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 Audit and Control

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Effective Date of Retirement

I.D. No. AAC-30-13-00004-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 341.4(a) and 341.6 of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11 and 311

Subject: Effective date of retirement.

Purpose: To conform the text of the regulation with RSSL sections 70 and 370 as amended by chapter 375 of the Laws of 2011.

Text of proposed rule: Section 341.4. Effective date of retirement.

(a) A service retirement application must be on file with the Office of the State Comptroller for no less than [30]*15* and no more than 90 days before the effective date of retirement.

(b) With respect to tier 1 and tier 2 members, a vested retirement application will become effective on the date it is filed or the first day of the month following the date upon which the member attains the minimum age required for vested retirement; whichever is later.

(c) With respect to tier 3 and tier 4 members, a vested retirement application will become effective on the date it is filed or the date upon which the member attains the minimum age required for vested retirement; whichever is later.

Section 341.6. Changing the effective date of service retirement.

A member or a person authorized under the Retirement and Social Security Law to file a retirement application on the member's behalf may change the effective date of the member's service retirement by filing a new application for service retirement with the Retirement System prior to the effective date of retirement established by the previously filed service retirement application, and by choosing thereon, a new effective date which meets the following requirements. The effective date of retirement selected on the new service retirement application must be at least [30]*15* and no more than 90 days after the filing date of the previously filed service retirement application, or must be at least [30]*15* and no more than 90 days after the filing date of the new service retirement application, whichever period is later. Such an application will not be considered filed until it is actually received. However, such a written request will be deemed filed on the date it is mailed if it is mailed to the Retirement System by United States Postal Service certified mail, return receipt requested and is actually received by the Retirement System as the result of such mailing.

Text of proposed rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

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

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

Consensus Rule Making Determination

This is a consensus rulemaking proposed for the sole purpose of conforming the existing text of Section 341.1(a) and 341.6 of Title 2 of NYCRR to the provisions of sections 70 and 370 of the Retirement and Social security law. These technical amendments relate to the effective date of retirement and it has been determined that no person is likely to object to the adoption of the rule as written.

Office of Children and Family Services

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Office of Children and Family Services publishes a new notice of proposed rule making in the NYS *Register*.

Child Care Personnel Tuberculosis Testing

I.D. No.	Proposed	Expiration Date
CFS-27-12-00008-P	July 3, 2012	July 3, 2013

Department of Environmental Conservation

NOTICE OF ADOPTION

Recreational Harvest Regulations for Summer Flounder (Fluke), Scup and Black Sea Bass

I.D. No. ENV-20-13-00006-A
Filing No. 748
Filing Date: 2013-07-09
Effective Date: 2013-07-24

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

Action taken: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105, 13-0340-b, 13-0340-e and 13-0340-f

Subject: Recreational harvest regulations for summer flounder (fluke), scup and black sea bass.

Purpose: To maximize recreational angler opportunities for popular finfish species while staying in compliance with the ASMFC and MAFMC.

Text or summary was published in the May 15, 2013 issue of the Register, I.D. No. ENV-20-13-00006-EP.

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

Text of rule and any required statements and analyses may be obtained from: Stephen Heins, Department of Environmental Conservation, 205 N. Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0435, email: swheins@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the department.

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

The department received very limited comments which required little response. One commenter was not satisfied with the half inch reduction in the minimum size limit of summer flounder. New York was only able to liberalize its regulations because we were allowed to use under-utilized summer flounder from other states to augment our allowable harvest. New York is currently working with the Atlantic States Marine Fisheries Commission to provide a more permanent solution to the inequality in recreational summer flounder regulations along the Atlantic Coast.

Another commenter felt that the more restrictive black sea bass regulations, particularly the 8 fish possession limit, would not encourage anglers to target black sea bass, especially on For-Hire vessels. The 8 fish possession limit is part of a harvest reduction and combined with days removed from the season make up the regulatory option supported by New York's Marine Resource Advisory Council.

Department of Financial Services

EMERGENCY RULE MAKING

Excess Line Placements Governing Standards

I.D. No. DFS-30-13-00001-E
Filing No. 712
Filing Date: 2013-07-03
Effective Date: 2013-07-03

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: Insurance Law, arts. 21 and 59, sections 301, 316, 1213, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 3103, 5907, 5909, 5911 and 9102; and Financial Services Law, sections 202 and 302; L. 1997, ch. 225; L. 2002, ch. 587; and L. 2011, ch. 61

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

Specific reasons underlying the finding of necessity: This regulation governs the placement of excess line insurance. Article 21 of the Insurance Law and Regulation 41 enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from unauthorized insurers (known as "excess line insurers") if the unauthorized insurers are "eligible," and an excess line broker places the insurance.

On July 21, 2010, President Obama signed into law the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"), which prohibits any state, other than the insured's home state, from requiring a premium tax payment for nonadmitted insurance. The NRRA also subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured's home state, and provides that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate nonadmitted insurance with respect to such insured. On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amended the Insurance Law to implement the provisions of the NRRA.

The sections of Part I of Chapter 61 that amend the Insurance Law to bring New York into conformance with the NRRA took effect on July 21, 2011, which is when the NRRA took effect. The regulation was previously promulgated on an emergency basis on July 22, 2011, October 19, 2011, January 16, 2012, April 16, 2012, July 13, 2012, October 10, 2012, January 7, 2013, and April 5, 2013.

For the reasons stated above, emergency action is necessary for the general welfare.

Subject: Excess Line Placements Governing Standards.

Purpose: To implement chapter 61 of the Laws of 2011, conforming to the federal Nonadmitted and Reinsurance Reform Act of 2010.

Substance of emergency rule: On July 21, 2010, President Obama signed into law the federal Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), which contains the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"). The NRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for excess (or "surplus") line insurance. The NRRA also subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state, and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured.

In addition, the NRRA provides that an excess line broker seeking to procure or place excess line insurance for an exempt commercial purchaser ("ECP") need not satisfy any state requirement to make a due diligence search to determine whether the full amount or type of insurance sought by the ECP may be obtained from admitted insurers if: (1) the broker procuring or placing the excess line insurance has disclosed to the ECP that the insurance may be available from the admitted market, which may provide greater protection with more regulatory oversight; and (2) the ECP has subsequently requested in writing that the broker procure the insurance from or place the insurance with an excess line insurer.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amends the Insurance Law to conform to the NRRA.

Insurance Regulation 41 (11 NYCRR Part 27) consists of 24 sections and one appendix addressing the regulation of excess line insurance placements.

The Department of Financial Services ("Department") amended Section 27.0 to discuss the NRRA and Chapter 61 of the Laws of 2011.

The Department amended Section 27.1 to delete language in the definition of "eligible" and to add three new defined terms: "exempt commercial purchaser," "insured's home state," and "United States."

Section 27.2 is not amended.

The Department amended Section 27.3 to provide an exception for an ECP consistent with Insurance Law Section 2118(b)(3)(F) and to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.4 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.5 to: (1) clarify that the requirements set forth in this section apply when the insured's home state is New York; (2) with regard to an ECP, require an excess line broker or the producing broker to affirm in part A or part C of the affidavit that the ECP was specifically advised in writing, prior to placement, that the insurance may or may not be available from the authorized market that may provide greater protection with more regulatory oversight; (3) require an excess line broker to identify the insured's home state in part A of the affidavit;

and (4) clarify that the premium tax is to be allocated in accordance with Section 27.9 of Insurance Regulation 41 for insurance contracts that have an effective date prior to July 21, 2011.

The Department amended Section 27.6 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.7(b) to revise the address to which reports required by Section 27.7 should be submitted.

The Department amended Section 27.8 to: (1) require a licensed excess line broker to electronically file an annual premium tax statement, unless the Superintendent of Financial Services (the "Superintendent") grants the broker an exemption pursuant to Section 27.23 of Insurance Regulation 41; (2) acknowledge that payment of the premium tax may be made electronically; and (3) change a reference to "Superintendent of Insurance" to "Superintendent of Financial Services."

The Department amended Section 27.9 to clarify how an excess line broker must calculate the taxable portion of the premium for: (1) insurance contracts that have an effective date prior to July 21, 2011; and (2) insurance contracts that have an effective date on or after July 21, 2011 and that cover property or risks located both inside and outside the United States.

The Department amended Sections 27.10, 27.11, and 27.12 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.13 to clarify that the requirements set forth in this section apply when the insured's home state is New York and to require an excess line broker to obtain, review, and retain certain trust fund information if the excess line insurer seeks an exemption from Insurance Law Section 1213. The Department also amended Section 27.13 to require an excess line insurer to file electronically with the Superintendent a current listing that sets forth certain individual policy details.

The Department amended Section 27.14 to state that in order to be exempt from Insurance Law Section 1213 pursuant to Section 27.16 of Insurance Regulation 41, an excess line insurer must establish and maintain a trust fund, and to permit an actuary who is a fellow of the Casualty Actuarial Society (FCAS) or a fellow in the Society of Actuaries (FSA) to make certain audits and certifications (in addition to a certified public accountant), with regard to the trust fund.

Section 27.15 is not amended.

The Department amended Section 27.16 to state that an excess line insurer will be subject to Insurance Law Section 1213 unless the contract of insurance is effectuated in accordance with Insurance Law Section 2105 and Insurance Regulation 41 and the insurer maintains a trust fund in accordance with Sections 27.14 and 27.15 of Insurance Regulation 41, in addition to other current requirements.

The Department amended Sections 27.17, 27.18, 27.19, 27.20, and 27.21 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

Section 27.22 is not amended.

The Department repealed current Section 27.23 and added a new Section 27.23 titled, "Exemptions from electronic filing and submission requirements."

Section 27.24 is not amended.

The Department amended the excess line premium tax allocation schedule set forth in appendix four to apply to insurance contracts that have an effective date prior to July 21, 2011.

The Department added a new appendix five, which sets forth an excess line premium tax allocation schedule to apply to insurance contracts that have an effective date on or after July 21, 2011 and that cover property and risks located both inside and outside the United States.

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 September 30, 2013.

Text of rule and any required statements and analyses may be obtained from: Joana Lucashuk, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2125, email: joana.lucashuk@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the promulgation of the Fourteenth Amendment to Insurance Regulation 41 (11 NYCRR Part 27) derives from Sections 301, 316, 1213, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 9102, and Article 21 of the Insurance Law, Sections 202 and 302 of the Financial Services Law, Chapter 225 of the Laws of 1997, Chapter 587 of the Laws of 2002, and Chapter 61 of the Laws of 2011.

The federal Nonadmitted and Reinsurance Reform Act of 2010 (the "NRRA") significantly changes the paradigm for excess line insurance placements in the United States. Chapter 61 of the Laws of 2011 amends the Insurance Law and the Tax Law to conform to the NRRA. The NRRA and Chapter 61 have been impacting excess line placements since their effective date of July 21, 2011.

Section 301 of the Insurance Law and Sections 202 and 302 of the Financial Services Law authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law. Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

Section 1213 provides the manner by which substituted service on an unauthorized insurer may be made in any proceeding against it on an insurance contract issued in New York. Substituted service may be made on the Superintendent in the manner prescribed in Section 1213.

Article 21 sets forth the duties and obligations of insurance brokers and excess line brokers. Section 2101 sets forth relevant definitions. Section 2104 governs the licensing of insurance brokers. Section 2105 sets forth licensing requirements for excess line brokers. Section 2110 provides grounds for the Superintendent to discipline licensees by revoking or suspending licenses or, pursuant to Section 2127, imposing a monetary penalty in lieu of revocation or suspension. Section 2116 permits payment of commissions to brokers and prohibits compensation to unlicensed persons. Section 2117 prohibits the aiding of an unauthorized insurer, with exceptions. Section 2118 sets forth the duties of excess line brokers, with regard to the placement of insurance with eligible foreign and alien excess line insurers, including the responsibility to ascertain and verify the financial condition of an unauthorized insurer before placing business with that insurer. Section 2121 provides that brokers have an agency relationship with insurers for the collection of premiums. Section 2122 imposes limitations on advertising by producers. Section 2130 establishes the Excess Line Association of New York ("ELANY").

Section 9102 establishes rules regarding the allocation of direct premiums taxable in New York, where insurance covers risks located both in and out of New York.

2. Legislative objectives: Generally, unauthorized insurers may not do an insurance business in New York. In permitting a limited exception for licensed excess line brokers to procure insurance policies in New York from excess line insurers, the Legislature established statutory requirements to protect persons seeking insurance in New York. The NRRA significantly changes the paradigm for excess (or "surplus") line insurance placements in the United States. The NRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for excess line insurance. Further, the NRRA subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured. In addition, the NRRA establishes uniform eligibility standards for excess line insurers. A state may not impose additional eligibility conditions.

Under the new NRRA paradigm, an excess line broker now must ascertain an insured's home state before placing any property/casualty excess line business. Thus, if the insured's home state is not New York, even though the insured goes to the broker's office in New York, the excess line broker must be licensed in the insured's home state in order for the broker to procure the excess line coverage for that insured. Conversely, a person who is approached by an insured outside of New York must be licensed as an excess line broker in New York in order to procure excess line coverage for an insured whose home state is New York.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amends the Insurance Law to conform to the NRRA. The NRRA and Chapter 61 took effect on July 21, 2011 and have been impacting excess line placements since that date.

3. Needs and benefits: Insurance Regulation 41 governs the placement of excess line insurance. The purpose of the excess line law is to enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from eligible excess line insurers. This regulation implements the provisions and purposes of Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the NRRA. The NRRA and Chapter 61 took effect on July 21, 2011 and have been impacting excess line placements since that date.

Section 27.14 of Insurance Regulation 41 currently prohibits an excess line broker from placing coverage with an excess line insurer unless the insurer has established and maintained a trust fund. However, the new NRRA eligibility requirements do not include a trust fund with respect to foreign insurers (alien insurers, however, do have to maintain a trust fund

that satisfies the International Insurers Department ("IID") of the National Association of Insurance Commissioners ("NAIC")). As such, New York is no longer requiring a trust fund of foreign insurers for eligibility.

Currently, Insurance Law Section 1213(e) exempts excess line insurers writing excess line insurance in New York from the requirements of Section 1213, such as the requirement that an insurer deposit with the clerk of the court cash or securities or a bond with good and sufficient sureties, in an amount to be fixed by the court sufficient to secure payments of any final judgment that may be rendered by the court, with the clerk of the court before filing any pleading in any proceeding against it, so long as the excess line insurance contract designates the Superintendent for service of process and, in material part, the policy is effectuated in accordance with Section 2105, the section that applies to excess line brokers. In a memorandum to the governor, dated March 30, 1949, recommending favorable executive action on the bill, the Superintendent of Insurance wrote that it was "our understanding that this subsection was inserted as the result of representations made by the representatives of Lloyds of London because the contracts of insurance customarily [written] by the underwriters and placed through licensees of this Department, contain a provision whereby the underwriters consent to be sued in the courts of this state and they maintain a trust fund in New York of a very sizable amount, which is available for the payment of any judgment which may be secured in an action involving one of their contracts of insurance."

When the Superintendent of Insurance first promulgated Insurance Regulation 41, effective October 1, 1962, pursuant to his broad power to make regulations, he codified in the regulation the longstanding practice regarding the trust fund, and established minimum provisions and requirements, thus providing a reasonable alternative for unauthorized insurers that regularly engage in the sale of insurance through the excess line market. While the specific provisions have been amended a number of times over the years, every iteration of Insurance Regulation 41 has called for a trust fund as a means of providing alternative security that the insurer would have resources to pay judgments against the insurer.

Although the NRRA apparently precludes New York from requiring a foreign insurer to maintain a trust fund to be eligible in New York, or a trust fund for an alien insurer that deviates from the IID requirements, New York policyholders need to be protected when claims arise. As a result, the Department is amending Section 27.16 of Insurance Regulation 41 to provide that an excess line insurer will be subject to Insurance Law Section 1213's requirements unless the contract of insurance is effectuated in accordance with Insurance Law Section 2105, the Superintendent is designated as agent for service of process, and the insurer maintains a trust fund in accordance with Sections 27.14 and 27.15 of Insurance Regulation 41 (in addition to other requirements currently set forth in Section 27.16). Further, the Department is amending Section 27.14 of Insurance Regulation 41 to state that in order to be exempt from Insurance Law Section 1213 pursuant to Section 27.16 of Insurance Regulation 41, an excess line insurer must establish and maintain a trust fund. Insurance Law Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

The Department amended Section 27.8(a) of Insurance Regulation 41 to require excess line brokers to file annual premium tax statements electronically, and amended Section 27.13 to require excess line brokers to file electronically a listing that sets forth certain individual policy details. In addition, the Department added a new Section 27.13 to Insurance Regulation 41 to allow excess line brokers to apply for a "hardship" exception to the electronic filing or submission requirement.

4. Costs: The rule is not expected to impose costs on excess line brokers, and it merely conforms the requirements regarding placement of coverage with excess line insurers to the requirements in Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the NRRA. Although the amended regulation will require excess line brokers to file annual premium tax statements and a listing that sets forth certain individual policy details electronically, most brokers already do business electronically. In fact ELANY already requires documents to be filed electronically. Moreover, the regulation also provides a method whereby excess line brokers may apply for an exemption from the electronic filing or submission requirement.

With regard to the trust fund amendment, on the one hand, excess line insurers may incur costs if they choose to establish and maintain a trust fund in order to be exempt from Insurance Law Section 1213. On the other hand, it should be significantly less expensive to establish and maintain a trust fund rather than comply with Insurance Law Section 1213. This is a business decision that each insurer will need to make. The trust fund, if established and maintained, will be for the purpose of protecting all United States policyholders.

Costs to the Department of Financial Services also should be minimal, as existing personnel are available to review any modified filings necessitated by the regulations. In fact, filing forms electronically may produce a cost savings for the Department of Financial Services. These rules impose no compliance costs on any state or local governments.

5. Local government mandates: These rules do not impose any program, service, duty or responsibility upon a city, town, village, school district or fire district.

6. Paperwork: The regulation imposes no new reporting requirements on regulated parties.

7. Duplication: The regulation will not duplicate any existing state or federal rule, but rather implement and conform to the federal requirements.

8. Alternatives: The Department discussed the changes related to trust funds and Insurance Law Section 1213 with counsel at the NAIC and with ELANY.

9. Federal standards: This regulation will implement the provisions and purposes of Chapter 61 of the Laws of 2011, which amends the Insurance Law to conform to the NRRA.

10. Compliance schedule: Pursuant to Chapter 61 of the Laws of 2011, this regulation will impact excess line insurance placements effective on and after July 21, 2011.

Regulatory Flexibility Analysis

This rule is directed at excess line brokers and excess line insurers.

Excess line brokers are considered to be small businesses as defined in section 102(8) of the State Administrative Procedure Act. The rule is not expected to have an adverse impact on these small businesses because it merely conforms the requirements regarding placement of coverage with excess line insurers to Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010.

The rule will require excess line brokers to file annual premium tax statements electronically, and to file electronically a listing that sets forth certain individual policy details. However, the excess line broker may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

Further, the Department of Financial Services has monitored Annual Statements of excess line insurers subject to this rule, and believes that none of them fall within the definition of "small business," because there are none that are both independently owned and have fewer than one hundred employees.

The Department of Financial Services finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses.

The rule does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

The Department of Financial Services ("Department") finds that this rule does not impose any additional burden on persons located in rural areas, and the Department finds that it will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

Job Impact Statement

The Department of Financial Services finds that this rule should have no impact on jobs and employment opportunities. The rule conforms the requirements regarding placement of coverage with excess line insurers to Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010. The rule also makes an excess line insurer subject to Insurance Law section 1213, unless it chooses to establish and maintain a trust fund in New York for the benefit of New York policyholders.

EMERGENCY RULE MAKING

Credit Exposure Arising from Derivative Transactions

I.D. No. DFS-30-13-00003-E

Filing No. 746

Filing Date: 2013-07-08

Effective Date: 2013-07-08

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

Action taken: Addition of Part 117 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 103 and 235; and Financial Services Law, section 302

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

Specific reasons underlying the finding of necessity: Derivative transactions, including swaps and options, are a basic tool used by many banking organizations in New York and elsewhere to hedge their exposure to various types of risk, including interest rate, currency and credit risk.

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act [cite] ("DFA") became effective [date]. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an insured state bank (including an insured state savings bank) may only engage in derivative transactions if the law of its chartering state regarding lending limits "takes into consideration credit exposure to derivative transactions."

In light of federal enactment of the DFA, the Legislature amended the Banking Law provision regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from derivative transactions should be taken into account. Laws of 2011, c. 182, § 2.

This regulation sets forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. Emergency adoption of the regulation is necessary in order to ensure that New York banking organizations continue to be able to engage in derivative transactions on and after January 21, 2013.

Subject: Credit exposure arising from derivative transactions.

Purpose: To provide for the consideration of credit exposure relating to derivative transactions in calculating bank loan limits.

Text of emergency rule: *PART 117*

LENDING LIMITS: INCLUSION OF CREDIT EXPOSURES ARISING FROM DERIVATIVE TRANSACTIONS

§ 117.1 Definitions.

For the purposes of this Part:

a) The appropriate Federal banking agency of a bank shall be the agency specified by Section 3(q) of the Federal Deposit Insurance Act (FDIA), 12 USC § 1813(q), or the successor to such provision.

b) Bank includes a bank or trust company or a savings bank formed under the Banking Law whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

c) Credit derivative means a financial contract that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure) to another party (the protection provider).

d) The current credit exposure of a bank to a counterparty on a particular date with respect to a derivative transaction other than a credit derivative shall be the amount that the bank reasonably determines would be its loss under the terms of the derivative contract covering such transaction if the counterparty defaulted on such date.

e) The credit exposure of a bank to a counterparty arising from derivative transactions other than credit derivatives is the higher of zero or the sum of the then positive current credit exposures with respect to such derivative transactions, provided, however, that in calculating such credit exposure, the bank may take into account netting to the extent specified in section 117.4(a).

f) Derivative transaction includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

g) Effective margining arrangement means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty that exceeds $1 million created by the derivative transactions covered by the agreement.

h) Eligible credit derivative means a single-name credit derivative or a standard, non-tranched index credit derivative, provided that:

(1) The derivative contract is executed under standard industry credit derivative documentation and meets the requirements of an eligible guarantee and has been confirmed by both the protection purchaser and the protection provider;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Bankruptcy, insolvency, or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;

(4) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract; and

(5) If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process.

i) Eligible protection provider means:

(1) A sovereign entity (a central government, including the United States government; an agency; department; ministry; or central bank);

(2) This state or any city, county, town, village or school district of this state, the New York State Thruway Authority, the Metropolitan Transportation Authority, the Triborough Bridge and Tunnel Authority or The Port Authority of New York and New Jersey;

(3) Any state other than the State of New York,

(4) The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(5) A Federal Home Loan Bank;

(6) The Federal Agricultural Mortgage Corporation;

(7) A depository institution, as defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c);

(8) A bank holding company, as defined in Section 2 of the Bank Holding Company Act, 12 U.S.C. § 1841;

(9) A savings and loan holding company, as defined in Section 10 of the Home Owners' Loan Act, 12 U.S.C. § 1467a;

(10) A securities broker or dealer registered with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq.;

(11) An insurance company that is subject to the supervision of a state insurance regulator;

(12) A foreign banking organization;

(13) A non-United States-based securities firm or a non-United States-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies;

(14) A qualifying central counterparty; and

(15) Such other entity or entities as may be designated from time to time by the superintendent.

j) Readily marketable collateral means financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value.

k) Financial market utility shall have the same meaning as used in Section 803(6) of the Dodd–Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5462(6).

l) The following terms shall have the same meaning as used in the Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches (Capital Adequacy Guidelines) of the bank's appropriate Federal banking agency.[1]

i. Eligible guarantee.

ii. Qualifying master netting agreement.

iii. Qualifying central counterparty.

§ 117.2 General Rule.

a) In computing the amount of loans of a bank outstanding to a person under Section 103.1 of the Banking Law or to a borrower under Section 235.8-c of the Banking Law at any specific time, the credit exposures of the bank arising from derivative transactions with respect to such person or borrower shall be included.

b) Such credit exposures shall be calculated as the sum of the bank's credit exposure to such person or borrower as a counterparty arising from derivative transactions other than credit derivatives plus the bank's credit exposure to such person or borrower as a counterparty arising from credit derivatives plus, where such person or borrower is the obligor on a reference exposure, the bank's credit exposure with respect to such person or borrower as obligor on such reference exposure arising from credit derivatives.

§ 117.3 Credit Derivatives.

a) Credit exposure to a counterparty. A bank shall calculate its credit exposure to a counterparty arising from credit derivatives by adding the net notional value of all protection purchased from the counterparty with respect to each reference exposure.

b) Credit exposure with respect to a reference exposure. A bank shall calculate the credit exposure with respect to a reference exposure arising from credit derivatives entered by the bank by adding the notional value of all protection sold on such reference exposure.

c) Exposure mitigants. In computing the exposures in paragraphs a and b hereof, the bank may take into account exposure mitigants to the extent specified in section 117.4.

§ 117.4 Exposure Mitigants.

a) Netting. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty with whom such

bank has in force a qualifying master netting agreement, such bank may net the credit exposures covered by such qualifying master netting agreement.

b) Collateral. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty, such credit exposures may be reduced where such credit exposures have been secured with readily marketable collateral under an effective margining arrangement. The amount of such reduction shall be equal to the value of such collateral multiplied by the percentage applicable to such type of collateral as may be prescribed by the superintendent from time to time.

c) Hedging. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty or with respect to a particular reference exposure, such credit exposures may be reduced to the extent hedged by an eligible credit derivative from an eligible protection provider.

§ 117.5 Exception.

In computing its credit exposures arising from derivative transactions, a bank need not include credit exposures to a qualifying central counterparty that has been designated by the Financial Stability Oversight Council as a financial market utility that is, or is likely to become, systemically important.

§ 117.6 Alternate Valuation Method.

With the permission of the superintendent, a bank may utilize an alternate method to evaluate its credit exposures arising from derivative transactions.

§ 117.7 Interim Method.

Until and including June 30, 2013, a bank may calculate its credit exposures arising from derivative transactions utilizing any method, provided that the bank reasonably determine that such method appropriately reflects such exposures. On and after July 1, 2013, a bank must calculate its credit exposures arising from derivative transactions in accordance with a method prescribed by, or otherwise permitted under, this part.

§ 117.8 Residual Authority of the Superintendent.

Where the method or methods used by a bank fails to appropriately reflect the credit exposures of the bank arising from derivative transactions, the superintendent may direct such bank to use an alternate method or methods.

---

[1] *In the case of a bank that is a member of the Federal Reserve System (member bank), the applicable definitions appear at Section 2 of Appendix F to 12 C.F.R. Part 208, and the case an Federally-insured bank that is not a member of the Federal Reserve System (nonmember insured bank), the applicable definitions appear at Section 2 of Appendix D to 12 C.F.R. Part 325.*

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires October 5, 2013.

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

Regulatory Impact Statement

1. Statutory Authority

Section 14 of the Banking Law provides that the Superintendent of Financial Services (the "Superintendent") shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the New York Banking Law (the "Banking Law") authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law (the "FSL") authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

2. Legislative Objectives

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y).

In response to federal enactment of Section 611 of DFA, the New York Legislature amended the Banking Law regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from certain types of transactions, including derivative transactions, shall be taken into account for purposes of the statutory loan limits. (L. 2011, c. 182).

This emergency regulation implements the Superintendent's authority by setting forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. Note that state chartered or licensed entities subject to DFA Section 610, including savings associations, and branches and agencies of foreign banking organizations, are not covered by the regulation.

3. Needs and Benefits

Derivative transactions, including swaps and options, are a basic tool used by many banking organizations to manage exposure to various types of risk, including interest rate, currency and credit risk. If the state's lending limit rules do not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on state banks' ability to manage the exposures embedded in their existing balance sheets (including exposures from any derivatives contracts entered into prior to the cutoff date), as well as the risks arising out of their ongoing business. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave state banks at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

While noting that there already exists some flexibility in the lending limit statute to interpret what constitutes credit exposure, the objective of the amendment was to provide certainty that New York law will comply with the requirements of DFA so as to ensure that insured banks in New York could continue to engage in derivative transactions after the cutoff date in Section 611 of DFA.

4. Costs

Banks that use derivatives already have systems in place to measure and manage the exposures incurred and their effect on the banks' overall risk position. The Department currently reviews such systems as part of its regular safety and soundness examination of regulated organizations.

It is believed that most state banks which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be comparatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for these banks are expected to be minimal.

Banks that engage in a larger volume of more complex derivatives transactions already have more sophisticated systems and processes in place for managing their risks, including those associated with derivatives transactions. The regulation provides that these institutions may, with the permission of the Superintendent, use an "alternative valuation method" to measure their credit exposure resulting from derivatives. Such institutions are expected to seek permission to use measurement methods which reflect their existing risk management procedures, thus minimizing the additional compliance costs resulting from the regulation.

5. Local Government Mandates

None.

6. Paperwork

The regulation does not require that state banks produce any additional reports. Banks that use derivatives have internal systems to measure their exposures, including exposures resulting from derivatives. In the course of its regular safety and soundness examination, the Department expects to be able to review the bank's records and computations regarding compliance with applicable lending limits.

While a bank seeking permission from the Department to utilize an alternative valuation model will be expected to provide information supporting the reasonableness of the proposed model, it is anticipated that such models will normally already have been reviewed by the Department during the examination process.

7. Duplication

The regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives

The Department could choose not to adopt a regulation with respect to loan limits that takes into consideration credit exposure to derivative transactions. However, under DFA Section 611 if such a regulation is not adopted insured state banks will not be able to engage in derivative transactions, a basic tool used by many banking organizations to manage their exposure to various types of risk, including interest rate, currency and credit risk. In addition, not adopting such a regulation would put state banks at a competitive disadvantage, since federally chartered banks will be able to continue to engage in derivative transactions to manage their exposure to risk.

The Department also considered adoption of a regulation similar to the interim rule adopted by the federal Office of the Comptroller of the Cur-

rency (the "OCC") regarding credit exposure arising from derivatives and securities financing transactions (the "OCC Interim Rule"). 77 FR 37265, 37275 (June 21, 201212), C.F.R. § 32 (2012). However, that rule is quite complex and requires institutions to devote significant resources to compliance. Given the non-complex nature of the derivatives activity of most state banks, the Department did not consider it necessary to impose such extensive requirements.

9. Federal Standards

Although DFA Section 611 prohibits state banks from engaging in derivative transactions after January 20, 2013 if state's law does not take into account credit exposure to derivative transactions, there are no federal standards for how state law is to do so.

The OCC Interim Rule applies to national banks and federal and state savings associations. Under Section 4 of the International Banking Act of 1978, federally licensed branches and agencies of foreign banks are generally subject to the same limitations on their activities as national banks. Thus, the OCC Interim Rule effectively applies to them as well and through the Foreign Bank Supervision Enhancements Act applies to state-licensed branches and agencies. See 12 USC § 3105(h). However, the OCC Interim Rule does not apply to state-chartered banks and savings banks.

10. Compliance Schedule

The regulation is effective immediately. However, it is recognized that banks will require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology.

Regulatory Flexibility Analysis

1. Effect of the Rule

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are small businesses are predominantly in the business of making commercial loans. To the extent these banks utilize derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets as well as the risks arising out of their ongoing business. Such banks would also be left at a substantial competitive disadvantage relative to federally-chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable federal regulations.

This regulation does not have any impact on local governments.

2. Compliance Requirements

It is believed that most banks which are small businesses and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are small businesses, produce any additional reports.

3. Professional Services

Banks that are small businesses and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

Those banks that are small businesses and use derivatives generally engage in a relatively limited number of non-complex derivative transactions. For such banks it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for those banks that are small businesses.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are small businesses, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are small businesses, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the rule effectively giving banks until to July 1, 2013, to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are small businesses.

6. Minimizing Adverse Impacts

If the state's lending limit does not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are small businesses, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave banks, including banks which are small businesses, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

7. Small Business and Local Government Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are small businesses. The regulation takes account of the comments received in the course of this process.

Rural Area Flexibility Analysis

1. Effect of the Rule

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are located in rural areas are predominantly in the business of making commercial loans. To the extent these banks utilize derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using

derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets, as well as the risks arising out of their ongoing business. Such banks would also be left at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable federal regulations.

2. Compliance Requirements

It is believed that most banks which are located in rural areas and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are located in rural areas, produce any additional reports.

3. Professional Services

Banks which are located in rural areas and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

To the extent banks located in rural areas use derivatives, they generally engage in a relatively limited number of non-complex derivative transactions. For such banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective[immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for banks that are located in rural areas.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are located in rural areas, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are located in rural areas, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the rule effectively giving banks until to July 1, 2013 to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are located in rural areas.

6. Minimizing Adverse Impacts

If the state's lending limit did not take account of credit exposure from derivatives transactions, DFA Section 611 would prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are located in rural areas, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave banks, including banks which are located in rural areas, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

7. Rural Area Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are located in rural areas. The regulation takes account of the comments received in the course of this process.

Job Impact Statement

The regulation will not have an adverse impact on employment in the state. Banking organizations that engage in derivative transactions already have systems and staff in place to manage the credit and other risks associated with those transactions.

Conversely, failing to adopt the regulation could have an adverse impact on employment. Under DFA Section 611, state banks would be prohibited from engaging in derivative transactions and therefore would need to find other uses for staff currently involved in derivatives activity. Moreover, if state banks were no longer able to use derivatives to manage the risks resulting from their current types and levels of business, they might be forced to reduce or restructure the banking services they provide, which could have a further adverse impact on employment levels for both the banks and their customers.

New York State Gaming Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Recognition of Establishment of the Gaming Commission

I.D. No. SGC-30-13-00010-EP
Filing No. 750
Filing Date: 2013-07-09
Effective Date: 2013-07-09

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

Proposed Action: Amendment of Parts 4000/5831 and addition of Parts 5000-5013 and 5100-5122 to Title 9 NYCRR; and repeal of Parts 2800-2836 of Title 21 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 102, 103, 104 and 128

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

Specific reasons underlying the finding of necessity: (1) The nature and location of the general welfare need:

Effective February 1, 2013, Part A of Chapter 60 of the Laws of 2012 consolidated the New York State Division of the Lottery and the New York State Racing and Wagering Board into a new Gaming Commission. Such Chapter of law was codified as Article 1 of the Racing, Pari-Mutuel Wagering and Breeding Law. The New York State Gaming Commission is authorized by Section 128 of the Racing, Pari-Mutuel Wagering and Breeding Law to promulgate regulations on an emergency basis to ensure the implementation of Article 1 of the Racing, Pari-Mutuel Wagering and Breeding law that established the Gaming Commission.

Pursuant to Section 100 of the Racing, Pari-Mutuel Wagering and Breeding Law, the Legislature found and determined that the gaming industries constitute a vital sector of New York State's overall economy. The Legislature also found and determined that responsive, effective, innovative, state gaming regulation is necessary to operate in a global, evolving and increasingly competitive market place. The Legislature additionally found and determined that establishment of the Gaming Commission was necessary to modernize and transform the present State gaming agencies into a new integrated state gaming commission.

This emergency rulemaking is in the interest of the public welfare to continue growth of the gaming industry which will contribute to economic development and job creation in this State. Further, it is essential to maintain the public confidence and trust in the credibility and integrity of legalized gaming activities. This emergency rulemaking memorializes the consolidation of various regulatory functions into a single oversight body with broad powers.

(2) Description of the cause, consequences, and expected duration of the need to file emergency rules:

The cause of the need is set forth in paragraph #1 above. The consequence of filing this emergency rulemaking is the memorialization of the establishment of the Gaming Commission and its four divisions: Charitable Gaming, Gaming, Lottery and Racing. The Gaming Commission filed this emergency rulemaking with a Notice of Proposed Rulemaking to continue the normal rulemaking procedures relative to these regulations. The Gaming Commission expects this emergency rulemaking to be in effect for ninety days. The Gaming Commission then expects to file a Notice of Adoption after consideration of any comments received during the comment period associated with the Notice of Proposed Rulemaking.

(3) Compliance with the requirements of § 202(1) of the State Adminis-

trative Procedure Act would be contrary to the public interest because it would delay memorialization of the consolidation of the Gaming Commission in applicable regulations. Furthermore, the Gaming Commission has the express statutory authority to promulgate this rulemaking on an emergency basis pursuant to Section 128 of the Racing, Pari-Mutuel Wagering and Breeding Law without regard to the provisions of the State Administrative Procedure Act.

(4) Circumstances necessitate that the public and interested parties be given less than the minimum period for notice and comment because the Legislature determined the urgent need for this rulemaking when it authorized the Gaming Commission to promulgate these rules on an emergency basis as provided in Section 128 of the Racing, Pari-Mutuel Wagering and Breeding Law. The Gaming Commission recognizes the value and importance of public comment and is therefore also filing this emergency rulemaking with a Notice of Proposed Rulemaking to allow for a public comment period and further public review.

Subject: Recognition of establishment of the Gaming Commission.

Purpose: Technical changes to references to the Racing and Wagering Board and Lottery to Gaming Commission.

Substance of emergency/proposed rule (Full text is posted at the following State website:www.gaming.ny.gov):

NEW YORK STATE GAMING COMMISSION TITLE 9 NYCRR
SUBTITLE T

Effective February 1, 2013, Part A of Chapter 60 of the Laws of 2012 consolidated the New York State Division of the Lottery and the New York State Racing and Wagering Board into a new Gaming Commission. Such Chapter of law was codified as Article 1 of the Racing, Pari-Mutuel Wagering and Breeding Law. Pursuant to Sections 123 and 129 of the Racing, Pari-Mutuel Wagering and Breeding Law, unless the context shall otherwise require, whenever the "Racing and Wagering Board" or "Division of Lottery" are referred to or designated in any law or rule pertaining to the functions, powers, obligations and duties transferred and assigned to the Gaming Commission, such reference or designation shall be deemed to refer to the Gaming Commission.

Technical amendments were made throughout the former agencies' regulations to change references from the Racing and Wagering Board, Chairman of the Board, the Lottery and the Director of the Lottery to the Gaming Commission to reflect the Gaming Commission's four divisions: Charitable Gaming, Gaming, Lottery and Racing and to effect other stylistic changes.

In addition to the technical references in the regulations, the Division of the Lottery's regulations are being re-codified into Subtitle T of Title 9 of New York Codes, Rules and Regulations so that the Gaming Commission's regulations are within the same Subtitle for ease of reference. A chart is attached for ease of reference.

REORGANIZATION CHART FOR GAMING COMMISSION RULES
SUBTITLE T. New York State Gaming Commission

Division of NYCRR	Title	Recodified Parts	Former Parts
CHAPTER I	Division of Horse Racing and Pari-Mutuel Wagering	Parts 4000-4550	Parts 4000-4500, 5100-5300 and 5402
Subchapter A	Thoroughbred Racing		
Article 1	Rules of Racing	Parts 4000-4044	Parts 4000-4044
Article 2	Steeplechases, Hurdle Races and Hunt Meetings	Parts 4050-4066	Parts 4050-4066
Article 3	New York-Bred Thoroughbreds	Parts 4080-4081	Parts 4080-4081
Subchapter B	Harness Racing	Parts 4100-4123	Parts 4100-4123
Subchapter C	Quarter Horse Racing	Parts 4200-4237	Parts 4200-4237
Subchapter D	Promotion of Equine Research	Part 4250	Part 4500
Subchapter E	Totalisator Systems	Part 4300	Part 5100
Subchapter F	Off-Track Pari-Mutuel Betting	Parts 4400-4412	Parts 5200-5212
Subchapter G	Internet and Telephone Account Wagering	Part 4500	Part 5300
Subchapter H	Adjudicatory Proceedings for Racing	Part 4550	Part 5402
CHAPTER II	Division of Charitable Gaming	Parts 4600-4831	Parts 5600-5831
Subchapter A	Games of Chance General Provisions, Identification and Licensing	Parts 4600-4611	Parts 5600-5611
Subchapter B	Authorized Games of Chance, Games of Chance Currency, Conduct of Games and Supplies and Equipment	Parts 4620-4627	Parts 5620-5627
Subchapter C	Bingo General Provisions	Parts 4800-4801	Parts 5800-5802
Subchapter D	Bingo Licensing and Registration	Parts 4810-4815	Parts 5810-5815
Subchapter E	Bingo Conduct of Games, Hearings and Appeals	Parts 4820-4823 and 4830-4831	Parts 5830-5823 and 5830-5831
CHAPTER III	Division of Lottery	Parts 5000-5013	21 NYCRR Parts 2800-2835
CHAPTER IV	Division of Gaming	Parts 5100-5300	21 NYCRR Part 2836
Subchapter A	Video Lottery Gaming	Parts 5100-5300	21 NYCRR Part 2836
Subchapter B	[Reserved]	Part 5200	(new)
Subchapter C	[Reserved]	Part 5300	(new)
CHAPTER V	Administration	Parts 5400-5500	Parts 5400-5401
Subchapter A	Public Access to Records	Parts 5400-5401	Parts 5400-5401
Subchapter B	General Provisions	Part 5402	(new)
Subchapter C	Office of Racing Promotion and Development	Part 5500	(new)

Notes:

Subdivision (l) of Section 4002.1 of Subtitle T, Title 9 is repealed. This subdivision repeated the VLT occupational licensing rules in former NYSRWB horse racing rules and is redundant to Subchapter A, Chapter IV, of Subtitle T, Title 9, as amended.

Former Article 4 (Part 4070) of Subtitle T, Title 9 is repealed. This Article, a breakage experiment during 1978-80, is obsolete.

Sections 4081.2 through 4081.6 and section 4082.2 of Subtitle T, Title 9 are repealed. These rules, governing horses foaled during 1979-92 and the 1993 distribution schedule for breeders awards, are obsolete.

Part 5211 of Subtitle T, Title 9 is repealed. This Part, a repetition of the OTB pool distribution contained in statute in the 1970s, is obsolete.

Part 5802 of Subtitle T, Title 9 is repealed. This Part, FOIL and personal privacy rules for bingo regulation, was duplicated elsewhere in former NYSRWB rules and is redundant to Parts 5400 and 5401 of Subtitle T, Title 9, as amended.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 6, 2013.

Text of rule and any required statements and analyses may be obtained from: Rick Goodell, New York State Gaming Commission, One Broadway Center, POB 7500, Schenectady NY 12305, (518) 388-3408, email: nylrules@gaming.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority: Effective February 1, 2012, Part A of Chapter 60 of the Laws of 2012, codified as Article 1 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law, established the New York State Gaming Commission to regulate gaming and horse racing within the State. Section 128 of such law authorizes the Gaming Commission to promulgate regulations on an emergency basis to implement the establishment of the Gaming Commission, its four divisions and regulation of gaming and racing within the State. These regulations fulfill that mandate.

2. Legislative Objectives: Pursuant to Section 100 of the Racing, Pari-Mutuel Wagering and Breeding Law, the Legislature found and determined that the gaming industries constitute a vital sector of New York State's overall economy. The Legislature also found and determined that responsive, effective, innovative, state gaming regulation is necessary to operate in a global, evolving and increasingly competitive market place. The Legislature additionally found and determined that establishment of the Gaming Commission was necessary to modernize and transform the present State gaming agencies into a new integrated state gaming commission.

3. Needs and Benefits: The regulations satisfy a legislative mandate directing the Gaming Commission to regulate gaming and racing within the State.

The benefits of this rulemaking are to memorialize the establishment of the Gaming Commission and its four divisions: Charitable Gaming, Gaming, Lottery and Racing and to re-codify the existing gaming and racing regulations into one Subtitle for ease of reference.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: None.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the Gaming Commission are expected to be sufficient.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the current operation of the Gaming Commission.

5. Local Government Mandates: No local mandates are imposed by rule upon any county, city, village, etc.

6. Paperwork: There are no changes in paperwork requirements.

7. Duplication: This rule will not duplicate, overlap or conflict with any State or Federal statute or rules.

8. Alternatives: In furtherance of its statutory mandate to regulate gaming and racing within the State, the Gaming Commission is proposing this rulemaking to make technical changes to terminology through its rules to memorialize its establishment and the establishment of its four divisions. The alternative to not promulgating this rulemaking, is to not memorialize the establishment of the Gaming Commission in regulation and to allow the existing regulations to continue which do not accurately reflect the structure of the Gaming Commission.

9. Federal Standards: This rule will not duplicate, overlap or conflict with any State or Federal statute or rules.

10. Compliance Schedule: None.

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

The proposal does not require a Regulatory Flexibility Statement, Rural Flexibility Statement or Job Impact Statement. There will be no adverse impact on jobs, rural areas, small business or local governments.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Mega Millions and Raffle Games

I.D. No. SGC-30-13-00009-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 5007.14; and amendment of sections 5007.1, 5007.2 and 5007.7 of Title 9 NYCRR.

Statutory authority: Racing and Pari-Mutuel Wagering and Breeding Law, section 104; and Tax Law, sections 1601, 1604, 1612 and 1617

Subject: Mega Millions and Raffle Games.

Purpose: To provide for a Mega Millions game matrix change and raffle game.

Text of proposed rule: Subdivision (b) of Section 5007.1 is amended as follows:

§ 5007.1. Mega Millions purpose.

(b) During each Mega Millions drawing, [6] six Mega Millions Winning Numbers will be selected from [2] *two* fields of numbers in the following manner: [5] *five* winning numbers from a field of [1] *one* through [56] *75* numbers, and [1] one winning number from a field of [1] one through [46] *15* numbers.

Paragraphs (2), (8), and (11) of Subdivision (a) of Section 5007.2 are amended to read as follows:

§ 5007.2. Mega Millions definitions.

(a) The following definitions shall apply to Mega Millions.

(2) Annuity Option[.] *is* [The] *the* manner in which the Mega Millions Jackpot Prize may be paid in [26] *30* annual installments.

(8) Mega Millions Play Area[, For] *is, for* the on-line Mega Millions game, the [areas] *area* on a Mega Millions play slip identified by an alpha character, A through E, containing two separate fields—one field of [56] *75* and a second field of [46] *15*—both containing [one or two] *one- or two*-digit numbers each. This is the area where the player, or computer if the player is using the Quick Pick option, will select five [(5) one] *one*- or two-digit numbers from the first field[,] and will select one [(1) one] *one*- or two-digit numbers from the second field.

(11) Mega Millions Winning Numbers[. For] *are,* for the on-line Mega Millions game, five [(5) one] *one*- or two-digit numbers, from one [(1)] through [fifty-six (56)] *75* and one [(1) one] *one*- or two-digit number from one [(1)] through [forty-six (46)] *15,* randomly selected at each Mega Millions drawing, which shall be used to determine winning Mega Millions plays contained on Mega Millions tickets.

Subdivision (a), clause (i) of subparagraph (4) of subdivision (b) and subdivision (c) of section 5007.7 are amended to read as follows:

§ 5007.7. Prize structure.

(a) For the [on-line] Mega Millions game—Matrix of 5/[56] *75* and 1/[46] *15* with 50 Percent Anticipated Prize Fund.

[Match Field 1	Match Field 2	Odds	Prize Category	Percentage of] Prize Fund]
[5	1	1:175,711,536.00	Grand	63.60 percent]
[5	0	1:3,904,700.80	Second	12.80 percent]
[4	1	1:689,064.85	Third	2.90 percent]
[4	0	1:15,312.55	Fourth	1.96 percent]
[3	1	1:13,781.30	Fifth	2.18 percent]
[2	1	1:843.75	Sixth	2.38 percent]
[3	0	1:306.25	Seventh	4.58 percent]
[1	1	1:140.63	Eighth	4.26 percent]
[0	1	1:74.80	Ninth	5.34 percent]
[Reserve]				[0 percent]
[Totals]		[1:39.89]		[100 percent]

Match Field 1	*Match Field 2*	*Odds 1 in*	*Prize*	*% of Sales*	*Level*
5	*1*	*258,890,850*	*JACKPOT*	*32.577%*	*1*
5	*0*	*18,492,204*	*$1,000,000*	*5.408%*	*2*
4	*1*	*739,688*	*$5,000*	*0.676%*	*3*
4	*0*	*52,835*	*$500*	*0.946%*	*4*
3	*1*	*10,720*	*$50*	*0.466%*	*5*
3	*0*	*766*	*$5*	*0.653%*	*6*
2	*1*	*473*	*$5*	*1.057%*	*7*

1	*1*	*56*	*$2*	*3.542%*	*8*
0	*1*	*21*	*$1*	*4.675%*	*9*
Total		*14.71*		*50.000%*	

(b) Jackpot prize payments. For the Mega Millions game:

(4) (i) Annuity option jackpot prizes shall be paid *through a 30-year graduated annuity (five percent escalation per payment)* in [26] *30* consecutive annual installments. The initial payment shall be paid upon completion of internal validation procedures. The subsequent [25] *29* payments shall be paid annually to coincide with the month of the federal auction date at which the bonds were purchased to fund the Annuity. All such payments shall be made within seven days of the anniversary of the annual auction date.

(c) Second- through ninth-level prizes.

(1) Mega Millions Panels matching five [(5)] of the five [(5)] Mega Millions Winning Numbers drawn for Field 1, but not matching the Mega Millions Winning Number drawn for Field 2, shall be entitled to receive a [Second Prize] *second prize* of $[250,000] *1,000,000*.

(2) Mega Millions panels matching four [(4)] of the five [(5)] Mega Millions Winning Numbers drawn for Field 1 and the Mega Millions Winning Number drawn for Field 2 shall be entitled to receive a [Third] *third* prize of $[10,000] *5,000*.

(3) Mega Millions panels matching four [(4)] of the five [(5)] Mega Millions Winning Numbers drawn for Field 1 but not matching the Mega Millions Winning Number drawn for Field 2 shall be entitled to receive a fourth prize of $[150] *500*.

(4) Mega Millions panels matching three [(3)] of the five [(5)] Mega Millions Winning Numbers drawn for Field 1 and the Mega Millions winning Number drawn for Field 2 shall be entitled to receive a fifth prize of $[150] *50*.

(5) Mega Millions panels matching [two] *three* of the five Mega Millions Winning Numbers drawn for Field 1 [and] *but not matching* the Mega Millions winning Number drawn for Field 2 shall be entitled to receive a sixth prize of $[10] *5*.

(6) Mega Millions Panels matching [three (3)] *two* of the five [(5)] Mega Millions winning numbers drawn for Field 1 [but not matching] *and* the Mega Millions winning number drawn for Field 2 shall be entitled to receive a [Seventh] *seventh* prize of $[7] *5*.

(7) Mega Millions panels matching one of the five Mega Millions winning numbers drawn for field 1 and the Mega Millions winning number drawn for field 2 shall be entitled to receive an eighth prize of $[3] *2*.

(8) Mega Millions Panels matching no numbers of the five Mega Millions winning numbers drawn for field 1 but matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a ninth prize of $[2] *1*.

Section 5007.14 is added to read as follows:

§ 5007.14, Raffle Game definitions.

(a) The following definitions shall apply to a Raffle Game:

(1) Bet ticket means the ticket generated by the computer terminal containing at a minimum a unique multiple-digit number constituting a single play or chance, the drawing date and validation data.

(2) Commission means the New York State Gaming Commission established pursuant to Article 1 of the Racing, Pari-Mutuel Wagering and Breeding Law.

(3) Computer terminal means the device at the sales agent location authorized by the Gaming Commission for the placing of game bets.

(4) Draw date means the date determined by the commission on which the process used to randomly select the winning game numbers takes place for the game.

(5) Game means a Raffle Game, which is a Lottery game in which a player purchases a number or numbers generated by the Lottery's gaming computer system.

(6) Gross sales means the value of the tickets eligible for the game.

(7) Lottery or State Lottery means the New York State Division of Lottery established and operated pursuant to Article 34 of the Tax Law and Article 1 of the Racing, Pari-Mutuel Wagering and Breeding Law.

(8) Manual entry means the capability of the computer terminal operator to enter the amount of dollars wagered by a player for the game into the terminal in response to verbal or written communication by the player. There is no other method of play at the terminal for the game.

(9) Raffle Game means a game played at any sales agent location by purchasing a ticket that will be sold for a limited sales period, in which a number of chances or plays will be offered.

(10) Prize pool means those funds available from the game sales or other sources to support the payment of prizes for the game.

(11) Sales period means a period of time starting from the initial sales date of the game tickets as specified by the Director and ending.

(i) on the date when all available numbers for such Raffle Game sales period have been sold, or

(ii) a date specified by the Director.

(12) Ticket means a Raffle Game ticket produced by the Lottery and sold by a licensed sales agent in an authorized manner containing at a minimum a unique nine-digit number constituting a single play or chance, the drawing date and validation data.

(13) Winning ticket means the ticket bearing the unique numbers randomly selected in the drawing as a winning play.

(b) Sale of Tickets.

(1) The price for a Raffle Game wager shall be determined by the commission prior to the sales period.

(2) Each number shall constitute a single play or chance.

(3) A player shall not select specific game numbers. Numbers shall be generated in an order based on instruction from the gaming central system.

(c) Ticket Price. The price for each Raffle Game wager shall be the price set by the commission.

(d) Drawing.

(1) A Raffle Game drawing will be conducted at a day, time, frequency and location determined by the commission. Winning game numbers are the numbers randomly selected that entitle the legitimate holder of a winning Raffle Game ticket to a prize for which such numbers were drawn. Such winning numbers shall be:

(i) randomly selected in accordance with existing Lottery draw procedures; and

(ii) announced publicly.

(2) A game number can only be selected once during the draw.

(e) Calculation and payment of prizes.

(1) Prizes levels and amounts for the game shall be determined by the commission prior to the sales period and announced publicly.

(2) The commission may hold a daily drawing for one or more prizes. If the commission chooses to award daily prizes, it will publicly announce such prizes prior to the start of the game. Any number drawn as a daily prize shall remain eligible for the top prize. The holder of a winning bet ticket shall win only one daily prize per winning number.

(3) Prize categories and amounts shall be determined by the commission prior to the sales period.

(f) Probability of Winning. The probability of winning a Raffle Game prize on a single qualifying wager shall be determined by the number of prizes awarded divided by the number of total plays in the drawing. The probability of winning a Raffle Game prize shall be determined by the commission prior to the sales period and announced publicly.

(g) Miscellaneous.

(1) A Raffle Game as described in this section may be, at the discretion of the commission, a multi-state game among other participating government-authorized lotteries or a game sold only by the Lottery. The frequency that a Raffle Game is conducted shall be as determined by the commission. If the Raffle Game is a multi-state game, the commission shall operate such game in compliance with any applicable multi-state agreement.

(2) No claimant will be considered eligible to receive a prize without presentation of a valid winning bet ticket.

(3) The commission reserves the right to change the prize structures, frequency of draws, draw dates or the games themselves.

(4) If, for any reason, a bet ticket is not entirely legible or is misprinted or altered in any way, then the computer record created at the time of sale shall be the sole method of determining whether such ticket is a valid winning ticket.

(5) A bet ticket for a Raffle Game may not be cancelled once issued by the computer terminal. The sales agent, however, may receive credit for any unreadable bet ticket issued, as these tickets (although unreadable) are recorded on the computer file as valid bets. A sales agent's request for credit must be postmarked before the draw date in order to receive credit for any such unreadable bet ticket.

Text of proposed rule and any required statements and analyses may be obtained from: Julie B. Silverstein Barker, New York State Gaming Commission, One Broadway Center, Schenectady, New York 12301, (518) 388-3408, email: nylrules@gaming.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Pursuant to the authority conferred in New York State Tax Law Sections 1601, 1604, 1612 and 1617, Racing, Pari-Mutuel Wagering and Breeding Law Section 104, the following official game rules shall take effect and shall remain in full force and effect throughout the New York Lottery's Raffle game and Mega Millions game. Section 1601 of the Tax Law states the purpose of Article 34 of the Tax is to carry out the constitutional mandate to establish a lottery operated by the State. Section 1604 of the Tax Law provides for the Lottery's authority to

promulgate rules and regulations governing the Lottery. Section 1617 of the Tax Law authorizes the Lottery to participate in multi-jurisdictional lottery games. Subdivision 19 of Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law authorizes the Gaming Commission to promulgate rules and regulations necessary to carry out its responsibilities.

2. Legislative objectives: The purpose of operating Lottery games is to generate revenue for the support of education in the State. Amendment of these regulations forwards the mission of the Lottery to generate revenue for education.

3. Needs and benefits: The regulations govern the Millions game and Raffle Game. The revisions to the Mega Millions game are necessary to comply with the amendments adopted by the Mega Millions game consortium which consists of other state-authorized lotteries. This will allow the New York Lottery to continue participation in the Mega Millions game and generate earnings for education. The new Mega Millions game matrix is accepted to be more attractive to jackpot Lottery game players because it will offer a more robust prize structure (for example, the second prize will be a $1 million). The success of the new Powerball game matrix shows the popularity that higher jackpots and higher non-jackpot prizes are amongst Lottery players.

The Lottery is adding the Raffle game to its mix of draw games because the game provides a distinctive play format and style from other Lottery games, especially due to the game's limited sales period. The limited sales period provides the Lottery with the opportunity to identify such games with a particular holiday or event (for example, Halloween) to grab players' attention. The relatively easy manner in which a player plays the Raffle game which may encourage occasional Lottery players to purchase a ticket for the game. Ticket numbers will be generated automatically by the Lottery's computer system for the Raffle game to mirror the classic raffle game style. The addition of the Raffle Game will allow the New York Lottery to continue its effort to keep and enlarge its market share of players (from within New York State and those visiting New York State from other states) who participate in jackpot lottery games. The New York Lottery anticipates that the Raffle Game will generate more than $3.5 million in revenue to benefit education in the State.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: None.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the existing Lottery games are expected to be sufficient to support this new game.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the New York State Lottery's experience in operating State Lottery games for more than 40 years.

5. Local government mandates: None.

6. Paperwork: There are no changes in paperwork requirements. New game brochures will be issued by the New York State Lottery for public convenience at retailer locations free of charge.

7. Duplication: None.

8. Alternatives: The alternative to amending the Mega Millions regulations is that the New York Lottery will no longer be able to participate in the Mega Millions game which will result in lost revenue to education within the State. The New York Lottery would then forfeit the investment already made by the New York State Lottery for the Mega Millions games. The alternative to adding a Raffle Game is not to proceed with such game which will also result in lost revenue to education that is anticipated to be earned.

9. Federal standards: None.

10. Compliance schedule: None.

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

The proposal does not require a Regulatory Flexibility Statement, Rural Flexibility Statement or Job Impact Statement. There will be no adverse impact on jobs, rural areas, small business or local governments.

Department of Labor

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Responding to Requests for Information and Employer Relief of Charges

I.D. No. LAB-30-13-00011-P

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

Proposed Action: Repeal of section 472.12; and addition of new section 472.12 to Title 12 NYCRR.

Statutory authority: Labor Law, sections 21(11), 530(1), 575 and 581(e)(3)

Subject: Responding to Requests for Information and Employer Relief of Charges.

Purpose: To provide a procedure for timely and adequate response to requests for information and for relief from charges.

Text of proposed rule: Section 472.12 is repealed and a new Section 472.12 is added to read as follows:

§ 472.12 Responding to Requests for Information and Employer Relief of Charges – Timely and Adequately Requirement for Responding

(a) A response to a notice of potential charges (hereinafter referred to as a claim notice) must be received by the Department of Labor within 10 calendar days of the date on the claim notice.

(b) All other requests for information pertaining to an unemployment insurance claim must be received by the Department of Labor within the number of days specified in the written (including electronic transmission) or verbal request for information.

(c) The Department of Labor may communicate its request for information to employers by letter; electronic communication; fax; telephone; through "SIDES," the State Information Data Exchange System (if agreed to by the employer); or other method of communication approved by the Department of Labor.

(d) The claim notice and all other requests for information referenced in subdivisions (a) and (b) shall be sent to the employer's address, fax number, or email address of record on file with the Department of Labor, or an electronic account authorized by the Department of Labor. The Department of Labor may also request information by calling the employer's business telephone number. Employers must notify the Department of Labor when any of the above contact information changes. Requests for information sent to the employer's last known address, business telephone number, fax number, email address or authorized electronic account shall be deemed to have been sent to the correct address for the purposes of this section.

(e) Employers may respond to a claim notice and/or request for information by fax, electronic communication, SIDES, U.S. Postal Service, private delivery service, telephone (if the request for information required a telephone response), or other method of communication approved by the Department of Labor. An employer's response to the Department of Labor shall be deemed to have been received on the date indicated by the date stamp placed on incoming faxes by the Department of Labor's fax machine, the date stamp on paper documents, or the date the electronic submission is received. If no fax or date stamp exists, the receipt date will be deemed to be two days prior to the date the document is entered in the Department's imaging system. If the employer disputes the date a response was received by the Department of Labor, the burden shall be on the employer to provide proof that the response was timely. Proof may include, but is not limited to, a confirmation of delivery, a stamped receipt by an agent of the Commissioner, or an affidavit of personal service on the Commissioner or his/her agent.

(f) An employer's response to a request for information must contain adequate information. To be considered adequate, the response must:

(1) specify the reason(s) for the separation, or other issue affecting the claimant's eligibility or entitlement for benefits;

(2) answer, in good faith, all questions in detail; and

(3) provide all relevant information and documentation for the Department of Labor to render a correct determination regarding the claimant's eligibility or entitlement for benefits.

(g) If the Commissioner of Labor determines that overpayments of benefits occurred because the employer failed to timely or adequately respond to a claim notice or other request for information, the employer's account shall not be relieved of charges relating to the overpayments, except in accordance with subdivisions (h), (i) and (j). The employer shall not be relieved of charges for each week that an overpayment is made, through the date that the Department of Labor makes a determination that the claimant is no longer eligible for or entitled to benefits or makes a determination that results in a reduction of benefits.

(h) An employer shall be relieved of charges imposed in subdivision (g) for the first instance that the employer or its agent fails to provide timely or adequate information, if the employer provides good cause for such failure. Good cause shall include any significant event that the employer could not reasonably have anticipated which affects the employer's ability to respond timely to requests for information, as determined by the Commissioner. After the first instance of failing to provide timely and adequate information, the employer shall only be relieved of charges for a subsequent failure in accordance with the provisions of subdivisions (i) and (j) below.

(i) An employer may be relieved of charges if the charges were due to an error by the Department of Labor.

(j) An employer may be relieved of charges if they were unable to respond in a timely manner due to a disaster emergency as declared by the Governor of their State or the President of the United States.

Text of proposed rule and any required statements and analyses may be obtained from: Amy C. Karp, Legislative Counsel, New York State Department of Counsel, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-7350, email: Regulations@labor.ny.gov

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

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

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

Statutory Authority: Labor Law Sections 21(11) (authorizes the Commissioner of Labor to promulgate regulations he deems necessary and proper), 530(1) (provides that the Commissioner may promulgate regulations necessary to administer Article 18, the Unemployment Insurance Law), 575 (requires an employer to maintain and provide information relating to an employees' wages) and 581(e)(3) (provides that an employer shall not be relieved from charges if it fails to provide information required pursuant to Labor Law § 597).

Legislative Objectives: 12 NYCRR § 472.12 is being repealed because the Labor Law no longer requires employers to report wages of employees to the Department of Labor for the purpose of determining eligibility for Unemployment Insurance benefits. A new 12 NYCRR § 472.12 is being added pursuant to that portion of Chapter 57 of the Laws of 2013 that amended Labor Law § 581(e)(3) which provides that an employer shall not be relieved of charges if an employer or its agent fails to submit information resulting in an overpayment pursuant to Labor Law § 597.

Needs and Benefits: The new Section 472.12 is being adopted because of a statutory amendment to Section 581 of the Labor Law enacted by Chapter 57 of the Laws of 2013. This amendment to Section 581(e)(3) provides that an employer shall not be relieved of charges pursuant to this subparagraph if an employer or its agent fails to submit information resulting in an overpayment pursuant to Section 597 of the Labor Law. This rule making sets forth the procedures to be followed by the Department to determine whether an employer shall be relieved of charges.

Costs: No additional costs will be incurred pursuant to the adoption of this proposed regulation.

Local Government Mandates: The proposed rule does not impose any program, service, duty, or responsibility upon local governments.

Paperwork: No additional paperwork is associated with these proposed regulations.

Duplication: The proposed rule does not duplicate other existing state or federal requirements.

Alternatives: It has been concluded that these proposed regulations are appropriate to provide employers with guidance and to assist in the equal application of the law.

Federal Standards: The proposed rule does not exceed any minimum standards indicated by amendment Section 252(a) of the Trade Adjustment Assistance Extension Act of 2011 (TAAEA) (Public Law (Pub. L.) 112-40).

Compliance Schedule: This regulation will be effective upon filing of the Notice of Adoption with the Secretary of State.

Regulatory Flexibility Analysis

1. Effect of Rule: This rule will have minimal effect on small businesses and local governments as both are currently required to return requests for information. This rule is being adopted because of a statutory amendment to Section 581 of the Labor Law enacted by Chapter 57 of the Laws of 2013. This amendment to Section 581(e)(3) provides that an employer shall not be relieved of charges pursuant to this subparagraph if an employer or its agent fails to submit information resulting in an overpayment pursuant to Section 597 of the Labor Law. This rule making sets forth the procedures to be followed by the Department to determine whether an employer shall be relieved of charges. Federal requirements to pay claimants promptly, while also preventing overpayments, require a tight time frame in receiving information affecting eligibility for a claim. This rule encourages employers to respond to requests for information using the most expedient method including fax, electronic communication, the State Information Data Exchange System (SIDES), and the U.S. Postal Service, all of which are readily available and within the resources of small businesses and local governments.

2. Compliance Requirements: No additional reporting, recordkeeping, or other affirmative acts will have to be undertaken by small businesses and local governments.

3. Professional Services: No professional services will be needed by small businesses and local governments.

4. Compliance Costs: No costs will be incurred by compliant small businesses or local governments.

5. Economic and Technological Feasibility: Compliance with this proposed rule will be economically and technologically feasible for small businesses and local governments.

6. Minimizing Adverse Impact: The proposed rule will have a minimal economic impact on some small businesses and local governments. The rule encourages employers to respond to requests for information using the most expedient method and suggests the use of no cost or low cost response methods including fax, electronic communication, the State Information Data Exchange System (SIDES), and the U.S. Postal Service, all of which are readily available and within the resources of small businesses and local governments. Some small businesses may choose to make investments in equipment such as fax machines to meet the requirements. Federal requirements to pay claimants promptly, while also preventing overpayments, require a tight time frame in receiving information affecting eligibility for a claim. The approaches for minimizing adverse economic impact suggested in SAPA § 202-b(1) were considered.

7. Small Business and Local Government Participation: Comments can be forwarded to the agency during the 45 day public comment period immediately following publication of the Notice of Proposed Rule Making in the State Register. The Department did not have sufficient time to solicit input from various sectors regarding these regulations. These regulations are required due to a statutory amendment to Section 581 of the Labor Law enacted by Chapter 57 of the Laws of 2013. This amendment to Section 581 of the Labor Law is effective October 1, 2013 and this rule making must be in effect by that date.

8. For rules that either establish or modify a violation or penalties associated with a violation: N/A

9. Initial review of the Rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: This rule will be reviewed in accordance with chapter 462 of the laws of 2012.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: The proposed rule applies to employers in rural areas as it does to other employers.

2. Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services: There are no additional reporting, recordkeeping or compliance requirements for rural areas with the proposed rule.

3. Costs: No costs will be incurred by rural areas because of the proposed rule.

4. Minimizing Adverse Impact: The proposed rule will have no adverse impact on rural areas.

5. Rural Area Participation: Comments can be forwarded to the agency during the 45 day public comment period immediately following publication of the Notice of Proposed Rule Making in the State Register. The Department did not have sufficient time to solicit input from various sectors of the population regarding these regulations. These regulations are required due to a statutory amendment to Section 581 of the Labor Law enacted by Chapter 57 of the Laws of 2013. This amendment to Section 581 of the Labor Law is effective October 1, 2013 and this rule making must be in effect by that date.

6. Initial review of the Rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: This rule will be reviewed in accordance with chapter 462 of the laws of 2012.

Job Impact Statement

1. Nature of Impact: The proposed rule will have no impact on jobs and employment opportunities.

2. Categories and Numbers Affected: No jobs or employment opportunities will be affected by the proposed rule.

3. Regions of Adverse Impact: The proposed rule will not cause any region of the state to have a disproportionate adverse impact on jobs or employment opportunities.

4. Minimizing Adverse Impact: The agency did not need to take any measures to minimize adverse impact on existing jobs and to promote the development of new employment opportunities.

5. Self Employment Opportunities: N/A

6. Initial review of the Rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: This rule will be reviewed in accordance with chapter 462 of the Laws of 2012.

Office of Mental Health

NOTICE OF ADOPTION

Family-Based Treatment Provisions

I.D. No. OMH-19-13-00003-A
Filing No. 743
Filing Date: 2013-07-08
Effective Date: 2013-07-24

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

Action taken: Amendment of Parts 587, 593 and 594 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 7.09

Subject: Family-Based Treatment Provisions.

Purpose: Repeal provisions with respect to Family-Based Treatment - programs ceased on March 31, 2013.

Text or summary was published in the May 8, 2013 issue of the Register, I.D. No. OMH-19-13-00003-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Operation of Residential Treatment Facilities for Children and Youth

I.D. No. OMH-19-13-00004-A
Filing No. 744
Filing Date: 2013-07-08
Effective Date: 2013-07-24

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

Action taken: Amendment of Part 584 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.04 and 31.26

Subject: Operation of Residential Treatment Facilities for Children and Youth.

Purpose: Add fire safety and smoking provisions; update information regarding facility construction and design; correct minor errors.

Text or summary was published in the May 8, 2013 issue of the Register, I.D. No. OMH-19-13-00004-P.

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

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

Initial Review of Rule
As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment
The agency received no public comment.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-30-13-00006-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Atlas Capital Group, LLC to submeter electricity at 222 East 39th Street, NY, NY.

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 Atlas Capital Group, LLC to submeter electricity at 222 East 39th Street, NY, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Atlas Capital Group, LLC to submeter electricity at 222 East 39th Street, 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-0291SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Eligibility Requirements for the Main Tier Renewable Portfolio Standard

I.D. No. PSC-30-13-00007-P

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

Proposed Action: The Commission is considering the petition for rehearing of HQ Energy Services (U.S.) Inc. regarding the Commission's May 22, 2013 Order Modifying Renewable Portfolio Standard Program Eligibility Requirements.

Statutory authority: Public Service Law, sections 4(1), 5(2), 20(1), 22, 23 and 66(1)

Subject: Eligibility requirements for the Main Tier Renewable Portfolio Standard.

Purpose: To modify the rules of the Renewable Portfolio Standard to limit eligibility to projects located in New York State.

Substance of proposed rule: The Commission is considering a petition for rehearing filed by HQ Energy Services (U.S.) Inc. on June 21, 2013, regarding the Commission Order Modifying Renewable Portfolio Standard Program Eligibility, issued on May 22, 2013, in Case 03-E-0188. In its petition, HQ Energy Services (U.S.) Inc. alleges that the Commission committed various errors of fact and law and therefore seeks rehearing pursuant to Public Service Law § 22 and 16 NYCRR Part 3.7. The Commission may grant or reject the petition, modify the relief sought in whole

or in part or take such other, further or different actions as it deems necessary in deciding the petition.

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.
(03-E-0188SP41)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-30-13-00008-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 84-86 White Street, LLC to submeter electricity at 84 White Street, 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 84-86 White Street, LLC to submeter electricity at 84 White Street, 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 84-86 White Street, LLC to submeter electricity at 84 White Street, 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-0289SP1)

State University of New York

EMERGENCY/PROPOSED
RULE MAKING
NO HEARING(S) SCHEDULED

State University of New York Tuition and Fees Schedule

I.D. No. SUN-30-13-00005-EP
Filing No. 747
Filing Date: 2013-07-09
Effective Date: 2013-07-09

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

Proposed Action: Amendment of section 302.1(b) of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

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

Specific reasons underlying the finding of necessity: Amendment of these regulations needs to proceed on an emergency basis because tuition increases are intended to be effective for the Fall 2013 semester. Billing for these new tuition rates occurs during the summer of 2013, therefore, notice of the new rates needs to occur as soon as possible.

Subject: State University of New York Tuition and Fees Schedule.

Purpose: To amend the Tuition and Fees Schedule to increase tuition for students in all programs in the State University of New York.

Text of emergency/proposed rule: Section 302.1. Tuition and fees at State-operated units of State University.

* * * * *

(b) Tuition charges as listed in the following table for categories of students, terms and programs, and as modified, amplified or explained in footnotes 1 through [6] *7* are effective with the [2012] *2013* fall term and thereafter.

		Charge per Semester		Charge per Semester credit hour[1] Special Students	
		New York State residents	Out-of-State residents	New York State residents	Out-of-State residents
(1)	Students enrolled in degree-granting undergraduate programs leading to an associate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	[$2,785] *$2,935*	[$7,410] *$7,660* $4,870[2] *$5,020*[3]	[$232] *$245* [$232] *$245*[4]	[$618] *$638* $406[2] *$418*[3] [$232[3]] *$245*[4]
(2)	Students enrolled in degree-granting undergraduate programs leading to a baccalaureate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	[$2,785] *$2,935*	[$7,410] *$7,660* [$8,095[4]] *$8,905*[5] [$7,360[5]] *$8,095*[6] [$4,180[6]] *$4,405*[7]	[$232] *$245*	[$618] *$638* [$675[4]] *$742*[5] [$613[5]] *$675*[6] [$349[6]] *$367*[7]

(3)	Students enrolled in graduate programs (other than Masters of Business Administration, Architecture, Social Work or Physician['s] Assistant) leading to a Master's, Doctor's or equivalent degree	[$4,685] *$4,935*	[$8,340] *$9,175* [$7,035[6]] *$7,405[7]*	[$390] *$411*	[$695] *$765* [$586[6]] *$617[7]*
(4)	Students enrolled in a graduate program leading to a Masters of Business Administration (MBA)	[$5,565] *$6,065*	[$9,160] *$10,075*	[$464] *$505*	[$763] *$840*
(5)	Students enrolled in a graduate program leading to a Masters of Architecture	[$5,020] *$5,470*	[$8,340] *$9,175*	[$418] *$456*	[$695] *$765*
(6)	Students enrolled in a graduate program leading to a Masters of Social Work	[$5,000] *$5,450*	[$8,340] *$9,175*	[$417] *$454*	[$695] *$765*
(7)	Students enrolled in the professional program of pharmacy	[$10,765] *$11,305*	[$20,875] *$21,920*	[$897] *$942*	[$1,740] *$1,827*
(8)	Students enrolled in the professional program of law	[$10,365] *$10,985*	[$17,610] *$19,020*	[$864] *$915*	[$1,468] *$1,585*
(9)	Students enrolled in the professional program of medicine	[$14,765] *$16,095*	[$27,325] *$28,690*	[$1,230] *$1,341*	[$2,277] *$2,391*
(10)	Students enrolled in the professional program of dentistry	[$12,725] *$13,870*	[$28,615] *$31,475*	[$1,060] *$1,156*	[$2,385] *$2,623*
(11)	Students enrolled in the professional program of physical therapy and doctor of nursing practice	[$8,970] *$9,775*	[$16,110] *$17,720*	[$748] *$815*	[$1,343] *$1,477*
(12)	Students enrolled in the professional program of optometry	[$9,950] *$10,945*	[$19,105] *$20,440*	[$829] *$912*	[$1,592] *$1,703*
(13)	Students enrolled in the professional program of physician assistant	[$4,970] *$5,415*	[$9,905] *$10,005*	[$414] *$451*	[$758] *$834*

[1]The Chancellor shall determine the equivalent of a credit hour.

[2]In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge *a* [this] lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students in degree-granting programs leading to a baccalaureate degree. *Alfred and Morrisville are authorized to charge the rate noted effective with the fall 2013 semester.*

[3]In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge *a* [this] lower rate for *non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs* [special students (part-time) enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs, and taking classes at off-campus locations or during the summer or winter intercessions]. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree. *Canton and Delhi are authorized to charge the rate noted effective with the fall 2013 term.*

[4]*In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge this lower rate for special students (part-time) enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs, and taking classes at off-campus locations or during the summer or winter intercessions. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree.* [In accordance with the NY-SUNY 2020 Challenge Grant Program Act, the University Centers at Buffalo and Stony Brook are authorized to charge this rate for non-resident undergraduate students.]

[5]In accordance with the NY-SUNY 2020 Challenge Grant Program Act, *the University Centers at Buffalo and Stony Brook are authorized to charge this rate for non-resident undergraduate students.* [the University Center at Binghamton is authorized to charge this rate for non-resident undergraduate students. The University Center at Albany is authorized to charge this rate for non-resident undergraduate students, pending approval of its submitted plan.]

[6]*In accordance with the NY-SUNY 2020 Challenge Grant Program Act, the University Center at Binghamton and the University Center at Albany are authorized to charge this rate for non-resident undergraduate students.* [As authorized by the Board of Trustees (2010-081), Maritime College is authorized to charge up to this rate for non-resident students from states considered to be in-region (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington D.C.).]

[7]*As authorized by the Board of Trustees (2010-081), Maritime College is authorized to charge up to this rate for non-resident students from states considered to be in-region (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington D.C.).*

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 6, 2013.

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, S-325, 353 Broadway, Albany, NY, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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

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

Regulatory Impact Statement

1. Statutory Authority: Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to make and amend rules and regulations for the governance of the State University and institutions therein. Section 355(2)(h) authorizes the State University Trustees to regulate the admission of students, tuition charges and other fees and charges, curricula and all other matters pertaining to the operation and administration of each State-operated institution of the University.

2. Legislative Objectives: The present measure will provide essential financial support for the operations of the State University of New York, in accordance with the NY-SUNY 2020 Challenge Grant Program Act, Chapter 260, Laws of 2011.

3. Needs and Benefits: The present measure establishes a series of tuition increases in the degree programs of the State University of New York.

- In accordance with the NY-SUNY 2020 Challenge Grant Program Act, resident undergraduate tuition will increase by $300 for all students, and pursuant to approval by the Governor and Chancellor of a long term economic and academic plan submitted by each University Center, non-resident undergraduate tuition for students at the University Centers will increase by 10%
- Non-resident undergraduate tuition for students at the Comprehensive Colleges, Colleges of Technology, and the Other Research/Doctoral institutions will be increased by 3.4%
- For graduate students enrolled in masters' and doctoral programs not otherwise specified, resident tuition will be increased by 5.3% and non-resident tuition will be increased by 10%
- Tuition rates for identified professional programs (dental, doctorate of physical therapy, doctorate of nursing practice) will be increased by 9% for resident students and by 10% for non-resident students
- Tuition rates for students enrolled in the Law program at the University at Buffalo will increase by 6% for resident students and 8% for non-resident students
- Tuition rates for students enrolled in the professional Pharmacy program will increase by 5% for both resident and non-resident students
- Tuition rates for the professional program in medicine will be increased by 9% for resident students and by 5% for non-resident students
- For students enrolled in the MBA program, rates for resident students will be increased 9% and by 10% for non-resident students
- For students enrolled in the Masters of Architecture program, rates for resident students will be increased by 9% and by 10% for non-resident students
- For students enrolled in the Masters of Social Work program rates for resident students will be increased by 9% and by 10% for non-resident students
- For students enrolled in the Physician Assistant (Masters) program, rates will be increased by 9% for resident students and by 10% for non-resident students

• For students enrolled in the Optometry program, rates for resident students will increase by 10% and rates for non-resident students will increase by 7%

Even with the recommended increases, the tuition charged at the State-operated campuses of State University of New York is still competitive when compared to peer institutions in other university systems. Accordingly, the tuition increases on an annual basis proposed by this resolution are as follows:

Undergraduate Degree: Tuition would increase by $300 to $5,870 for resident students.

Undergraduate Degree: Tuition would increase by $1,620 to $17,810 for out-of-state students at the University Centers at Buffalo and Stony Brook; by $1,470 to $16,190 at the University Centers at Albany and Binghamton; and, by $500 to $15,320 for all other campuses.

Undergraduate Degree: Tuition for out-of-state students enrolled in an associates degree program at one of the Colleges of Technology at Alfred or Morrisville would increase by $0, remaining at $9,740 annually; and by $300, to $10,040 at Canton and Delhi.

Graduate Degree Programs: Tuition would increase by $500 for resident students, to $9,870. Tuition would increase by $1,670 for out-of-state students, to $18,320. For students enrolled in programs leading to a Masters in Business Administration degree, tuition would increase by $1000 to $12,130 for residents and by $1,830 to $20,150 for out-of-state students. For students enrolled in programs leading to a Masters in Architecture degree, tuition would increase by $900 to $10,940 for residents and by $1,670 to $18,350 for out-of-state students. For students enrolled in programs leading to a Masters in Social Work degree, tuition would increase by $900 to $10,900 for residents and by $1,670 to $18,350 for out-of-state students.

Medicine: Tuition would increase by $2,660 to $32,190 for residents and by $2,730 to $57,380 for out-of-state residents.

Law: The tuition at the Law School of the University at Buffalo would be increased by $1,240 to $21,970 for residents and by $2,820 to $38,040 for out-of-state residents.

Pharmacy: The tuition at the School of Pharmacy at the University at Buffalo would increase by $1,080 to $22,610 for residents and by $2,090 to $43,840 for out-of-state residents.

Physical Therapy and Doctor of Nursing Practice: Tuition for the Doctor of Physical Therapy and Nursing Practice at the University at Buffalo and the University at Stony Brook would increase by $1,610 to $19,550 for residents and by $3,220 to $35,440 for out-of-state residents.

Dentistry: Tuition for the D.D.S programs at the Universities at Stony Brook and Buffalo would increase by $2,290 to $27,740 for residents and by $5,720 to $62,950 for out-of-state residents.

Optometry: Tuition for the Optometry program at the College of Optometry would increase by $1,990 to $21,890 for residents and by $2,670 to $40,880 for out-of-state residents.

Physician Assistant: Tuition for the Physicians' Assistant graduate program at Stony Brook and Upstate would increase by $890 to $10,380 for residents and by $1,820 to $20,010 for out-of-state residents.

The tuition rates were last increased in the Fall 2012.

4. Costs: Students enrolled in these programs of the State University of New York will be required to pay additional tuition ranging from $300 per year for resident associate degrees to $5,720 for non-resident students at the Schools of Dentistry. In setting the new tuition schedule, the State University has examined its appropriation levels, the prevailing tuition rates charged by other public universities and the status of various State and Federal student financial aid programs.

5. Local Government Mandates: There are no local government mandates. The amendment does not affect students enrolled in the community colleges operating under the program of the State University of New York.

6. Paperwork: No parties will experience any new reporting responsibilities. State University of New York publications and documents containing notices regarding costs of attendance will need to be revised to reflect these changes.

7. Duplication: None.

8. Alternatives: Delays in tuition increases as well as higher increases were considered, however, there is no acceptable alternative to the proposed increases. The revenue from these tuition increases is necessary in order for the University to maintain quality of instruction and essential services to students, especially given the high cost professional programs.

9. Federal Standards: None.

10. Compliance Schedule: The amendment to the tuition schedule will go into effect for the Fall 2013 semester.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportnities, or self-employment. This regulation governs tuition charges for State University of New York and will not have any adverse impact on the number of jobs or employment.

Urban Development Corporation

EMERGENCY RULE MAKING

Small Business Revolving Loan Fund

I.D. No. UDC-30-13-00002-E
Filing No. 745
Filing Date: 2013-07-08
Effective Date: 2013-07-08

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

Action taken: Addition of Part 4250 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); L. 1968, ch. 174; and L. 2010, ch. 59, section 16-t

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

Specific reasons underlying the finding of necessity: The delay in the approval of the State budget and 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 Small Business Revolving Loan Fund in order to promptly provide assistance to the State's small businesses in order to sustain and increase employment generated by these businesses.

Subject: Small Business Revolving Loan Fund.

Purpose: Provide the basis for administration of Small Business Revolving Loan Fund including evaluation criteria and application process.

Text of emergency rule: *SMALL BUSINESS REVOLVING LOAN FUND*

Section 4250.1 Purpose.

The purpose of these regulations is to set forth and codify administration by the New York State Urban Development Corporation (the "Corporation") of the Small Business Revolving Loan Fund (the "Program") authorized by Section 16-t of the New York State Urban Development Corporation Act (the "Act") (Uncon. Laws section 6266-t, added by Chapter 59, Part N, section 1, of the Laws of 2010). The Corporation is authorized, within available appropriations, to provide low interest loans to community development financial institutions, in order to provide funding for those lending organizations' loans to small businesses, located within New York State, that generate economic growth and job creation within New York State but that are unable to obtain adequate credit or adequate terms for such credit. If the use of a community development financial institution is not practicable based upon an assessment of geographic and administrative capacity and other factors as determined by the Corporation, then the Corporation is authorized, within available appropriations, to provide low interest loans to the following other local community based lending organizations: 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, credit unions and community banks.

Section 4250.2 Definitions.

a) "Administrative Costs" shall mean expenses incurred by a Community Based Lending Organization in its administration of a Program Loan from the Corporation.

b) "Administrative Income" shall mean income from (i) fees charged by a Community Based Lending Organization, including application fees, commitment fees and loan guarantee fees related to the Business Loans made to borrowers by the Community Based Lending Organization and (ii) interest income earned on the portion of the Program funds held by the Community Based Lending Organization (whether such funds are undisbursed Program funds or are repayment proceeds of Business Loans¬ made by the Community Based Lending Organization).

c) "Business Loan" shall mean a loan made by a Community Based Lending Organization to an Eligible Business for an Eligible Project that is either a Micro-Loan or a Regular Loan.

d) "Community Based Lending Organizations" shall mean 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, credit unions and community banks.

e) "Community Development Financial Institution" or "CDFI" shall mean a community based organization that provides financial services and products to communities, businesses and people underserved by traditional financial institutions.

f) "Corporation" shall mean the New York State Urban Development Corporation d/b/a Empire State Development Corporation, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York created by Chapter one hundred seventy-four of the Laws of nineteen hundred sixty-eight, as amended.

g) "Eligible Businesses" shall have the meaning given in Section 4250. 3 below.

h) "Eligible Project" shall have the meaning given in Section 4250.3 below.

i) "Eligible Uses" shall have the meaning given in Section 4250.4 below.

j) "Ineligible Businesses" shall mean newspapers, broadcasting, or other news media; medical facilities, libraries, community or civic centers. It also means any business relocating from one municipality with the State to another, except when the business is relocating within a municipality with a population of at least one million and the governing body of the municipality approves or each municipality from which such business operation will be relocated agrees to such relocation.

k) "Ineligible Projects" shall mean any project that is not an Eligible Project, including, without limiting the foregoing, public infrastructure improvements and funding for providing payment or distribution as a loan to owners, members and partners or shareholders of the applicant business or their family members.

l) "Loan Fund" shall mean the Small Business Revolving Loan Fund created by the Small Business Revolving Loan Fund Legislation.

m) "Loan Fund Account" shall mean each and every account established by the Community Based Lending Organization for the purpose of depositing Program funds.

n) "Loan Fund Legislation" shall mean Section 16-t of the Act.

o) "Loan Fund Proceeds" shall mean any and all monies made available to the Corporation for deposit to the Loan Fund, including monies appropriated by the State and any income earned by, or incremental to, the amount due to the investment of the same, or any repayment of monies advanced from the Loan Fund.

p) "Micro-Loan" shall mean a Small Business loan that has a principal amount that is less than or equal to twenty-five thousand dollars.

q) "Minority Business Enterprise" shall mean a business enterprise which is at least fifty-one percent owned, or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned, by one or more minority persons and such ownership must have and exercise the authority to independently control the day to day business decisions of the entity. Minority persons shall mean persons who are:

1. Black;

2. Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent or either Indian or Hispanic origin, regardless of race;

3. Asian and Pacific Islander persons having origins in the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or

4. American Indian or Alaskan Native persons having origins in any of the original people of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

r) "Program Loan Fund Agreement" shall mean the agreement between the Corporation and the Community Based Lending Organization pursuant to which the Program funds will be disbursed to and used by the Community Based Lending Organization.

s) "Program Loan" shall mean a loan made by the Corporation to a Community Based Lending Organization.

t) "Regular Loan" shall mean a Small Business loan that has a principal amount greater than twenty-five thousand dollars.

u) "Service Delivery Area" shall mean one or more contiguous counties or municipalities to be served by the Community Based Lending Organization and described in the Program Loan Fund Agreement between the Corporation, as lender, and the Community Based Lending Organization, as borrower.

v) "Small Business" shall mean 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.

w) "State" shall mean the State of New York.

x) "Women Business Enterprise" shall mean a business enterprise that is at least fifty one percent owned, or in the case of a publicly-owned business at least fifty one percent of the common stock or other voting interests of which is owned, by United States citizens or permanent resident aliens, one or more who are women, regardless of race or ethnicity, and such ownership interest is real, substantial and continuing and such woman or women have and exercise the authority to independently control the day to day business decisions of the enterprise.

y) "Working Capital Loans" shall mean short and medium term loans for working capital, revolving lines of credit and seasonal inventory loans made by Community Based Lending Organizations to Eligible Businesses for Eligible Projects.

Section 4250.3 Eligible Business, Eligible Projects and Ineligible Projects.

Business Loans shall be offered by Community Based Lending Organizations on the terms and conditions that are in accordance with and subject to the Act and the provisions of this Part. Business Loans shall be provided by the Community Based Lending Organization only to Eligible Businesses for Eligible Projects and shall not be used for Ineligible Projects. The terms "Eligible Business", "Eligible Projects" and "Ineligible Projects" are defined as follows.

An "Eligible Business" is a:

1. business enterprise that is resident in and authorized to do business in New York State;

2. independently owned and operated;

3. not dominant in its field; and

4. employs one hundred or fewer persons.

An "Eligible Project" is a Business Loan from a Community Based Lending Organization to an Eligible Business in the Service Delivery Area for an Eligible Use, whereby the Community Based Lending Organization has reviewed every Business Loan application to determine the feasibility of the proposed Eligible Use(s) of the financing requested by the small business applicant, the likelihood of repayment, and the potential that the loan will generate economic development and jobs within the State. An "Eligible Project" cannot be an "Ineligible Project" as defined below.

An "Ineligible Project" shall mean: (i) a project or use that would result in the relocation of any business operation from one municipality within the state to another, except under one of the following conditions, (A) When a business is relocating within a municipality with a population of at least one million where the governing body of such municipality approves such relocation, or (B) each municipality from which such business operation will be relocated has consented to such relocation; (ii) projects with respect to newspapers, broadcasting or other news media, medical facilities, libraries, community or civic centers, and public infrastructure improvements; (iii) providing funds, directly or indirectly, for payments, distribution or as a loan (except in the case of a loan to a sole proprietor for business use), to owners, members, partners or shareholders of the applicant business, except as ordinary income for services rendered; (iv) any project that results in a Business Loan to a person who is a member of the board or other governing body, officer, employee, or member of a loan committee, or a family member of the Community Based Lending Organization or who shall participate in any decision on the use of Program funds if such person is a party to or has a financial or personal interest in such loan.

Section 4250.4 Eligible Uses.

Eligible Uses of Program funds by a Small Business borrower of the Community Based Lending Organization are:

1. working capital;

2. acquisition and/ or improvement of real property;

3. acquisition of machinery and equipment; and

4. refinancing of debt obligations provided that:

a. it does not refinance a loan already in the portfolio of the Community Based Lending Organization;

b. the refinanced loan will provide a tangible benefit to the business borrower as determined by the Corporation in writing; and

c. the aggregate of the principal of all borrower refinancing loan amounts in the Community Based Lending Organization's Program loan portfolio is not greater than twenty-five percent (25%) of the principal amount of the Corporation's Program loan to the Community Based Lending Organization.

Section 4250.5 Fees.

A Community Based Lending Organization may charge application, commitment and loan guarantee fees pursuant to a schedule of fees adopted by the institution and approved in writing by the Corporation.

Section 4250.6 Niagara, St. Lawrence, Erie, and Jefferson Counties.

Notwithstanding anything to the contrary in this rule, the Corporation shall provide at least five hundred thousand dollars in Program funds to Community Based Lending Organizations for the purpose of making loans to small businesses located in each of the following counties: Niagara, St. Lawrence, Erie and Jefferson.

Section 4250.7 Business Loan Types and Limits.

a) There shall be two categories of Business Loans to Eligible Businesses:

1. a microloan that shall have a principal amount that is less than twenty-five thousand dollars; and

2. a regular loan that shall have a principal amount not less than twenty-five thousand dollars.

b) The Program funds amount used by the Community Based Lending Organization to fund a Business Loan shall not be more than fifty percent of the principal amount of such loan and shall not be greater than one hundred and twenty-five thousand dollars.

c) No less than ten percent (10%) of the aggregate Program funds shall be allocated by the Corporation for Microloans.

Section 4250.8 General Evaluation Criteria.

a) In addition to such criteria as may be set forth by the Corporation from time to time in solicitations for applications from Community Based Lending Organizations, the Corporation shall evaluate the Program assistance application of a Community Based Lending Organization in conformance with the Act and in accordance with the criteria set forth in this Part, including as applicable:

1. The ability of the Community Based Lending Organization to analyze small business applications for Business Loans, to evaluate the credit worthiness of small businesses, and to monitor and service Business Loans.

2. The ability of the Community Based Lending Organization to review every Business Loan application in order to determine, among other things, the feasibility of the proposed Eligible Use(s) of the financing requested by the small business applicant, the likelihood of repayment, and the potential that the loan will generate economic development and jobs within the State.

3. The ability of the Community Based Lending Organization to target and market to Minority and Women-Owned Enterprises and other small businesses that are having difficulty accessing traditional credit markets.

b) The Corporation is authorized, within available appropriations, to provide low interest loans to community development financial institutions, in order to provide funding for those lending organizations' loans to small businesses, located within New York State, that generate economic growth and job creation within New York State but that are unable to obtain adequate credit or adequate terms for such credit. If the use of a community development financial institution is not practicable based upon an assessment of geographic and administrative capacity and other factors as determined by the Corporation, then the Corporation is authorized, within available appropriations, to provide low interest loans to the following other local community based lending organizations: 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, credit unions and community banks.

Section 4250.9 General Requirements.

a) Program funds shall be disbursed to a Community Based Lending Organization by the Corporation in the form of a Program Loan.

1. The term of the Program Loan shall commence upon closing of the Program Loan Fund Agreement between the Corporation and the Community Based Lending Organization.

2. The Program Loan shall carry a low interest rate determined by the Corporation based on then prevailing interest rates and the circumstances of the Community Based Lending Organization.

b) Notwithstanding the performance of the Business Loans made by the Community Based Lending Organization using Program funds, the Community Based Lending Organization shall remain liable to the Corporation with respect to any unpaid amounts due from the Community Based Lending Organization pursuant to the terms of the Corporation's Program Loan to the Community Based Lending Organization.

c) At the discretion of the Corporation, a portion of Program loan funds may be disbursed to the Community Based Lending Organization in the form of a grant or forgivable loan provided that those funds are used by the Community Based Lending Organization for administrative expenses associated with Business Loans to Eligible Borrowers for Eligible Projects, loan-loss reserves, or other eligible expenses as may be approved in writing by the Corporation.

d) The Corporation may establish a Program fund for Program use and pay into such fund any funds available to the Corporation from any source that is eligible for Program use, including moneys appropriated by the State.

e) Interest received by the Corporation from Program Loans to Community Based Lending Organizations may be used at the discretion of the Corporation for Program Loans and the management, marketing, and administration of the Program.

f) If the use of a community development financial institution is not practicable based upon an assessment of geographic and administrative capacity and other factors as determined by the Corporation, then the Corporation is authorized, within available appropriations, to provide low interest loans to the following other local community based lending organizations: 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, credit unions and community banks.

Section 4250.10 Loan Fund Accounts.

Each Community Based Lending Organization shall deposit Program funds awarded by the Corporation, repayments, and interest earned into a bank account in a State or Federal chartered banking institution.

Section 4250.11 Application and Approval Process.

The Corporation shall identify eligible Community Based Lending Organizations through one or more competitive statewide or local solicitations.

Section 4250.12 Auditing, Compliance and Reporting.

a) The Community Based Lending Organization shall submit to the Corporation annual reports and additional reports as requested at the discretion of the Corporation stating:

1. The number of Business Loans made;

2. The amount of each Business Loan;

3. The amount of Program Loan proceeds used to fund each Business Loan;

4. The use of Business Loan proceeds by the borrower;

5. The number of jobs created or retained;

6. A description of the economic development generated;

7. The status of each outstanding Business Loan; and

8. Such other information as the Corporation may require.

b) The Corporation may conduct audits of the Community Based Lending Organization in order to ensure compliance with the statute, any regulations promulgated with respect thereto and agreements between the Community Based Lending Organization and the Corporation of all aspects of the use of Program funds and Business Loan transactions.

c) In the event that the Corporation finds substantive noncompliance, the Corporation may terminate the Community Base Lending Organization's participation in the Program.

d) Upon termination of a Community Based Lending Organization's participation in the Program, the Community Based Lending Organization shall return to the Corporation, promptly after its demand thereof, all Program fund proceeds held by the Community Based Lending Organization; and provide to the Corporation, promptly after its demand thereof, an accounting of all Program funds received by the Community Based Lending Organization, including all currently outstanding Business Loans that were made using Program funds. Notwithstanding such termination, the Community Based Lending Organization shall remain liable to the Corporation with respect to any unpaid amounts due from the Community Based Lending Organization pursuant to the terms of the Corporation's loans to the Community Based Lending Organization.

e) In the event that a Community Based Lending Organization's participation in the Program is terminated, the Corporation, in its discretion, can reassign all or part of the award made to such Community Based Lending Organization to one or more Community Based Lending Organizations that are already administering the Program and that serve the same Service Area or portions thereof without an additional solicitation.

Section 4250.13 Confidentiality.

a) 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 Loan Fund administered through the selected Community Based Lending Organizations by the Corporation, shall be confidential and exempt from public disclosures.

b) To the extent permitted by law, no full time employee of the State of New York or any agency, department, authority or public benefit corporation thereof shall be eligible to receive assistance under this Program.

Section 4250.14 Non-Discrimination and Affirmative Action.

The Corporation's affirmative action and non-discrimination policies and programs are grounded in both public policy and applicable law, including but not limited to, Section 2879 of the Public Authorities Law, Article 15-A of the Executive Law and Section 6254 (11) of the Unconsolidated Laws. These laws mandate the Corporation to take affirmative action in implementing programs. The Corporation has charged the affirmative action department with overall responsibility to ensure that the spirit of these mandates is incorporated into the Corporation's policies and projects. Where applicable, the affirmative action department will work with applicants in developing an appropriate Affirmative Action Program for business and employment opportunities generated by the Corporation's participation of the Program.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires October 5, 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-t of the Act provides for the creation of the Small Business Revolving Loan Fund (the "Program") and authorizes the New York State Urban Development Corporation d/b/a Empire State Development Corporation (the "Corporation"), within available appropriations, to provide low interest loans to Community Development Financial Institutions and other Community Based Lending Organizations, in order to provide funding 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-t of the Act (Uncon. Laws section 6266-t, added by Chapter 59, Part N, section 1, of the Laws of 2010) sets forth the Legislative objective of authorizing the Corporation, within available appropriations, to provide low interest loans to community development financial institutions and other community based lending organizations, in order to provide funding 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 4250 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 $25 million to provide low interest loans to community development financial institutions and other community based lending organizations, in order to provide funding 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. As of December 31, 2012, over $51.5 million have been loaned to 2,204 small businesses through the Program. Almost $18 million of these funds are from the Corporation.

The Program (i) allows the Corporation to evaluate the effectiveness of community based lending organizations with respect to their ability to make loans to credit worthy small businesses, (ii) decentralizes to community based lending organizations the evaluation of the credit and operations of small businesses within the respective communities served by such organizations, and (iii) enhances the ability of community based lending organizations to make loans to small businesses in the communities served by such organizations. The rule facilitates these aspects of the Program by providing for a competitive process to select community based financial institutions for Program Loans and defining eligible and ineligible small businesses and eligible uses of the proceeds of loans to small businesses and other criteria to be applied by the community development financial institutions in making loans to small businesses.

4. Costs: The Program is funded by a State appropriation in the amount of twenty-five million dollars. Pursuant to the rule, community based lending organizations must provide not less than fifty percent of the principal amount of each small business loan funded with Program funds. The costs to a community based lending organization involved in the Program would depend on the extent to which they participate in the Program and their effectiveness and efficiency in making small business loans. The rule also provides for approval by the Corporation of fees charged by a community based lending institutions in connection with loans to small businesses that use Program funds. As of December 31, 2012, $33,510,131 of private funds have been matched to the Corporation's $17,570,131 for 2,204 loans to small businesses.

5. Paperwork / Reporting: There are no additional reporting or paperwork requirements as a result of this rule on community based lending organizations participating in the Program except those required by the statute creating the Program such as quarterly and annual reports 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, the State has established the Program in order to enhance the access of small businesses to such financing, and the proposed rule provides the regulatory basis for providing low interest loans to 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.

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 Development Financial Institution" is defined as community based organization that provides financial services and products to communities, businesses and people underserved by traditional financial institutions; and "Community Based Lending Organizations" is defined as 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, credit unions and community banks. The rule will facilitate the statutory Program's purpose of having New York State Urban Development Corporation d/b/a Empire State Development Corporation (the "Corporation") make low interest loans to community based lending organizations in order to provide funding for those lending organizations' loans (including microloans in principal amounts equal to or less than twenty-five thousand dollars) to small businesses, located within the State, that are unable to obtain adequate credit or credit terms for such credit.

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 low interest loans to community based lending organizations in order to enhance the ability of such organizations to fund loans to small businesses.

7. Small Business and Local Government Participation: A number of community based lending organizations that engage in lending to small businesses responded to a survey circulated by the Corporation regarding implementation of the program as reflected in the rule.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: Community development financial institutions and other community based lending organizations serving all of the 44 counties defined as rural by the Executive Law § 481(7), are eligible to apply for the Small Business Revolving Loan Fund (the "Program") assistance pursuant to a State-wide request for proposals.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The rule will not impose any new or additional reporting or recordkeeping requirements other than those that would be required of any community based lending organization 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 community based lending organization 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 community based lending organizations 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, changed 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 community based lending organizations in order to enhance the ability of these entities to make loans to small businesses, especially those small businesses that may not be able to borrower funds at acceptable rates from larger financial institutions. This rule provides a basis for cooperation between the State and CBLOs, including CBLO that serve rural areas of the State, in order to maximize the Program's effectiveness and minimize any negative impacts for such CBLO and the small businesses, including small businesses located in rural areas of the State, that such CBLOs 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 CBLOs 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 is targeted to 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.