projects. The Corporation may refer such businesses to various business service providers or the Department of Economic Development for technical assistance as such businesses may need.

(c) Program assistance is limited to the financial backing necessary to secure bid bonds, performance bonds, and payment bonds issued in connection with contract bids or awards. Such Program assistance shall be in such form as the Corporation may determine, and may include irrevocable standby letters of credits issued to a surety company by a financial institution for the account of the Corporation in connection with the surety company providing such bonds on behalf of a Program eligible contractor with respect to a contract. The amount of such Program assistance provided to a surety company with respect to each contract shall generally not be greater than the amount necessary to induce such surety company to issue the bonds required for the contract, and in no event shall exceed fifty percent of the face value of bonds to be issued by the surety company for such contract. Generally, a surety company may not receive Program assistance for more than two contracts for the same contractor at the same time.

2. Program Administration:

(a) In order for a Surety Company to participate in the Program, the surety company shall enter into a Program participation agreement with the Corporation in such form as the Corporation may prescribe.

(b) The Corporation shall conduct the oversight and management of the Program, and the Corporation may engage an agent for administration and implementation of the Program.

(c) The Corporation may contract with one or more financial institutions in order that such financial institution will provide to surety companies, as additional financial backing Program assistance, letters of credit or other guarantees for the account of the Corporation.

(d) The Corporation or the agent shall evaluate applications for Program assistance and make determinations as to business creditworthiness and whether to provide the requested additional financial backing Program assistance.

(e) The Corporation or the agent shall prepare annual reports for the Program.

3. Fees:

A participating Surety company may charge application fees, commitment fees, bonding premiums and other reasonable fees and expenses pursuant to a schedule of fees and expenses adopted by the surety company and approved in writing by the Corporation. The Corporation may require a contractor participating in the Program to pay the Corporation for its out-of-pocket costs in connection with the Program assistance for the contractor, including, without limiting the foregoing, the costs with respect to letter of credit and other guarantees to be provided to a surety company in connection with bonds for such contractor's contract.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 17, 2013.

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

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 (Uncon. Laws section 6259-c), as amended (the "Act"), provides, in part, that the Corporation shall, assisted by the Commissioner of Economic Development and in consultation with the Department of Economic Development, promulgate rules and regulations in accordance with the State Administrative Procedure Act.

Section 16-f of the Act provides for the creation of the Bonding Guarantee Assistance Program (the "Program") and authorizes the New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation"), within available appropriations, to provide small businesses and minority and women-owned business enterprises the additional financial backing needed in order to induce surety companies to issue surety bond lines, bid bonds or payment and performance bonds necessary for such contractors to meet requirements for construction projects, including but not limited to, government sponsored, transportation related construction projects and to provide technical assistance in completing bonding applications for such contractors seeking surety bonding in preparation for bidding on construction projects, including transportation related projects.

2. Legislative Objectives: Section 16-f of the Act (Uncon. Laws section 6266-f, added by Chapter 169 of the Laws of 1994) sets forth the Legislative objective of authorizing the Corporation, within available appropriations, to provide the assistance described above. The adoption of 21 NYCRR Part 4253 will further these goals by setting forth the types of available assistance, evaluation criteria, the application process and related matters for the Program.

3. Needs and Benefits: The State has allocated $10,405,173.00 of Federal funds for this program. The Bond Guarantee Assistance Program will provide assistance to New York's eligible small businesses, minority-owned business enterprises and women-owned business enterprises, in order to provide the collateral support necessary to secure surety bonding.

These businesses have been determined to be a major source of employment throughout New York State. These businesses have historically had difficulties obtaining financing or refinancing in order to remain competitive and grow their operations, and the current economic difficulties have exacerbated this problem. Providing assistance to these businesses should sustain and potentially increase the employment provided by such businesses, especially during this period of historically high unemployment and underemployment. The rule defines eligible and ineligible businesses and eligible uses of the assistance and other criteria to be applied to qualify for the Program.

4. Costs: The Program is funded by a State appropriation in the amount of $10,405,173.00 dollars. Pursuant to the rule, the amount of such assistance provided to a surety company with respect to each contract shall not be greater than the amount necessary to induce such surety company to issue the bonds required for the contract, and in no event shall exceed fifty percent of the face value of bonds to be issued by the surety company for such contract. The costs to a participating surety company would depend on the extent to which they participate in the Program and their effectiveness and efficiency providing assistance.

5. Paperwork / Reporting: There are minimal additional reporting or paperwork requirements as a result of this rule for Program participants except those required by the statute creating the Program such as an annual report on the organization's lending activity and providing information in connection with an audit by the Corporation with respect to the organization's use of Program funds. Standard documents used for most other assistance by the Corporation will be employed in keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients.

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

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

8. Alternatives: While surety companies already provide business credit through surety bonding, access to such credit remains difficult to obtain for contractors that are small businesses and/or certified minority-owned enterprises or women-owned business enterprises. The State has established the Program in order to enhance the access of such businesses to such credit, and the proposed rule provides the regulatory basis for inducing surety companies to provide credit for contractors that are small businesses and/or certified minority-owned enterprises or women-owned business enterprises.

9. Federal Standards: There are no minimum federal standards related to this regulation. The regulation is not inconsistent with any federal standards or requirements. Federal funds through US Treasury's State Small Business Credit Initiative are being used for this program and all regulations associated with SSBCI will be followed.

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

Regulatory Flexibility Analysis

a) Effects of Rule: In the rule: "Small business" is defined as a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis; "Women owned Business Enterprise" is defined as a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in State and independently owned and operated; (v) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (vi) an enterprise that is a Small Business, unless the term Women-Owned Business Enterprise is otherwise defined in section 310 of the Executive Law, in which case the definition shall be as set forth for such term in such section; "Minority-Owned Business Enterprise" is defined as a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in this state and independently owned and operated; (v) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (vi) an enterprise that is a Small Business, unless the term Minority-Owned Business Enterprise is otherwise defined in section 310 of the Executive Law, in which case the definition shall be as set forth for such term in such section; and "Surety Company" is defined as a surety company that has a certificate of solvency from, and its rates approved by, the New York State Department of Financial Services and/ or appears in the most current edition of the U.S. Department of Treasury Circular 570 as eligible to issue bonds in connection with procurement contracts for the United States of America. The rule will facilitate the statutory Program's purpose of having New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation") provide assistance to surety companies in order to provide financial backing to eligible small businesses, certified minority-owned business enterprises or certified women-owned business enterprises to secure bid bonds, performance bonds and payment bonds issued in connection with contract bids or awards. The amount of such assistance provided to small businesses and minority and women-owned small businesses with respect to each contract shall not be greater than the amount necessary to induce such surety company to issue the bonds required for the contract, and in no event shall exceed fifty percent of the face value of bonds to be issued by the surety company for such contract.

1. Compliance Requirements: There are no compliance requirements for local governments in these regulations. Small businesses must comply with the compliance requirements applicable to all participating surety companies regardless of size. This is a voluntary program. Companies not wishing to undertake the compliance obligations need not participate.

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

3. Compliance Costs: There are no compliance costs for local governments in these regulations. Small businesses bear no costs, other than the fees imposed by surety companies for the surety bond or by banks for issuing a letter of credit. This program is voluntary. If it is not financially advantageous for a company to participate, then it is not required to do so.

4. Economic and Technological Feasibility: There are no compliance costs for small businesses and local governments in these regulations so there is no basis for determining the economic and technological feasibility for compliance with the rule by small businesses and local governments.

5. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide letters of credit to enhance the ability of small businesses to secure surety bonding.

6. Small Business and Local Government Participation: Small business contractors have repeatedly identified securing surety bonds as a major obstacle to securing government and private contracts.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: Surety companies serving all of the 44 counties defined as rural by the Executive Law § 481(7), are eligible to apply for the Bonding Guarantee Assistance Program (the "Program") assistance pursuant to a State-wide request for proposals.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The rule will not impose any new or additional reporting or recordkeeping requirements other than those that would be required of any surety company receiving similar assistance regarding such matters as financial condition, required matching funds, and utilization of Program funds, and the statutorily required annual report on the use of Program funds; no additional acts will be needed to comply other than the said reporting requirements and the making of surety bonds to small businesses in the normal course of the business for any surety company that receives Program assistance; and, it is not anticipated that applicants will have to secure any additional professional services in order to comply with this rule.

3. Costs: The costs to surety companies that participate in the Program would depend on the extent to which they choose to participate in the Program, including the amount of required matching funds for their surety bonds to small businesses and the administrative costs in connection with such small business surety bonds and the fees, if any, charged to small businesses in connection with surety bonds to such businesses that include Program funds.

4. Minimizing Adverse Impact: The purpose of the Program is to provide surety companies the additional financial backing needed in order to induce such companies to issue payment and performance bonds for contractors that are small businesses, certified minority-owned enterprises or women-owned business enterprises, in order for such contractors to meet payment and performance bonding requirements for construction projects, including but not limited to government sponsored transportation related construction projects and to provide technical assistance in completing bonding applications for such contractors seeking surety bond-

ing in preparation for bidding on construction projects, including transportation related projects. This rule provides a basis for cooperation between the State and surety companies, including surety companies that serve rural areas of the State, in order to maximize the Program's effectiveness and minimize any negative impacts for such surety companies and the small businesses, including small businesses located in rural areas of the State that such surety companies serve.

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those located only in urban areas or only in rural areas. A number of surety companies that engage in underwriting surety bonds to rural and urban small businesses responded to a survey circulated by the Corporation regarding implementation of the Program. Their comments were considered in the rulemaking process.

Job Impact Statement

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of New York by providing small businesses greater access to surety bonds required to participate in the construction industry. The Program includes minorities, women and other New Yorkers who have difficulty accessing regular credit markets.

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

EMERGENCY RULE MAKING

Capital Access Program

I.D. No. UDC-15-13-00004-E

Filing No. 313

Filing Date: 2013-03-20

Effective Date: 2013-03-20

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

Action taken: Addition of Part 4251 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); L. 2011, ch. 103, section 16-K; L. 1968, ch. 174

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

Specific reasons underlying the finding of necessity: The current economic crisis, including high unemployment and the immediate lack of financing from traditional financial institutions for job generating small business, are the reasons for the emergency adoption of this Rule which is required for the immediate implementation of the Capital Access Program in order to promptly provide assistance to the State's small businesses in order to sustain and increase employment generated by these businesses.

Subject: Capital Access Program.

Purpose: Provide the basis for administration of the Capital Access Program.

Substance of emergency rule: The Capital Access Program (the "Program") was authorized pursuant to 16-k of the New York State Urban Development Corporation Act (the "Enabling Legislation"). The general purpose of the Program is to promote economic development in the State by assisting small businesses that otherwise find it difficult to obtain regular or sufficient bank financing through the funding of loan loss reserves for loans made to such small businesses by participating financial institutions.

The Enabling Legislation creates Section 16-k of the New York State Urban Development Corporation Act (the "Act"), which governs the Program. The Enabling Legislation requires the New York State Urban Development Corporation (the "Corporation") to promulgate rules and regulations for the Program (the "Rules") in accordance with the provisions of the State Administrative Procedure Act. The Rules set forth the framework for the eligibility, evaluation criteria, application and project process and administrative procedures of the Program as follows:

1. Program Operations:

A participating financial institution shall provide to the Corporation a plan for the marketing of the Program to eligible small businesses, including small businesses in highly distressed areas and MWBEs, with appropriate lending objectives identified by the participating financial institution for such areas and businesses. Program loans to eligible small businesses shall only be for the purposes of expansion, facility or technology upgrading, start-up or working capital purposes. No program loan will exceed five hundred thousand dollars in principal amount. For each program loan, there shall be deposited in the loan loss reserve fund an amount, specified or agreed to in writing by the Corporation, from both the participating financial institution and the eligible small business borrower, aggregating neither less than three percent nor more than seven percent of the principal amount of the program loan, whereby the amount contributed by the eligible small business is not greater than fifty percent of such aggregate. With respect to each program loan, it shall be certified to the Corporation in such a fashion and with such supporting information as the Corporation shall prescribe that the participating financial institution has made such loan and delivered the aggregate loan loss reserve fund contribution with respect to such loan. The Corporation, after satisfactory certification pursuant to the Rules shall transfer to the loan loss reserve fund an amount, as determined by the Corporation, that is (1) not less than the aggregate contribution of the participating financial institution and the small business with respect to such loan, and (2) not greater than one hundred fifty percent of such aggregate contributions as determined by the Corporation.

2. Program Administration:

The Corporation may administer the Program through a third party agent, which may be the New York Business Development Corporation, established under section 210 of the Banking Law, provided, however, that if the third party agent is to be a financial institution other than the New York Business Development Corporation, then such third party agent will be selected pursuant to a competitive process. With respect to these third party agents, the Rules specify requirements for contract duration, performance evaluation and contract renewals.

3. Application and Approval Process:

The Corporation shall identify, review, and approve eligible participating financial institutions through an open recruitment and enrollment process. Participating financial institutions participating in the Program will possess sufficient commercial lending experience, financial and managerial capabilities, and operational skills to meet the Program objectives. The Rules provide guidance as to what documents can be provided by various lending entities to assist in the Corporation's evaluation of applicants.

4. Auditing, Compliance and Reporting:

The Rules set forth requirements for quarterly and annual reporting from participating financial institutions, including updated specific information regarding loan loss reserve funds and individual program loans. The Corporation may conduct audits of participating financial institutions in order to ensure compliance with the provisions of applicable laws and regulations, and with respect to and agreements between the Participating Financial Institution and the Corporation and the Agent.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 17, 2013.

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

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 (Uncon. Laws section 6259-c), as amended (the "Act"), provides, in part, that the Corporation shall, assisted by the Commissioner of Economic Development and in consultation with the Department of Economic Development, promulgate rules and regulations in accordance with the State Administrative Procedure Act.

Section 16-k of the Act provides for the creation of the Capital Access Program (the "Program") and authorizes the New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation"), within available appropriations, to provide funding for loan loss reserves to Community Based Lending Organizations and Participating Financial Institutions, in order to provide portfolio insurance for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit.

2. Legislative Objectives: Section 16-k of the Act (Uncon. Laws section 6266-k, added by Chapter 103 of the Laws of 2011) sets forth the Legislative objective of authorizing the Corporation, within available appropriations, to provide funding for loan loss reserves to financial institutions and other community based lending organizations, in order to provide portfolio insurance for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit. The adoption of 21 NYCRR Part 4251 will further these goals by setting forth the types of available assistance, evaluation criteria, the application process and related matters for the Program.

3. Needs and Benefits: The State has allocated $18,994,204 of federal funds to provide funding for loan loss reserves to financial institutions and other community based lending organizations, in order to provide portfolio insurance for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit. Small businesses have been determined to be a major source of employ-

ment throughout the State. Small businesses have historically had difficulties obtaining financing or refinancing in order to remain competitive and grow their operations, and the current economic difficulties have exacerbated this problem. Providing loans to small businesses should sustain and potentially increase the employment provided by such businesses, especially during this period of historically high unemployment and underemployment. The Program allows the Corporation to use either the New York Business Development Corporation or another third party contracted through a competitive process by the Corporation to administer the Capital Access Program if desirable. The rule further facilitates the administration of the Program by defining eligible and ineligible small businesses, eligible uses of the proceeds of loans to small businesses and other criteria to be applied by the institutions in making loans to small businesses.

4. Costs: The Program is funded by a State appropriation of federal funds in the amount of $18,994,204 dollars. Pursuant to the rule, principal amount of Program Loans will not be greater than $500,000. The costs to participating financial institutions or community based lending organizations would depend on the extent to which they participate in the Program and their effectiveness and efficiency in making small business loans.

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

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

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

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

9. Federal Standards: There are no minimum federal standards related to this regulation. The regulation is not inconsistent with any federal standards or requirements. Federal funds through US Treasury's State Small Business Credit Initiative are being used for this program and all regulations associated with SSBCI will be followed.

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

Regulatory Flexibility Analysis

1. Effects of Rule: In the rule: "Small business" is defined as a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis; "Community Based Lending Organization" is defined as including community development financial institutions, small business lending consortia, certified development companies, providers of United States department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, community development credit unions, and community banks; and "Financial Institution" is defined as any bank, trust company, savings bank, savings and loan association or cooperative bank chartered by the State or any national banking association, federal savings and loan association or federal savings bank or any Community Based Lending Organization, provided, however, that such entity has its principal office located in the State. The rule will facilitate the statutory Program's purpose of having New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation") assist small businesses that otherwise find it difficult to obtain regular or sufficient bank financing, through the funding of loan loss reserves for loans made to such small businesses by participating financial institutions.

2. Compliance Requirements: There are no compliance requirements for local governments in these regulations. Small businesses must comply with the compliance requirements applicable to all participating lending institutions regardless of size. This is a voluntary program. Lending institution not wishing to undertake the compliance obligations need not participate.

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

4. Compliance Costs: There are no compliance costs for local governments in these regulations. With respect to small business lending institutions, they must comply with the compliance cost requirements applicable to all participating lending institutions regardless of size. This is a voluntary program. Lending institutions not wishing to undertake the compliance obligations need not participate.

5. Economic and Technological Feasibility: There are no compliance costs for small businesses and local governments in these regulations so there is no basis for determining the economic and technological feasible for compliance with the rule by small businesses and local governments.

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide access to capital through the funding of loan loss reserves for loans made to small businesses by participating financial institutions.

7. Small Business and Local Government Participation: A number of banks and community lending organizations were surveyed by the Corporation and were supportive of the program and its structure.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: Community development financial institutions serving all of the 44 counties defined as rural by the Executive Law § 481(7), are eligible to apply for the Capital Access Program (the "Program") assistance pursuant to a State-wide request for proposals.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The rule will not impose any new or additional reporting or recordkeeping requirements other than those that would be required of any financial institution receiving a similar loan regarding such matters as financial condition, required matching funds, and utilization of Program funds, and the statutorily required annual report on the use of Program funds; no affirmative acts will be needed to comply other than the said reporting requirements and the making of loans to small businesses in the normal course of the business for any financial institution that receives Program assistance; and, it is not anticipated that applicants will have to secure any professional services in order to comply with this rule.

3. Costs: The costs to financial institutions that participate in the Program would depend on the extent to which they choose to participate in the Program, including the amount of required matching funds for their Program loans to small businesses and the administrative costs in connection with such small business loans and the fees, if any, charged to small businesses in connection with loans to such businesses that include Program funds.

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

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those located only in urban areas or only in rural areas. A number of financial institutions that engage in lending to rural and urban small businesses responded to a survey circulated by the Corporation regarding implementation of the Program. Their comments were considered in the rulemaking process.

Job Impact Statement

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of New York by providing greater access to capital for main street everyday small businesses. The Program includes minorities, women and other New Yorkers who have difficulty accessing regular credit markets.

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

EMERGENCY RULE MAKING

Downstate Revitalization Fund

I.D. No. UDC-15-13-00005-E

Filing No. 314

Filing Date: 2013-03-20

Effective Date: 2013-03-20

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.

Purpose: Provide the basis for administration of The Downstate Revitalization Fund.

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.

(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 of 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; and intellectual capital capacity building;

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

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

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

4249.4 Eligibility

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

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

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

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

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

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

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

(1) Business Investment Business Investments are capital expenditures that facilitate an employer's ability to create new jobs in New York State or retain jobs that are otherwise in jeopardy. Such jobs otherwise in jeopardy include, but are not limited to, jobs in danger of being eliminated, having hours and/or wages reduced or relocated outside of New York State. Within the Business Investment Track, five-year job commitments will be required of all beneficiaries; it is by underwriting these job commitments that ESDC is best able to forecast the economic benefits of providing assistance to any particular project. Applicants will therefore be required to commit to the number of jobs at risk that will be retained by the proposed project, the number of new jobs that will be created by the project, and the average salaries of each. Failure to achieve or maintain these employment commitments will subject a beneficiary to potential recapture of assistance.

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

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

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

Section 4249.5 Evaluation criteria

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

(1) with significant private financing or matching funds through other public entities;

(2) likely to produce a high return on public investment;

(3) with existence of significant support from the local business community, local government, community organizations, academic institutions and other regional parties;

(4) deemed likely to increase the community's economic and social viability;

(5) with cost benefit analysis that demonstrates increased economic activity, sustainable job creation and investments;

(6) located in distressed communities;

(7) whose application is submitted by multiple entities, both public and private; or

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

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

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

	Maximum Score		
Criterion	*Business*	*Infrastructure*	*Downtown*
Private financing leveraged	*10*	*10*	*5*
Public financing leveraged	*5*	*5*	*5*
Return on public investment	*10*	*5*	*5*
Increased economic activity	*10*	*5*	*5*
Distressed Census Tract	*10*	*10*	*10*
Application supported by multiple public/private entities	*7*	*7*	*7*
Local/regional support	*3*	*3*	*3*
Significant regional breadth, likely to have wide regional impact, or likely to increase the community's economic and social viability	*5*	*5*	*5*
Minority or women owned business enterprise	*5*	*5*	*5*
Comports with identifiable regional development plans/ initiatives	*5*	*5*	*5*
Loan v. grant	*10*	*10*	*10*
ESDC credit score (considers cash flow, collateral and guarantees)	*10*	*10*	*10*
Project readiness	*5*	*5*	*5*
Sustainable development	*5*	*5*	*5*
Reuse/remediation	*5*	*5*	*5*
Identified tenants	*5*	*5*	*5*
Potential to revitalize a downtown neighborhood	*3*	*3*	*3*
Consistency/ preserve architectural character	*2*	*2*	*2*
President & CEO discretion	*10*	*10*	*10*
Total	*125*	*115*	*110*

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

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

Section 4249.6 Application and Approval Process

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

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

(c) If the proposal satisfies the applicable requirements and initiative funding is available, the proposal may be presented to the Corporation's directors for adoption consideration in accordance with applicable law and regulations. The directors normally meet once a month. If the project is approved for funding and if it involves the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of any property, the Corporation will schedule a public hearing in accordance with the Act and will take such further action as may be required by the Act and applicable law and regulations. After approval by the Corporation and a public hearing the project may then be reviewed by the State Public Authorities Control Board ("PACB"), which also generally meets once a month, in accordance with PACB requirements and policies. Following directors' approval, and PACB approval, if required, documentation will be prepared by the Corporation. Notwithstanding the foregoing, no initiative project shall be funded if sufficient initiative monies are not received by the Corporation for such project.

Section 4249.7 Confidentiality

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

Section 4249.8 Expenses

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

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

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

Section 4249.9 Affirmative action and non-discrimination

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 17, 2013.

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

Regulatory Impact Statement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thus far, $34,156,000 in assistance has been awarded to eligible recipients within the three targeted tracks of business investment, infrastructure investment and downtown redevelopment. $844,000 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 associ-

ated 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.

ESD 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.

ESD 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 ESD 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.

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.

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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."

Rural Area Flexibility Analysis

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

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

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

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

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

Job Impact Statement

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

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

EMERGENCY RULE MAKING

Economic Development Fund Program (''EDF'')

I.D. No. UDC-15-13-00006-E

Filing No. 315

Filing Date: 2013-03-20

Effective Date: 2013-03-20

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

Action taken: Amendment of Part 4243 of Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, sections 9-c and 16-i; L. 1968, ch. 174

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

Specific reasons underlying the finding of necessity: The modification to the rule facilitates the provision of Economic Development Fund emergency assistance to (i) retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York ("Agricultural Manufacturing Businesses") and adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York and adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

Subject: Economic Development Fund Program (''EDF'').

Purpose: Provide the basis for administration of The Champlain Bridge and August-September 2011 Storm and Flood Recovery Fund within EDF.

Text of emergency rule: Champlain Bridge and August – September 2011 Storm and Flood, Recovery Fund

Section 4243.36 Generally

Champlain Bridge and August – September Storm and Flood Recovery Fund (the "Fund") provides General Development Financing assistance on an emergency basis (i) for retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, the Village of Port Henry, New York and agricultural and manufacturing businesses, located in Essex County, New York, ("Agricultural and Manufacturing Businesses") that were adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York that were adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

Section 4243.37 Champlain Bridge and August – September 2011 Storm and Flood Recovery Fund Assistance

(a) In order to provide General Development Financing assistance to Retail and Service Businesses and Agricultural and Manufacturing Businesses in Eligible Areas (as defined below), the following provisions of the rule are modified as follows solely for Fund assistance.

(1) "Eligible Area" shall mean: (i) for assistance with respect to the closure of the Bridge Closure, as defined below, (a) with respect to assistance for Retail and Service Businesses the Towns of Crown Point, Moriah, and Ticonderoga, New York, the Village of Port Henry, New York and (b) with respect to assistance for Agricultural and Manufacturing Businesses, Essex County, New York; and (ii) for assistance with respect to damages and losses caused by or related to storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011, in Essex County, New York.

(2) "Bridge Closure" shall mean the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge.

(3) The term "Distressed Area" in paragraph 4243.2(a)(7) shall also include the Eligible Areas.

(4) The term "Eligible Applicant" in paragraph 4243.2(a)(11) shall also include all Retail and Service Businesses and Agricultural and Manufacturing Businesses.

(5) The term "Eligible Business" in paragraph 4243.2(a)(12) shall also include all Retail and Service Businesses and Agricultural and Manufacturing Businesses.

(6) The term "Eligible Recipient" in paragraph 4243.2(a)(13)(iii) shall also include all Retail and Service Businesses and Agricultural and Manufacturing Businesses.

(7) The term "Ineligible Cost" in paragraph 4243.2(a)(22) subparagraph (v) does not apply.

(8) The term "Ineligible Recipient" in paragraph 4243.2(a)(23) subparagraphs (i), (ii), (iii) and (iv) does not apply.

(9) Section 4243.7 regarding fees does not apply. There are no fees for Fund assistance.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 17, 2013.

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

Regulatory Impact Statement

1. Statutory Authority: Section 9-c of the New York State Urban Development Corporation Act Chapter 174 of the Laws of 1968, as amended (the "Act"), provides, in part, that the Corporation shall, assisted by the Commissioner of Economic Development and in consultation with the Department of Economic Development, promulgate rules and regulations in accordance with the State Administrative Procedure Act.

Section 16-i of the Act established the Economic Development Fund and authorizes the New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation"), within available appropriations, to provide grants for the purpose of creating or retaining jobs or preventing, reducing or eliminating unemployment or underemployment. The proposed regulations modify Chapter L, Part 4243 of Title 21 NYCRR.

2. Legislative Objectives: Section 16-i of the Act sets forth the Legislative objective of authorizing the Corporation, within available appropriations, to provide grants and loans in order to promote the economic health of New York state by facilitating the creation or retention of jobs and would increase business activity within a municipality or region of the state. The adoption of 21 NYCRR Part 4243.36 and 4243.37 will further these goals by modifying 21 NYCRR Part 4243 in order to provide General Development Financing assistance on an emergency basis to retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York ("Agricultural Manufacturing Businesses") that were adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York that were adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011, in order to facilitate the retention of jobs and increase business activity within those municipalities and the affected region.

3. Needs and Benefits: The Governor declared a state of emergency in Essex County and surrounding areas due to the emergency closure of the unsafe Lake Champlain Bridge (which was subsequently demolished). For nearly eighty years, the bridge had been a major transportation route between the Ticonderoga, Crown Point and Port Henry areas of the State and the Vergennes, Middlebury and Burlington areas of Vermont. The loss of the bridge resulted is a 100 mile detour until a new bridge could be designed and constructed. Even with an emergency ferry service to handle limited traffic, local businesses lost customers and incurred increased costs that would cause business closures, and require layoffs and firing. The Governor also declared a state of emergency in Essex County and surrounding areas due to the storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011. The modifications to the rule would allow affected businesses to receive economic assistance in order to retain jobs and mitigate layoffs and firings and increase business activity.

4. Costs: The Program is funded by a State appropriation for the Economic Development Fund and there are no other costs.

5. Paperwork / Reporting: There are no additional reporting or paperwork requirements as a result of this rule on businesses participating in the Program. Standard applications and grant documents used for most other assistance by the Corporation will be employed in keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients.

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

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

8. Alternatives: There are no alternatives to this regulation for providing emergency assistance for business affected by the storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011 and the closing of the Lake Champlain Bridge in order to retain jobs in the affected area.

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

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

Regulatory Flexibility Analysis

1. Effects of Rule: The modification of the Rule pursuant to Parts 4243.36 and 4243.37 provides emergency Economic Development Fund General Development Financing assistance to retail and service businesses located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York that were adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and retail and service businesses and agricultural and manufacturing businesses located in Essex County, New York that were adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011 in order to preserve business activity and the jobs by these businesses that would otherwise be reduced or lost due to the loss of customers and increased costs arising from the unexpected permanent closing (and subsequent demolition) of the unsafe Lake Champlain Bridge and the August – September 2011 storms and floods.

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

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

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

5. Economic and Technological Feasibility: There are no compliance costs for small businesses and local governments in these regulations so there is no basis for determining the economic and technological feasible for compliance with the rule by small businesses and local governments.

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide assistance to the business listed above.

7. Small Business and Local Government Participation: The modification to the rule facilitates emergency assistance to all agricultural, manufacturing, retail, and service small businesses located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and Essex County, New York affected by the emergency closing and demolition of the Lake Champlain Bridge and the storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: Retail and Service Businesses located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York that were adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York that were adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011 are eligible to apply for Economic Development Fund General Development Financing pursuant to the Champlain Bridge Recovery Fund (the "Program").

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The modification of 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: There should be no costs to small businesses receiving assistance other than the minimal costs of preparing a simple application for program assistance.

4. Minimizing Adverse Impact: The purpose of the rule modification is to provide General Development Financing assistance from the Economic Development Fund on an emergency basis for (i) retail and service businesses located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York that were adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York that were adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

5. Rural Area Participation: This rule provides emergency assistance to agricultural, manufacturing, retail and service business in rural Essex County, New York and the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York.

Job Impact Statement This modification to Part 4243 of Title 21 NYCRR will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of New York, particularly by providing emergency Economic Development Fund assistance to(i) retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York ("Agricultural Manufacturing Businesses") that were adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York that were adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

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

EMERGENCY RULE MAKING

Capital Access Program

I.D. No. UDC-15-13-00007-E
Filing No. 316
Filing Date: 2013-03-20
Effective Date: 2013-03-20

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

Action taken: Addition of Part 4251 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); L. 2011, ch. 103, section 16-K; and L. 1968, ch. 174

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

Specific reasons underlying the finding of necessity: The current economic crisis, including high unemployment and the immediate lack of financing from traditional financial institutions for job generating small business, are the reasons for the emergency adoption of this Rule which is required for the immediate implementation of the Capital Access Program in order to promptly provide assistance to the State's small businesses in order to sustain and increase employment generated by these businesses.

Subject: Capital Access Program.

Purpose: Provide the basis for administration of the Capital Access Program.

Substance of emergency rule: The Capital Access Program (the "Program") was authorized pursuant to 16-k of the New York State Urban Development Corporation Act (the "Enabling Legislation"). The general purpose of the Program is to promote economic development in the State by assisting small businesses that otherwise find it difficult to obtain regular or sufficient bank financing through the funding of loan loss reserves for loans made to such small businesses by participating financial institutions.

The Enabling Legislation creates Section 16-k of the New York State Urban Development Corporation Act (the "Act"), which governs the Program. The Enabling Legislation requires the New York State Urban Development Corporation (the "Corporation") to promulgate rules and regulations for the Program (the "Rules") in accordance with the provisions of the State Administrative Procedure Act. The Rules set forth the framework for the eligibility, evaluation criteria, application and project process and administrative procedures of the Program as follows:

1. Program Operations:

A participating financial institution shall provide to the Corporation a plan for the marketing of the Program to eligible small businesses, including small businesses in highly distressed areas and MWBEs, with appropriate lending objectives identified by the participating financial institution for such areas and businesses. Program loans to eligible small businesses shall only be for the purposes of expansion, facility or technology upgrading, start-up or working capital purposes. No program loan will exceed five hundred thousand dollars in principal amount. For each program loan, there shall be deposited in the loan loss reserve fund an amount, specified or agreed to in writing by the Corporation, from both the participating financial institution and the eligible small business borrower, aggregating neither less than three percent nor more than seven percent of the principal amount of the program loan, whereby the amount contributed by the eligible small business is not greater than fifty percent of such aggregate. With respect to each program loan, it shall be certified to the Corporation in such a fashion and with such supporting information as the Corporation shall prescribe that the participating financial institution has made such loan and delivered the aggregate loan loss reserve fund contribution with respect to such loan. The Corporation, after satisfactory certification pursuant to the Rules shall transfer to the loan loss reserve fund an amount, as determined by the Corporation, that is (1) not less than the aggregate contribution of the participating financial institution and the small business with respect to such loan, and (2) not greater than one hundred fifty percent of such aggregate contributions as determined by the Corporation.

2. Program Administration:

The Corporation may administer the Program through a third party agent, which may be the New York Business Development Corporation, established under section 210 of the Banking Law, provided, however, that if the third party agent is to be a financial institution other than the New York Business Development Corporation, then such third party agent will be selected pursuant to a competitive process. With respect to these third party agents, the Rules specify requirements for contract duration, performance evaluation and contract renewals.

3. Application and Approval Process:

The Corporation shall identify, review, and approve eligible participating financial institutions through an open recruitment and enrollment process. Participating financial institutions participating in the Program will possess sufficient commercial lending experience, financial and managerial capabilities, and operational skills to meet the Program objectives. The Rules provide guidance as to what documents can be provided by various lending entities to assist in the Corporation's evaluation of applicants.

4. Auditing, Compliance and Reporting:

The Rules set forth requirements for quarterly and annual reporting from participating financial institutions, including updated specific information regarding loan loss reserve funds and individual program loans. The Corporation may conduct audits of participating financial institutions in order to ensure compliance with the provisions of applicable laws and regulations, and with respect to and agreements between the Participating Financial Institution and the Corporation and the Agent.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 17, 2013.

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

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 (Uncon. Laws section 6259-c), as amended (the "Act"), provides, in part, that the Corporation shall, assisted by the Commissioner of Economic Development and in consultation with the Department of Economic Development, promulgate rules and regulations in accordance with the State Administrative Procedure Act.

Section 16-k of the Act provides for the creation of the Capital Access Program (the "Program") and authorizes the New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation"), within available appropriations, to provide funding for loan loss reserves to Community Based Lending Organizations and Participating Financial Institutions, in order to provide portfolio insurance for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit.

2. Legislative Objectives: Section 16-k of the Act (Uncon. Laws section 6266-k, added by Chapter 103 of the Laws of 2011) sets forth the Legislative objective of authorizing the Corporation, within available appropriations, to provide funding for loan loss reserves to financial institutions and other community based lending organizations, in order to provide portfolio insurance for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit. The adoption of 21 NYCRR Part 4251 will further these goals by setting forth the types of available assistance, evaluation criteria, the application process and related matters for the Program.

3. Needs and Benefits: The State has allocated $18,994,204 of federal funds to provide funding for loan loss reserves to financial institutions and other community based lending organizations, in order to provide portfolio insurance for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit. Small businesses have been determined to be a major source of employment throughout the State. Small businesses have historically had difficulties obtaining financing or refinancing in order to remain competitive and grow their operations, and the current economic difficulties have exacerbated this problem. Providing loans to small businesses should sustain and potentially increase the employment provided by such businesses, especially during this period of historically high unemployment and underemployment. The Program allows the Corporation to use either the New York Business Development Corporation or another third party contracted through a competitive process by the Corporation to administer the Capital Access Program if desirable. The rule further facilitates the administration of the Program by defining eligible and ineligible small businesses, eligible uses of the proceeds of loans to small businesses and other criteria to be applied by the institutions in making loans to small businesses.

4. Costs: The Program is funded by a State appropriation of federal funds in the amount of $18,994,204 dollars. Pursuant to the rule, principal amount of Program Loans will not be greater than $500,000. The costs to participating financial institutions or community based lending organizations would depend on the extent to which they participate in the Program and their effectiveness and efficiency in making small business loans.

5. Paperwork / Reporting: There are no additional reporting or paperwork requirements as a result of this rule for Program participants except

those required by the statute creating the Program such as an annual report on the organization's lending activity and providing information in connection with an audit by the Corporation with respect to the organization's use of Program funds. Standard documents used for most other assistance by the Corporation will be employed in keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients.

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

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

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

9. Federal Standards: There are no minimum federal standards related to this regulation. The regulation is not inconsistent with any federal standards or requirements. Federal funds through US Treasury's State Small Business Credit Initiative are being used for this program and all regulations associated with SSBCI will be followed.

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

Regulatory Flexibility Analysis

1. Effects of Rule: In the rule: "Small business" is defined as a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis; "Community Based Lending Organization" is defined as including community development financial institutions, small business lending consortia, certified development companies, providers of United States department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, community development credit unions, and community banks; and "Financial Institution" is defined as any bank, trust company, savings bank, savings and loan association or cooperative bank chartered by the State or any national banking association, federal savings and loan association or federal savings bank or any Community Based Lending Organization, provided, however, that such entity has its principal office located in the State. The rule will facilitate the statutory Program's purpose of having New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation") assist small businesses that otherwise find it difficult to obtain regular or sufficient bank financing, through the funding of loan loss reserves for loans made to such small businesses by participating financial institutions.

2. Compliance Requirements: There are no compliance requirements for local governments in these regulations. Small businesses must comply with the compliance requirements applicable to all participating lending institutions regardless of size. This is a voluntary program. Lending institution not wishing to undertake the compliance obligations need not participate.

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

4. Compliance Costs: There are no compliance costs for local governments in these regulations. With respect to small business lending institutions, they must comply with the compliance cost requirements applicable to all participating lending institutions regardless of size. This is a voluntary program. Lending institutions not wishing to undertake the compliance obligations need not participate.

5. Economic and Technological Feasibility: There are no compliance costs for small businesses and local governments in these regulations so there is no basis for determining the economic and technological feasible for compliance with the rule by small businesses and local governments.

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide access to capital through the funding of loan loss reserves for loans made to small businesses by participating financial institutions.

7. Small Business and Local Government Participation: A number of banks and community lending organizations were surveyed by the Corporation and were supportive of the program and its structure.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: Community development financial institutions serving all of the 44 counties defined as rural by the Executive Law § 481(7), are eligible to apply for the Capital Access Program (the "Program") assistance pursuant to a State-wide request for proposals.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The rule will not impose any new or additional reporting or recordkeeping requirements other than those that would be required of any financial institution receiving a similar loan regarding such matters as financial condition, required matching funds, and utilization of Program funds, and the statutorily required annual report on the use of Program funds; no affirmative acts will be needed to comply other than the said reporting requirements and the making of loans to small businesses in the normal course of the business for any financial institution that receives Program assistance; and, it is not anticipated that applicants will have to secure any professional services in order to comply with this rule.

3. Costs: The costs to financial institutions that participate in the Program would depend on the extent to which they choose to participate in the Program, including the amount of required matching funds for their Program loans to small businesses and the administrative costs in connection with such small business loans and the fees, if any, charged to small businesses in connection with loans to such businesses that include Program funds.

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

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those located only in urban areas or only in rural areas. A number of financial institutions that engage in lending to rural and urban small businesses responded to a survey circulated by the Corporation regarding implementation of the Program. Their comments were considered in the rulemaking process.

Job Impact Statement

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of New York by providing greater access to capital for main street everyday small businesses. The Program includes minorities, women and other New Yorkers who have difficulty accessing regular credit markets.

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