RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

EMERGENCY RULE MAKING

Species of Ash Trees, Parts Thereof and Debris Therefrom Which Are at Risk for Infestation by the Emerald Ash Borer

I.D. No. AAM-14-13-00001-E
Filing No. 622
Filing Date: 2013-06-11
Effective Date: 2013-06-11

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

Action taken: Amendment of section 141.2 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

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

Specific reasons underlying the finding of necessity: The rule amends section 141.2 of 1 NYCRR to establish an Emerald Ash Borer (EAB) quarantine in the counties of Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Seneca, Sullivan, Tioga and Tompkins. The rule will also extend the quarantine to the southern portions of the following counties: Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga.

EAB, Agrilus planipennis, an insect species non-indigenous to the United States, is a destructive wood-boring insect native to eastern Russia, northern China, Japan and the Korean peninsula. EAB can cause serious damage to healthy trees by boring through their bark, consuming cambium tissue, which contains growth cells, and phloem tissue, which is responsible for carrying nutrients throughout the tree. This boring activity results in loss of bark, or girdling, and ultimately results in the death of the tree within two years. The average adult EAB is 3/4 of an inch long and 1/6 of an inch wide and is a dark metallic green in color. The larvae are approximately 1 to 1 1/4 inches long and are creamy white in color. Adult insects emerge in May and June and begin laying eggs in crevasses in the bark about two weeks after emergence. One female can lay 60 to 90 eggs. After hatching, the larvae burrow into the bark and begin feeding on the cambium and phloem, usually from late July or early August through October, before overwintering in the outer bark. The larvae emerge as adult insects the following spring, and the life cycle begins anew. Evidence of the presence of the EAB includes loss of tree bark, S-shaped larval galleries, or tunnels, just beneath the bark, small, D-shaped exit holes through the bark and dying and thinning branches near the top of the tree.

Ash trees, nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Materials at risk of attack and infestation by the EAB include the following species of North American ash trees: White Ash (Fraxinus Americana); Green Ash (Fraxinus pennsylvanica); Black Ash (Fraxinus nigra); and Blue Ash (Fraxinus quadrangulata). The movement of these materials poses a serious threat to susceptible ash trees in forests as well as in parks and yards throughout the State.

EAB was first discovered in Michigan in June 2002, and has since spread to at least 15 other states as well as to two provinces in Canada. The initial detection of this pest in New York occurred on June 16, 2009 in the Town of Randolph, which is located in southwestern Cattaraugus County and is adjacent to Chautauqua County. A quarantine of both counties was established pursuant to federal protocols for control of EAB.

Further detections were confirmed in six other counties (Monroe, Genesee, Livingston, Steuben, Greene and Ulster) during July and August, 2010. Due to the patchwork nature of these detections, limited detection capabilities and stakeholder input, the EAB quarantine was extended to the following 12 counties in western New York: Cattaraugus, Chautauqua, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung. A new quarantine region was established in eastern New York comprised of Greene and Ulster Counties.

In 2011, there were multiple new detections within the Western New York quarantine area. New detections of EAB in Albany and Orange Counties demonstrate further spread of EAB within the Eastern New York quarantine area and prompted the extension of the quarantine to include those counties.

In 2012, there were new detections within the Western New York quarantine area as well as the Eastern New York area. All but two are within quarantine counties. Dutchess and Tioga Counties are new detections outside the current quarantine and as such, are required to be quarantined per federal protocols.

Given the rapid pace of EAB detections in New York, the challenges with timely detection, cost of control, and stakeholder calls for changes due to economic impacts and limited ability to move various regulated articles, this regulation combines both quarantine zones by adding the counties of Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Seneca, Sullivan, Tioga and Tompkins as well as portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga. This creates one quarantine zone.

The regulations are necessary to protect the general welfare, since the effective control of the EAB in the counties where this insect has most recently been found is important to protect New York's nursery, forest products industry, urban and suburban street trees and forest resources. The quarantine will help ensure that as control measures are undertaken, EAB does not spread beyond those areas via the movement of infested trees and materials. Since EAB has been detected in many locations in both western and eastern New York, there is a high likelihood that this pest is present in other areas of the State, but has yet to be detected.

The regulations are also necessary to balance pest risk against economic impacts as this program transitions to a management program. The immediate adoption of this rule is necessary to meet Federal protocols for new detections as well as mitigate negative economic impacts that have resulted from the current configuration of the quarantine.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of these amendments is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest.

Subject: Species of ash trees, parts thereof and debris therefrom which are at risk for infestation by the emerald ash borer.

Purpose: To extend the emerald ash borer quarantine to prevent the further spread of the beetle to other areas.

Text of emergency rule: Section 141.2 of 1 NYCRR is amended to read as follows:

Section 141.2. Quarantined area.

(a) Regulated articles as described in section 141.3 of this Part shall not be shipped, transported or otherwise moved from any point within [Albany, Orange, Niagara, Erie, Orleans, Genesee, Wyoming, Allegany, Monroe, Livingston, Steuben, Wayne, Ontario, Yates, Schuyler, Chemung, Greene, Ulster, Chautauqua and Cattaraugus Counties] *Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Columbia, Cortland, Delaware, Dutchess, Erie, Genesee, Greene, Livingston, Monroe, Niagara, Ontario, Orleans, Orange, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Wayne, Wyoming and Yates Counties* to any point outside of said counties, except in accordance with this Part.

(b) Regulated articles as described in section 141.3 of this Part shall not be shipped, transported or otherwise moved from any point within those portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga Counties inclusive of and south of the New York State Thruway to any point outside of said counties, except in accordance with this Part. The boundary of the quarantine in these counties is as follows: a line from the shore of Lake Ontario following the boundary of Cayuga County south to the New York State Thruway; continuing east along and inclusive of the New York State Thruway to its intersection with State Route 28 in Herkimer County; continuing north along State Route 28 to its intersection with State Route 29; continuing east along State Route 29 onto State Route 29A until the crossing of the East Canada Creek; continuing south along the East Canada Creek to its intersection with State Highway 29; continuing east along State Highway 29 until its intersection with State Highway 67; continuing east along State Highway 67 until its intersection with the Saratoga County line; continuing south along the boundary of Saratoga and Albany Counties to the Rensselaer County line.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. AAM-14-13-00001-EP, Issue of April 3, 2013. The emergency rule will expire August 9, 2013.

Text of rule and any required statements and analyses may be obtained from: Kevin King, Director, Division of Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087, email: kevin.king@agriculture.ny.gov

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Section 167 also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law.

2. Legislative objectives:

The regulations are consistent with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the spread within the State of an injurious insect, the Emerald Ash Borer (EAB).

3. Needs and benefits:

The rule amends section 141.2 of 1 NYCRR to extend the EAB quarantine to the counties of Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Seneca, Sullivan, Tioga and Tompkins. The rule would also establish a quarantine within the southern portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga Counties.

The Emerald Ash Borer, Agrilus planipennis, an insect species non-indigenous to the United States, is a destructive wood-boring insect native to eastern Russia, northern China, Japan and the Korean peninsula. EAB can cause serious damage to healthy trees by boring through their bark, consuming cambium tissue, which contains growth cells, and phloem tissue, which is responsible for carrying nutrients throughout the tree. This boring activity results in loss of bark, or girdling, and ultimately results in the death of the tree within two years. The average adult EAB is 3/4 of an inch long and 1/6 of an inch wide and is a dark metallic green in color. The larvae are approximately 1 to 1 1/4 inches long and are creamy white in color. Adult insects emerge in May and June and begin laying eggs in crevasses in the bark about two weeks after emergence. One female can lay 60 to 90 eggs. After hatching, the larvae burrow into the bark and begin feeding on the cambium and phloem, usually from late July or early August through October, before overwintering in the outer bark. The larvae emerge as adult insects the following spring, and the life cycle begins anew. Evidence of the presence of the EAB includes loss of tree bark, S-shaped larval galleries, or tunnels, just beneath the bark, small, D-shaped exit holes through the bark and dying and thinning branches near the top of the tree.

Ash trees, nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Materials at risk of attack and infestation by the EAB include the following species of North American ash trees: White Ash (Fraxinus Americana); Green Ash (Fraxinus pennsylvanica); Black Ash (Fraxinus nigra); and Blue Ash (Fraxinus quadrangulata). The movement of these materials poses a serious threat to susceptible ash trees in forests as well as in parks and yards throughout the State.

EAB was first discovered in Michigan in June 2002, and has since spread to at least 15 other states as well as to two provinces in Canada. The initial detection of this pest in New York occurred on June 16, 2009 in the Town of Randolph, which is located in southwestern Cattaraugus County and is adjacent to Chautauqua County. A quarantine of both counties was established pursuant to federal protocols for control of EAB.

Further detections were confirmed in six other counties (Monroe, Genesee, Livingston, Steuben, Greene and Ulster) during July and August, 2010. Due to the patchwork nature of these detections, limited detection capabilities and stakeholder input, the EAB quarantine was extended to the following 10 counties in western New York: Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung. A new quarantine region was established in eastern New York comprised of Greene and Ulster Counties.

In 2011, there were multiple new detections within the Western New York quarantine area. New detections of EAB in Albany and Orange Counties demonstrate further spread of EAB within the Eastern New York quarantine area and prompted the extension of the quarantine to include those counties.

In 2012, there were new detections within the Western New York quarantine area as well as the Eastern New York area. All but two are within quarantine counties. Dutchess and Tioga Counties are new detections and are outside the current quarantine and are required to be quarantined per federal protocols. Since EAB has been detected in many locations in both western and eastern New York, there is a high likelihood that this pest is present in other areas of the State, but has yet to be detected. Most finds are well established leading to little opportunity for successful intervention.

Given the rapid pace of EAB detections in New York and the likelihood EAB is established in counties but yet to be detected, the regulation adds the counties of Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Seneca, Sullivan, Tioga and Tompkins to the quarantine area. The rule also establishes a quarantine within the southern portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga Counties. The addition of these counties or portions thereof creates one quarantine zone. This not only helps to control the further spread of this pest, but also answers the calls by regulated parties to combine the two quarantine areas due to economic impacts and limited ability to move various regulated articles throughout the State.

The regulations are necessary to balance pest risk against economic impacts as this program transitions to a management program. The immediate adoption of this rule is necessary to meet Federal protocols for new detections as well as mitigate negative economic impacts that have resulted from the current configuration of the quarantine.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are approximately 940 licensed nursery growers and 1,399 nursery dealers in the new quarantine areas. However, it is anticipated that only a fraction of these establishments carry regulated articles. There is no approved protocol for ash nursery stock. Furthermore, experience has shown that the presence of EAB and its destructive potential will significantly reduce or eliminate the market for ash nursery stock as ornamental, street and park plantings.

According to the US Census Bureau's most recent County Business Patterns Report, there are 258 logging companies, sawmills and forest-products manufacturers in these counties, employing an estimated 3,664 employees. According to the Empire State Forest Products Association, white ash accounts for 10 to 15-percent by volume of the total hardwood lumber manufactured in New York, and approximately 7 to 10-percent by value. Forest-based manufacturing provided $7.4-billion in value of shipments to New York's economy in 2001. Additionally, purchases of white ash stumpage from New York landowners exceed $13-million annually.

Regulated parties exporting regulated articles, exclusive of nursery stock, from the quarantine zone would require an inspection and the issuance of a federal or state certificate of inspection and/or compliance agreement. This service is available at a rate of $25 per hour. Most inspections will take one hour or less. A total of 3,520 inspections of wood processors, sawmills, nurseries, garden centers, firewood distributors, truckers, arborists, and loggers were conducted in 2011, and 156 compliance agreements were issued. These numbers will decline with the expansion of the quarantine area.

Most shipments would be made pursuant to compliance agreements. Services required prior to shipment of host materials, including inspection of the materials, taking and analyzing soil samples and reviewing shipping records, are available at a rate of $25 per hour.

Tree removal services would have the option of leaving host materials within the quarantine area or transporting them outside of the quarantine area under a limited permit to a federal/state disposal site for processing.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: Some local governments may face expenses in tree maintenance since ash trees have become popular trees to use to line streets. However, the rule does not require local governments to remove the trees from the quarantine area. Accordingly, local governments within the quarantine area will not incur any additional expenses due to the quarantine. This expansion of the quarantine area will save on costs to the state as seasonal staff can be reduced due to a decline in the number of compliance agreements that will be needed to move regulated materials from within an expanded quarantine area.

(c) The information, including the sources of such information and the methodology upon which the cost analysis is based: The costs analysis set forth above is based upon observations of the industry. Private regulated parties handling regulated articles in the quarantine area would no longer require compliance agreements with the Department or phytosanitary certificates for intra-state movement of regulated articles. Accordingly, regulated parties would incur no expense.

5. Local government mandate:

None.

6. Paperwork:

Regulated articles inspected and certified to be free of EAB moving from the quarantine area established by the rule would have to be accompanied by a state or federal certificate of inspection and a limited permit or be undertaken pursuant to a compliance agreement.

7. Duplication:

None.

8. Alternatives:

The alternative of no action was considered. However, this option is not feasible, given the threat EAB poses to the State's forests and forest-based industries. Additionally, the option of establishing a quarantine throughout the entire state was also considered. However, this option could result in exterior quarantines by foreign and domestic trading partners as well as a federal quarantine of the entire State. It could also place the State's own natural resources (forest, urban and agricultural) at risk from the spread of EAB that could result from the unrestricted movement of White Ash, Green Ash, Black Ash and Blue Ash from the quarantine areas. In light of these factors, there does not appear to be any viable alternative to the quarantine set forth in this proposal.

9. Federal standards:

The regulations do not exceed any minimum standards for the same or similar subject areas.

10. Compliance schedule:

It is anticipated that regulated parties would be able to comply with the regulations immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

The small businesses affected by the regulations establishing an Emerald Ash Borer (EAB) quarantine in Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Seneca, Sullivan, Tioga and Tompkins Counties and portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga Counties are the nursery dealers, nursery growers, landscaping companies, loggers, sawmills and other forest products manufacturers located within those counties. There are approximately 940 licensed nursery growers and 1,399 nursery dealers in these counties and portions thereof. According to the US Census Bureau's most recent County Business Patterns Report, there are approximately 258 logging companies, sawmills and forest-products manufacturers in these counties, employing an estimated 3,664 employees. According to the Empire State Forest Products Association, white ash accounts for 10 to 15-percent by volume of the total hardwood lumber manufactured in New York, and approximately 7 to 10-percent by value. Additionally, purchases of white ash stumpage from New York landowners exceed $13-million annually.

It is anticipated that only a fraction of these establishments carry regulated articles. Furthermore, experience has shown that the presence of EAB and its destructive potential will significantly reduce or eliminate the market for ash nursery stock as ornamental, street and park plantings.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

2. Compliance requirements:

There is no approved protocol to diagnose or treat nursery stock, since approved methods (e.g. debarking) would kill the plants. All regulated parties in the quarantine area established by the regulations would be required to obtain certificates and limited permits in order to ship other regulated articles (e.g. firewood and forest products) from that area. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

3. Professional services:

In order to comply with the regulations, all regulated parties shipping regulated articles from the quarantine area would require professional inspection services, which would be provided by the Department, the Department of Environmental Conservation (DEC) or the United States Department of Agriculture (USDA).

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the rule: None.

(b) Annual cost for continuing compliance with the rule:

Regulated parties exporting regulated articles, exclusive of nursery stock, from these counties, other than pursuant to compliance agreement, would require an inspection and the issuance of a federal or state certificate of inspection. This service is available at a rate of $25 per hour. Most inspections will take one hour or less. A total of 3,520 inspections of wood processors, sawmills, nurseries, garden centers, firewood distributors, truckers, arborists, and loggers were conducted in 2011, and 156 compliance agreements were issued. These numbers will decline with the expansion of the regulated area.

Most shipments would be made pursuant to compliance agreements. Services required prior to shipment of host materials, including inspection of the materials, taking and analyzing soil samples and reviewing shipping records, are available at a rate of $25 per hour.

Tree removal services would have the option to leave host materials within the quarantine area or transport them outside of the quarantine area under a limited permit to a federal/state disposal site for processing.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

5. Economic and technological feasibility:

The economic and technological feasibility of compliance with the rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Regulated parties shipping regulated articles (exclusive of nursery stock) from the quarantine area, other than pursuant to a compliance agreement would require an inspection and the issuance of a certificate of inspection. Most shipments, however, would be made pursuant to compliance agreements. Accordingly, the requirements and procedures are economically and technologically feasible.

6. Minimizing adverse impact:

The Department has designed the rule to minimize adverse economic impact on small businesses. This quarantine is being expanded in order to minimize economic impacts while maintaining restrictions that assist in minimizing the spread of EAB. The current quarantine, which consists of separate areas in western and eastern New York, has had significant financial impacts on wood products manufacturers in central New York. The rule addresses this by joining the western and eastern quarantine areas

so that the quarantine is parallel to Pennsylvania's statewide quarantine. Several small businesses have expressed that they have incurred significant costs and one facility noted a shift layoff as a result of the inability to obtain wood for five months that this quarantine restricted movement of regulated articles. As set forth in the regulatory impact statement, the regulations provide for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the rule was designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the regulations minimize adverse economic impact as much as is currently possible.

7. Small business and local government participation:

On January 16, 2012, the Department made a presentation at the Penn-York Lumbermen's Association about the Asian Longhorned Beetle and the EAB. Over 80 lumber industry members were in attendance from throughout New York and Pennsylvania. Those in attendance expressed serious concerns with the costs of complying with the EAB quarantine in its current configuration, since the eastern quarantine area and western quarantine area were separated by counties which are not quarantined.

A stakeholder's meeting was held on April 26, 2012 to discuss various changes in the EAB program nationally and gain feedback from various interest groups. This was well attended by individuals representing environmental groups, local government, utility companies, private campgrounds, forest products businesses, forest landowners, and nursery businesses. Support was expressed for the State's efforts to control this pest, however, there was general agreement for a balanced approach that addressed economic concerns while making efforts to control the spread of EAB.

The economic impacts of the current quarantine configuration were raised by forest products businesses. The terms of the quarantine are not overly objectionable to the industry, however, the configuration of the quarantine that has surrounded some businesses on three-sides (Eastern New York, Western New York and Pennsylvania) is causing problems in that it prevents movement of logs to the State's largest hardwood lumber facilities for five months of the year.

Additional feedback from the stakeholder's meeting focused on the role that firewood plays in moving this insect. It was acknowledged that public campgrounds, while promoting a message of "don't move firewood," are not restricting or otherwise policing the movement of firewood into those facilities, which continues to present a serious threat to spread of EAB and other invasive insects.

The Department also conferred with the Department of Environmental Conservation (DEC) and the United States Department of Agriculture (USDA) in formulating this rule.

On June 13, 2012, a meeting and conference call was held with the Department, DEC and USDA to discuss recent detections of the pest as well as economic impacts of those detections.

In July 2012, the Department and DEC issued a letter, inviting comments on plans to extend EAB quarantine due to recent detections and continuing spread of the pest.

On September 20, 2012, the Department and DEC met with the Empire State Forest Products Association and indicated that the agencies have heard the concerns and are working closely to address them.

On November 21, 2012, the Department and DEC met to discuss DEC's concerns regarding the proposed rulemaking. DEC offered no specifics other than a preference for county by county approach.

On December 21, 2012, the Department and DEC agreed on a quarantine expansion that roughly coincides with the New York State Thruway.

Outreach efforts will continue.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The regulated parties affected by the regulations establishing an Emerald Ash Borer (EAB) quarantine in Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Seneca, Sullivan, Tioga and Tompkins Counties and portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga Counties are the nursery dealers, nursery growers, landscaping companies, loggers, sawmills and other forest products manufacturers located within those counties. There are approximately 940 licensed nursery growers and 1,399 nursery dealers in these counties and portions thereof. According to the US Census Bureau's most recent County Business Patterns Report, there are approximately 258 logging companies, sawmills and forest-products manufacturers in these counties, employing an estimated 3,664 employees. The Empire State Forest Products Association indicates that white ash accounts for 10 to 15-percent by volume of the total hardwood lumber manufactured in New York, and approximately 7 to 10-percent by value. Additionally, purchases of white ash stumpage from New York landowners exceed $13-million annually.

It is anticipated that only a fraction of these establishments carry regulated articles. Furthermore, experience has shown that the presence of EAB and its destructive potential will significantly reduce or eliminate the market for ash nursery stock as ornamental, street and park plantings.

These businesses are in rural areas as defined by section 481(7) of the Executive Law.

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

There is no approved protocol to diagnose or treat nursery stock, since approved methods (e.g. debarking) would kill the plants. All regulated parties in the quarantine area established by the rule would be required to obtain certificates and limited permits in order to ship other regulated articles (e.g. firewood and forest products) from that area. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

In order to comply with the regulations, all regulated parties shipping regulated articles from the quarantine area would require professional inspection services, which would be provided by the Department, the Department of Environmental Conservation (DEC) and the United States Department of Agriculture (USDA).

3. Costs:

There are 940 licensed nursery growers and 1,399 nursery dealers in the counties which would be affected by the quarantine. There are an unknown number of loggers, sawmills and forest-products manufacturers using white ash in these counties. According to the Empire State Forest Products Association, white ash accounts for 10 to 15-percent by volume of the total hardwood lumber manufactured in New York, and approximately 7 to 10-percent by value. Forest-based manufacturing provided $7.4-billion in value of shipments to New York's economy in 2001. Additionally, purchases of white ash stumpage from New York landowners exceed $13-million annually.

Regulated parties exporting regulated articles (exclusive of nursery stock) from the quarantined areas set forth in this rule would require an inspection and the issuance of a federal or state certificate of inspection, unless they have a compliance agreement. This service is available at a rate of $25 per hour. Most inspections will take one hour or less. A total of 3,520 inspections of wood processors, sawmills, nurseries, garden centers, firewood distributors, truckers, arborists, and loggers were conducted in 2011, and 156 compliance agreements were issued. These numbers will decline with the expansion of the regulated area.

Most shipments would be made pursuant to compliance agreements. Services required prior to shipment of host materials, including inspection of the materials, taking and analyzing soil samples and reviewing shipping records, are available at a rate of $25 per hour.

Tree removal services would have the option to leave host materials within the quarantine area or transport them outside of the quarantine area under a limited permit to a federal/state disposal site for processing.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the regulations were drafted to minimize adverse economic impact on all regulated parties, including those in rural areas. This quarantine is being expanded in order to minimize economic impacts while maintaining restrictions that assist in minimizing the spread of EAB. The current quarantine, which consists of separate areas in western and eastern New York, has had significant financial impacts on wood products manufacturers in central New York. The rule addresses this by joining the western and eastern quarantine areas so that the quarantine is parallel to Pennsylvania's statewide quarantine. Several small businesses have expressed that they are incurring significant costs and one facility noted a shift layoff as a result of the inability to obtain wood for the five months that this quarantine restricted movement of regulated articles. As set forth in the regulatory impact statement, the regulations would provide for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the regulations were designed to minimize adverse impact. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

5. Rural area participation:

On January 16, 2012, the Department made a presentation at the Penn-York Lumbermen's Association about the Asian Longhorned Beetle and the EAB. Over 80 lumber industry members were in attendance from throughout New York and Pennsylvania. Those in attendance expressed serious concerns with the costs of complying with the EAB quarantine in its current configuration, since the eastern quarantine area and western quarantine area were separated by counties which are not quarantined.

A stakeholder's meeting was held on April 26, 2012 to discuss various changes in the EAB program nationally and gain feedback from various

interest groups. This was well attended by individuals representing environmental groups, local government, utility companies, private campgrounds, forest products businesses, forest landowners, and nursery businesses. Support was expressed for the State's efforts to control this pest; however, there was general agreement for a balanced approach that addressed economic concerns while making efforts to control the spread of EAB.

The economic impacts of the current quarantine configuration were raised by forest products businesses. The terms of the quarantine are not overly objectionable to the industry, however, the configuration of the quarantine that has surrounded some businesses on three-sides (Eastern New York, Western New York and Pennsylvania) is causing problems in that it prevents movement of logs to the State's largest hardwood lumber facilities for five months of the year.

Additional feedback from the stakeholder's meeting focused on the role that firewood plays in moving this insect. It was acknowledged that public campgrounds, while promoting a message of "don't move firewood," are not restricting or otherwise policing the movement of firewood into those facilities, which continues to present a serious threat to spread of EAB and other invasive insects.

The Department also conferred with the Department of Environmental Conservation (DEC) and the United States Department of Agriculture (USDA) in formulating this rule.

On June 13, 2012, a meeting and conference call was held with the Department, DEC and USDA to discuss recent detections of the pest as well as economic impacts of those detections.

In July 2012, the Department and DEC issued a letter, inviting comments on plans to extend EAB quarantine due to recent detections and continuing spread of the pest.

On September 20, 2012, the Department and DEC met with the Empire State Forest Products Association and indicated that the agencies have heard the concerns and are working closely to address them.

On November 21, 2012, the Department and DEC met to discuss DEC's concerns regarding the proposed rulemaking. DEC offered no specifics other than a preference for county by county approach.

On December 21, 2012, the Department and DEC agreed on a quarantine expansion that roughly coincides with the New York State Thruway.

Outreach efforts will continue.

Job Impact Statement

The amendment to section 141.2, establishing an Emerald Ash Borer (EAB) quarantine in Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Seneca, Sullivan, Tioga and Tompkins Counties and portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga Counties will not have a substantial adverse impact on jobs or employment opportunities and in fact, will likely aide in protecting jobs and employment opportunities for now and in the future. Forest related activities in New York State provide employment for approximately 70,000 people. Of that number, 55,000 jobs are associated with the wood-based forest economy, including manufacturing. The forest-based economy generates payrolls of more than $2 billion.

By extending the EAB quarantine to these counties and portions thereof, the regulation is designed to prevent the further spread of this pest to other parts of the State. There are an estimated 750-million ash trees in New York State (excluding the Adirondack and Catskill Forest Preserves), with ash species making up approximately seven percent of all trees in our forests. A spread of the infestation would have very adverse economic consequences to the nursery, forestry and wood-working (e.g. lumber yard, flooring and furniture and cabinet making) industries of the State, due to the destruction of the regulated articles upon which these industries depend. Additionally, a spread of the infestation could result in the imposition of more restrictive quarantines by the federal government, other states and foreign countries, which would have a detrimental impact upon the financial well-being of these industries.

By helping to prevent the spread of EAB, the rule helps prevent such adverse economic consequences, which protects the jobs and employment opportunities associated with the State's nursery, forestry and wood-working industries.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standards for Petroleum Products

I.D. No. AAM-26-13-00004-EP
Filing No. 617
Filing Date: 2013-06-10
Effective Date: 2013-06-10

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

Proposed Action: Amendment of section 224.3(a) of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179(3)(b)

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

Specific reasons underlying the finding of necessity: The American Society for Testing Materials (ASTM) provides, in a document numbered D 4814, specifications and test procedures for petroleum products. Currently, the 2004 version of such document is incorporated by reference in 1 NYCRR section 224.3(a). In 2012, however, ASTM published a new version of D 4814 which contains new and less stringent requirements for petroleum products. The 2012 version of D 4814 is in use in surrounding states and New York must incorporate by reference such document, on an emergency basis, to ensure that the State does not have different standards for petroleum products than surrounding states which could unduly burden refiners and sellers of petroleum products and jeopardize provision of petroleum products to the State's residents.

Subject: Standards for petroleum products.

Purpose: To ensure that specifications and test procedures for petroleum products meet current requirements issued by ASTM.

Text of emergency/proposed rule: Subdivision (a) of section 224.3 of 1 NYCRR is amended to read as follows:

(a) Automotive gasoline. All automotive gasoline shall meet the requirements in the Annual Book of ASTM Standards, specification number [D 4814-04a] *D 4814-12*, except as noted below.

(1) Vapor pressure. Vapor pressure standards set forth in 6 NYCRR Subpart 225-3, or exceptions granted thereto by the Commissioner of Environmental Conservation, shall supersede those in this section.

(2) Gasoline-alcohol blends.

(i) The total alcohol content of any gasoline alcohol blend shall not exceed 10 percent by volume.

(ii) When methanol is blended with gasoline in quantities greater than three-tenths (0.3) percent by volume, the finished blend shall contain at least an equal amount of butanol or higher molecular weight alcohol, or other approved co-solvent. The maximum methanol content of any gasoline shall not exceed five percent by volume.

(3) Motor octane number. All unleaded gasoline with minimum (R + M)/2 octane ratings of 87 or higher shall have minimum motor octane number of 82. Unleaded gasolines with minimum (R + M)/2 octane ratings less than 87 shall have a minimum motor octane number of 81.5.

(4) Testing for octane rating. To determine the automotive fuel rating (octane rating) for gasoline in this Part, add the research octane number from test method ASTM D2699-92 and the motor octane number from test method ASTM D2700-92 and divide by two as explained in ATSM Standards, specification number [D 4814-04a] *D 4814-12*. Variations in test results for octane ratings within the ASTM reproducibility limits shall be recognized in the enforcement of this section. No violation shall be issued for failure to meet a certified or posted octane rating unless the laboratory test results are:

(i) more than seven-tenths (0.7) octane less than the certified or posted octane for octane ratings less than 89; or

(ii) more than six-tenths (0.6) octane less than the certified or posted octane rating for octane ratings of 89 or greater.

(5) Leaded gasoline. All automotive gasoline designated as "leaded" shall contain a minimum of 0.05 gram per gallon and a maximum of 0.1 gram per gallon of lead, or a minimum of 0.005 gram per gallon of phosphorous.

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 September 7, 2013.

Text of rule and any required statements and analyses may be obtained from: Michael Sikula, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3146, email: mike.sikula@agriculture.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

1. Statutory authority:

Agriculture and Markets Law ("A&ML") sections 16, 18, 179(3)(b).

2.Legislative objectives:

The legislature has authorized the Commissioner of Agriculture and Markets ("Commissioner") to promulgate rules that, generally, implement the provisions of the A&ML Furthermore, the legislature has specifically authorized the Commissioner to promulgate rules that relate to petroleum product quality, specifications, and sampling and testing methods and that are consistent with the standards established by the American Society for Testing and Materials ("ASTM"). The proposed rule will incorporate by reference in 1 NYCRR section 224.3(a) a document published by ASTM, entitled D 4814-12, in place of D 4814-04a, presently incorporated by reference. D 4814-12 contains more current and less burdensome requirements relating to distillation temperatures for gasoline/ethanol blends and to vapor lock protection classes for gasoline.

The proposed rule, if adopted, would advance the legislative objective referred to above.

3.Needs and benefits:

The proposed rule is needed to advance the legislative intent to ensure that New York's regulations governing petroleum product quality, specifications, and sampling and testing methods are consistent with the latest, most reliable science and technology, as determined by ASTM. The proposed rule is also needed to ensure that an ample supply of gasoline is available to the residents of the State. Presently, ASTM D4814-04a is incorporated by reference in 1 NYCRR section 224.3(a) and provides for more stringent requirements than does D4814-12, which would replace D4814-04a upon adoption of the proposed rule. Nearly all of the states surrounding New York have adopted or enforce the provisions of D4814-12 and New York is, therefore, "out-of-step" with such states. The effect of this situation is that it is more costly for manufacturers and blenders of gasoline and gasoline/ethanol blends ("distributors") to directly provide such petroleum products to New York as compared to providing such petroleum products to surrounding states, and that it is impractical for such petroleum products that have been shipped to surrounding states to be "re-shipped" to New York in the event of a disruption in supply in New York; the proposed rule is needed to ensure that this situation is effectively remedied.

Finally, the proposed rule is needed to relieve a regulatory burden upon distributors. Presently, gasoline and gasoline/ethanol blends ("such petroleum products") must meet relatively high distillation temperature standards and vapor lock protection requirements. While requirements of these types are necessary to ensure that such petroleum products are safe, perform adequately, and do not damage the motor vehicles in which they are used, the requirements that are presently in effect are unnecessarily expensive to comply with and do not serve to promote the aforementioned interests any more effectively than requirements that are less burdensome. As such, the proposed rule is needed to lift an unnecessary regulatory requirement upon distributors.

The residents of the State will benefit if the proposed rule is adopted. The State's residents collectively require an adequate supply of such petroleum products that are "reasonably" priced; the proposed rule, if adopted, will aid in accomplishing that objective.

4.Costs:

a.Costs to regulated parties: None.

b.Costs to the agency, state and local governments: None.

c.The proposed rule will require distributors to deal in such petroleum products that are in compliance with less stringent requirements than are presently imposed; as such, those distributors should experience a decrease in the cost of formulating and refining such petroleum products.

5.Local government mandates:

None.

6.Paperwork:

None.

7.Duplication:

The proposed rule does not duplicate any extant federal or state requirement.

8.Alternatives:

None.

9.Federal standards:

None. The National Institute of Standards and Technology ("NIST"), a division of the United States Department of Commerce, publishes Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality ("Handbook 130"), and reference is made therein to the most recent version of D 4814. The provisions of Handbook 130 are not set forth in federal law or regulation, however, and are not pre-emptive upon the states. As such, no federal standards in this area exist.

10.Compliance schedule:

Distributors who legally deal in such petroleum products in New York are currently in compliance with the proposed rule because the proposed rule lessens the currently-applicable regulatory requirement. Upon adoption of the proposed rule, such manufacturers and blenders may deal in such petroleum products that meet lesser requirements but will not be required to do so.

Regulatory Flexibility Analysis

1. Effect of rule:

There are approximately 6,000 retailers of gasoline and gasoline/ethanol blends ("such petroleum products") located in New York, almost all of which are small businesses. There are also approximately 200 distributors of such petroleum products located in the State; these entities transport such petroleum products in trucks from terminals to retail outlets and almost all of them are small businesses. Because the proposed rule will affect only those entities that refine or manufacture such petroleum products from crude oil and retailers and distributors of such petroleum products do not typically do so, the proposed rule will have little if no effect upon small businesses.

2.Compliance requirements:

Because retailers and distributors will not be affected by the proposed rule, they will not have to undertake any affirmative acts to comply. Manufacturers and importers of such petroleum products will be affected by the proposed rule but will be required to comply with less stringent requirements than are presently imposed; furthermore, such entities consist of few if any small businesses.

3.Professional services:

None.

4.Compliance costs:

The proposed rule will incorporate less stringent requirements relating to distillation temperatures for gasoline/ethanol blends and to vapor lock protection classes for gasoline than are presently imposed. As such, the proposed rule will lessen compliance costs compared to those that are currently imposed. Furthermore, most if not all of such petroleum products are sold and distributed in interstate commerce and all states surrounding New York currently require manufacturers and importers to comply with the less stringent requirements referred to above (furthermore, and as also mentioned above, manufacturers and importers of such petroleum products are not, by and large, small businesses).

5.Economic and technological feasibility:

Persons affected by the proposed rule will use the same equipment for testing such petroleum products to determine whether they meet the new standards required by the proposed rule as they presently use to determine compliance with the standards that are currently in effect. As such, compliance with the proposed rule is economically and technically feasible.

6.Minimizing adverse impact:

The proposed rule will not have any adverse impact upon small businesses.

7.Small business and local government participation:

The proposed rule will have no effect upon local governments. Prior to preparing the proposed rule, the New York State Petroleum Council, a group that represents the interests of all participants in the petroleum business, was consulted and had an opportunity to comment.

Rural Area Flexibility Analysis

The proposed rule will not impose any adverse impact upon rural areas nor will it require entities in rural areas to prepare reports, maintain records, or engage in other compliance actions. The proposed rule will incorporate by reference a document prepared by the American Society for Testing Materials (ASTM), entitled D 4814-12, in place of D 4814-04a, presently incorporated by reference. D 4814-12 contains less stringent requirements for the distillation temperature of gasoline/ethanol blends, and also provides lower vapor lock protection class requirements for gasoline. Because the proposed rule lessens a burden upon gasoline manufacturers and blenders, it will have no adverse impact upon regulated parties located in rural areas.

Job Impact Statement

The proposed rule will have no impact upon jobs and employment opportunities. The proposed rule will incorporate by reference a document prepared by the American Society for Testing Materials (ASTM), entitled D 4814-12, in place of D 4814-04a, presently incorporated by reference. D 4814-12 contains less stringent requirements for the distillation temperature of gasoline/ethanol blends, and also provides lower vapor lock protection class requirements for gasoline. Because the proposed rule lessens the burden upon gasoline manufacturers and blenders, it will have no impact upon jobs and employment opportunities.

NOTICE OF ADOPTION

Cull Onions and Potatoes

I.D. No. AAM-16-13-00007-A
Filing No. 621
Filing Date: 2013-06-11
Effective Date: 2013-06-26

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

Action taken: Addition of Part 192 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, section 160-v

Subject: Cull onions and potatoes.

Purpose: To establish proper disposal methods for culls and waste piles of onions and potatoes not produced in New York State.

Text or summary was published in the April 17, 2013 issue of the Register, I.D. No. AAM-16-13-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Kevin King, Director, Division of Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087, email: kevin.king@agriculture.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

Comment: The Department received one comment expressing support for the proposed regulation.

Response: The Department concurs.

Office of Children and Family Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Child Day Care Regulations

I.D. No. CFS-26-13-00012-P

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

Proposed Action: Repeal of Parts 413, 416 and 417 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 390

Subject: Child Day Care Regulations.

Purpose: To revise and update the family and group family day care regulations.

Substance of proposed rule (Full text is posted at the following State website:www.ocfs.state.ny.us): After a rigorous review of the current regulatory standards for family day care and group family day care programs and research on such issues as emergency preparedness, injuries related to supervision, national health and safety performance standards and guidelines for early care and education programs, the Office proposes numerous changes to Title 18 of the New York State Code of Rules and Regulations (NYCRR) §§ 413, 416 and 417.

The Office's main objectives in proposing changes to current family-based child day care regulations is to strengthen health and safety standards, correct conflicting regulatory language discovered in existing citations relative to the administration of medication, to update the regulations with recent changes made to Social Services Law and the NYS Building Code, and to make the regulations easier to understand.

One major category chosen for modifications is the administration of medication in group family day care and family day care. These changes include amendments made as a result of lessons learned since 2005 when the administration of medication regulations were first adopted. The proposed regulations adhere to the approach that administering medications to children is a serious responsibility, performed best by those who have oversight by a health care consultant and training on administering all types of medications. The proposed regulatory changes focus on when permission to administer medications is required by a parent and a health care provider and when a child's dose of medication can be altered without requiring a new prescription and added cost. The proposed regulations also answer issues not addressed in 2005 such as, What is permitted when a health care consultant ends his/her affiliation with the program? May a provider refuse to administer a medication? May a Provider stock medication? When may a provider administer an auto injector or allow a child to carry an asthma inhaler?

A second category of changes focuses on obesity prevention. On this topic, the Office worked in collaboration with the Centers for Disease Control and Prevention, Division of Nutrition, Physical Activity, and Obesity; and the NYS Department of Health. The group discussed best practice and the practicality of adding obesity prevention measures to child day care regulations. As a result of combined efforts, the Office was able to craft balanced regulatory requirements for providers that would also allow for parent choice. The regulations will require that low-fat milk, water or 100% juice be served, unless the parent supplies the provider with alternatives. In addition, children must have physical activity every day, and screen time activities must be limited during the child day care program.

Health, safety and emergency preparedness was also a focus in drafting proposed changes. The proposed regulations address emergency evacuation plans and drills for sheltering in place, additional smoke detectors inside sleeping areas, carbon monoxide alarms, changes in technology around phone service, safe storage of firearms, shotguns and rifles and safe sleep practices for infants.

Another key proposed change concerns adoption of an orientation session for applicants and a new training requirement for owners operating multiple sites. The Office proposes that all applicants seeking a family-based child day care license or registration complete an on-line orientation program prior to receiving an application. In addition, the Office proposes a requirement for all owners who operate multiple family-based child day care programs to receive training in administration and management of multiple sites.

Supervision is the most important element of child care services. Some would argue it is the central safety component in keeping children safe from harm. The meaning and significance of competent supervision, as a way of protecting children from injury, was studied and the Office proposes rewording the term to include the need to be close enough to redirect a child and to be aware of each child's ongoing activity.

A final category focuses on the proposed requirement for providers to be the main caregivers in family-based programs. In recent years, there has been an escalation in the number of providers who open multiple family-based programs. Providers then hire "on-site providers" to operate the programs. A number of safety issues arise from this arrangement, not the least of which are: un-cleared caregivers supervising children, untrained providers starting in their roles as primary caregivers without health and safety training, and increases in enforcement cases with regard to these programs. Existing programs will be grandfathered, new applicants will be denied.

In addition to the categories above, the Office is proposing changes to the length of the regulations. This is more about breaking the regulations up into separate citations than it is about requiring additional standards. This change is significant to providers for the following reason: When an inspector cites a provider for a violation of regulation, that violation is listed on the Office website. If the regulatory citation includes multiple requirements, the web user is unable to distinguish what part of the regulatory citation was violated. This change will alleviate this problem.

Text of proposed rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12210, (518) 473-7793

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

Section 34(3)(f) of the SSL authorizes the Commissioner to establish regulations for the administration of public assistance and care within the State.

Section 390(2)(d)of the SSL authorizes the Office to establish regulations for the licensure and registration of child day care providers.

Section 410(l) of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and

authorizes the Office to establish criteria for when such day care is to be provided.

Chapter 416 of the Laws of 2000, enacting the Quality Child Care and Protection Act of 2000 (the Act), authorizes the Office to strengthen the existing regulations governing child day care programs. Subdivision 2-A of section 390 of the SSL, added by the Act, requires the Office to establish minimum quality program requirements.

2. Legislative objectives:

The Office's objective in proposing changes to current family-based child care regulations is to strengthen health and safety standards, correct conflicting regulatory language, update the regulations with recent changes made to SSL and NYS Building Code, and to make the regulations easier to understand.

3. Needs and benefits:

The proposed changes in the family-based child care regulations are needed to correct current regulatory inconsistencies, to incorporate recent statutory amendments, and to clarify the specific deficiency when a program is cited for a regulatory violation. The proposed changes can be organized into seven categories: the administration of medication and infection control, obesity prevention, safety and emergency preparedness, legislative changes, terminology and definitions, training requirements and responsibility of child care owners to administer and supervise programs.

The first category, the administration of medication and infection control, includes changes that adhere to the approach that administering medications to children is a serious responsibility, performed best by those who have oversight by a health care consultant and training on administering all types of medications. Changes are needed to correct current inconsistencies in the regulations regarding the authorization needed by the provider before administering medication to a child. The proposed changes reorganize the layout of the health and infection control section of the regulation to make referring to the regulations easier. The proposed changes will benefit the providers, children in care, and parents, by relaxing the current restrictions on medication administration, allowing providers discretion in medication administration, allowing providers to stock medication, and permitting a 60 day grace period when a health care consultant ends his/her affiliation with the program.

The second category, obesity prevention, is a topic the Office worked on in collaboration with the Centers for Disease Control and Prevention, Division of Nutrition, Physical Activity, and Obesity; and the NYS Department of Health. The current regulations do not require providers to help children cultivate healthy eating and positive exercise habits to prevent childhood obesity. As a result of combined efforts, the proposed changes balance minimal requirements with parent choice. The regulations will require nutritious beverages and snacks unless the parent supplies the provider with alternatives. In addition, children must have physical activity every day, and screen time activities will be limited.

The changes to the third category, health, safety and emergency preparedness, are needed to address safety and security at the child care program. The proposed regulations allow providers to plan for and practice emergency evacuations and sheltering in place drills. The regulations require additional smoke detectors and carbon monoxide alarms, expanded requirements for safe sleep practices, and permit providers to discontinue the expense of a landline telephone where there is a designated and operational phone.

The fourth category includes statutory requirements not yet included in regulation. These changes are needed to clarify to providers that the requests of the Office are being made because of statutory requirements. Specifically the need to complete a training topic, Education on Shaken Baby Syndrome; that at least one caregiver in Cardio Pulmonary Resuscitation and first aid must be present; the increase in the licensing or registration period from two-year to four-year intervals; the change in child capacity limits in family-based programs; prohibitions against reissuing a license or registration to a child day care provider whose license or registration was revoked or terminated during the previous two years; an expanded list of violations for which the Office may seek a fine; and an explanation of the responsibility of an authorized agency to inspect and monitor providers who care for children receiving subsidy from the authorized agency. The Federal Consumer Product Commission's new standards for cribs are included in regulation.

The fifth category includes changes to definitions and terms, which are needed to keep pace with the field observations, reflect current acceptable practices, and use of more neutral terms. The proposed regulations change the term "discipline" to behavior management, clarify the meaning and significance of competent supervision to be close enough to redirect a child and to be aware of each child's ongoing activity. The Office is also seeking to increase Class II fines from $200 to $250 a day and Class III fines from $50 to $100 a day.

The sixth category addresses the need to clarify the training requirements associated with operating a child care program. The regulation will require applicants to complete an on-line orientation program prior to receiving an application, and owners who operate multiple family-based child care programs must receive training in administration and management of multiple sites. The changes also include examples of the types of course that will be accepted toward each of the training topics.

The last category focuses on the requirement for providers to be the main caregivers in family-based programs. In recent years, there has been an escalation in the number of providers who open multiple family-based programs. Providers then hire "on-site providers" to operate the programs. A number of safety issues arise from this arrangement: unapproved staff supervising children, untrained providers without health and safety training, and increases in enforcement cases with regard to these programs. Existing programs will be grandfathered, and applicants will be denied. The enforcement of this requirement will directly protect the health and safety of children.

In addition to the above, the Office is proposing changes to the length of the regulations, to break the current provisions into separate citations, not to require additional standards. This change is significant to providers because when an inspector cites a violation, that violation is listed on the Office website. If the regulatory citation includes multiple requirements, the web user is unable to distinguish what part of the regulatory citation was violated. This change will alleviate this problem.

4. Costs:

The implementation of these regulations and the underlying statutory provisions may have minimal costs associated for some home-based child care providers. Some providers have already instituted these safety measures, however as necessary additional costs will be limited to complying with firearms safety provisions, posting house numbers for emergency vehicles when not already posted, installing smoke detectors and carbon monoxide detectors where necessary, storing nonperishable food for all children in case of emergencies, and purchasing nutritious beverages and foods. The changes are not expected to have any adverse fiscal impact on providers.

The Office will provide an on-line orientation session for all applicants, and training to grandfathered owners of multiple home-based child care programs. The Office will use existing resources to implement these regulations. It is expected that providers will have financial relief by changing renewals from every two years to every four years. Providers will also experience savings by the elimination of required medical examinations for providers and employees after initial medical examination associated with employment.

5. Local government mandates:

No new mandates are imposed on local governments by these proposed regulations.

6. Paperwork:

Paperwork will be reduced because the renewal application is now due on a four year cycle instead of a two year cycle. Regulatory waiver requests will be reduced because of the changes made to the medication administration and authorization provisions. In addition, the proposed regulations eliminate routine medical exams for all providers, caregivers and household members, at renewal. An estimated 47,000 family-based child day care staff will no longer be submitting medical forms (after the initial medical evaluation) to their employer for filing. Providers would no longer have to track each employee to ensure he/she completes the medical exam, nor would they have to file and keep such records.

Additional paperwork is required, however the additions are necessary for the health and safety of children in care, and the overall impact will be minimal on home-based child care programs. Providers will be required to submit a written emergency plan and evacuation diagram, and will need to document that they held two shelter in place drills annually, this notation can be recorded with the other evacuation drills. Providers will be required to post the transportation services they are providing to children and share this with parents using the service. A substitute (not a required role in home-based child care) employed by a child day care program will be required to submit references, criminal history attestation and a health statement. This documentation is important as it verifies the background of a person who is sometimes left in sole charge of a group of children.

The child day care provider will be required to enter the actual attendance times of each child and caregiver. The "in" time and "out" time for each child and staff person can be an added to the child's attendance form, already in use. A child day care provider must document that a daily health care check has been completed on each child in attendance. The Office will accept the addition of a check box on the attendance sheet indicating that the health care check was performed.

The Provider must collect the signatures of parents, indicating that each parent has been told that a firearm, shotgun, rifle or ammunition is on the premises.

7. Duplication:

The new requirements do not duplicate State or federal requirements.

8. Alternatives:

The Office has met with stakeholders, including child care provider union representatives, staff from NYS Department of Health, Centers for Disease Control and Prevention, NYS Education Department, Child Care Resource and Referral, to develop the proposed regulatory changes. The alternative to the proposed regulations is to continue operation under the current regulations and cite law when the regulations contain out-of-date information or are missing requirements.

9. Federal standards:

The regulations are consistent with applicable federal requirements.

10. Compliance schedule:

The regulation will become effective upon adoption. The regulated community will have 180 days to comply with the new provisions.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments:

The proposed regulations will affect all licensed and registered home-based child care providers in New York State, approximately 14,500 providers.

The regulation will affect the 58 social services districts, including the home-based child care providers in New York City. There is no expected effect on local governments.

2. Compliance requirements:

Additional paperwork is required under the proposed regulations, however the additions are limited to maintaining accurate attendance of children and staff present, documenting a daily health check of each child, documenting notification to parents when a firearm, shotgun, rifle or ammunition is on the premises, documenting evacuation and shelter-in-place drills in accordance with approved plans, transportation service provided by the program, and conducting background checks on substitutes who may have unsupervised contact with children in care.

No new mandates are imposed on local governments by these proposed regulations.

3. Professional services:

Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

4. Compliance costs:

The implementation of these regulations and the underlying statutory provisions may have minimal costs associated for some home-based child care providers. Some providers have already instituted these safety measures, however as necessary additional costs will be limited to complying with firearms safety provisions, posting house numbers for emergency vehicles when not already posted, installing smoke detectors and carbon monoxide detectors where necessary, storing nonperishable food for all children in case of emergencies, and purchasing nutritious beverages and foods. The changes are not expected to have any adverse fiscal impact on providers.

The Office will provide an on-line orientation session for all applicants, and training to grandfathered owners of multiple home-based child care programs. The Office will use existing resources to implement these regulations. It is expected that providers will have financial relief by changing renewals from every two years to every four years. Providers will also experience savings by the elimination of required medical examinations for providers and employees after initial medical examination associated with employment.

5. Economic and technological feasibility:

The child care providers and social services districts affected by the regulations have the economic and technological ability to comply with the regulations.

6. Minimizing adverse impact:

The Office collaborated with child care provider union representatives, staff from NYS Department of Health, Centers for Disease Control and Prevention, NYS Education Department, Child Care Resource and Referral, and social services districts in developing the proposed regulatory changes. Providers owning multiple family-based child day care programs, who will be required to receive Office approved training in administration and management of multiple programs will be offered the training at no cost. Orientation will be an on-line session offered at no cost. All requirements for documentation (paperwork) are supported by Office supplied and web-based access to forms designated for each purpose. The Office currently offers CPR and first aid training slots to eligible providers at no cost. The Office is working in collaboration with the New York State Child Care and Adult Food Program (CACFP) to advertise and support enrollment in the CACFP program which will reimburse eligible providers for food and drink for children at the child day care program.

7. Small business and local government participation:

The Office has met with day care providers, Child Care Resource and Referral Agencies, the unions representing family-based providers, and social service districts to inform the field of regulations under review and marked for changes. Comments and input have been assessed for inclusion in the proposed regulations.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The regulations will affect home-based child care providers located in all 44 rural areas of the State. There are approximately 2,500 home-based child care providers in rural areas.

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

Additional paperwork is required under the proposed regulations, however the additions are limited to maintaining accurate attendance of children and staff present, documenting a daily health check of each child, documenting notification to parents when a firearm, shotgun, rifle or ammunition is on the premises, documenting evacuation and shelter-in-place drills in accordance with approved plans, transportation service provided by the program, and conducting background checks on substitutes who may have unsupervised contact with children in care.

No new mandates are imposed on local governments by these proposed regulations.

3. Costs:

The implementation of these regulations and the underlying statutory provisions may have minimal costs associated for some home-based child care providers. Some providers have already instituted these safety measures, however as necessary additional costs will be limited to complying with firearms safety provisions, posting house numbers for emergency vehicles when not already posted, installing smoke detectors and carbon monoxide detectors where necessary, storing nonperishable food for all children in case of emergencies, and purchasing nutritious beverages and foods. The changes are not expected to have any adverse fiscal impact on providers.

The Office will provide an on-line orientation session for all applicants, and training to grandfathered owners of multiple home-based child care programs. The Office will use existing resources to implement these regulations. It is expected that providers will have financial relief by changing renewals from every two years to every four years. Providers will also experience savings by the elimination of required medical examinations for providers and employees after initial medical examination associated with employment.

4. Minimizing adverse impact:

The Office collaborated with child care provider union representatives, staff from NYS Department of Health, Centers for Disease Control and Prevention, NYS Education Department, Child Care Resource and Referral, and social services districts in developing the proposed regulatory changes. Providers owning multiple family-based child day care programs, who will be required to receive Office approved training in administration and management of multiple programs will be offered the training at no cost. Orientation will be an on-line session offered at no cost. All requirements for documentation (paperwork) are supported by Office supplied and web-based access to forms designated for each purpose. The Office currently offers CPR and first aid training slots to eligible providers at no cost. The Office is working in collaboration with the New York State Child Care and Adult Food Program (CACFP) to advertise and support enrollment in the CACFP program which will reimburse eligible providers for food and drink for children at the child day care program.

The Office is preparing revised forms and new forms to capture all required documentation. Forms will be available on its website or through the OCFS warehouse.

5. Rural area participation:

The Office has met with providers, Child Care Resource and Referral agencies, unions representing family-based providers, social service districts and Infant-Toddler Specialists to help inform our thinking on these regulations.

Job Impact Statement

Nature of Impact: The Office does not expect any family child day care employee or group family child day care employee reductions based on proposed regulation.

Categories and Numbers Affected: There are no changes in categories or numbers.

Regions of Adverse Impact: There are no regions where the regulations would have a disproportionate adverse impact on jobs or employment opportunities.

Self-employment Opportunities: No measureable impact on opportunities for self-employment is expected.

Education Department

EMERGENCY RULE MAKING

Charter School Charter Renewals

I.D. No. EDU-13-13-00005-E
Filing No. 616
Filing Date: 2013-06-10
Effective Date: 2013-06-10

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

Action taken: Addition of section 119.7 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2) and (20), 2851(4), 2852(1), (2), (3), (5), (5-a), (5-b), (6) and 2857(1)

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to clarify procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity.

The proposed amendment was adopted as an emergency rule at the March Regents meeting, effective March 12, 2013. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on March 27, 2013.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for permanent adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the June 17-18, 2013 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the June meeting, would be July 3, 2013, the date a Notice of Adoption would be published in the State Register. However, the March emergency rule will expire on June 9, 2013, 90 days from its filing with the Department of State on March 12, 2013. A lapse in the effective date of the rule may disrupt procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the March 11-12, 2013 Regents meeting remains continuously in effect until the effective date of its permanent adoption, and thereby avoid any potential disruption in the procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption on a permanent basis at the June 17-18, 2013 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by SAPA.

Subject: Charter school charter renewals.

Purpose: To clarify standards for charter renewals of charter schools for which the Board of Regents is the authorizing entity.

Text of emergency rule: Section 119.7 of the Regulations of the Commissioner of Education is added, effective June 10, 2013, as follows:

119.7 Renewal of Charters.

(a) Applicability. The provisions of this section shall apply to applications for the renewal of a charter pursuant to Education Law section 2851(4) that are submitted by charter schools for which the Board of Regents is the charter entity.

(b) Charter school obligations.

(1) The board of trustees of the charter school shall submit an application for charter renewal to the Board of Regents in a format and pursuant to a timeline prescribed by the Commissioner, consistent with Education Law section 2851(4).

(2) The board of trustees shall also submit such additional material or information as may be requested by the State Education Department.

(3) Where applicable, the charter school shall comply with the notification and submission requirements in subparagraph (d)(3) of this section.

(c) Department obligations.

(1) Notification of renewal application. Pursuant to Education Law section 2857(1), the State Education Department shall provide notification of receipt of an application for charter renewal and consider comments received concerning such application, consistent with Education Law section 2857(1).

(2) Renewal Site Visit and Report. The Department may, in its discretion, conduct or cause to be conducted a renewal site visit to the charter school for purposes of obtaining information relevant to the renewal of such school's charter and prepare a renewal site visit report, consistent with guidelines established by the Department.

(3) Renewal Recommendation.

(i) The Department shall prepare and submit to the Board of Regents a renewal recommendation which shall be based upon application of the performance benchmarks pursuant to subdivision (e) of this section. In making this renewal recommendation, the Department shall consider evidence and data gathered about the charter school, including, but not limited to, the following:

(a) information in the renewal application submitted pursuant to paragraph (b)(1) of this section;

(b) any additional material or information submitted by the charter School pursuant to paragraph (b)(2) of this section;

(c) any information relating to the site visit and the site visit report, if any, pursuant to paragraph (c)(2) of this section;

(d) the charter school's annual reporting results including, but not limited to, student academic achievement; and

(e) any other information that the Department, in its discretion, determines is relevant to whether the charter should be renewed, including, but not limited to, information related to whether renewal should be denied to protect the interests of students, families and the public including, but not limited to, instances involving criminal violations, fraud, unsafe environment, organizational stability or other serious or egregious violations of law or of the school's charter.

(ii) Notification of recommendation. The Department shall notify the charter school of the Department's renewal recommendation. In the event that the recommendation is to not renew the charter school's charter, the charter school shall be provided with written notification of such recommendation and the reasons for the recommendation, and shall be given an opportunity to submit, within thirty days of its receipt of such written notification, a written response to such recommendation. Any such written response may include supporting affidavits, exhibits and other documentary evidence and may also include a written legal argument.

(d) Board of Regents procedures.

(1) Board of Regents determination.

(i) The decision concerning whether to approve a charter renewal application shall be wholly within the discretion of the Board of Regents, and shall be based on whether the Board can make the relevant findings specified in Education Law section 2852(2) for the approval of such an application.

(ii) The Board of Regents shall consider the following when making a decision concerning whether to approve a charter renewal application:

(a) the information in the renewal application submitted pursuant to paragraph (b)(1) of this section;

(b) any additional material or information submitted by the charter school pursuant to subparagraph (b)(2) of this section;

(c) comments received pursuant to Education Law section 2857(1), as provided for in paragraph (c)(1) of this section;

(d) any information relating to the site visit and the site visit report, if any, pursuant to paragraph (c)(2) of this section;

(e) the charter school's annual reporting results including, but not limited to, student academic achievement;

(f) the Department's renewal recommendation pursuant to paragraph (c)(3) of this section and the charter school's written response, if any, pursuant to subparagraph (c)(3)(ii) of this section; and

(g) any other information that the Board, in its discretion, may deem relevant to its determination whether the charter should be renewed, including, but not limited to, information related to whether renewal should be denied to protect the interests of students, families and the public including, but not limited to, instances involving criminal violations, fraud, unsafe environment, organizational stability or other serious or egregious violations of law or of the school's charter.

(iii) In making its decision concerning whether to approve a charter renewal application, the Board of Regents shall consider the totality of the evidence presented in each case, and may accept or reject, in whole or in part, the Department's renewal recommendation, provided however that nothing in this subparagraph shall be construed as prohibiting the Board of Regents from weighing any one factor more heavily than another.

(iv) The decision of the Board of Regents with respect to whether to approve a renewal application shall be final.

(2) Renewal outcomes.

(i) The Board of Regents in its sole discretion may:

(a) renew a charter for a maximum term of five years;

(b) renew the charter for a term of less than five years; or

(c) deny renewal of the charter.

(ii) When deciding whether to grant a renewal application and/or

for how long to renew a school's charter, the charter school's student academic achievement shall be considered of paramount importance by the Board of Regents. Furthermore, for all renewals subsequent to a first renewal, a charter school's student academic achievement shall be given greater weight than for a first renewal.

(3) In the event that the Department's renewal recommendation recommends that the Regents grant a renewal application, but the Board of Regents decides to reject such recommendation and deny renewal of a charter, the charter school shall be provided with written notification of such decision and the reasons for the decision, and shall be given an opportunity to submit a written response to such decision and request that the Board of Regents reconsider its action. If the charter school chooses to submit a written response, the charter school shall, within five days of receipt of the Department's notification, notify the Department in writing of its intent to submit a written response, and shall submit such written response within thirty days of receipt of the Department's notification. Any such written response may include supporting affidavits, exhibits and other documentary evidence and may also include a written legal argument. The Department shall submit any such submission to the Board of Regents for reconsideration. Following receipt of such submission, the Board of Regents shall reconsider the charter school's renewal application, provided that nothing in this paragraph shall be construed to require more than one reconsideration.

(e) Performance benchmarks. Each renewal charter for a charter school authorized by the Board of Regents shall include the performance benchmarks set forth in the Charter School Performance Framework, as issued by the Department, as part of the oversight plan in the charter school's charter agreement. For each such renewal charter, the analysis of qualitative and quantitative data and evidence concerning a charter school's performance, for purposes of the Department's renewal recommendation pursuant to paragraph (c)(3) of this section, shall be based on the charter school's achievement in each of the performance benchmarks set forth in the Charter School Performance Framework; provided that the charter school's performance under student academic achievement, as set forth in Benchmark 1: Student Performance shall be paramount when determining to renew a school's charter.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-13-13-00005-EP, Issue of March 27, 2013. The emergency rule will expire August 8, 2013.

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents as its head, and authorizes the Board of Regents to appoint the Commissioner of Education as the chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 empowers the Regents and Commissioner to adopt rules and regulations to carry out the State laws regarding education and the functions and duties conferred on the Department.

Education Law section 305(1) provides that the Commissioner is the chief executive officer of the State system of education and of the Board of Regents, and charged with the enforcement of all general and special laws relating to the educational system of the State and the execution of all educational policies determined by Regents. Section 305(2) provides that the Commissioner shall have general supervision over all schools and institutions subject to the Education Law or any statute relating to education. Section 305(20) provides that the Commissioner shall have and execute such further powers and duties as he shall be charged with by the Regents.

Education Law section 2851(4), prescribes requirements for the renewal of charter school charters in accordance with the provisions of Article 56 of the Education Law pursuant to Education Law section 2852.

Education Law section 2857(1) provides that at each significant stage of the chartering process the charter entity and the Board of Regents shall provide appropriate notification to the school district in which the charter school is located and to public and nonpublic schools in the same geographic area as the charter school. Prior to the issuance, revision, or renewal of a charter, the school district in which the charter school is located shall hold a public hearing to solicit comments from the community in connection with the foregoing. Such hearing must be held in the community potentially impacted by the proposed charter school. When a revision involves the relocation of a charter school to a different school district, the proposed new school district shall also hold such hearing. In addition, the school district shall be given an opportunity to comment on the proposed charter to the charter entity.

LEGISLATIVE OBJECTIVES:

Consistent with the statutory authority set forth above, the proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity.

NEEDS AND BENEFITS:

In November 2012, the Board of Regents approved a Charter School Renewal Policy and endorsed a Performance Framework, which outlines the performance benchmarks by which charter schools will be evaluated by Department Staff when they apply for renewal. Taken together, these two documents were intended to provide a roadmap for the renewal process for charter schools authorized by the Regents and ensure that all interested and impacted parties are informed at the outset of the process of the benchmarks by which a renewal application will be judged and the policy underpinnings of charter renewal decisions. Consistent with the terms of the Department's $113 million federal Charter Schools Program (CSP) multi-year grant, improvement in student academic achievement is the most important factor that will be considered by the Regents when determining whether to renew or revoke a school's charter.

The proposed amendment applies to applications for the renewal of a charter pursuant to Education Law section 2851(4) that are submitted by charter schools for which the Board of Regents is the charter entity. The proposed amendment, which is consistent with the Performance Framework endorsed by the Regents, makes the charter school renewal process more transparent by adopting a comprehensive regulation that embodies the guidelines for the renewal process and policies. In addition to clarifying the Board's previous Charter School Renewal Policy, the proposed amendment requires that renewal charters include the performance benchmarks prescribed pursuant to the regulation. The end result is a roadmap for the renewal process for charter schools authorized by the Regents that clearly sets forth the roles, responsibilities and obligations of all the parties in the charter renewal process: the charter school's board of trustees, the Department, and the Board of Regents. The proposed amendment also outlines the possible charter renewal outcomes, and specifies that such outcomes are within the sole discretion of the Board of Regents.

COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Cost to private regulated parties: none.

(d) Cost to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity and does not impose any additional costs on the State, local government, private regulated parties or the State Education Department, as regulating agency.

LOCAL GOVERNMENT MANDATES:

The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity and will not impose any additional program, service, duty or responsibility upon local governments.

PAPERWORK:

The board of trustees of a charter school shall submit an application for charter renewal to the Board of Regents in a format and pursuant to a timeline prescribed by the Commissioner, consistent with Education Law section 2851(4). The board of trustees shall also submit such additional material or information as may be requested by the State Education Department.

In the event that the Department's renewal recommendation recommends that the Regents grant a renewal application, but the Board of Regents decides to reject such recommendation and deny renewal of a charter, the charter school shall be provided with written notification of such decision and the reasons for the decision, and shall be given an opportunity to submit a written response to such decision and request that the Board of Regents reconsider its action. If the charter school chooses to submit a written response, the charter school shall, within five days of receipt of the Department's notification, notify the Department in writing of its intent to submit a written response, and shall submit such written response within thirty days of receipt of the Department's notification. Any such written response may include supporting affidavits, exhibits and other documentary evidence and may also include a written legal argument.

DUPLICATION:

The proposed amendment does not duplicate any existing State or Federal requirements.

ALTERNATIVES:

The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity. There are no significant alternatives and none were considered.

FEDERAL STANDARDS:
There are no applicable Federal standards.
COMPLIANCE SCHEDULE:
It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:
The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity, and does not impose any economic impact, or other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.
Local Governments:
EFFECT OF RULE:
The proposed amendment applies to all charter schools in the State for which the Board of Regents is the charter entity. There are currently 41 charter schools open for instruction in the 2012-13 school year for which the Board of Regents is the charter entity; an additional 14 such charter schools are scheduled to open in 2013-14 or later.
COMPLIANCE REQUIREMENTS:
The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity, and will not impose any additional reporting, recordkeeping or other compliance requirements on school districts or charter schools.
The board of trustees of a charter school shall submit an application for charter renewal to the Board of Regents in a format and pursuant to a timeline prescribed by the Commissioner, consistent with Education Law section 2851(4). The board of trustees shall also submit such additional material or information as may be requested by the State Education Department.
In the event that the Department's renewal recommendation recommends that the Regents grant a renewal application, but the Board of Regents decides to reject such recommendation and deny renewal of a charter, the charter school shall be provided with written notification of such decision and the reasons for the decision, and shall be given an opportunity to submit a written response to such decision and request that the Board of Regents reconsider its action. If the charter school chooses to submit a written response, the charter school shall, within five days of receipt of the Department's notification, notify the Department in writing of its intent to submit a written response, and shall submit such written response within thirty days of receipt of the Department's notification. Any such written response may include supporting affidavits, exhibits and other documentary evidence and may also include a written legal argument.
PROFESSIONAL SERVICES:
The proposed amendment does not impose any additional professional services requirements on school districts or charter schools.
COMPLIANCE COSTS:
The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity and does not impose any additional costs on the State, local government, private regulated parties or the State Education Department, as regulating agency.
ECONOMIC AND TECHNOLOGICAL FEASIBILITY:
The proposed amendment does not impose any additional compliance costs or technological requirements on school districts or charter schools.
MINIMIZING ADVERSE IMPACT:
The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity, and will not impose any additional reporting, recordkeeping or other compliance requirements, or costs, on school districts or charter schools.
LOCAL GOVERNMENT PARTICIPATION:
Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to charter schools and to the chief school officers of the five big city school districts.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:
The proposed amendment applies to all charter schools in the State for which the Board of Regents is the charter entity. None of such charter schools are located in the 44 rural counties with less than 200,000 inhabitants or the 71 towns in urban counties with a population density of 150 per square mile or less.
REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:
The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity, and will not impose any additional reporting, recordkeeping or other compliance requirements on school districts or charter schools.
The board of trustees of a charter school shall submit an application for charter renewal to the Board of Regents in a format and pursuant to a timeline prescribed by the Commissioner, consistent with Education Law section 2851(4). The board of trustees shall also submit such additional material or information as may be requested by the State Education Department.
In the event that the Department's renewal recommendation recommends that the Regents grant a renewal application, but the Board of Regents decides to reject such recommendation and deny renewal of a charter, the charter school shall be provided with written notification of such decision and the reasons for the decision, and shall be given an opportunity to submit a written response to such decision and request that the Board of Regents reconsider its action. If the charter school chooses to submit a written response, the charter school shall, within five days of receipt of the Department's notification, notify the Department in writing of its intent to submit a written response, and shall submit such written response within thirty days of receipt of the Department's notification. Any such written response may include supporting affidavits, exhibits and other documentary evidence and may also include a written legal argument.
The proposed amendment does not impose any additional professional services requirements on school districts or charter schools in rural areas.
COSTS:
The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity and does not impose any additional costs on the State, local government, private regulated parties or the State Education Department, as regulating agency.
MINIMIZING ADVERSE IMPACT:
The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity, and will not impose any additional reporting, recordkeeping or other compliance requirements, or costs, on school districts or charter schools.
RURAL AREA PARTICIPATION:
Comments on the proposed rule were solicited from the Department's Rural Advisory Committee. In addition, copies of the proposed rule have been provided to each charter school for review and comment.

Job Impact Statement

The proposed rule clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity. The proposed rule will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Financial Services

EMERGENCY RULE MAKING

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

I.D. No. DFS-26-13-00003-E
Filing No. 615
Filing Date: 2013-06-07
Effective Date: 2013-06-09

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

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

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: Chapter 472 of the Laws of 2008, which requires mortgage loan servicers to be registered

with the Superintendent of Financial Services (formerly the Superintendent of Banks), went into effect on July 1, 2009. These regulations implement the registration requirement and inform servicers of the details of the registration process so as to permit applicants to prepare, submit and review applications for registrations on a timely basis.

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

Subject: Registration and Financial Responsibility Requirements for Mortgage Loan Servicers.

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

Substance of emergency rule: Section 418.1 summarizes the scope and application of Part 418. It notes that Sections 418.2 to 418.11 implement the requirement in Article 12-D of the Banking Law that certain mortgage loan servicers ("servicers") be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), while Sections 418.12 and 418. 13 set forth financial responsibility requirements that are applicable to both registered and exempt servicers. {Section 418.14 sets forth the transitional rules.]

Section 418.2 implements the provisions in Section 590(2)(b-1) of the Banking Law requiring registration of servicers and exempting mortgage bankers, mortgage brokers, and most banking and insurance companies, as well as their employees. Servicing loans made pursuant to the Power New York Act of 2011 is excluded. The Superintendent is authorized to approve other exemptions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 109.3 lists the documents to be included in an application for servicer registration, including the required fees. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent of Financial Services (formerly the Superintendent of Banks) can require additional information or an in person conference, and that the applicant can submit additional pertinent information.

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

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

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

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

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires September 4, 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 10004-1417, (212) 709-1658, email: sam.abram@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Subprime Lending Reform Law (Ch. 472, Laws of 2008, hereinafter, the "Subprime Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers (MLS) are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2) (b-1) and 595-b.)

Subsection (1) of Section 590 of the Banking Law was amended by the

Subprime Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i).)

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). The registration requirements do not apply to an "exempt organization," licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations. (Note that under Section 89 of Part A of Chapter 62 of the Laws of 2011, the functions and powers of the banking board have been transferred to the Superintendent.)

New Paragraph (d) was added to Subsection (5) of Section 590 by the Subprime Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Subprime Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Subprime Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Subprime Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Subprime Law to extend the Superintendent's examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Subprime Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Subprime Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for MLS registration applications and for MLS branch applications are established in accordance with Banking Law Section 18-a.

2. Legislative Objectives.

The Subprime Law is intended to address various problems related to residential mortgage loans in this State. The Subprime Law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there had previously been no general regulation of servicers by the state or the Federal government.

The Subprime Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

The regulations implement the first component of the mortgage servicing statute – the registration of mortgage servicers. In doing so, the rule utilizes the authority provided to the Superintendent to set standards for the registration of such entities. For example, the rule requires that a potential loan servicer would have to provide, under Sections 418.11 to 418.13 of the proposed regulations, evidence of their character and fitness to engage in the servicing business and demonstrate to the Superintendent their financial responsibility. The rule also utilizes the authority provided by the Legislature to revoke, suspend or otherwise terminate a registration or to fine or penalize a registered mortgage loan servicer.

Consistent with this requirement, the rule authorizes the Superintendent to refuse to register an applicant if he/she shall find that the applicant lacks the requisite character and fitness, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant has been convicted of certain felonies. These are the same standards as are applicable to mortgage bankers and mortgage brokers in New York. (See Section 418.7.)

Further, in carrying out the Legislature's mandate to regulate the mortgage servicing business, Section 418.8 sets out certain application requirements for prior approval of a change in control of a registered mortgage loan servicer and notification requirements for changes in the entity's executive officers and directors. Collectively, these various provisions implement the intent of the Legislature to register and supervise mortgage loan servicers.

The Department has separately adopted emergency regulations dealing with business conduct and consumer protection requirements for MLSs. (3 NYCRR Part 419).

3. Needs and Benefits.

The Subprime Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry. It affected a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Previously, the Department of Financial Services (formerly the Banking Department) regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also may act as agents for owners of mortgages in negotiations relating to modifications. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; and erroneously force-placing insurance when borrowers already have insurance.

While minimum standards for the business conduct of servicers is the subject of another emergency regulation which has been promulgated by the Department. (3 NYCRR Part 419) Section 418.2 makes it clear that persons exempted by from the registration requirement must notify the Department that they are servicing mortgage loans and must otherwise comply with the regulations.

As noted above, these regulations relate to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It is intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers.

Further, consumers in this state will also benefit under these regulations because in the event there is an allegation that a mortgage servicer is involved in wrongdoing and the Superintendent finds that there is good cause, or that there is a substantial risk of public harm, he or she can suspend such mortgage servicer for 30 days without a hearing. And in other cases, he or she can suspend or revoke such mortgage servicer's registration after notice and a hearing. Also, the requirement that servicers meet minimum financial standards and have performance and other bonds will act to ensure that consumers are protected.

As noted above, the MLS regulations are divided into two parts. The Department had separately adopted emergency regulations dealing with business conduct and consumer protection requirements for MLSs. (3 NYCRR Part 419)

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and will be required to comply with the conduct of business and consumer protection rules applicable to MLSs.

Under Section 418.2, a person servicing loans made under the Power New York Act of 2011 will not thereby be considered to be engaging in the business of servicing mortgage loans. Consequently, a person would not be subject to the rules applicable to MLSs by reason of servicing such loans.

4. Costs.

The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The amount of the application fee for MLS registration and for an MLS branch application is $3,000.

The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System are set by that body. MLSs will also incur administrative costs associated with preparing applications for registration.

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and, through the timely response to consumers' inquiries, should assist in decreasing the number of foreclosures in this state.

The regulations will not result in any fiscal implications to the State. The Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local Government Mandates.

None.

6. Paperwork.

An application process has been established for potential mortgage loan servicers to apply for registration electronically through the National Mortgage Licensing System and Registry (NMLSR) - a national system, which currently facilitates the application process for mortgage brokers, bankers and loan originators. Therefore, the application process is virtually paperless; however, a limited number of documents, including fingerprints where necessary, would have to be submitted to the Department in paper form.

The specific procedures that are to be followed in order to apply for registration as a mortgage loan servicer are detailed in Supervisory Procedure MB 109.

7. Duplication.

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

An exemption was created under Section 418.13, from the otherwise applicable net worth and surety bond requirements, for entities that are subject to the capital requirements applicable to insured depository institutions and are considered adequately capitalized.

8. Alternatives.

The purpose of the regulation is to carry out the statutory mandate to register mortgage loan servicers while at the same time avoiding overly complex and restrictive rules that would have imposed unnecessary burdens on the industry. The Department is not aware of any alternative that is available to the instant regulations. The Department also has been cognizant of the possible burdens of this regulation, and it has accordingly concluded that an exemption from the registration requirement for persons or entities that are involved in a de minimis amount of servicing would address the intent of the statute without imposing undue burdens those persons or entities.

The procedure for suspending servicers that violate certain financial responsibility or customer protection requirements, which provides a 90-day period for corrective action, during which there can be an investigation and hearing on the existence of other violations, provides flexibility to the process of enforcing compliance with the statutory requirements.

9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies. However, although not a registration process, in order for any mortgage loan servicer to service loans on behalf of certain federal instrumentalities such servicers have to demonstrate that they have specific amounts of net worth and have in place Fidelity and E&O bonds.

These regulations exceed those minimum standards, in that, a mortgage loan servicer will now have to demonstrate character and general fitness in order to be registered as a mortgage loan servicer. In light of the important role of a servicer – collecting consumers' money and acting as agents for mortgagees in foreclosure transactions – the Department believes that it is imperative that servicers be required to meet this heightened standard.

10. Compliance Schedule.

The emergency regulations will become effective on September 17, 2012. Similar emergency regulations have been in effect since July 1, 2009.

The Department expects to approve or deny applications within 90 days of the Department's receipt (through NMLSR) of a completed application.

A transitional period is provided for mortgage loan servicers which were doing business in this state on June 30, 2009 and which filed an application for registration by July 31, 2009. Such servicers will be deemed in compliance with the registration requirement until notified by the Superintendent that their application has been denied.

Additionally, the version of Part 418 adopted on an emergency basis effective August 5, 2011 requires holders of mortgage servicing rights to register as mortgage loans servicers even where they have sub-contracted servicing responsibilities to a third-party servicer. Such servicers were given until October 15, 2011 to file an application for registration.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The emergency rule will not have any impact on local governments. It is estimated that there are approximately 120 mortgage loan servicers in the state which are not mortgage bankers, mortgage brokers or exempt organizations, and which are therefore required to register under the Subprime Lending Reform Law (Ch. 472, Laws of 2008) (the "Subprime Law") Of these, it is estimated that a very few of the remaining entities will be deemed to be small businesses.

2. Compliance Requirements:

The provisions of the Subprime Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of Financial Services (formerly the Banking Department) of servicers who are not mortgage bankers, mortgage brokers or exempt organizations (the "MLS Registration Regulations") , and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Subprime Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Subprime Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. The emergency MLS Registration Regulations here adopted implement that statutory requirement by providing a procedure whereby MLSs can apply to be registered and standards and procedures for the Department to approve or deny such applications. The emergency regulations also set forth financial responsibility standards applicable to applicants for MLS registration, registered MLSs and servicers which are exempted from the registration requirement.

Additionally, the regulations set forth standards and procedures for Department action on applications for approval of change of control of an MLS. Finally, the emergency regulations set forth standards and procedures for, suspension, revocation, expiration, termination and surrender of MLS registrations, as well as for the imposition of fines and penalties on MLSs.

3. Professional Services:

None.

4. Compliance Costs:

Applicants for mortgage loan servicer registration will incur administrative costs associated with preparing applications for registration. Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations. Registration fees of $3000, plus fees for fingerprint processing and participation in the National Mortgage Licensing System and Registry (NMLS) will be required of non-exempt servicers.

5. Economic and Technological Feasibility:

The emergency rule-making should impose no adverse economic or technological burden on mortgage loan servicers who are small businesses. The NMLS is now available. This technology will benefit registrants by saving time and paperwork in submitting applications, and will assist the Department by enabling immediate tracking, monitoring and searching of registration information; thereby protecting consumers.

6. Minimizing Adverse Impacts:

The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLS, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

As noted above, most servicers are not small businesses. As regards servicers that are small businesses and not otherwise exempted, the regulations give the Superintendent of Financial Services (formerly the Superintendent of Banks) the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

7. Small Business and Local Government Participation:

Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry though its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community

outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Rural Area Flexibility Analysis

Types and Estimated Numbers: Approximately 70 mortgage loan servicers have been registered by the Department of Financial Services or have applied for registration. Very few of these entities operate in rural areas of New York State and of those, most are individuals that do a de minimus business. As discussed below, the Superintendent can modify the requirements of the regulation in such cases.

Compliance Requirements: Mortgage loan servicers in rural areas which are not mortgage bankers, mortgage brokers or exempt organizations must be registered with the Superintendent to engage in the business of mortgage loan servicing. An application process will be established requiring a MLS to apply for registration electronically and to submit additional background information and fingerprints to the Mortgage Banking unit of the Department.

MLSs are required to meet certain financial responsibility requirements based on their level of business. The regulations authorize the Superintendent of Financial Services (formerly the Superintendent of Banks) to reduce or waive the otherwise applicable financial responsibility requirements in the case of MLSs which service not more than $4,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden which those requirements might otherwise impose on entities operating in rural areas.

Costs: The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The application fee for MLS registration will be $3,000. The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System and Registry ("NMLSR") are set by that body. Applicants for mortgage loan servicer registration will also incur administrative costs associated with preparing applications for registration.

Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations.

Minimizing Adverse Impacts: The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLSR, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

Of the servicers which operate in rural areas, it is believed that most are mortgage bankers, mortgage brokers or exempt organizations. Additionally, in the case of servicers that operate in rural areas and are not otherwise exempted, the Superintendent has the authority to reduce, waive or modify the financial responsibility requirements for individuals that do a de minimis amount of servicing.

Rural Area Participation: Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry though its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Subprime Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). This emergency regulation sets forth the application, exemption and approval procedures for registration as a Mortgage Loan servicer (MLS), as well as financial responsibility requirements for applicants, registrants and exempted persons. The regulation also establishes requirements with respect to changes of officers, directors and/or control of MLSs and provisions with respect to suspension, revocation, termination, expiration and surrender of MLS registrations.

The requirement to comply with the emergency regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. Many of the larger entities engaged in the mortgage loan servicing business are already subject to oversight by the Department of Financial Services (formerly the Banking Department) and exempt from the new registration requirement. Additionally, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

The registration process itself should not have an adverse effect on employment. The regulations require the use of the internet-based National Mortgage Licensing System and Registry, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common on-line application for servicer registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to the nature and purpose of the statutory registration requirement rather than the provisions of the emergency regulations.

Department of Health

EMERGENCY RULE MAKING

Presumptive Eligibility for Family Planning Benefit Program

I.D. No. HLT-26-13-00001-E
Filing No. 610
Filing Date: 2013-06-05
Effective Date: 2013-06-05

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

Action taken: Amendment of section 360-3.7 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 366(1)

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

Specific reasons underlying the finding of necessity: Chapter 59 of the laws of 2011 enacted a number of proposals recommended by the Medicaid Redesign Team established by the Governor to reduce costs and increase quality and efficiency in the Medicaid program. The changes to SSL section 366(1) that require the Department, by regulation, to implement criteria for presumptive eligibility for the Family Planning Benefit Program, took effect April 1, 2011. Paragraph (t) of section 111 of Part H of Chapter 59 authorizes the Commissioner to promulgate, on an emergency basis, any regulations needed to implement such law. The Commissioner has determined it necessary to file these regulations on an emergency basis.

Subject: Presumptive Eligibility for Family Planning Benefit Program.

Purpose: To set criteria for the Presumptive Eligibility for Family Planning Benefit Program.

Text of emergency rule: Section 360-3.7 is amended to add a new subdivision (e) to read as follows:

(e) Presumptive eligibility for coverage of family planning benefit program (FPBP) services.

(1) An individual will be presumed eligible to receive the MA care, services and supplies listed in paragraph (8) of this subdivision when a qualified provider determines, on the basis of preliminary information, that the individual's family income does not exceed 200 percent of the Federal poverty line applicable to a family of the same size.

(2) For purposes of this subdivision, the individual's family income will be determined according to section 360-4.6 of this Part relating to financial eligibility for MA. The resources of the individual's family will not be considered in determining the individual's presumptive eligibility for coverage of FPBP services.

(3) For purposes of this subdivision, an individual's family includes the individual, any legally responsible relatives and any legally dependent relatives with whom he or she resides. In determining eligibility for children under 21, parental income is disregarded when the child requests confidentiality, has good cause not to provide or is otherwise unable to obtain parental income information.

(4) As used in this subdivision, the term qualified provider means a provider who:

(i) is eligible to receive payment under the MA program;

(ii) provides family planning services, treatment and supplies; and

(iii) has been found by the department to be capable of making presumptive eligibility determinations based on family income.

(5) An individual who has been determined presumptively eligible for coverage of FPBP services must submit a FPBP application to the social services district in which he or she resides, or to the department or its agent, by the last day of the month following the month in which a qualified provider determined him or her to be presumptively eligible.

(6) A qualified provider that has determined an individual to be presumptively eligible for coverage of FPBP services must:

(i) on the day the qualified provider determines the individual to be presumptively eligible, inform the individual that a FPBP application must be submitted to the social services district in which he or she resides, or to the department or its agent, by the last day of the following month in order to continue presumptive eligibility until the day his or her FPBP eligibility is determined;

(ii) assist the individual to complete the FPBP application and submit the application on his or her behalf; and

(iii) within five business days after the day the qualified provider determines the individual to be presumptively eligible, notify the social services district in which the individual resides, or the department or its agent, of its presumptive eligibility determination on forms the department develops or approves.

(7) The period of presumptive eligibility for coverage of FPBP services begins on the day a qualified provider determines the individual to be presumptively eligible. If the individual submits a FPBP application to the social services district in which he or she resides, or to the department or its agent, by the last day of the following month, the period of presumptive eligibility continues through the day the individual's eligibility for FPBP is determined; if the individual fails to submit such an application, the period of presumptive eligibility continues through the last day of the following month.

(8) An individual found presumptively eligible pursuant to this subdivision is eligible for coverage of the following medically necessary FPBP services and appropriate transportation to obtain such services:

(i) hospital based and free standing clinics;

(ii) county health department clinics;

(iii) federally qualified health centers or rural health centers;

(iv) obstetricians and gynecologists;

(v) family practice physicians,

(vi) licensed midwives, nurse practitioners; and

(vii) family planning related services from pharmacies and laboratories.

(9) If a presumptively eligible individual is subsequently determined to be ineligible for FPBP, he or she may request a fair hearing pursuant to Part 358 of this Title to dispute the denial of FPBP, but the presumptive eligibility period will not be extended by such request.

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 2, 2013.

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objectives:

Subdivision (1) of section 366 of the Social Services Law (SSL), as amended by Chapter 59 of the Laws of 2011, provides that pursuant to regulations promulgated by the Commissioner of Health, that the Department will establish criteria for presumptive eligibility for the Family Planning Benefit Program. The legislative objective, expressed through SSL section 366(1) is to expand access to family planning services by easing the application process.

Needs and Benefits:

New York included in Chapter 59 of the Laws of 2011, the option afforded by the Affordable Care Act, of providing individuals with a period of presumptive eligibility for family planning-only services. This regulation will provide the necessary criteria, as required by subdivision 1 of Section 366 of the Social Services Law, to implement the Presumptive Eligibility for the Family Planning Benefit Program.

COSTS:

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

This amendment will not increase costs to the regulated parties.

Costs to State and Local Government:

This amendment will not increase costs to the State or local governments.

Costs to the Department of Health:

Any costs associated with this amendment will be offset by administrative savings.

Local Government Mandates:

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

Paperwork:

Any provider choosing to act as a "qualified provider" will be required to notify the local social services district when a presumptive eligibility determination has been made.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

Establishing criteria for presumptive eligibility for the Family Planning Benefit Program is mandated by section 366(1) of the SSL. Processing through a statewide vendor was chosen over processing through local districts to centralize administration of eligibility determinations.

Federal Standards:

The federal Medicaid statute at section 2303(b) of the Affordable Care Act (ACA) added a new section (1920C) to the Social Security Act that gives States that adopt the new family planning group the option of also providing a period of presumptive eligibility based on preliminary information that an individual meets the eligibility criteria for family planning services in new section 1902(ii).

Compliance Schedule:

Social services districts should be able to comply with the proposed regulations when they become effective.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

Job Impact Statement

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

EMERGENCY RULE MAKING

Expand Medicaid Coverage of Enteral Formula

I.D. No. HLT-26-13-00002-E

Filing No. 614

Filing Date: 2013-06-07

Effective Date: 2013-06-07

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

Action taken: Amendment of section 505.5 of Title 18 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The 2011-2012 Executive Budget placed limitations on Medicaid coverage of enteral formula. In response, stakeholders expressed the concern that these benefits limits were too restrictive as applied to a small population of individuals substantially at risk and nutritionally compromised who require oral supplemental nutrition. Consequently, in Chapter 56 of the Laws of 2012, the Legislature amended section 365-a of the Social Services Law to authorize the Department to establish standards for Medicaid coverage of enteral formula for persons with a diagnosis of HIV infection, AIDS or HIV-related illness, or other diseases and conditions. The proposed regulations carry out this Legislative intent. The Department has

determined that it is necessary to adopt the regulations on an emergency basis to protect the health of medically fragile persons with declining medical and nutritional status who need access to enteral formula.

Subject: Expand Medicaid Coverage of Enteral Formula.

Purpose: To expand Medicaid coverage of enteral formula for individuals with HIV infection, AIDS or HIV-related illness or other diseases.

Text of emergency rule: Paragraph (3) of subdivision (g) of Section 505.5 of Title 18 is amended to read as follows:

(3) Enteral nutritional formulas are limited to coverage for*:*

(i) tube-fed individuals who cannot chew or swallow food and must obtain nutrition through formula via tube;

(ii) individuals with rare inborn metabolic disorders requiring specific medical formulas to provide essential nutrients not available through any other means; [and for]

(iii) children under age 21 when caloric and dietary nutrients from food cannot be absorbed or metabolized[.] *; and*

(iv) persons with a diagnosis of HIV infection, AIDS, or HIV-related illness, or other disease or condition, who are oral-fed and who:

(a) require supplemental nutrition, demonstrate documented compliance with an appropriate medical and nutritional plan of care, and have a body mass index under 18.5 as defined by the Centers for Disease Control, up to 1,000 calories per day; or

(b) require supplemental nutrition, demonstrate documented compliance with an appropriate medical and nutritional plan of care, and have a body mass index under 22 as defined by the Centers for Disease Control and a documented, unintentional weight loss of 5 percent or more within the previous 6 month period, up to 1,000 calories per day; or

(c) require total nutritional support, have a permanent structural limitation that prevents the chewing of food, and the placement of a feeding tube is medically contraindicated.

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 4, 2013.

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program. In addition, SSL section 365-a(2)(g) authorizes the Commissioner of the Department to establish standards related to enteral formula therapy and nutritional supplements for persons with a diagnosis of HIV infection, AIDS or HIV-related illness or other diseases and conditions.

Legislative Objective:

The legislative objective of this authority is to expand Medicaid coverage of enteral formula for individuals with HIV infection, AIDS or HIV-related illness or other diseases and conditions which can result in poor nutritional status.

Needs and Benefits:

Enteral nutritional formulas are ordered by practitioners and dispensed by pharmacy or durable medical equipment providers. Medicaid reimburses the cost of enteral formulas for administration via tube, or for oral nutrition when used for treatment of an inborn metabolic disorder, or to address growth and development issues in children. In 2012, the Legislature expanded Medicaid coverage of enteral formulas to persons with a diagnosis of HIV infection, AIDS or HIV-related illness (and potentially to persons with other diseases and conditions), subject to standards established by the Commissioner of the Department. The statutory change was intended to benefit underweight adults and adults who have rapid short term weight loss, who need oral enteral formula to supplement their diet.

The proposed rule would provide coverage of enteral formulas to persons with a diagnosis of HIV infection, AIDS, or HIV-related illness, or other disease or condition, who are oral-fed and who: (a) require supplemental nutrition, demonstrate documented compliance with an appropriate medical and nutritional plan of care, and have a body mass index under 18.5 as defined by the Centers for Disease Control, up to 1,000 calories per day; or (b) require supplemental nutrition, demonstrate documented compliance with an appropriate medical and nutritional plan of care, and have a body mass index under 22 as defined by the Centers for Disease Control and a documented, unintentional weight loss of 5 percent or more within the previous 6 month period, up to 1,000 calories per day; or (c) require total nutritional support, have a permanent structural limitation that prevents the chewing of food, and the placement of a feeding tube is medically contraindicated.

Costs:

Costs to the State and Local Government:

The expansion of coverage of enteral formula is estimated to result in an increase in Medicaid expenditures of $3.5 million. Because the local social services districts' share of Medicaid costs is statutorily capped, it is expected that there will be no additional costs to local governments as a result of this proposed regulation.

Costs to Private Regulated Parties:

Regulated entities will not incur any costs as a result of this rule.

Costs to the Regulatory Agency:

DOH will incur an estimated cost of $20,000 to implement necessary changes to the automated phone authorization system, which processes the majority of enteral related authorizations for providers. Utilization management measures will reallocate existing staff resources equivalent to one full time employee.

Local Government Mandates:

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

Paperwork:

This amendment will require practitioners and dispensers to obtain any necessary authorizations and complete the related required paperwork to the extent they provide enteral formula to individuals who qualify for coverage under the new benefit expansion.

Duplication:

This regulation does not duplicate any existing federal, state or local government regulation.

Alternatives:

The Department could expand the coverage of enteral formula to a more defined group based on age, diagnosis, or other factors. However, the proposed changes are felt to represent the most cost effective method of expanding coverage to at risk individuals not currently covered by the existing benefit limit.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas and does not result in reimbursement by Medicaid at a higher level than established federal reimbursement for enterals.

Compliance Schedule:

It is anticipated that regulated persons would be able to comply with the rule immediately.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

This amendment affects 3123 pharmacies and 369 durable medical equipment providers enrolled in the Medicaid program that actively bill Medicaid for enterals. The amendment will expand the enteral benefit which will increase Medicaid utilization and billable claims for these businesses.

The expansion of coverage of enteral formula is estimated to result in an increase in Medicaid expenditures of $3.5 million. Because the local social services districts' share of Medicaid costs is statutorily capped, it is expected that there will be no additional costs to local governments as a result of this proposed regulation.

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

There are no direct costs of compliance with this amendment.

Economic and Technological Feasibility:

The enteral benefit limit is operationalized through beneficiary information and the practitioner's fiscal order for the enteral formula. Based on this information, a dispenser is able to provide enteral formula for tube-fed individuals who cannot chew or swallow food, individuals with rare inborn metabolic disorders, children when necessary to address growth and development concerns, adults who require supplemental nutrition up to 1,000 calories per day and are either underweight, or have a body mass index under 22 and have demonstrated an unintentional 5% weight loss within the previous 6 month period, and adults with a permanent structural limitation that prevents the chewing of food, for whom a feeding tube is medically contraindicated. Since the amendment will not change the way providers bill for services or affect the way the local districts contribute their local share of Medicaid expenses, there should be no concern about economic or technological difficulties associated with compliance of the proposed regulation.

Minimizing Adverse Impact:

No adverse impact is anticipated as the legislation amendment will expand the existing benefit limit.

Small Business and Local Government Participation:

The Department invited participation in developing coverage standards through email outreach, a webinar presentation and social media. Proposed coverage change options were presented. The stakeholder feedback received was given substantial weight when making the proposed regulation amendment. A second webinar will be scheduled to inform stakeholders of the specific changes that are being proposed. Upon adoption of the regulation, DOH will inform stakeholders of the changes in coverage and associated prior authorization modifications.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

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

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

This rule will apply to 3123 pharmacies and 369 durable medical equipment providers in New York State. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

Compliance Requirements:

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

Professional Services:

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact:

The rule is not expected to have any adverse impact on public and private sector interests in rural areas.

Opportunity for Rural Area Participation:

The Department meets on a regular basis with providers groups such as the New York Medical Equipment Providers (NYMEP), who represents some rural providers. Webinar and social media sessions are accessible to providers statewide, including rural providers.

Job Impact Statement

Nature of Impact:

This rule will result in increased Medicaid billable claims for 3123 pharmacies and 369 durable medical equipment providers. The increase in revenue should not have an adverse impact on jobs and employment opportunities within these businesses.

Categories and Numbers Affected:

This rule, which increases Medicaid revenue for providers, should not have any adverse effect on employment opportunities.

Regions of Adverse Impact:

No region of New York State should realize adverse impact from this rule given the potential increase in Medicaid revenue for providers.

Minimizing Adverse Impact:

No adverse impact is anticipated given that this rule expands the existing benefit limit.

Self-Employment Opportunities:

The rule is expected to have minimal impact on self-employment opportunities since it expands the benefit limit and the majority of providers that will be affected by the rule are not small businesses or sole proprietorships solely dispensing enterals to Medicaid beneficiaries.

Justice Center for the Protection of People with Special Needs

NOTICE OF ADOPTION

Use of Social Security Numbers

I.D. No. JCP-12-13-00011-A

Filing No. 626

Filing Date: 2013-06-11

Effective Date: 2013-06-30

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

Action taken: Addition of Part 702 to Title 14 NYCRR.

Statutory authority: Protection of People with Special Needs Act, L. 2012, ch. 501

Subject: Use of Social Security Numbers.

Purpose: To assist in verifying the identity of persons vis a vis their presence on the Staff Exclusion List/VPCR.

Text of final rule: A new Part 702 is added to Title 14, NYCRR, to read as follows:

Part 702 USE OF SOCIAL SECURITY NUMBERS

§ 702.1 Background and Intent

(a) The Protection of People with Special Needs Act (the "Act"), enacted as Chapter 501 of the Laws of 2012, seeks to prevent persons responsible for egregious or repeated acts of abuse or neglect of a vulnerable person from being engaged as employees, administrators, consultants, interns, volunteers or contractors, and from obtaining licenses, certificates or other approvals, for positions where they have the potential for regular and substantial contact with vulnerable persons or other individuals whom the Act seeks to protect.

(b) To accomplish this goal, the Act provides that all custodians who have been found by a preponderance of the evidence, after an opportunity for a fair hearing, to have engaged in an act of abuse or neglect of sufficient severity or with sufficient frequency, shall be placed on the register of substantiated category one cases of abuse or neglect, also known as the "staff exclusion list."

(c) This regulation outlines the procedures for obtaining and using social security numbers to assist in verifying the identity of subjects of reports in the vulnerable persons central register ("VPCR"); individuals placed on the staff exclusion list and those individuals who must be screened against the staff exclusion list.

§ 702.2 Applicability

This regulation applies to all facilities and provider agencies as defined in subdivision (4) of section 488 of the Social Services Law and to all other entities that must screen individuals against the staff exclusion list pursuant to subdivision (2) of section 495 of the Social Services Law.

§ 702.3 Legal authority

(a) The Act provides for the creation of a Justice Center for the Protection of Persons with Special Needs ("Justice Center").

(b) Section 492 of the Social Services Law mandates that the Justice Center establish a VPCR in which findings of whether alleged acts of abuse or neglect are substantiated or unsubstantiated shall be entered.

(c) Section 492 of the Social Services Law mandates that upon accepting a report of a reportable incident, an investigation must be initiated that includes the determination of whether the subject of the report is currently the subject of an open or substantiated report in the VPCR.

(d) Sections 493, 494 and 495 of the Social Services Law provide for the creation of a register of substantiated category one cases of abuse or neglect ("the staff exclusion list"), and describe the circumstances and due process requirements for placing a custodian on that register.

(e) Section 495 of the Social Services Law provides that a custodian placed on the staff exclusion list is subject to termination of employment from a facility or provider agency, provided that for state entities bound by collective bargaining, action established by collective bargaining shall govern.

(f) Subdivision (2) of section 495 of the Social Services Law requires a screening agency, as defined in this Part, to check the staff exclusion list before determining whether to hire or otherwise allow any person as an employee, administrator, consultant, intern, volunteer or contractor who will have the potential for regular and substantial contact with a service recipient or other applicable individual and before approving an applicant for a license, certificate, permit or other approval to provide care to a service recipient or other applicable individual.

(g) Paragraph (e) of subdivision (1) of section 96 of the Public Officers Law permits a state agency to disclose personal information incident to a "routine use," which means any use of such record or personal information relevant to the purpose for which it was collected, and which use is necessary to the statutory duties of the agency that collected or obtained the record or personal information, or necessary for that agency to operate a program specifically authorized by law.

(h) Paragraph (c) of subdivision (1) one of section 94 of the Public Officers Law permits a state agency to obtain the social security number of an individual for purposes of a quasi-judicial determination.

(i) Paragraph (b) of subdivision (3) of section 399ddd of the General Business Law permits firms, partnerships, associations or corporations to require an individual to disclose or furnish his or her social security account number, when required by state or local law or regulation.

§ 702.4 Definition

Whenever used in this Part:

(a) "Custodian" shall mean a director, operator, employee or volunteer of a facility or provider agency as defined in subdivision (4) of section 488 of the Social Services Law; or a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a facility or provider agency pursuant to contract or other arrangement that permits such person to have regular and substantial contact with individuals who are cared for by such a facility or provider agency.

(b) "Delegate investigatory entity" shall have the same meaning as expressed in subdivision (7) of section 488 of the Social Services Law.

(c) "Facility" or "provider agency" shall have the same meaning as expressed in subdivision (4) of section 488 of the Social Services Law.

(d) "Screening agency" shall mean a facility or provider agency as defined in subdivision (4) of section 488 of the Social Services Law; any other provider of services to vulnerable persons in programs licensed, certified or funded by any state oversight agency; and any other provider agency or licensing agency as defined in subdivision (3) or (4) of section 424-a of the Social Services Law.

(e) "Service recipient" shall mean an individual who resides or is an inpatient in a residential facility or who receives services from a facility or provider agency as defined in subdivision (4) of section 488 of the Social Services Law.

(f) "Staff exclusion list" shall mean the register of substantiated category one cases of abuse or neglect, pursuant to sections 493 and 495 of the Social Services Law.

(g) "State oversight agency" shall mean the state agency that operates, licenses or certifies an applicable facility or provider agency; provided however that such term shall only include the following entities: the office of mental health, the office for people with developmental disabilities, the office of alcoholism and substance abuse services, the office of children and family services, the department of health and the state education department.

(h) "Vulnerable person" shall have the same meaning as expressed in subdivision 15 of section 488 of the social services law.

§ 702.5 Verification of Identity

(a) The Justice Center or a delegate investigatory entity responsible for investigating a reportable incident pursuant to paragraph (c) of subdivision (3) of section 492 of the Social Services Law shall be authorized to obtain the social security number of any custodian who is being investigated as a subject of a reportable incident, by consent from the custodian under investigation or from the applicable facility or provider agency, for purposes of verifying the custodian's identity as the subject of any open or substantiated report in the VPCR and, where applicable, as an individual included on the staff exclusion list.

(b) Any person applying for a position for which such person must be screened against the staff exclusion list pursuant to subdivision (2) of section 495 of the Social Services Law shall provide the applicable screening agency with his or her social security number for submission to the Justice Center for the purpose of verifying the person's identity to determine whether the individual is included on the staff exclusion list.

(c) An individual's failure to provide his or her social security number when requested pursuant to this section, after receiving notice of the reason for such request, may preclude the individual from being considered or approved for any such position.

§ 702.6 Confidentiality

The Justice Center shall promulgate policies and procedures regarding corrective actions or penalties for failure to comply with the use, confidentiality and non-disclosure requirements of Sections 89, 94, 95, 96 and 96-a of the Public Officer's Law.

§ 702.7 Severability

If any provision of this Part or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Part that can be given effect without the invalid provision or applications, and to this end the provisions of this Part are declared to be severable.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 702.5(c).

Text of rule and any required statements and analyses may be obtained from: Stephan Haimowitz, Justice Center for Protection of People with Special Needs, 161 Delaware Avenue, Delmar, New York 12054, (518) 549-0244, email: stephan.haimowitz@cqc.ny.gov

Revised Regulatory Impact Statement

Non-substantive changes in the text of the proposed rule do not necessitate modification of the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement as published in the State Register on March 20, 2013. Accordingly, a revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required by any changes in the rule's text.

However, non-substantive revisions, including the correction of a clerical error, have been made to the Regulatory Flexibility Analysis and Rural Area Flexibility Analysis for this rule to accurately and more fully describe outreach to small business and rural interests subsequent to March 20, 2013. Those updated statements are attached to this Notice of Adoption.

Revised Regulatory Flexibility Analysis

1. Effect of rule:

Small businesses include not for profit, volunteer or other types of non-state agencies and providers of services to vulnerable persons under Justice Center jurisdiction. Local governments that operate detention centers for juveniles will be affected.

2. Compliance requirements:

The proposed Rule has been reviewed in consideration of its impact on small business and local government service providers. Because existing small business providers are presently engaged in fielding employment, volunteer and consultant applications, and applicants for licenses, certificates permits or approvals are handled by the state agencies, there is no anticipated additional burden on small businesses or local government. The activity required by this rule is limited, in any event, to the transmission of information that can be provided electronically in a secure fashion, and based on forms provided by the Justice Center.

3. Professional services:

It is not anticipated than any new professional services will be needed as a result of the proposed rule-making.

4. Compliance costs:

Any recurring costs are subsumed in regular operating costs of all entities affected, and are represented in the cost of telephone, fax and electronic communications. As a consequence, no additional cost for compliance is anticipated.

5. Economic and technological feasibility:

Electronic mail and facsimile transmissions are general available technologies that can be used to transmit the information required under this rule.

6. Minimizing adverse impact:

This rule is designed to promote efficiency, promptness and accuracy, thus avoiding any potential adverse impacts from fulfilling the statutory requirement expressed through this rule.

7. Small business and local government participation:

We sought input during the public comment period regarding the effect of this rule on small businesses. As noted previously, representatives of those types of entities participated in formulating the legislation under which this rule is being promulgated (see "The Measure of a Society: Protection of Vulnerable Persons in Residential Facilities against Abuse and Neglect" report prepared by Clarence J. Sundram, the Governor's Special Advisor on Vulnerable Persons www.governor.ny.gov/assets/documents/justice4specialneeds.pdf). Subsequent to publication of the proposed rule, members of the Justice Center Leadership Team received input from small businesses at more than a dozen trade association conferences and service providers meetings. These sessions included executives and care givers from programs across the state which are under the jurisdiction of the NYS Justice Center for People with Special Needs.

Revised Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule will apply to every county in New York State that has facilities or providers under the Justice Center's jurisdiction.

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

There are no professional services required for compliance with this rule. The compliance requirements are no different than those of a type already being carried out by the facilities or providers in each of New York's counties, as comprehended under the human resources, staffing and licensing, certification or approval activities of each of these entities.

3. Costs:

No capital costs are required. The annual costs are included in the existing human resources, staffing, licensing, and certification or approval activities of those affected.

4. Minimizing adverse impact:

There are no adverse impacts on rural areas.

5. Rural area participation:

We sought input during the public comment period regarding the effect of this rule on rural areas. As noted previously, representatives of rural entities participated in formulating the legislation under which this rule is being promulgated (see "The Measure of a Society: Protection of Vulnerable Persons in Residential Facilities against Abuse and Neglect" report prepared by Clarence J. Sundram, the Governor's Special Advisor on Vulnerable Persons www.governor.ny.gov/assets/documents/justice4specialneeds.pdf). Subsequent to publication of the proposed rule and to date, members of the Justice Center Leadership Team received input at more than a dozen trade association conferences and service providers meetings. These sessions included executives and care givers from programs across the state under the jurisdiction of the NYS Justice Center for People with Special Needs, including those in rural areas.

Revised Job Impact Statement

Non-substantive changes in the text of the proposed rule do not necessitate modification of the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement as published in the State Register on March 20, 2013. Accordingly, a revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required by any changes in the rule's text.

However, non-substantive revisions, including the correction of a clerical error, have been made to the Regulatory Flexibility Analysis and Rural Area Flexibility Analysis for this rule to accurately and more fully describe outreach to small business and rural interests subsequent to March 20, 2013. Those updated statements are attached to this Notice of Adoption.

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 proposed rules under comment concern the Justice Center for the Protection of People with Special Needs, [Justice Center]. They include the Justice Center's administrative adjudications procedure (Part 700); criminal background check requirements and procedures (Part 701); use of social security numbers (Part 702); and, the rule governing Justice Center responses to requests for disclosure of facility or provider agency records relating to the abuse or neglect of vulnerable persons (Part 703). These regulations comprise 14 NYCRR Parts 700-703. These rules are authorized under the statutory mandate of the Protection of People with Special Needs Act [PPSNA], Chapter 501 Laws of 2012, which creates the Justice Center. This Assessment of Comment pertains to 14 NYCRR Part 702.

Comments on the proposed rulemaking were received from four entities. They are: Service Employees International Union Local 200United (SEIU 200United); New York State ARC (NYSARC), an association of not-for-profit organizations representing providers of services to developmentally disabled persons; the Professional Employees Union (PEF) and the New York State Assembly Chairs of the Standing Committee on Mental Health and the Administrative Regulations Review Commission, Aileen M. Gunther and Kenneth P. Zebrowski, respectively.

Many of the comments received were requests for clarification. Some comments were beyond the scope of this rulemaking or lacked sufficient justification to make requested changes. The responses to comments are as follows:

Part 702: Use of Social Security Numbers

Comment I

Two commenters expressed concerns about confidentiality protections for the personally identifiable information collected under this regulation.

Response

The proposed regulation provides for the issuance of policies and procedures that will enforce the confidentiality provisions of the Public Officers Law restricting the use or disclosure of personally identifiable information by state agencies. Those authorized persons transmitting personally identifiable information to the Justice Center will be required to acknowledge the requirement to comply with state and federal laws concerning the privacy of personally identifiable information, including Labor Law 203-d which applies to employers.

Comment II

"Part 702 is being adopted to prevent persons responsible for egregious or repeated acts of abuse or neglect of vulnerable persons from being engaged as employees in positions where they have the potential for regular and substantial contact with vulnerable persons. The Federal Privacy Act does not authorize the use of social security number for this purpose, thus, 14 NYCRR 702 is not authorized by Section 42 USC 405(c)(2)(C)(i)."

Response

We disagree. The purpose of Part 702 is to help ensure the correct identification of persons who are subjects of reports of abuse or neglect as defined in Section 488(12) of the Social Services Law (SSL), persons placed on the Register of Substantiated Cases of Category One Abuse or Neglect [Staff Exclusion List], and of applicants for employment who require Staff Exclusion List checks. See, § 492, § 493, § 494 and § 495. SSL § 495 provides the statutory authority for preventing custodians who have been convicted of an intentional crime directly related to the abuse or neglect of a vulnerable person, or who have been placed on the Justice Center's Staff Exclusion List, from having regular and substantial contact with vulnerable persons.

Comment III

"Although prospective applicants possess no "right" to public employment, tenured State employees do possess a "right" to continued employment. Therefore, for existing State employees, the proposed regulations violate section 7 of the Federal Privacy Act. Section 7 of the Privacy Act prohibits a state from denying an individual a right provided by law because of his or her refusal to disclose his or her social security number. We believe that New York State may request that an employee disclose his or her social security number informing him or her that the disclosure is voluntary and providing the other information required by Section 7(b) of the Privacy Act, but the State many not require the disclosure."

Response

We disagree. The PPSNA provides that an employee be "subject to termination" upon being placed on the Staff Exclusion List. SSL § 495(4). The catalyst event for termination is not the failure to provide a social security number, but rather placement on the Staff Exclusion List. The rule has been clarified by deleting the words, "or retained in" contained in 14 NYCRR § 702.5(c).

Comment IV

Assembly members comment that the Regulatory Flexibility Analysis for Small Businesses and Local Governments contained reference to rural flexibility analysis and did not reflect sufficient efforts at outreach to small businesses or rural areas.

Response

The Regulatory Flexibility Analysis for Small Businesses and Local Government submitted with the proposed rule contained a reference to "rural" instead of small business flexibility analysis in the final paragraph. That clerical error has been corrected. The text of Regulatory Analysis for Small Business and Local Government and Rural Flexibility Analysis has also been modified to more fully reflect Justice Center activities seeking input from small businesses from urban and rural New York State, subsequent to the publication of this proposed rule.

NOTICE OF ADOPTION

Procedure for Disclosure of Facility or Provider Records Relating to Abuse or Neglect of Vulnerable Persons

I.D. No. JCP-12-13-00012-A

Filing No. 625

Filing Date: 2013-06-11

Effective Date: 2013-06-30

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

Action taken: Addition of Part 703 to Title 14 NYCRR.

Statutory authority: Protection of People with Special Needs, Act L. 2012, ch. 501

Subject: Procedure for disclosure of facility or provider records relating to abuse or neglect of vulnerable persons.

Purpose: To permit public access to records relating to abuse or neglect from facilities or providers licensed or certified by the state.

Text of final rule: A new Part 703 is added to Title 14, NYCRR, to read as follows:

Part 703 JUSTICE CENTER FACILITY AND PROVIDER DISCLOSURE

§ 703.1 Background

The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) provides that access to records relating to the abuse or neglect of vulnerable persons may be obtained from facilities or provider agencies as defined in subdivision (4) of section 488 of the Social Services Law that are not agencies of state government. Subdivision (6) of section 490 of the Social Services Law provides that records in those providers' possession that relate to abuse or neglect shall be made available to the same extent that they would be available under Article Six of the Public Officers Law from a state agency.

§ 703.2 Applicability

(a) This Part governs the process for obtaining the disclosure of records of state certified or licensed facilities or provider agencies, as defined in subdivision (4) of section 488 of the Social Services Law, relating to the abuse or neglect of vulnerable persons, as mandated by subdivision 6 of section 490 of the Social Services Law.

(b) Individual requests for records under other statutory authority, including section 33.25 of the Mental Hygiene Law, section 422-A of the Social Services Law and Article Six of the Public Officers Law as applied to the records of the Justice Center for the Protection of People with Special Needs as a state agency, are not covered by this Part.

§ 703.3 Legal Authority

(a) The Protection of People with Special Needs Act creates the Justice Center for the Protection of People with Special Needs and authorizes the Justice Center to promulgate regulations to implement its mandate.

(b) Subdivision (6) of section 490 of the Social Services Law requires the Justice Center to respond to requests for disclosure of records of state certified or licensed facilities or provider agencies, as defined in subdivision (4) of section 488 of the Social Services Law, relating to the abuse or neglect of vulnerable persons.

§ 703.4 Definitions

Whenever used in this Part:

(a) "Justice Center" means the New York State Justice Center for the Protection of People with Special Needs.

(b) "Requester" means the person submitting a request to the Justice Center for disclosure of facility or provider agency records under this Part.

(c) "Record" means any information kept, held, filed, produced or reproduced by, with or for a provider, in any physical form whatsoever, insofar as it is related to abuse and neglect as defined in subdivision (1) of section 488 of the Social Services Law. This definition includes, but is not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

§ 703.5 Record Requests

(a) The Justice Center shall receive, process and respond to requests for access to facility or provider agency records in accordance with this Part.

(b) All requests to inspect or copy records shall be made in writing and shall reasonably describe the records to which access is being sought. Such requests shall be directed to the Justice Center records access officer at the address indicated on the Justice Center website.

(c) All requests for facility or provider agency records shall include the following information:

(1) the name, mailing address, phone number and electronic mail address, if any, of the requester;

(2) the name and address or other identifying information of the facility or provider agency from which the records are sought; and

(3) a description of the nature and content of the record sought to be disclosed sufficient to enable the facility or provider agency and the Justice Center to identify responsive records.

§ 703.6 Record Request Processing

(a) As soon as practicable after receipt of a request for facility or provider agency records, the Justice Center shall notify the applicable facility or provider agency of the request and shall request such facility or provider agency to begin a search for any responsive records.

(b) Within 10 calendar days from the first business day following the receipt of the request for facility or provider agency records, the Justice Center shall issue an acknowledgement of the request, which may include an approximate date upon with the request will be granted or denied, and/or a request for clarification or further particularization of the types of records the requestor is seeking.

(c) Within a reasonable time thereafter, as determined by the complexity of the request, the volume of records, the ease or difficulty for the facility or provider agencies to locate or retrieve records, the need to review records to determine the extent to which they must be disclosed or other circumstances, the Justice Center shall make the records available to the person requesting them or deny the request for the records.

§ 703.7 Provider Duties and Responsibilities

(a) Facility and provider agencies shall respond to Justice Center inquiries and requests for records in a timely manner and to the extent disclosure is authorized by federal and state law, and shall keep the Justice Center informed of any difficulties or delays in retrieving potentially responsive records.

(b) In providing records to the Justice Center for purposes of this Part, a facility or provider agency may use any appropriate means of transmittal, including electronic mail and electronic document transfers, taking appropriate measures to ensure confidentiality of communications. However, the Justice Center shall have access to the original records in possession of the facility or provider agency whenever it deems it necessary, taking into account the need for the facility or provider agency to maintain such records for provision of services to individuals in its care.

(c) The facility or provider agency shall produce any potentially responsive records to the records access officer of the Justice Center.

(d) The Justice Center shall advise the applicable state oversight agency when a facility or provider agency does not comply with their duties and responsibilities under this Part.

§ 703.8 Record Review and Exemptions from Disclosure

(a) As soon as practicable after receipt of potentially responsive records, the Justice Center shall review the records provided to it and make its determination regarding redactions of information contained in such records and exemptions from disclosure of those records consistent with the exemptions to disclosure contained in Article 6 of the Public Officers Law.

§ 703.9 Decisions

(a) Grants of requests for disclosure of records shall be in writing and shall indicate the manner of production.

(b) Denials of requests for records shall be in writing and shall state the basis of the decision. The denial shall also inform the requester of the opportunity to appeal the decision to the Executive Director of the Justice Center.

(c) Where no responsive records exist, or the facility or provider agency has been unable to locate responsive records, the decision shall so state.

§ 703.10 Fees

(a) Fees for the production of records pursuant to this Part shall be charged as follows:

(1) The requester shall be charged no more than 0.25 cents per page per photocopy. At the Justice Center's discretion, photocopying fees may be waived in any case.

(2) Photocopying costs incurred by the facility or provider agency in making records available to the Justice Center for review shall be factored into the calculation of the cost of producing the record.

(3) There shall be a one-time charge for processing responses provided in electronic form in accordance with paragraph (c) of subdivision (1) of section 87 of the Public Officers Law.

(4) If the records copying process exceeds two hours of employee time, additional charges may be levied in accordance with paragraph (c) of subdivision (1) or section 87 of the Public Officers Law. Included in this calculation will be the time and cost to the facility or provider agency to reproduce records for Justice Center review.

(5) In any event the requester will be advised of the total amount of the fees due, prior to the provision of the records.

§ 703.11 Records Access

(a) Records that the Justice Center determines are subject to disclosure shall be made available in the following manner, respecting the requester's preference as to the medium of reproduction if such copy can reasonably be made.

(1) To the extent practicable, records requested by electronic means shall be provided in like form to the requester upon payment of any fees for production, as required under this Part.

(2) Photocopied records shall be provided to the requester by mail at the physical or electronic address provided upon payment of the fees for production, as required under this Part.

(3) Records determined to be subject to disclosure by the Justice Center, may be inspected at the Justice Center's main offices by the requester, as indicated on the Justice Center website and during weekday business hours when the records access officer is present.

§ 703.12 Appeal

(a) Any person denied access to a record under this Part may, within 30 days of such denial, appeal to the Executive Director of the Justice Center.

(b) The time for deciding an appeal shall commence upon receipt of a written request for appeal that identifies the record that is the subject of the appeal and the name and return address of the appellant. The written request may include reasons why such record should be disclosed.

(c) Within a reasonable time after receipt of the written request for appeal, the Executive Director shall:

(1) provide access to the record; or

(2) explain in writing the factual and statutory reasons for denial of access to the record; and

(3) inform the individual of the right to seek judicial review of such determination pursuant to Article 78 of the Civil Practice Law and Rules.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 703.6(b), 703.11(a) and 703.12(b).

Text of rule and any required statements and analyses may be obtained from: Stephan Haimowitz, Justice Center for Protection of People with Special Needs, 161 Delaware Avenue, Delmar, NY 12054, (518) 549-0244, email: stephan.haimowitz@cqc.ny.gov

Revised Regulatory Impact Statement

Non-substantive changes in the text of the proposed rule do not necessitate modification of the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement as published in the State Register on March 20, 2013. Accordingly, a revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required by any changes in the rule's text.

However, non-substantive revisions, including the correction of a clerical error, have been made to the Regulatory Flexibility Analysis and Rural Area Flexibility Analysis to accurately and more fully describe outreach to small business and rural interests subsequent to March 20, 2013. Those updated statements are attached to this Notice of Adoption.

Revised Regulatory Flexibility Analysis

1. Effect of rule:

Small businesses affected will include not for profit, volunteer or other types of non-state agencies and providers of services to vulnerable persons under Justice Center jurisdiction. Local government is not affected by the promulgation of this rule.

2. Compliance requirements:

The proposed Rule has been reviewed by the Justice Center with regard to potential impacts on small business or local governments. No additional professional services will be required of as a result of this rule, as tasks of the same type, i.e., identifying and locating records responsive to requests for records, are currently being performed by the affected facilities or provider agencies in the general course of their business. In addition, because of the opportunity to use electronic transactions, minimal paperwork will be required on the part of small businesses.

3. Compliance costs:

No initial capital costs are associated with the implementation of this rule. The cost of compliance is for small business only, as local government is not affected by this rule. Compliance can be achieved by the use of existing resources and through mechanisms that are part of general operating costs, such as facsimile, phone and electronic mail communications.

4. Economic and technological feasibility:

The technology used for secure communications is now commonplace and already utilized by the providers or facilities as they typically manage confidential records such as clinical and medical or educational records and personal information.

5. Minimizing adverse impact:

The rule was designed to allow for variable time frames for compliance, in consideration of the practical aspects of identifying and producing records, depending on the system of records management and the accessibility of the records. The rule also allows for collecting fees for the time expended in reproducing large numbers of records, which takes into account personnel time expended, although these funds by operation of law are remitted to the state's general fund. The rule also provides for expediting processing through the use of electronic secure communications.

6. Small business and local government participation:

We sought input during the public comment period regarding the effect of this rule on small businesses. As noted previously, representatives of those types of entities participated in formulating the legislation under which this rule is being promulgated (see "The Measure of a Society: Protection of Vulnerable Persons in Residential Facilities against Abuse and Neglect" report prepared by Clarence J. Sundram, the Governor's Special Advisor on Vulnerable Persons www.governor.ny.gov/assets/documents/justice4specialneeds.pdf). Subsequent to publication of the proposed rule, members of the Justice Center Leadership Team received input from small businesses at more than a dozen trade association conferences and service providers meetings. These sessions included executives and care givers from programs across the state which are under the jurisdiction of the NYS Justice Center for People with Special Needs.

Revised Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule will apply to every county in New York State that has facilities or providers under the Justice Center's jurisdiction.

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

The proposed Rule has been reviewed by the Justice Center with regard to potential impacts for compliance. The compliance requirements are no different than those of a type already being carried out by records management personnel in each of the respective facilities or providers in New York's counties.

3. Costs:

There are no capital costs associated with this rule, or any difference in the requirements as to rural or urban areas. It is expected that compliance with this rule can be achieved with existing resources.

4. Minimizing adverse impact:

The rule provides for the secure electronic transfer of information, thus minimizing any adverse impact that might be generated by distance from the Justice Center central offices.

5. Rural area participation:

We sought input during the public comment period regarding the effect of this rule on rural areas. As noted previously, representatives of rural entities participated in formulating the legislation under which this rule is being promulgated (see "The Measure of a Society: Protection of Vulnerable Persons in Residential Facilities against Abuse and Neglect" report prepared by Clarence J. Sundram, the Governor's Special Advisor on Vulnerable Persons www.governor.ny.gov/assets/documents/justice4specialneeds.pdf). Subsequent to publication of the proposed rule and to date, members of the Justice Center Leadership Team received input at more than a dozen trade association conferences and service providers meetings. These sessions included executives and care givers from programs across the state under the jurisdiction of the NYS Justice Center for People with Special Needs, including those in rural areas.

Revised Job Impact Statement

Non-substantive changes in the text of the proposed rule do not necessitate modification of the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement as published in the State Register on March 20, 2013. Accordingly, a revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required by any changes in the rule's text.

However, non-substantive revisions, including the correction of a clerical error, have been made to the Regulatory Flexibility Analysis and Rural Area Flexibility Analysis to accurately and more fully describe outreach to small business and rural interests subsequent to March 20, 2013. Those updated statements are attached to this Notice of Adoption.

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 proposed rules under comment concern the Justice Center for the Protection of People with Special Needs, [Justice Center]. They include the Justice Center's administrative adjudications procedure (Part 700); criminal background check requirements and procedures (Part 701); use of social security numbers (Part 702); and, the rule governing Justice Center responses to requests for disclosure of facility or provider agency records relating to the abuse or neglect of vulnerable persons (Part 703). These regulations comprise 14 NYCRR Parts 700-703. These rules are authorized under the statutory mandate of the Protection of People with Special Needs Act [PPSNA], Chapter 501 Laws of 2012, which creates the Justice Center. This assessment of comment relates to 14 NYCRR Part 703.

Comments on the proposed rulemaking were received from four entities. They are: Service Employees International Union Local 200United (SEIU 200United); New York State ARC (NYSARC), an association of not-for-profit organizations representing providers of services to developmentally disabled persons; the Professional Employees Union (PEF) and the New York State Assembly Chairs of the Standing Committee on Mental Health and the Administrative Regulations Review Commission, Aileen M. Gunther and Kenneth P. Zebrowski, respectively.

Many of the comments received were requests for clarification. Some comments were beyond the scope of this rulemaking or lacked sufficient justification to make requested changes. The responses to comments are as follows:

Part 703: Justice Center Facility and Provider Disclosure

Comment I

"There is no available procedure that permits the provider as opposed to the Justice Center, to define or limit the scope of the request. The Justice Center should allow the provider to pre-screen requests to meet federal and state legal requirements before communicating them to facility or provider agencies." ''The regulation should provide guidance on personal privacy issues."

Response:

The issue raised concerns provisions of the statute itself. Social Services Law § 490(6) gives the Justice Center the responsibility for receiving, reviewing and responding to requests for these types of facility or

provider records. The procedure for processing requests allows for input from both the requester and the facility or provider agency. Determinations will be made on a case by case basis. Social Services Law § 490(6) has a specific focus - "when such records relate to abuse or neglect of vulnerable persons" not just records of substantiated abuse or neglect. The scope of records subject to disclosure is circumscribed by the language in Social Services Law § 490(6) which specifies that records are to be disclosed "to the same extent as they would be available" from a state agency under Article 6 of the Public Officers Law. That body of law lays out the rules and exemptions which effectuate the balancing of interests to determine disclosure.

Comment II

This comment asks what level of security is required with respect to the requirement that providers take "appropriate measures to ensure confidentiality of communications".

Response

The appropriate means of transmittal will be that which the entities subject to this regulation already use in their outgoing confidential communications. There are no new requirements as to means or mode of transmittal under this rule.

Comment III

Assembly members' comment asserts that the proposed language is not sufficiently consistent with the provisions of Article 6 of the Public Officers Law providing for the prompt response to facility or provider agency record requests. The commenters concede this new process merits longer response times than those provided for in Article 6 of the Public Officers Law.

Response:

The statutory provision for the disclosure of facility or provider agency records through a request to the Justice Center creates a new process by which the public may access a limited set of records maintained by private entities, "relating to abuse or neglect of vulnerable persons" to the same extent that they would be available from a state agency. That access is to be determined by the substantive provisions of the Freedom of Information Law [FOIL]. The PPSNA states that the process for disclosure is required to be "consistent with the provisions of Article 6 of the Public Officers Law providing for the prompt response to such requests."

The rule incorporates provisions for responding to requests for records based upon the same criteria as in FOIL, e.g., the complexity of the request, the volume of records, the ease or difficulty for the facility or provider agencies to locate or retrieve records and the need to review records for redactions. The rule also includes the obligation to acknowledge receipt of a request for records within a specific period of time and to reach a determination in a reasonable amount of time, both as an initial matter, and on appeal to the Justice Center Executive Director.

While Article 6 of the Public Officers Law provides time limits for responding to record requests, it also allows for extensions based upon the same considerations cited in this rule. Those considerations together with the reasonableness requirement provide sufficient underpinning for promptness and finality determinations.

Comment IV

Assembly members' comment that proposed 14 NYCRR § 703.6(b) should clarify whether it refers to calendar or business days to avoid confusion.

Response

A non-substantive change has been made by inserting the word "calendar" in the text of Part 703.6(b) to clarify that the reference is to calendar days.

Comment V

Assembly members comment that the text of the rule should reference the possibility of a grant or denial of disclosure either "in whole or in part".

Response:

The existing text when read together with POL § 87(2) regarding the ability to "deny access to records, or portions thereof", necessarily means that a grant or denial may be "in whole or in part". A response to a record request may grant access to records and deny access to portions of them. The regulation outlines the procedure for the grant of access and for the denial of access, whether it is in whole or in part.

Comment VI

Assembly members suggest that the following language of 14 NYCRR § 703.6(c) is improper:

"… the need to review records to determine the extent to which they must be disclosed ….".

The commenters assert the authorizing legislation, Social Services Law § 490(6), provides that the Justice Center "may", not "must" allow access to records.

Response

Social Services Law 490(6) states that the Justice Center is bound by Article 6 of the Public Officer's Law in making determinations about what records from private entities should be disclosed. Public Officers Law § 87(2) governs the exemptions from disclosure. The language of this rule does nothing to alter those provisions.

Comment VII

Assembly members ask that the rule ensure that a requester's petition on the type of format for disclosure be respected, as provided for under FOIL.

Response

14 NYCRR § 703.11 specifies all the potential means of record disclosure. A non-substantive modification of the text clarifies that the requester, as is the case under Public Officers Law § 87(5)(a), may access the copy of the record in the form they solicit where such a copy can reasonably be made, whether it be by paper copies, electronically or by physical inspection.

Comment VIII

Assembly members comment that the requirement in 14 NYCRR § 703.12(b) that a requester provide a reason for the disclosure of records as a condition of an appeal from a denial should be deleted as it is prohibited under FOIL.

Response

A non-substantive change to the text of the proposed rule has been made to clarify that there is no requirement to provide a reason for disclosure on an appeal to the Justice Center Executive Director. The change clarifies that a requester who appeals a denial may take that opportunity to identify reasons why the record should be disclosed.

Comment IX

Assembly members comment that the Regulatory Flexibility Analysis for Small Businesses and Local Governments contained reference to rural flexibility analysis and did not reflect sufficient efforts at outreach to small businesses or rural areas.

Response:

The Regulatory Flexibility Analysis for Small Businesses and Local Government submitted with the proposed rule contained a reference to "rural" instead of small business flexibility analysis in the final paragraph. That clerical error has been corrected. The text of Regulatory Analysis for Small Business and Local Government and Rural Flexibility Analysis have also been modified to more fully reflect Justice Center activities seeking input from small businesses from urban and rural New York State, subsequent to the publication of this proposed rule.

NOTICE OF ADOPTION

Criminal History Information Checks

I.D. No. JCP-12-13-00015-A

Filing No. 623

Filing Date: 2013-06-11

Effective Date: 2013-06-30

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

Action taken: Addition of Part 701 to Title 14 NYCRR.

Statutory authority: Protection of People with Special Needs Act, L. 2012, ch. 501; Executive Law, section 553(5); Mental Hygiene Law, sections 31.35 and 16.33; and Social Services Law, section 378-a

Subject: Criminal history information checks.

Purpose: To provide rules for conducting criminal history information checks.

Text or summary was published in the March 20, 2013 issue of the Register, I.D. No. JCP-12-13-00015-P.

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

Text of rule and any required statements and analyses may be obtained from: Stephen Haimowicz, Justice Center for the Protection of People with Special Nee, 161 Delaware Avenue, Delmar, NY 12054, (518) 549-0244, email: stephen.haimowitz@cqc.ny.gov

Revised Regulatory Flexibility Analysis

1. Effect of Rule: Agencies that operate mental health programs that contract with, or are approved or otherwise authorized by, the New York State Office of Mental Health ("OMH") and the Office for People With Developmental Disabilities ("OPWDD") are subject to this regulation. The regulation shall also apply to authorized agencies which operate certain residential programs for children and the Office of Children and Family Services ("OCFS"), excluding foster family homes and residential programs for victims of domestic violence. Some of the aforementioned programs would be considered "small businesses." The cost for criminal history checks for the mental health programs currently required to request such checks, is borne by OMH and OPWDD and will continue to be under

the Protection of People with Special Needs Act (the "Act")(Chapter 501 of the Laws of 2012). Prior to the enactment of the Act, criminal history information checks, by authorized agencies operating residential programs for children, for staff engaged directly in the care and supervision of children, were voluntary. These criminal history information checks required under the Act are now required, so this may impose an economic impact on these authorized agencies. The proposed rule will not impose any adverse economic impact on small businesses, nor will it impose new reporting, record keeping or other compliance requirements on small businesses or local governments.

2. Compliance Requirements: Providers of services that are subject to these requirements must, by statute, request criminal history information concerning certain subject individuals employed or utilized by the provider of service who will have the potential for regular and substantial unsupervised or unrestricted contact with individuals who receive services. One or more persons in their employ must be designated to request a criminal history information check through the Justice Center for the Protection of People with Special Needs ("Justice Center"). Payment for the fingerprinting fee, which is paid to the Division of Criminal Justice, is currently the responsibility of OMH and the OPWDD. In the case of an authorized agency which operates a residential program for children and OCFS, either the provider or the applicant for employment of volunteer service is required to pay the fingerprinting fee. Providers of service must inform the subject individuals of their right to request information and of the procedures available to them to review and correct criminal history information maintained by the State and by the Federal Bureau of Investigation. Although subject individuals cannot be hired before a determination is received from the Justice Center about whether or not the application must be denied, providers can give temporary approval to prospective employees and permit them to work so long as they do not have unsupervised contact with individuals receiving services.

3. Professional Services: No additional professional services will be required by small businesses or local governments to comply with this rule.

4. Compliance Costs: The cost for a New York State criminal history information check through the Division of Criminal Justices Services is $75.00, the cost for a national criminal history information check through the Federal Bureau of Investigation is $16.50, and if fingerprints are submitted through MorphoTrust, the State-approved vendor, the current fee is set at $10.75. OMH and OPWDD currently own and utilize Live Scan equipment to submit prints, thereby avoiding the use of the State-approved vendor. Accordingly, the direct cost for a New York State and national criminal history information check request by either OMH or OPWDD currently is $91.50. The direct cost for a New York State and national criminal history record check as authorized by subdivision (1) of section 378-a of the Social Services Law of $102.25, which includes the State-approved vendor fee, will be absorbed either by the authorized agency which operates a residential program for children or the individual seeking employment.

5. Economic and Technological Feasibility: In order to assist providers in fulfilling their responsibilities in implementing statutory requirements enacted in the Act, the Justice Center has developed the Justice Center Criminal History Information Tracking System (Justice Center CHITS), which is a web-based system designed to enter applicant information and track the status of the fingerprinting process. Because only a minimum amount of data must be input into the system, and the system is designed to generate all of the required forms mandated in the statute, it is intended to reduce any administrative burden related to the implementation of the Act. Aside from record retention requirements necessary for monitoring compliance, the regulation will not require providers of service to furnish additional information, reports, records or data. This technology will be accessible through existing computer networks. There may be a very small number of providers that do not have any computer from which they can access this technology. The Justice Center will work with those providers either to identify a way to obtain such access or identify another alternative.

6. Minimizing Adverse Impact: Because most of the requirements in this proposal are statutorily required, compliance with them is mandatory. However, the Justice Center has developed its compliance plan with the goal of minimizing adverse impact to the greatest extent possible. The Justice Center CHITS is one example of a strategy intended to reduce the administrative burden related to implementation of the Act. Furthermore, the Justice Center has endeavored to maximize its capability to have fingerprints taken electronically, through systems using technologies that capture fingerprints electronically and would transmit the fingerprints directly to the Division of Criminal Justice Services to obtain criminal history information. It has many advantages to the traditional "ink and roll" process for obtaining fingerprints.

While the Justice Center's implementation plans will accommodate the ability to accept some fingerprints through the "ink and roll" method, our strategy is designed to utilize the Live Scan and MorphoTrust technology to the greatest extent possible as of June 30, 2013.

7. Small Business and Local Government Participation: We are seeking comments during the public comment period on rural area participation. However, small businesses an local governments participated in formulating the legislation under which this rule is being promulgated by virtue of their input into the "The Measure of a Society: Protection of Vulnerable Persons in Residential Facilities against Abuse and Neglect" report prepared by Clarence J. Sundram, the Governor's Special Advisor on Vulnerable Persons, which addressed the problem of abuse and neglect of vulnerable people in programs operated or supported by agencies of the state of New York and resulted in the enactment of the Act. See link below. In addition, since April 2013 the Justice Center has conducted extensive outreach programs, including presentations and opportunities for questions and answers, and representatives of rural area interests were included among the participants.

http://www.governor.ny.gov/assets/documents/justice4specialneeds.pdf

Revised Rural Area Flexibility Analysis

1. Effect of Rule: Agencies that operate mental health programs that contract with, or are approved or otherwise authorized by, the New York State Office of Mental Health ("OMH") and the Office for People With Developmental Disabilities ("OPWDD") are subject to this regulation. The regulation shall also apply to authorized agencies that operate residential programs for children and the Office of Children and Family Services ("OCFS"), excluding foster family homes and residential programs for victims of domestic violence. However, since these state agencies and agencies authorized pursuant to subdivision (1) of section 378-a of the Social Services Law were already authorized to conduct such checks, the proposed rule will not impose any adverse economic impact on rural areas, nor will it impose new reporting, record keeping or other compliance requirements on local governments.

2. Compliance Requirements: Providers of service that are subject to these requirements, including those in rural areas, must, by statute, request criminal history information concerning prospective subject individuals who will have the potential for regular and substantial unsupervised or unrestricted contact with individuals receiving services. One or more persons in their employ must be designated to request a criminal history information check. The criminal history record information must be obtained through the Justice Center for the Protection of People with Special Needs ("Justice Center"). Payment for the fingerprinting fee, which is paid to the Division of Criminal Justice Services ("DCJS"), is the responsibility of the applicable state oversight agency that licenses, certifies or otherwise approves the provider of service. In the case of a program or facility licensed or certified by the OCFS, either the provider or the applicant for employment of volunteer service is required to pay the fingerprinting fee. Providers of service must inform their prospective subject individuals of their right to request information and of the procedures available to them to review and correct criminal history information maintained by the State and the Federal Bureau of Investigation ("FBI"). Although prospective subject individuals cannot be hired before a determination is received from the Justice Center about whether or not the application must be denied, providers can give temporary approval to prospective subject individuals and permit them to work so long as they do not have unsupervised contact with clients.

3. Professional Services: No additional professional services will be required by small businesses or local governments to comply with this rule.

4. Compliance Costs: The cost for a New York State criminal history information check through the Division of Criminal Justices Services is $75.00, the cost for a national criminal history information check through the Federal Bureau of Investigation is $16.50, and if fingerprints are submitted through MorphoTrust, the State-approved vendor, the current fee is set at $10.75. OMH and OPWDD currently own and utilize Live Scan equipment to submit prints, thereby avoiding the use of the State-approved vendor. Accordingly, the direct cost for a New York State and national criminal history information check request by either OMH or OPWDD currently is $91.50. The direct cost for a New York State and national criminal history record check as authorized by subdivision (1) of section 378-a of the Social Services Law of $102.25, which includes the State-approved vendor fee, will be absorbed either by the authorized agency which operates a residential program for children or the individual seeking employment.

5. Economic and Technological Feasibility: In order to assist providers in fulfilling their responsibilities in implementing statutory requirements enacted in The Protection of People with Special Needs Act (the "Act")(Chapter 501 of the Laws of 2012), the Justice Center has developed the Justice Center Criminal History Information Tracking System (Justice Center CHITS), which is a web-based system designed to enter applicant information and track the status of the fingerprinting process. Because only a minimum amount of data must be input into the system, and the system is designed to generate all of the required forms mandated in the

statute, it is intended to reduce any administrative burden related to the implementation of the Act. Aside from record retention requirements necessary for monitoring compliance, the regulation will not require providers of services to furnish additional information, reports, records, or data. This technology will be accessible through existing computer networks. There may be a very small number of providers that do not have any computer from which they can access this technology. The Justice Center will work with those providers either to identify a way to obtain such access or identify another alternative.

6. Minimizing Adverse Impact: Because most of the requirements in this proposal are statutorily required, compliance with them is mandatory. However, the Justice Center has developed its compliance plan with the goal of minimizing adverse impact to the greatest extent possible. The Justice Center CHITS is one example of a strategy intended to reduce the administrative burden related to implementation of the Act. Furthermore, the Justice Center has endeavored to maximize its capability to have fingerprints taken electronically, through systems called either Live Scan or MorphoTrust. These systems utilize technologies that capture fingerprints electronically and would transmit the fingerprints directly to the Division of Criminal Justice Services to obtain criminal history information. It has many advantages to the traditional "ink and roll" process.

While the Justice Center's implementation plans will accommodate the ability to accept some fingerprints through the "ink and roll" method, particularly in rural areas where access to State-operated Live Scan or MorphoTrust technology may be more difficult, our strategy is designed to utilize the Live Scan and Morpho-Trust technology to the greatest extent possible as of June 30, 2013.

7. Rural Area Participation: We are seeking comments during the public comment period on rural area participation. However, rural areas participated in formulating the legislation under which this rule is being promulgated by virtue of their input into the "The Measure of a Society: Protection of Vulnerable Persons in Residential Facilities against Abuse and Neglect" report prepared by Clarence J. Sundram, the Governor's Special Advisor on Vulnerable Persons, which addressed the problem of abuse and neglect of vulnerable people in programs operated or supported by agencies of the state of New York and resulted in the enactment of the Act. See http://www.governor.ny.gov/assets/documents/justice4specialneeds.pdf. Since April 2013 the Justice Center has conducted extensive outreach programs, including presentations and opportunities for questions and answers, and representatives of rural area interests were included among the participants.

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 proposed rules under comment concern the Justice Center for the Protection of People with Special Needs, (Justice Center). They include the Justice Center's administrative adjudications procedure (Part 700); criminal background check requirements and procedures (Part 701); use of social security numbers (Part 702); and the rule governing Justice Center responses to requests for disclosure of facility or provider agency records relating to the abuse or neglect of vulnerable persons (Part 703). These regulations comprise 14 NYCRR Parts 700-703. These rules are authorized under the statutory mandate of the Protection of Persons with Special Needs Act, Chapter 501 Laws of 2012, which creates the Justice Center.

Comments on the proposed rulemaking pertaining to Part 701 criminal history information checks were received from the New York State ARC (NYSARC), an association of not-for-profit organizations representing providers of services to developmentally disabled persons.

The responses to comments requiring non-substantive changes in Part 701 are as follows:

Part 701: Criminal History Information Checks

Comment 1: NYSARC indicated regarding 14 NYRCC Part 701, § 702.1:

With regard to criminal history checks, NYSARC notes that this proposed regulation is only meant to apply to the same providers that are already required to perform checks under sections 16.33 and 31.35 of the Mental Hygiene Law, which does not include OPWDD, hospitals licensed under Article 28 of the public health law, or professionals licensed under Title 8 of the Education Law. Again, and unfortunately, this new background check requirement continues to apply only to voluntary providers, when a much broader spectrum of providers employ individuals who should be subject to the same background checks and safeguards. Exempting these groups from the requirement to perform background checks on employees creates an unnecessary risk to individuals with intellectual or other developmental disabilities.

Response:

The Justice Center legislation centralizes the criminal background check process for facilities or providers overseen by the Office of Mental Health (OMH), the Office for People With Developmental Disabilities and the Office of Children and Family Services (OCFS)-licensed residential programs within the Justice Center. The Justice Center legislation did not expand the providers required to do background checks to hospitals under Article 28 of the Public Health Law nor to professionals licensed under Title 8 of the Education Law. Accordingly, the proposed regulation is constrained by the statute.

Comment 2: NYSARC indicated regarding 14 NYCRR Part 701, § 701.5:

This section appears to leave open the question of whether service agencies, which have submitted background check information to the Justice Center for review and approval, may perform those background checks independently. In addition, with regard to commencement of employment or volunteerism, please clarify whether the requirements relating to criminal history checks and fingerprinting apply to employees or volunteers hired before the effective date of these regulations (June 30, 2013)?

Response:

The proposed regulation provides sufficient guidance as to when a service agency may exercise discretion to hire an individual in § 701.6(a)(2)(iv) and (vi). If NYSARC's comment is referring the background checks independent of the Justice Center involvement, that is obviously outside the purview of the regulation.

Employees or volunteers hired before the effective date of the Justice Center regulations are already covered under existing OMH and OPWDD criminal background check regulations. The requirements relating to fingerprint-based criminal history checks through the Justice Center will apply to employees or volunteers hired or otherwise commencing service after June 30, 2013.

NOTICE OF ADOPTION

Administrative Adjudication Process for Substantiated Cases of Abuse and Neglect

I.D. No. JCP-12-13-00017-A

Filing No. 624

Filing Date: 2013-06-11

Effective Date: 2013-06-30

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

Action taken: Addition of Part 700 to Title 14 NYCRR.

Statutory authority: Protection of People with Special Needs Act, L. 2012, ch. 501

Subject: Administrative Adjudication Process for Substantiated Cases of Abuse and Neglect.

Purpose: To establish administrative adjudication procedures for substantiated cases of abuse and neglect.

Substance of final rule: A new Part 700 is added to Title 14, NYCRR, to read as follows:

Part 700 THE ADMINISTRATIVE ADJUDICATION PROCESS FOR SUBSTANTIATED CASES OF ABUSE AND NEGLECT

§ 700.3 contains the definitions for the purposes of this Part, including the terms "Executive Director," "Justice Center," "Administrative Law Judge," "Subject," "Hearing," "Substantiated Report," and "Abuse or neglect."

§ 700.4 contains the Initiation of Request for Amendment. This section sets forth the process by which the subject of a substantiated report of abuse or neglect has the right to request an amendment of the report, which includes submission by the subject of a signed written statement during a specified time period.

§ 700.5 contains the Review Based Upon Request for Amendment. This section sets forth the process by which the Justice Center administrative appeals unit conducts reviews of substantiated reports that may be requested by subjects under Social Services Law section 494(1)(a).

§ 700.6 contains the Right to a Hearing/Hearing Issues. This section sets forth the subject's right to a hearing before an administrative law judge after review by the administrative appeals unit and a substantiated finding, as well as the subject's right to retain counsel at his or her own expense and the hearing issues.

§ 700.7 contains the Notice of the Pre-Hearing Conference. This section sets forth the procedure for initiating a pre-hearing conference, the requirements for the notice of pre-hearing conference, and the requirement that the notice be mailed at least 20 days before the date of the pre-hearing conference.

§ 700.8 contains the Pre-Hearing Conference. This section sets forth the requirements of the pre-hearing conference and provides for pre-hearing conference by telephone or video conference, and also includes provisions for identification and exchange of witness information and evidence, notification as to request for an interpreter and scheduling a hearing date.

§ 700.9 contains the Responsibilities of the Administrative Law Judge. This section sets forth the powers of the administrative law judge as well as the requirement that the proceedings be conducted in a fair and impartial manner. This section also sets forth the procedure for requesting that an administrative law judge recuse himself or herself, grounds for recusal, requirements for a written decision if the request for recusal is denied, and the procedure for appeal of the denial.

§ 700.10 contains the Conduct of the Hearing. This section sets forth that the administrative law judge presides and makes all procedural rulings, that the hearing may be conducted by video conference, the requirements for appearances, and that the burden of proof is on the Justice Center. This section also includes that the parties may make an opening and closing statement and that at the conclusion of the hearing, the parties will have the opportunity to provide written argument of issues of law.

§ 700.11 contains the Hearing Record. This section sets forth that a verbatim recording will be made of the hearing in a manner that accurately records the hearing and that a transcript of the hearing will be made available to a party upon request and payment of the cost of the transcript. This section also defines the contents of a hearing record.

§ 700.12 contains the Administrative Law Judge's Report and Recommendations. This section sets forth that at the conclusion of the hearing the administrative law judge will issue a report and recommendation, which will include his or her determination of the issues. This section also includes requirements for the report and recommendation such as a description of the issues, recitation of relevant facts, assessment of credibility, applicable statutory and regulatory authority as well as findings of fact and conclusions of law. A copy of the written report and recommendation is provided to the Executive Director.

§ 700.13 contains the Executive Director's Final Determination. This section sets forth that after receipt of the administrative law judge's report and recommendation and the hearing record, the executive director or his or her designee shall make a final determination. The final determination of the executive director or designee shall be in writing and embodied in an order. The order shall be based exclusively upon the record of the hearing and shall contain findings of fact and conclusions of law. The order shall contain notice of the right to seek review of the order pursuant to Article 78 of the Civil Practice Law and Rules.

§ 700.14 contains Finality. This section sets forth that the determination of the executive director or his or her designee shall be final and is not subject to further administrative review.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 700.4(a)-(b), 700.6, 700.8(f), 700.9(d)(1), 700.10(a) and (b)(3).

Text of rule and any required statements and analyses may be obtained from: Adrienne Lawston, Justice Center for the Protection of People with Special Nee, 161 Delaware Ave., Delmar, New York 12054, (518) 549-0243, email: Adrienne.Lawston@cqc.ny.gov

Revised Regulatory Impact Statement

Non-substantive changes in the text of the proposed rule do not necessitate modification of the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement as published in the State Register on March 20, 2013. Accordingly, a revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required. However, non-substantive revisions have been made to the Regulatory Flexibility Analysis and Rural Area Flexibility Analysis to more fully describe outreach to small business and rural interests subsequent to March 20, 2013.

Revised Regulatory Flexibility Analysis

1. Effect on small business and local governments:

The proposed adjudication regulations have been reviewed in consideration of impact on service providers of all sizes and local governments. A determination has been made that some provider agencies which employ fewer than 100 employees overall provide services to "vulnerable persons" under the Act and meet the requirements of small businesses as defined in SAPA § 102(8). The impact of the adjudication regulations upon small businesses as well as local governments is discussed below.

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

The adjudication regulations do not directly impose adverse economic impact or reporting, record keeping or other compliance requirements, or professional service requirements on the small businesses described above or on local governments. Indirectly, minimal impact may result by the establishment of an appeals process in which the subject of a substantiated report of abuse or neglect may challenge a substantiated finding.

3. Costs:

In order to conduct the legal review by the administrative appeals attorney, where an investigation has been conducted by one of the small business provider agencies, the investigating agency will be required to provide a copy of the investigatory file to the Justice Center. The investigatory file, however, contains documents generated as a result of other legal requirements and no new documents are required to be prepared as a result of the adjudication regulations and it is believed that the cost of providing a copy of the file will be minimal. In addition, where the subject proceeds to a hearing before an administrative law judge, and an investigation has been conducted by one of the small business provider agencies, appearance at the hearing may be required by an employee of the agency as a witness. It is not possible to calculate the cost to the small businesses of having an employee appear at a hearing as a witness, but it is believed that the cost will be minimal. In addition, record keeping requirements are not imposed on the regulated parties by the adjudication regulations, but to the extent that additional records will be maintained as an indirect result of the adjudication process (i.e. notifications will be provided to the regulated parties at various points of the adjudication process), current laws and regulations already impose record keeping requirements and it is believed that the cost of the additional record keeping performed by the regulated parties will be minimal. Similarly, the proposed regulations do not directly impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district. Any facility or provider under the jurisdiction of the Justice Center that is operated by a county, city, town, village, school district or other special district is subject to the terms of the Act, however, and may have to provide investigatory records or have an employee appear as a witness at an administrative hearing. Also, the regulations do not impose record keeping requirements, although additional records may be maintained as an indirect result of the adjudication process. It is believed that any additional indirect costs will be minimal.

4. Minimizing adverse impact:

A review and consideration of the approaches for minimizing adverse economic impact as suggested in the State Administrative Procedure Act has been conducted. The Protection of People with Special Needs Act creates uniform standards across systems to be implemented and monitored by the Justice Center. It is believed that implementation of a uniform set of standards will benefit the regulated parties, including small business and local government, and that as a result, any indirect adverse impact will be minimized. In addition, whenever possible, emphasis will be upon the efficient use of resources available, electronic communications and documents will be acceptable, locations of hearings will be conducted with consideration of geographic factors and impact upon witnesses, and the use of video conference technology for hearings may be employed.

5. Participation by small business:

We sought comments during the public comment period regarding the effect of this rule on small businesses. In addition, subsequent to publication of the proposed rule, the Justice Center conducted outreach programs, including presentations and opportunities for input, questions and answers at more than a dozen trade association conferences and service provider meetings, and representatives of small business interests were among the participants. As noted previously, representatives of small businesses also participated in formulating the legislation under which this rule is being promulgated by virtue of their input into "The Measure of a Society: Protection of Vulnerable Persons in Residential Facilities against Abuse and Neglect" report prepared by Clarence J. Sundram, the Governor's Special Advisor on Vulnerable Persons, which addressed the problem of abuse and neglect of vulnerable people in programs operated or supported by agencies of the state of New York and resulted in the enactment of the Protection of People with Special Needs Act. See http://www.governor.ny.gov/assets/documents/justice4specialneeds.pdf.

Revised Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

Every county in New York has facilities or providers under the jurisdiction of the Justice Center.

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

Impact on service providers in rural areas has been considered regarding the adjudication regulations and it has been determined that the regulations do not directly impose an adverse economic impact on public or private entities in rural areas, reporting, recordkeeping, other compliance or professional service requirements. Indirectly, minimal impact may result by the establishment of an appeals process in which the subject of a substantiated report of abuse or neglect may challenge a substantiated finding.

3. Costs:

In order to conduct the legal review by the administrative appeals attorney, where an investigation has been conducted by one of the providers in a rural area, the investigating agency will be required to provide a copy of the investigatory file to the Justice Center. The investigatory file, however, contains documents generated as a result of other legal requirements and no new documents are required to be prepared as a result of the adjudication regulations and it is believed that the cost of providing a copy of the file will be minimal. In addition, where the subject proceeds to a hearing before an administrative law judge, and an investigation has been conducted by one of the providers in a rural area, appearance at the hearing may be required by someone at the agency as a witness. It is not possible to calculate the cost of having an employee appear at a hearing as a witness, but it is believed that the cost will be minimal. In addition, record keeping requirements are not imposed on the regulated parties by the adjudication regulations, but to the extent that additional records will be maintained as an indirect result of the adjudication process (i.e. notifications will be provided to the regulated parties at various points of the adjudication process), current laws and regulations already impose record keeping requirements and it is believed that the cost of the additional record keeping performed by the regulated parties will be minimal.

4. Minimizing adverse impact:

A review and consideration of the approaches for minimizing adverse economic impact as suggested in the State Administrative Procedure Act has been conducted. The Protection of People with Special Needs Act creates uniform standards across systems to be implemented and monitored by the Justice Center. It is believed that implementation of a uniform set of standards will benefit the regulated parties, including those in rural areas, and that as a result, any indirect adverse impact will be minimized. In addition, whenever possible, emphasis will be upon the efficient use of resources available, electronic communications and documents will be acceptable, and locations of hearings will be conducted with consideration of geographic factors and impact upon witnesses, and the use of video conference technology for hearings may be employed.

5. Participation by providers in rural areas:

We sought comments during the public comment period regarding the effect of this rule on rural areas. In addition, subsequent to publication of the proposed rule, the Justice Center conducted outreach programs, including presentations and opportunities for input, questions and answers at more than a dozen trade association conferences and service provider meetings, and representatives of rural area interests were among the participants. In addition, rural areas participated in formulating the legislation under which this rule is being promulgated by virtue of their input into "The Measure of a Society: Protection of Vulnerable Persons in Residential Facilities against Abuse and Neglect" report prepared by Clarence J. Sundram, the Governor's Special Advisor on Vulnerable Persons, which addressed the problem of abuse and neglect of vulnerable people in programs operated or supported by agencies of the state of New York and resulted in the enactment of the Protection of People with Special Needs Act. See http://www.governor.ny.gov/assets/documents/justice4specialneeds.pdf.

Revised Job Impact Statement

Non-substantive changes in the text of the proposed rule do not necessitate modification of the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement as published in the State Register on March 20, 2013. Accordingly, a revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required. However, non-substantive revisions have been made to the Regulatory Flexibility Analysis and Rural Area Flexibility Analysis to more fully describe outreach to small business and rural interests subsequent to March 20, 2013.

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 proposed rules under comment concern the Administrative Adjudication Process for Substantiated Cases of Abuse and Neglect (Part 700). These rules are authorized under the statutory mandate of the Protection of People with Special Needs Act, Chapter 501 of the Laws of 2012, which creates the Justice Center for the Protection of People with Special Needs (Justice Center).

Public comments on the proposed rulemaking were received from the New York State Public Employees Federation (PEF), New York State ARC (NYSARC), and the New York State Assembly Chairs of the Standing Committee on Mental Health & Developmental Disabilities and the Administrative Regulations Review Commission, Aileen M. Gunther and Kenneth P. Zebrowski, respectively. Comments from NYSARC and the Assembly Chairs were limited in scope to the Rural Area Flexibility Analysis. These comments and responses are summarized below.

1. COMMENT

14 NYCRR 700.4(a) does not provide for notice that is timely, clear and delivered in a manner that will reasonably ensure receipt by a subject of a report. Additional language suggested includes that notice be provided to the subject in writing and served on the subject in a particular manner, and that the notice advise the subject of the right to request an amendment of the report, and set forth the procedures of how to request such amendment.

RESPONSE

Regarding the suggestion that additional language provide that notice of the finding be given to the subject in writing, to clarify the rule a non-substantive change has been made to the text. The text of 14 NYCRR 700.4(a) now reads: "The Justice Center shall provide the subject of a substantiated report of abuse or neglect with written notice of the findings of the report, and the subject has the right to request an amendment of the report." We agree that notice to the subject must be timely, clear and delivered in a manner that will reasonably ensure receipt by a subject of a report. However, we believe that the language of the law, which requires establishment of process and procedure does not require the additional regulatory language proposed by the commenter.

2. COMMENT

The 14 NYCRR 700.4(b) requirement of a signed written statement by the subject of the report setting forth the basis for the request should be rejected because the short timeframe allowed to request an amendment may not allow for the subject to have the opportunity to gather evidence, set forth a legal and factual basis for seeking amendment, retain counsel and consult with counsel prior to the appeal deadline. Alternative language suggested is that "The request for amendment may include a statement setting forth the basis for the amendment."

RESPONSE

We disagree with this assertion. Requiring a signed written statement setting forth the basis of the request sets a low threshold that neither requires a legal explanation, nor production of evidence.

3. COMMENT

14 NYCRR 700.4(b) should permit the subject or representative to sign the appeal.

RESPONSE

We agree that the subject or representative should be permitted to sign the request for amendment. To clarify the rule a non-substantive change has been made to the text. The text of 14 NYCRR 700.4(b) now reads: "The request for amendment of the substantiated report of abuse or neglect shall be a written statement signed by the subject or representative setting forth the basis for the request."

4. COMMENT

The language for 14 NYCRR 700.4(c)-(d) is confusing regarding the timeframes. The commenter suggests that notice to the subject be sent via certified mail, return receipt requested, and also suggests the following alternative language for 14 NYCRR 700.4(c): "The request for amendment of the substantiated report of abuse or neglect shall be postmarked within 30 days of receipt of notice of the substantiated report by the subject of the report."

RESPONSE

We disagree with the assertion. 14 NYCRR 700.4(c), consistent with the enabling statute, provides that the request for amendment of the substantiated report of abuse or neglect be received by the Justice Center within 30 days of the subject of the report being notified that the report is substantiated. 14 NYCRR 700.4(d) provides the subject with ten additional days for mailing, thereby extending the time period for submitting the request to 40 days from the date of mailing of the notice of the substantiated report to the subject.

5. COMMENT

The standard of proof in 14 NYCRR 700.6(b) should be amended as follows: "by a preponderance of the non-hearsay evidence…."

RESPONSE

There is no basis in the law for the standard of proof to be amended to a preponderance of the non-hearsay evidence. Section 494(1)(b) of the Social Services Law provides that the standard of proof at the administrative hearing is "preponderance of the evidence."

6. COMMENT

14 NYCRR 700.9(f) should be amended to read "except the rules of privilege recognized by law and the evidentiary standard of proof set forth in 14 NYCRR 700.6(b)."

RESPONSE

There is no basis in the law for the standard of proof to be amended to a preponderance of the non-hearsay evidence. Section 494(1) (b) of the Social Services Law provides that the standard of proof at the administrative hearing is "preponderance of the evidence."

7. COMMENT

14 NYCRR 700.8(a) should be changed so that the decision as to whether to waive the in-person pre-hearing conference in favor of phone or video conference is not made based upon the convenience of the judge or parties. An in-person exchange of documents while in the same room as the other parties has advantages over conducting the exchange remotely. The following alternative language is suggested: "By consent of the parties, the administrative law judge may conduct the pre-hearing conference by telephone or video conference."

RESPONSE

We disagree with the assertion. The administrative law judge is properly provided with the discretion to conduct a pre-hearing conference via phone or video conference, as long as there is an opportunity to exchange evidence.

8. COMMENT

14 NYCRR 700.9(d)(1) should provide that arguments be heard by the parties either for or against consolidation and joint hearing prior to an administrative law judge ordering consolidation or a joint hearing.

RESPONSE

To clarify the rule a non-substantive change has been made to the text. The text of 14 NYCRR 700.9(d) (1) now reads: "In proceedings that involve common questions of fact, the administrative law judge may, upon his or her own initiative or upon application of any party, order consolidation or a joint hearing of any or all issues to avoid unnecessary delay and cost; the parties shall have the opportunity to be heard prior to issuance of such order."

9. COMMENT

The 14 NYCRR 700.9(g) provision that an administrative law judge may take judicial notice "of other facts within the specialized knowledge of the agency" should be omitted because it is too vague.

RESPONSE

We disagree with the assertion. This provision for judicial notice is common in administrative hearings. It is noted that 14 NYCRR 700.9(g) is very similar to a provision in the New York State Administrative Procedure Act (SAPA) that "Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the agency. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could not be taken, every party shall be given notice thereof and shall on timely request be afforded an opportunity prior to decision to dispute the fact or its materiality" (see SAPA § 306[4]).

10. COMMENT

14 NYCRR 700.10(a) provision for a hearing by video technology absent consent of the subject would violate the subject's due process rights. The failure to produce a witness in person denies an administrative law judge the opportunity to assess a witness' demeanor and credibility. A witness cannot properly be cross-examined by video conference and it cannot be determined whether a witness is being coached while testifying.

RESPONSE

We disagree with the assertion. To clarify the rule a non-substantive change has been made to the text. The text of 14 NYCRR 700.10(a) now reads: "An administrative law judge shall preside at the hearing and make all procedural rulings. For the convenience of the administrative law judge or the parties, the administrative law judge may conduct the hearing by video conference. The parties shall be given notice thereof and shall on timely request be afforded an opportunity prior to a decision to conduct the hearing by video technology to be heard on their respective positions."

11. COMMENT

Provision should be added to 14 NYCRR 700.10(f) that a young child or witness may give unsworn testimony if the administrative law judge is satisfied that the witness possesses sufficient intelligence and capacity. This is determined by a showing that the witness appreciates the difference between telling the truth and a lie. Additionally a provision should be added which states that a substantiated report will not be upheld by an administrative law judge based solely upon unsworn testimony.

RESPONSE

We disagree with the assertion. The allowance of unsworn testimony in administrative proceedings where an individual lacks the ability to understand the meaning of an oath or affirmation is a common concept. It is noted that 14 NYCRR 700.10(f), which provides that "All testimony shall be given under oath or affirmation, unless the testimony is given by a young child or an individual who is unable to understand the meaning of an oath or affirmation" is substantially similar to a provision governing child protective services administrative hearing procedure. "All testimony must be given under oath or affirmation unless the testimony is given by a young child who is unable to understand the meaning of oath or affirmation" (see 18 NYCRR 434.8[c]).

12. COMMENT

14 NYCRR 700.11 should contain provision for a subject of a report to make a motion in forma pauperis if that person is unable to afford a transcript of the hearing.

RESPONSE

We disagree with the assertion as beyond the scope of the requirements of law.

13. COMMENT

Two comments were received asserting that insufficient outreach to rural areas was conducted and one commenter indicated that hearings should be scheduled to have meaningful discussion of the impact of the proposed regulations in rural areas.

RESPONSE

We disagree that hearings are required regarding the issue of impact of the proposed regulations in rural areas. However, a non-substantive change has been made to the text of the Rural Area Flexibility Analysis to reflect that since April 2013 the Justice Center has conducted extensive outreach programs, including presentations and opportunities for questions and answers, and representatives of rural area interests were included among the participants.

Office of Parks, Recreation and Historic Preservation

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Environmental Protection Fund (EPF) Grant Application Procedures for Parks, Historic Preservation and Heritage Areas

I.D. No. PKR-26-13-00006-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 439.3(a)(6)-(8), 440.7(c), (d)(8)-(10), (e), 440.10(b) and 440.12 of Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historical Preservation Law, section 3.09(8); Environmental Conservation Law, sections 54-0101 to 54-0901

Subject: Environmental Protection Fund (EPF) grant application procedures for parks, historic preservation and heritage areas.

Purpose: To align OPRHP's procedures and offices with the procedures and regions for the Consolidated Funding Application.

Text of proposed rule: Section 439.3(a)(6)-(8) of title 9 is amended as follows:

(6) State and Federal mandates; *and*

(7) emergencies or disasters[; and

(8) the recommendations of the Environmental Assistance Advisory Task Force established by section 439.4(b) of this Part].

Section 440.7(c), (d)(8)-(10), (e) is amended as follows:

(c) Application information. Application information may be obtained from the office's web site at www.nysparks.com/grants or from the Albany office [of the Office of Parks, Recreation and Historic Preservation,] or from the regional grants [representative at the headquarters of any of the office's 11 park regions] *administrator at the appropriate regional office* listed below:

[Allegany Region--Allegany, Cattaraugus and Chautauqua Regional Grants Representative, Allegany State Park, ASP Route 1, Salamanca, NY 14779 (716) 354-9101, FAX (716) 354-2255

Niagara Region--Erie and Niagara Regional Grants Representative, Niagara Reservation State Park, PO Box 1132, Niagara Falls, NY 14303 (716) 278-1761, FAX (716) 278-1744

Genesee Region--Orleans, Monroe, Genesee, Wyoming and Livingston Regional Grants Representative, 1 Letchworth State Park, Castile, NY 14427 (585) 493-3613, FAX (585) 493-5272

Finger Lakes Region--Cayuga, Chemung, Ontario, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Yates Regional Grants Representative, Taughannock Falls State Park, 2221 Taughannock Park Road, Trumansburg, NY 14886 (607) 387-7041, FAX (607) 387-3390

Central Region--Oswego, Oneida, Onondaga, Cortland, Chenango, Otsego, Madison, Broome, Herkimer, Delaware Regional Grants Representative, Clark Reservation State Park, 6105 East Seneca Turnpike, Jamesville, NY 13078 (315) 492-1756, FAX (315) 492-3277

Thousand Islands Region--Clinton, Franklin, Hamilton, Jefferson, Lewis, and St. Lawrence Regional Grants Representative, Keewaydin State Park, Alexandria Bay, NY 13607 (315) 482-2593, FAX (315) 482-9413

Saratoga/Capital District Region--Albany, Essex, Fulton, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington Regional Grants Representative, Saratoga Spa State Park, 19 Roosevelt Drive Saratoga Springs, NY 12866-6214 (518) 584-2000, FAX (518) 584-5694

Palisades Interstate Park Commission--Orange, Rockland, Sullivan, Ulster Taconic Region - Columbia, Dutchess, Putnam, Westchester Regional Grants Representative, OPRHP - Taconic Regional Office, 9 Old Post Road, PO Box 308, Staatsburg, NY 12580 (845) 889-4100, FAX (845) 889-8321

New York City Region--Bronx, Kings, New York, Queens, Richmond Regional Grants Representative, NYS Office of Parks, Recreation and Historic Preservation, 163 W. 125th Street, 17th Floor, New York, New York 10027 (212) 866-2599, FAX (212) 866-3186

Long Island Region--Nassau, Suffolk Regional Grants Representative, Belmont Lake State Park, PO Box 247, Babylon, NY 11702 (631) 321-3543, FAX (631) 321-3721]

Western New York Region - Allegany, Cattaraugus, Chautauqua, Erie and Niagara OPRHP, Beaver Island State Park, 2136 West Oakfield, Grand Island, NY 14072 (716) 773-5292, FAX (716) 773-4150

Finger Lakes Region - Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming and Yates, OPRHP, Allegany State Park, ASP Rte 1, Salamanca, NY 14779 (716) 354-9101, FAX (716) 354-2255

Long Island Region - Nassau and Suffolk, OPRHP, Belmont Lake State Park, PO Box 247, Babylon, NY 11702 (631) 321-3543, FAX (631) 321-3721

New York City Region - Bronx, Kings, New York, Queens and Richmond, OPRHP, Adam Clayton Powell, Jr. State Office Building, 163 West 125th Street, 17th Floor, New York, NY 10027 (212) 866-2599, FAX (212) 866-3186

Capital District Region - Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Warren and Washington, OPRHP, Saratoga Spa State Park, 19 Roosevelt Drive, Saratoga Springs, NY 12866-6214 (518) 584-2000, FAX (518) 584-5694

Central New York Region - Cayuga, Cortland, Madison, Onondaga and Oswego, OPRHP, Clark Reservation State Park, 6105 East Seneca Turnpike, Jamesville, NY 13078-9516 (315) 492-1756, FAX (315) 492-3277

Southern Tier Region - Broome, Chemung, Chenango, Delaware, Schuyler, Steuben, Tioga and Tompkins, OPRHP, 2221 Taughannock Park Road, Trumansburg, NY 14886 (607) 387-7041, FAX (607) 387-3390

Mohawk Valley Region - Fulton, Herkimer, Montgomery, Oneida, Otsego and Schoharie, OPRHP, Clark Reservation State Park, 6105 East Seneca Turnpike, Jamesville, NY 13078-9516 (315) 492-1756, FAX (315) 492-3277

Mid-Hudson Region - Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster and Westchester, OPRHP, Taconic Regional Office, 9 Old Post Road, Staatsburg, NY 12580 (845) 889-3866, FAX (845) 889-8321

North Country Region - Clinton, Essex, Franklin, Hamilton, Jefferson, Lewis, and St. Lawrence, OPRHP, Keewaydin State Park, Alexandria Bay, NY 13607 (315) 482-2593, FAX (315) 482-9413

[(8) a copy of a resolution or other document of the governing body of the project sponsor recommending the application to the commissioner and authorizing an official of the project sponsor to execute documents necessary to the project];

[(9)] *(8)* program specific information required by sections 441.2, 442.3 and 443.2 of this Title respectively; and

[(10)] *(9)* such other information as may be required by the commissioner in order to accommodate requirements arising from annual program priorities.

(e) The application [shall be submitted to the Office of Parks, Recreation and Historic Preservation as indicated in the announcement and application. Applications should be submitted as early as possible but no later than the deadline specified in the announcement and application for any given funding cycle] *process shall be announced prior to each grant round*. Applications received after the specified deadline will not be accepted. At the discretion of the office, paragraphs (d)(4), (6) and [(9)] *(8)* of this section may be submitted after the application is submitted but prior to execution of the project agreement with the project sponsor, however, such late submission may be a negative factor in the rating criteria.

Section 440.10(b) is amended as follows:

(b) All project agreements will require:

(1) a copy of a resolution or other document of the governing body of the project sponsor recommending the application to the commissioner and authorizing an official of the project sponsor to execute documents necessary to the project;

[(1)]*(2)* a project term which shall commence on the date of the letter advising a project sponsor that its application has been selected for State assistance;

[(2)]*(3)* performance standards, reporting requirements and timelines for initiating and completing project elements;

[(3)]*(4)* that contracts and procurement policies and procedures of a municipality comply with sections 103 and 104-b of the General Municipal Law;

[(4)]*(5)* that a not-for-profit corporation has policies for procuring quality goods and services in a way that assures prudent and economical use of public money in the best interests of the taxpayers.

[(5)]*(6)* that the project sponsor comply with the provisions of article 15-A of the Executive Law regarding equal employment opportunities for women and minorities and contracting opportunities for minority- and women business enterprises, as well as the Omnibus Procurement Act regarding participation of New York State businesses;

[(6)]*(7)* that the project be accessible in accordance with the New York State Uniform Fire Prevention and Building Code and the Americans with Disabilities Act Guidelines (ADAAG-appendix A to 28 CFR part 36). The project sponsor is responsible for determining which of these standards, guidelines or codes apply to the project when there is a discrepancy with regard to a particular accessibility requirement;

[(7)]*(8)* that changes will not be made to the project without the approval of the commissioner. The office may re-rate a project if the sponsor proposes any changes and may disapprove changes which would cause the revised project rating to fall below the level at which it would have received funding;

[(8)]*(9)* that a project sign or other suitable acknowledgment in a form to be determined by the office be installed on the property;

[(9)]*(10)* provisions which assure that the expenditure of public funds on the project will result in a public benefit. Such provisions may include:

(i) a requirement that the public have reasonable access to or use of the project as specified by the commissioner;

(ii) a requirement that the project sponsor not alter, demolish, sell, lease or otherwise convey the project, in whole or in part, without the prior written approval of the commissioner;

(iii) a requirement that all plans for restoration, rehabilitation, improvement, demolition or other physical change to the completed project be approved in writing by the commissioner before work commences; or

(iv) program or project specific requirements which the commissioner deems necessary.

Section 440.12 is amended as follows:

Section 440.12. Alternate grant awards

In a given funding cycle, applications which rate highly but for which insufficient funds are available [will] *may* be selected as alternate grant awards. These applications may be retained by the office and [will] *may* be used to select alternate projects to fund in the event that a project is cancelled by the office, abandoned by its sponsor or funds become otherwise available.

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen L. Martens, Associate Counsel, Office of Parks, Recreation and Historic Preservation, Albany, NY 12238 (USPS); 625 Broadway, Albany, NY 12207 (courier delivery), (518) 486-2921, email: rule.making@parks.ny.gov

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

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

Consensus Rule Making Determination

The Office of Parks, Recreation and Historic Preservation (OPRHP) is proposing to update its obsolete application procedures for Environmental Protection Fund grants under Environmental Conservation Law § 54-0901 through 54-0911 (parks, historic preservation and heritage areas) to align them with the procedures for the Consolidated Funding Application to streamline the process. No one is likely to object to the proposed technical changes to the rule.

Job Impact Statement

The proposed consensus rule is a technical amendment that updates the application requirements for parks, historic preservation and heritage area grants administered by OPRHP under the Environmental Protection Act. The rule will not impact jobs or employment opportunities.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Implement a Shared Utility Equipment Stockpile for Gas and Electric Utilities

I.D. No. PSC-26-13-00007-P

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

Proposed Action: To examine gas and electric Utility Shared Critical Equipment and Supplies and allow comment to determine the best practices and procedures to implement a Shared Utility Critical Equipment Stockpile in New York.

Statutory authority: Public Service Law, section 66

Subject: To implement a Shared Utility Equipment Stockpile for gas and electric utilities.

Purpose: To determine the best practices and procedures to implement a Shared Utility Equipment Stockpile in New York State.

Substance of proposed rule: The Public Service Commission (Commission) instituted a proceeding to examine gas and electric Utility Shared Critical Equipment and Supplies and through a collaborative process have the major utilities create a report for comment and process to determine the best practices and procedures to implement a Utility Shared Critical Equipment and Supplies Stockpile. The Commission may grant, deny or modify, in whole or in part, the collaborative report filed by the Company, and may also consider related matters.

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

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

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

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

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

(13-M-0047SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Disconnection from the Utility Franchise System and Reconnection to a Different Electric Franchise; and Waiver of Certain Fees

I.D. No. PSC-26-13-00008-P

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

Proposed Action: The Commission is considering a petition by Terpening Trucking Co. requesting examination of National Grid's operations related to customers disconnecting utility electric service and reconnecting to municipal electric service; and waiver of certain fees.

Statutory authority: Public Service Law, section 65

Subject: Disconnection from the utility franchise system and reconnection to a different electric franchise; and waiver of certain fees.

Purpose: Clarify whether Terpening Trucking will be allowed to disconnect from National Grid without paying certain fees.

Substance of proposed rule: The Public Service Commission is considering whether to adopt, modify or reject a petition filed by Terpening Trucking Company requesting the examination of National Grid's management and operations related to business customers disconnecting from National Grid's electric service and reconnecting to municipal electric service. Terpening Trucking has also asked the Commission to waive any fees for the removal of National Grid's assets. The Commission may do such other related actions it deems necessary.

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-0239SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-26-13-00009-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 North 3rd Bedford Avenue LLC and North 3rd Berry Street LLC to submeter electricity at 155 and 129 North 3rd Street, Brooklyn, 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 North 3rd Bedford Avenue LLC and North 3rd Berry Street LLC to submeter electricity.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by North 3rd Bedford Avenue LLC and North 3rd Berry Street LLC to submeter electricity at 155 and 129 North 3rd Street, Brooklyn, 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-0237SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-26-13-00010-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 500 West 30th LLC to submeter electricity at 500 West 30th 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 500 West 30th LLC to submeter electricity at 500 West 30th 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 500 West 30th LLC to submeter electricity at 500 West 30th Place, 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-0238SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Waiver of 16 NYCRR Sections 86.3(a)(2), 86.3(b)(2), and 88.4(a)(4)

I.D. No. PSC-26-13-00011-P

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

Proposed Action: Waiver of certain provisions of 16 NYCRR regarding Upstate New York Power Corporation's application pursuant to PSC Article VII for a Certificate of Environmental Compatibility and Public Need.

Statutory authority: Public Service Law, sections 86.3(a)(2), (b)(2) and 88.4(a)(4)

Subject: Waiver of 16 NYCRR sections 86.3(a)(2), (b)(2) and 88.4(a)(4).

Purpose: Waiver of 16 NYCRR sections 86.3(a)(2), (b)(2) and 88.4(a)(4).

Substance of proposed rule: In a motion accompanying an application filed May 31, 2013 (Case No. 13-T-0235), New York State Electric and Gas Corporation and Niagara Mohawk Power Corporation d/b/a National Grid (Applicants) seek a waiver of certain application requirements. Applicants seek a Certificate of Environmental Compatibility and Public Need, pursuant to Public Service Law (PSL) Article 7, authorizing the construction and operation of an electric transmission facility between the State Street Substation in Cayuga County to the Elbridge Substation in Onondaga County, New York. In its PSL Article 7 application, Applicants specifically request waiver of the following otherwise applicable provisions of 16 NYCRR:

(1) Section 86.3(a)(2), NYSDOT Maps at 1:250,000 Scale;

(2) Section 86.3(b)(2), Aerial Photographs;

(3) Section 88.4(a)(4), System Reliability Impact Study (SRIS) as forwarded by the New York Independent System Operator's Transmission Planning Advisory Subcommittee (TPAS) for approval by the Operating Committee.

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-T-0235SP1)

Department of State

NOTICE OF ADOPTION

Appraisal Trainee/Supervision Standards and Reciprocity

I.D. No. DOS-16-13-00005-A

Filing No. 619

Filing Date: 2013-06-10

Effective Date: 2013-07-01

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

Action taken: Amendment of sections 1101.4, 1103.4 and 1104.1 of Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d

Subject: Appraisal trainee/supervision standards and reciprocity.

Purpose: To conform existing regulations to new Federal requirements.

Text or summary was published in the April 17, 2013 issue of the Register, I.D. No. DOS-16-13-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Whitney Clark, NYS Department of State, Office of Counsel, 1 Commerce Plaza, 99 Washington Avenue, Albany NY 12231, (518) 473-2728, email: whitney.clark@dos.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

Urban Development Corporation

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Small Business Revolving Loan Fund

I.D. No. UDC-26-13-00005-P

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

Proposed Action: Addition of Part 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

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 proposed rule: *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.

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