

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.

Element	Percentage
Calcium (Ca)	1.00
Magnesium (Mg)	0.50
Sulfur (S)	1.00
Boron (B)	0.02
Chlorine (Cl)	0.10
Cobalt (Co)	0.0005
Copper (Cu)	0.05
Iron (Fe)	0.10
Manganese (Mn)	0.05
Molybdenum (Mo)	0.0005
<i>Nickel (Ni)</i>	<i>0.0010</i>
Sodium (Na)	0.10
Zinc (Zn)	0.05

Guarantees or claims for the above listed plant nutrients are the only ones which will be accepted. Labels and directions for the use of the fertilizer shall be furnished with the application for license and upon request. Any of the above listed elements which are guarantee[s]d shall appear in the order listed[,] immediately following guarantee[s]d for the primary nutrients[,] of nitrogen, [phosphoric acid] phosphate and potash. Warning or caution statements are required on the label for any product which contains 0.03 percent or more of boron in a water soluble form or 0.001 percent or more of molybdenum. In the case of such boron content, the warning or caution statement shall be conspicuously displayed, shall state the crop or crops for which the fertilizer is to be used, and state that the use of the fertilizer on any other than those recommended may result in serious injury to said crop; in the case of such molybdenum content, the warning or caution statement shall be conspicuously displayed, shall state the crop or crops for which the fertilizer is to be used, shall state that the use of the fertilizer on any other than those recommended may result in serious injury to said crop and further state that the application of fertilizers containing molybdenum may result in forage crops containing levels of molybdenum which are toxic to ruminant animals. No claims or guarantees shall be made for any commercial fertilizer except for the elements set forth above.

(b) When any plant nutrient guaranteed is broken down into the component forms, the percentage for each component shall be shown before the name of the form, for example, “4% Nitrate Nitrogen”.

Section 153.7 of Part 153 is amended to read:

Section 153.7. Tonnage reports.

In accord with section 146-c of the law, each licensee who distributes commercial fertilizer in this State shall furnish the commissioner with a written report for the period[s] ending June 30 and] *January 1 through December 31* of each year indicating the tonnage distributed during [those] *that period[s] on forms or in a format* prescribed by the commissioner. Said report[s] shall be filed within 30 days of the end of [each] *the* reporting period.

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

Consensus Rule Making Determination

This rule is proposed as a consensus rule within the definition of that term in the State Administrative Procedure Act section 102(11) pursuant

Department of Agriculture and Markets

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reporting and Labeling Requirements Governing Sale and Analysis of Commercial Fertilizer

I.D. No. AAM-10-13-00001-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 153.2 and 153.7 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 144 and 146-c

Subject: Reporting and labeling requirements governing sale and analysis of commercial fertilizer.

Purpose: To provide for annual tonnage reporting and increase uniformity for growers and fertilizer industry.

Text of proposed rule: Section 153.2 of Part 153 is amended to read:

Section 153.2. Plant [n]Nutrients [guarantees.] *in Addition to Nitrogen, Phosphate and Potash.*

(a) [Any] *Other* plant nutrients [in addition to nitrogen, phosphoric acid and potash when claimed in the labeling of any commercial fertilizer shall be guaranteed on the elemental basis.] *when mentioned in any form or manner shall be guaranteed. Guarantees shall be made on the elemental basis. Sources of the elements guaranteed and proof of availability shall be provided to the Department upon request. Except guarantees for those water soluble nutrients labeled for ready to use foliar fertilizers, ready to use specialty liquid fertilizers, hydroponic or continuous liquid feed programs and guarantees for potting soils, [T]the minimum percentages which may be guaranteed are as follows:*

to the expectation that no person is likely to object to its adoption because it is non-controversial.

Agriculture and Markets Law (AML) § 144 provides that guarantees for plant nutrients except phosphoric acid and potash shall be expressed in the form of the element in a manner prescribed by the Commissioner of Agriculture and Markets. The proposed amendments to 1 NYCRR § 153.2 would provide an exemption below minimum plant nutrient guarantees for foliar, specialty liquid, hydroponic fertilizers and potting soils. In addition, the proposed amendment requires that labels and directions be furnished with the application for a license to distribute commercial fertilizer and upon request. Further, that there would be a stated minimum concentration for the plant nutrient Nickel.

Section 153.2 currently provides minimum allowable guarantees in which a fertilizer product may be labeled for secondary use and micronutrients for plant growth. This standard provides the fertilizer industry with uniformity in the minimum concentration in which a plant nutrient may be guaranteed. The proposed amendment to § 153.2 would provide an exemption for labeled nutrients that are below minimum concentration for water soluble nutrients labeled for ready to use foliar fertilizers, ready to use specialty liquid fertilizers, hydroponic or continuous liquid feed programs and guarantees for potting soils. Greenhouse and hydroponic plant growth conditions are different than the growth conditions in the field. The lower guarantees are necessary so that too many nutrients are not provided to the plant all at once. This amendment will allow specialty fertilizer products to be distributed in the State. The New York greenhouse, hydroponic, lawn and landscaping, tree fertilizing as well as agricultural community will benefit from the availability of these specialty fertilizer products.

In addition, the proposed amendment provides a minimum allowable concentration for the plant nutrient Nickel (Ni) of .0010%. Further, labels and directions for the use of the fertilizer will be furnished with the license application and upon request. The adoption of the proposed amendments, which are consistent with the Association of American Plant Food Control Officials (AAPFCO) Uniform State Fertilizer Bill-Rules and Regulations-Fertilizer, will provide increased uniformity for both growers and the fertilizer industry.

Agriculture and Markets Law (AML) § 146-c requires that each licensee who distributes commercial fertilizer in this State shall furnish the Commissioner with a written statement of the tonnage of each grade of commercial fertilizer sold in this State during the calendar year. The report shall be submitted in the form and with such frequency as the Commissioner shall require by regulation. Currently § 153.7 provides that tonnage reports are submitted for the periods ending June 30 and December 31. The proposed amendment would change the reporting from semiannual to annual and require that tonnage reports be submitted for the period January 1 through December 31 of each year.

There are approximately 480 entities licensed to distribute commercial fertilizers in New York State. The proposed reporting amendment will decrease costs associated with reporting since a regulated business will be required to report tonnage on an annual basis instead of semi-annual. Since the proposed rule will relieve a regulatory burden upon the fertilizer industry but still fulfills the reporting requirement contained in AML § 146-c it is expected that no one is likely to object to the proposed amendment. In 2010 the Department requested comments regarding switching tonnage reporting to once a year. The responses were supportive of annual versus semi-annual tonnage reporting. Annual reporting also simplifies and decreases the time spent by Department personnel mailing tonnage requests and processing tonnage reports. The proposed amendment fulfills the reporting requirement contained in AML § 146-c while decreasing the reporting burden on the fertilizer industry as well as the Department.

Job Impact Statement

The proposed amendments to Section 153.2 will provide an exemption below minimum plant nutrient guarantees for specialty fertilizers, require labels and directions be furnished at time of license application and provide a minimum concentration for the plant nutrient Nickel. The amendments will allow specialty fertilizers to be distributed in the State and increase uniformity for both growers and the fertilizer industry. The proposed rule is expected to have a positive impact upon jobs and employment opportunities in the State's greenhouse, hydroponic, lawn, landscaping, and tree fertilizing industries as well as the agricultural community.

The proposed amendment to Section 153.7 reduces the tonnage reporting requirements for licensed distributors of commercial fertilizers from twice a year to once a year. This amendment reduces a regulatory burden upon entities licensed to distribute commercial fertilizers in New York State and as such is expected to have a positive impact upon jobs and employment opportunities.

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Exemption for the Possession and Sale of Bighead Carp

I.D. No. ENV-10-13-00007-P

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

Proposed Action: Amendment of section 180.9 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 11-0303, 11-0305, 11-0507 and 11-0511

Subject: Exemption for the Possession and Sale of Bighead Carp.

Purpose: Repeal the current exemption for the sale of bighead carp.

Text of proposed rule: Existing subdivision 180.9(c) is repealed and existing subdivisions 180.9(d) and 180.9(e) are renumbered as the new 180.9(c) and 180.9(d)

[(c) Exceptions. Notwithstanding the prohibitions contained in this section, bighead carp may be sold, possessed, transported, imported and exported in the five boroughs of the City of New York (Manhattan, Bronx, Queens, Brooklyn, and Staten Island) and the Westchester County Towns of Rye, Harrison, and Mamaronek and all the incorporated cities or villages located therein. Live bighead carp offered for sale in any retail establishment shall be killed by the seller before the purchaser takes possession of said fish. Failure of a retail seller to kill a live bighead carp before transferring possession of the fish to the retail purchaser shall constitute a violation of this section.]

Text of proposed rule and any required statements and analyses may be obtained from: Shaun Keeler, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8928, email: sxkeeler@gw.dec.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority

Sections 3-0301 of the Environmental Conservation Law (ECL) establishes the general functions, powers and duties of the Department of Environmental Conservation (Department) and the Commissioner, including general authority to adopt regulations. Sections 11-0303 and 11-0305 of the Environmental Conservation Law (ECL) authorize the Department to provide for the management and protection of the State's fisheries resources, taking into consideration ecological factors, public safety, and the safety and protection of private property. Section 11-0511 empowers the Department to regulate the possession and importation of species of wildlife or fish. Section 11-0507 empowers the Department to guard against the liberation of fish and wildlife in NY.

2. Legislative Objectives

Section 11-0511 empowers the Department to protect against the possession and importation of species of wildlife or fish that would present a danger to the health or welfare of the people of the state, or to an individual resident or indigenous fish or wildlife population. Prohibitions are in place for the possession and sale of fish species, including snakehead fish and three species of Asian Carp, determined to be a present danger to indigenous fish populations. Current prohibitions in the NYCRR do include an exception however, allowing for bighead carp (one of the Asian carp species) to be sold, possessed, transported, imported and exported in the five boroughs of the City of New York (Manhattan, Bronx, Queens, Brooklyn, and Staten Island) and the Westchester County Towns of Rye, Harrison, and Mamaronek and all the incorporated cities or villages located therein. Bighead carp offered for sale in any retail establishment shall be killed by the seller before the purchaser takes possession of said fish.

3. Needs and Benefits

As a result of federal action, the exceptions in section 180.9 are no longer legal and should be repealed. Legal counsel at DEC have already advised that the 6 NYCRR Part 180.9 exception for possession, sale, import, export, and transport of bighead carp in New York City and certain towns in Westchester County should be repealed because this regulation is preempted by the federal Asian Carp Prevention and Control Act. This federal act went into effect in December 2010.

4. Costs

No cost to DEC or local governments. Those in the food market, and sellers of bighead carp for human consumption, have already been impacted by federal legislation in December 2010 preventing the possession and sale of bighead carp.

5. Local Government Mandates

These amendments of 6 NYCRR will not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district or fire district.

6. Paperwork

Not Applicable, as the removal of this exception will not result in any required paperwork of any sort.

7. Duplication

The federal Asian Carp Prevention and Control Act prohibits the possession and sale of bighead carp. This federal act went into effect in December 2010.

8. Alternatives

Not amending Part 180.9 will result in a regulation in NYCRR which is no longer valid and is inconsistent with Federal law. Not removing the exception language from State regulation will also make it more difficult to cease the sale of bighead carp in the food markets in the NYC area and to prosecute violators.

9. Federal Standards

None, as possession and sale are prohibited altogether.

10. Compliance Schedule

These regulations, if adopted, will become effective immediately, and compliance by the regulated parties will be required.

Regulatory Flexibility Analysis

As a result of federal action, the exceptions in 6 NYCRR Section 180.9, subdivision 180.9(c) are no longer legal and should be repealed. The exceptions allow for bighead carp to be sold, possessed, transported, imported and exported in New York City and the immediate vicinity; but, this has since been preempted by the federal Asian Carp Prevention and Control Act that went into effect in December 2010.

Since the purpose of the department's proposed rule making is to remove a regulation from NYCRR that is no longer valid as a result of federal action, a rural flexibility analysis is not required. Any impacts to small businesses will have already resulted by the federal action and this proposal does not add any additional restrictions to those that are already in place.

Rural Area Flexibility Analysis

As a result of federal action, the exceptions in 6 NYCRR Section 180.9, subdivision 180.9(c) are no longer legal and should be repealed. The exceptions allow for bighead carp to be sold, possessed, transported, imported and exported in New York City and the immediate vicinity; but, this has since been preempted by the federal Asian Carp Prevention and Control Act that went into effect in December 2010. Since the previous exceptions were limited to New York City and immediate vicinity there are no impacts on public or private entities in rural areas and a Rural Area Flexibility Analysis is not required.

Secondly, the purpose of the department's proposed rule making is to remove a regulation from NYCRR that is no longer valid as a result of federal action. Any impacts will have already resulted by the federal action and this proposal does not add any additional restrictions to those that are already in place.

Job Impact Statement

As a result of federal action, the exceptions in 6 NYCRR Section 180.9, subdivision 180.9(c) are no longer legal and should be repealed. The exceptions allow for bighead carp to be sold, possessed, transported, imported and exported in New York City and the immediate vicinity; but, this has since been preempted by the federal Asian Carp Prevention and Control Act that went into effect in December 2010.

Since the purpose of the department's proposed rule making is to remove a regulation from NYCRR that is no longer valid as a result of federal action, a Job Impact Statement is not required. Any adverse impact on jobs or employment opportunities in New York will have already resulted by the federal action and this proposal does not add any additional restrictions to those that are already in place.

Department of Financial Services

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rules Governing Valuation of Life Insurance Reserves

I.D. No. DFS-10-13-00008-EP

Filing No. 184

Filing Date: 2013-02-19

Effective Date: 2013-02-19

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

Proposed Action: Amendment of Part 98 (Regulation 147) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 1304, 1308, 4217, 4218, 4240 and 4517

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

Specific reasons underlying the finding of necessity: This amendment to Regulation 147 contains changes to the reserve requirements on universal life with secondary guarantee policies. The Department has been concerned about compliance and reserve adequacy issues with respect to product designs involving an imbalance between the guarantees and reserves held. The National Association of Insurance Commissioners ("NAIC") attempted to address this issue with revisions to Actuarial Guideline 38. To prevent potential substantial reserve increases for in-force business, a bifurcated approach was adopted, which provides for separate reserve methodologies for in-force business and prospective business. The Guideline provides that for universal life with secondary guarantee business written between July 1, 2005 and December 31, 2012, the reserves will be determined using a principles-based approach, as adopted by an NAIC Committee in 2012. For business issued after January 1, 2013, the reserves will be calculated using a formulaic-based approach, until such time that principles-based reserving is enacted through a change in law.

These standards have already been adopted by the NAIC through its Accounting Practices and Procedures Manual. Since New York has a separate regulation addressing this subject matter, the revised standards are not automatically adopted and need to be adopted through an amendment to Regulation 147. This amendment incorporates the NAIC revisions identified in Actuarial Guideline 38, thus resulting in consistency between the NAIC's and New York's rules and promoting regulatory uniformity across the U.S. Companies domiciled in states that do not adopt these changes by December 31, 2012 will be holding reserves at a different level relative to companies domiciled in states that have adopted these changes.

For insurers that have not followed the intent of the current regulation, adoption of this amendment may increase reserves on business issued between July 1, 2005 and December 31, 2012 of New York authorized life insurers. For insurers that have followed the intent of the current regulation, reserves may decrease.

Insurers subject to this regulation must file quarterly financial statements based upon minimum reserve standards in effect on the date of filing. The filing date for the December 31, 2012 annual statement is March 1, 2013. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner. It is essential that this regulation be adopted on an emergency basis until such time as it can be adopted on a permanent basis.

For all of the reasons stated above, an emergency adoption of this fourth amendment to Regulation 147 is necessary for the general welfare.

Subject: Rules governing valuation of life insurance reserves.

Purpose: Prescribe rules and guidelines for valuing individual life insurance policies and certain group life insurance certificates.

Substance of emergency/proposed rule (Full text is posted at the following State website: <http://www.dfs.ny.gov>): The Fourth Amendment to Insurance Regulation 147 provides revised reserve standards for universal life with secondary guarantee policies.

Section 98.9(c)(2) is amended to reference new subparagraphs (ix) and (x), which provide revised reserve standards for universal life with secondary guarantee policies.

Section 98.9(c)(2)(viii)(b)(2) is amended to change the applicability dates for applying lapse rates from policies issued on or after January 1,

2007 to before January 1, 2014 to policies issued on or after January 1, 2007 to before January 1, 2013.

Section 98.9(c)(2)(viii)(e) is amended to change the applicability dates for applying lapse rates in the calculation of the net single premium from policies issued on or after January 1, 2007 to before January 1, 2014 to policies issued on or after January 1, 2007 to before January 1, 2013.

Section 98.9(c)(2)(viii)(h)(2) is amended to change the applicability dates, when there is a reduction for surrender charges, from policies issued on or after January 1, 2007 to before January 1, 2014 to policies issued on or after January 1, 2007 to before January 1, 2013.

Section 98.9(c)(2)(viii)(j) is amended to change the applicability dates for universal life with secondary guarantee policies when a stand-alone asset adequacy analysis is required.

A new subparagraph (ix) is added to section 98.9(c)(2) to prescribe reserve standards for certain universal life with secondary guarantee policies that were issued on or after July 1, 2005 to before January 1, 2013. This amendment affects universal life with secondary guarantee products, with or without a shadow account, with multiple sets of interest rates or other credits, or multiple sets of cost of insurance, expense, or other charges that may become applicable to the calculation of the secondary guarantee measures in any one year.

A new subdivision (x) is added to section 98.9(c)(2) to prescribe revised reserve standards for universal life with secondary guarantee policies issued on or after January 1, 2013. The steps for calculating the reserve are specified in section 98.9(c)(2)(x)(a)-(i). Section 98.9(c)(2)(x)(j) adds Actuarial Opinion and Insurer Representation requirements to declare that the policies appropriately fit one of the design categories described in this subdivision. Additionally, if reserves are calculated under Method II, a report that describes the analytical review that was performed with respect to premium payment patterns must also be provided.

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 May 19, 2013.

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

Data, views or arguments may be submitted to: Frederick Andersen, NYS Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 474-5462, email: frederick.andersen@dfs.ny.gov

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

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority to promulgate the Fourth Amendment to Insurance Regulation 147 (11 NYCRR 98) derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 1304, 1308, 4217, 4218, 4240 and 4517 of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent as the head of the Department of Financial Services.

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

Insurance Law section 1304 requires every insurer authorized under the Insurance Law to transact the kinds of insurance specified in Insurance Law section 1113(a)(1)-(3) to maintain reserves as necessary on account of the insurer's policies, certificates and contracts.

Insurance Law section 1308 describes when reinsurance is permitted, and the effect that reinsurance will have on an insurer's reserves.

Insurance Law section 4217 requires the Superintendent to annually value, or cause to be valued, the reserve liabilities ("reserves") for all outstanding policies and contracts of every life insurer doing business in New York. Insurance Law section 4217(a)(1) specifies that the Superintendent may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods used in the calculation of the reserves. Reserving has not historically included lapse as a factor in calculations, because it was not relevant to traditional forms of life insurance contracts; therefore, section 4217 does not expressly include references to lapses. However, the development of new types of life insurance that were not contemplated at the time section 4217 was enacted may cause lapses to be relevant in reserve calculations in certain instances.

Insurance Law section 4217(c)(6)(C) provides that reserves - according to the commissioner's reserve valuation method for life insurance policies that provide for a varying amount of insurance or requiring the payment of varying premiums - shall be calculated by a method consistent with the principles of section 4217(c)(6).

Insurance Law section 4217(c)(6)(D) permits the Superintendent to issue, by regulation, guidelines for the application of the reserve valuation provisions of section 4217 to such policies and contracts as the Superintendent deems appropriate.

Insurance Law section 4217(c)(9) requires that, in the case of any plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurer based on estimates of future experience, or in the case of any plan of life insurance or annuity that is of such a nature that the minimum reserves cannot be determined by the methods described in sections 4217(c)(6) and 4218, the reserves that are held under the plan must be appropriate in relation to the benefits and the pattern of premiums for that plan, and must be computed by a method that is consistent with the principles of sections 4217 and 4218, as determined by the Superintendent.

Insurance Law section 4218 requires that when the actual premium charged for life insurance under any life insurance policy is less than the modified net premium calculated on the basis of the commissioner's reserve valuation method, the minimum reserve required for the policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy, or the reserve calculated by the commissioner's reserve valuation method replacing the modified net premium by the actual premium charged for the policy in each contract year for which the modified net premium exceeds the actual premium.

Insurance Law section 4240(d)(6) states that the reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees provided in the contract. Section 4240(d)(7) states that the Superintendent shall have the power to promulgate regulations, as may be appropriate, to carry out the provisions of section 4240.

Insurance Law section 4517(b)(2) provides, with respect to fraternal benefit societies, that reserves according to the commissioner's reserve valuation method for life insurance certificates that provide for a varying amount of benefits, or requiring the payment of varying premiums, shall be calculated by a method consistent with the principles of subsection (b).

2. Legislative objectives: One of the principal goals of the Legislature in enacting the Insurance Law is maintaining the solvency of insurers doing business in New York. One fundamental way the Insurance Law seeks to ensure solvency is by requiring all insurers and fraternal benefit societies that are authorized to do business in New York State to hold reserve funds in amounts that are sufficient in relation to the obligations made to policyholders. At the same time, an insurer benefits when it has adequate capital for company uses such as expansion, product innovation, and other forms of business development.

3. Needs and benefits: Interpretation of the previous standards for universal life with secondary guarantee products has not been consistent among the insurance industry and regulatory authorities across the U.S. In an effort to provide greater clarification of the standards, the National Association of Insurance Commissioners ("NAIC") revised Actuarial Guideline 38. This amendment to Regulation 147 incorporates the NAIC's revisions to Actuarial Guideline 38, which is intended to establish regulatory uniformity across the U.S. Insurers domiciled in states that do not adopt these changes by December 31, 2012 will be holding reserves at different levels relative to insurers domiciled in states that have adopted these changes, creating solvency concerns and an unlevel playing field among insurers.

The amendment, which is based on the previous NAIC Model, addresses the present situation, experienced nationwide, of insurers calculating reserves based on their various interpretations of the current regulation. The differing interpretations have resulted in some insurers setting imprudently low reserves and raising concerns about solvency and the ability of those insurers to meet their obligations. At the same time, those insurers that have set inappropriately low reserves have greater access to unrestricted funds that can be used for other purposes, creating an unlevel playing field to the disadvantage of those insurers that have properly set their reserves. This amendment will make certain that all insurers use the same approach to calculating reserves and ensure that proper reserves will be set, and insurers will not be under-reserved.

4. Costs: Costs to insurers and fraternal benefit societies that are authorized to do business in New York that are impacted by this amendment could be significant. The cost would include the actual modifications to existing computer software to incorporate the new methodologies for in-force and prospective business, as well as the testing and implementation of the changes to the software. Some insurers may find it necessary to redesign the policies that are offered for sale to fit one of the policy designs addressed in the regulation.

Insurers that had not been complying with the full intent of the current regulation may find it necessary to increase reserves for policies issued between July 1, 2005 and December 31, 2012 upon adoption of the amendment, which provides greater clarification of the regulation's requirements.

Insurers that have complied with the current regulation may find that their reserves have decreased.

Cost estimates range from \$100,000 to \$1.1 million nationwide for impacted insurers based on information provided by the Life Insurance Council of New York, Inc. Many insurers, however, would be incurring these costs in any event since they must comply with the same requirements imposed by other states in which they are licensed. The changes to reserving methodology contained in the regulation are also being adopted in other states to conform with the NAIC revisions to the Actuarial Guideline. After an insurer has modified its computer systems and developed new policy forms to comply with the regulation, only minimal additional costs should be anticipated.

The amendment is expected to result in the need for significant training of Department staff. The cost of such training will be absorbed through the Department's normal budget. There are no costs to other government agencies or local governments.

5. Local government mandates: The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: For policies issued between January 1, 2007 and December 31, 2012, the amendment does not alter the regulation's requirement that insurers annually prepare a stand-alone Actuarial Memorandum that sets forth the reserve analysis performed on the business. However, insurers subject to Section 98.9(c)(2)(ix) (respecting certain policies issued July 1, 2005 through December 31, 2012) are made subject to the requirements of Part 98 (Insurance Regulation 172), which provides for the adoption of the NAIC Accounting Practices & Procedures Manual ("NAIC Manual"). Under the 2013 edition of the NAIC Manual, such insurers must submit an additional Actuarial Memorandum to document compliance with the NAIC Manual's valuation of reserves requirements. Also, for policies issued on or after January 1, 2013, the regulation requires, at the time of filing or approval of a new product, each insurer to file with the Superintendent an Actuarial Opinion and an Insurer Representation made with respect to the applicable policy forms. Those insurers that use Method II, as described in section 98.9(c)(2)(x)(a)(2) of the amendment to Regulation 147, must submit a report that briefly describes the analytical review performed, the insurer's conclusions following the analytical review, and whether any additional premium payment patterns, other than those required, were tested as a result of the review.

7. Duplication: The regulation does not duplicate any existing law or regulation.

8. Alternatives: The only alternative considered by the Department was to not adopt the recent changes to the NAIC model regulation or the provisions in the new version of Actuarial Guideline 38. This would create an unlevel playing field for insurers, and reserves calculated by New York domestic insurers would be held at a different level than reserves held by non-domestic insurers.

9. Federal standards: There are no federal standards in this subject area.

10. Compliance schedule: This amendment to the regulation applies to 2012 annual statements due March 1, 2013 and statements filed thereafter. This amendment provides revised reserve standards for calculating reserves on universal life with secondary guarantee policies. The NAIC conducted outreach on a national level. In New York, the Department engaged in discussions with the affected insurers' trade association, the Life Insurance Council of New York (LICONY). The Department was notified by LICONY on December 21, 2012 that its members support the amendment to Regulation 147. Since the standards contained in the amendment were already adopted by the NAIC, insurers should have adequate time to comply with the regulation.

Regulatory Flexibility Analysis

1. Small businesses:

The Department finds that this amendment will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all insurers and fraternal benefit societies that are authorized to do business in New York State, none of which comes within the definition of "small business" provided in section 102(8) of the State Administrative Procedure Act. The Department reviewed filed Reports on Examination and Annual Statements of authorized insurers and fraternal benefit societies and concludes that none of these entities comes within the definition of "small business," because there are none that are both independently owned and have fewer than one hundred employees.

2. Local governments:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers and fraternal benefit societies covered by the amendment do business in every county in

this state, including rural areas as defined in State Administrative Procedure Act ("SAPA") section 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: There are separate reporting and compliance requirements for policies issued between July 1, 2005 and December 31, 2012 and for policies issued on or after January 1, 2013. Additionally, for policies issued on or after January 1, 2013, the regulation requires insurers to file an Actuarial Opinion with the Superintendent.

3. Costs: Costs to insurers and fraternal benefit societies that are authorized to do business in New York State that are impacted by this amendment could be significant. The costs would include the actual modifications to existing computer software to incorporate the new methodologies for in-force and prospective business, as well as the testing and implementation of the changes to the software. Some insurers may find it necessary to redesign the policies that are offered for sale to fit one of the policy designs addressed in the regulation. Insurers that had not been complying with the full intent of the current regulation may find it necessary to increase reserves for policies issued between July 1, 2005 and December 31, 2012 upon adoption of the amendment, which provides greater clarification of the regulation's requirements. Insurers that have complied with the current regulation may find that their reserves have decreased.

Cost estimates range from \$100,000 to \$1.1 million nationwide for impacted insurers based on information provided by the Life Insurance Council of New York, Inc. Many insurers, however, would be incurring these costs in any event since they must comply with the same requirements imposed by other states in which they are licensed. The changes to reserving methodology contained in the regulation are also being adopted in other states to conform with the NAIC revisions to Actuarial Guideline 38. After an insurer has modified its computer systems and developed new policy forms to comply with the regulation, only minimal additional costs should be anticipated.

The amendment is expected to result in the need for significant training of Department staff. The cost of such training will be absorbed through the Department's normal budget. There are no costs to other government agencies or local governments.

4. Minimizing adverse impact: The regulation does not impose any adverse impact on rural areas.

5. Rural area participation: The NAIC conducted outreach on a national level. In New York, the Department engaged in discussions with the affected insurers' trade association, the Life Insurance Council of New York (LICONY). The Department was notified by LICONY on December 21, 2012 that its members support the amendment to Regulation 147.

Job Impact Statement

The Department finds that this amendment should have no impact on jobs and employment opportunities. This amendment sets standards for setting life insurance reserves for insurers and fraternal benefit societies. Insurers should not need to hire additional employees or independent contractors to comply with these new standards.

Higher Education Services Corporation

NOTICE OF ADOPTION

New York Higher Education Loan Program (NYHELPS)

I.D. No. ESC-01-13-00005-A

Filing No. 183

Filing Date: 2013-02-19

Effective Date: 2013-03-06

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

Action taken: Amendment of Part 2213 of Title 8 NYCRR.

Statutory authority: Education Law, sections 691(10) and 655(4)

Subject: New York Higher Education Loan Program (NYHELPS).

Purpose: Amend several provisions of the regulation.

Text or summary was published in the January 2, 2013 issue of the Register, I.D. No. ESC-01-13-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1315, Albany, NY 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

Department of Labor

NOTICE OF ADOPTION

Child Performers

I.D. No. LAB-36-12-00007-A

Filing No. 185

Filing Date: 2013-02-19

Effective Date: 2013-04-01

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

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

Statutory authority: Labor Law, section 154-a

Subject: Child Performers.

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

Substance of final rule: The adopted rule creates a new section of regulations designated as 12 NYCRR Part 186 entitled "Child Performers" promulgated pursuant to Labor Law § 154-a.

The Child Performer Education and Trust Act of 2003 (the Act) requires trust accounts to be established for child performers and requires employers to transfer 15% of earnings to such accounts to be held in trust until the child reaches eighteen years of age. It requires all child performers to have permits issued by the New York State Department of Labor. By amendment, effective July 21, 2011, such permits were changed from semi-annual to annual. It requires all employers of child performers to have employer certificates issued by the New York State Department of Labor, valid for three years, at specified costs. It requires employers of child performers to provide teachers to such child performers if they are otherwise unable to fulfill educational requirements due to their employment schedules.

Labor Law § 154-a requires the Commissioner of Labor to promulgate rules and regulations as shall be necessary and proper to effectuate the purposes and provisions of the Act, including but not limited to rules and regulations determining the hours of work and conditions of work necessary to safeguard the health, education, morals and general welfare of child performers.

A public hearing was held in New York City on September 20, 2012. Five (5) persons spoke at the hearing, and six (6) persons submitted written comments.

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

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

They set forth the time and manner in which a child must obtain and renew a Child Performer Permit and the time and manner in which the employer of a child performer must obtain and renew an Employer Certificate of Eligibility. The adopted regulations also provide for a Temporary Child Performer Permit valid for fifteen days so as to permit a child performer who has never previously obtained a Child Performer Permit to be employed without or prior to submitting all documents necessary for a full Child Performer Permit. They also provide for an Employer Certificate of Group Eligibility permitting a group of children to be employed as a group on certain projects for not more than two days of work.

Like all other New York State working papers, a physician's certification of fitness to work is necessary to obtain the Child Performer Permit.

The adopted regulations require child performers below 16 years of age to be accompanied throughout the work day by a responsible person. In film, television and other types of work that is not live performance work, the responsible person is the parent or someone named by the parent. In live theater and other live performance, the responsible person may be named by the employer if allowing parental accompaniment is infeasible.

The adopted regulations require employers to provide a nurse, with pediatric practice experience, and a responsible person for each three or fewer child performers between the ages of fifteen days and six weeks, and for each ten or fewer child performers from ages of six weeks to six months.

The adopted regulations require employers to provide time and facilities for the education of child performers, whether schooled on location, home-schooled, or distance educated, when their work schedules prevent them from fulfilling their educational requirements outside of work. When needed, employers must provide certified or credentialed on-location teachers.

The adopted regulations also set forth the hours of work according to the age of the child and the production sector; one set of hours for live theater and other live performance work and another set of hours for all other productions.

The adopted regulations provide for the issuance of variances in the event of significant hardship and for the suspension or revocation of a permit or certificate after hearing. In addition, the adopted regulations permit the Commissioner of Labor to impose fines for violation of the regulations. However, no penalty or sanction shall be imposed for any violation of this Part that occurs, and is cured, prior to June 1, 2013.

The adopted sections of Part 186 are summarized as follows:

Subpart 186-1 Purposes and scope

Subpart 186-2 Definitions

Subpart 186-3 Responsibilities of parents and guardians

Subpart 186-4 Responsibilities of employers

Subpart 186-5 Educational requirements

Subpart 186-6 Hours and Conditions of work

Subpart 186-7 Records; contracts

Subpart 186-8 Variances

Subpart 186-9 Suspension or revocation of permits and certificates

Subpart 186-10 Penalties and appeals.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 186-2.1(a), (l), 186-3.5(c), 186-4.2(c), (f), 186-4.5(b), 186-6.3(c), 186-6.4(d) and 186-11.

Text of rule and any required statements and analyses may be obtained from: Amy C. Karp, Department of Labor, State Office Campus, Building 12, Albany, NY 12240, (518) 457-7350, email: regulations@labor.ny.gov

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

There have been no substantial revisions or changes in the text of the Proposed Rule necessitating a modification in the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement as published in the State Register on September 5, 2012, a revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required.

Initial Review of Rule

As a rule that requires a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement, this rule will be initially reviewed in the calendar year 2018, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

Assessment of Public Comment

Radio, Television and Movies

Commenters questioned whether the regulations should cover radio, television and motion pictures broadcast or filmed from locations like schools, churches and homes, with one seeking to exclude, and another to cover, certain broadcasts and films.

Response: The scope of exemptions set forth in the regulations (186-1.3(a) and 186-1-3(b)) are consistent with Arts and Cultural Affairs Law (ACAL) at § 35.01(2), which only exempts certain radio and television broadcasts and programs, but not motion pictures. The Department determined that the regulation provides appropriate protection without being overly burdensome.

Child Models

Commenters requested that all work of child models be covered by the regulations. Child models are regulated pursuant to ACAL § 35.05 and 8 NYCRR § 190.2.

Response: The present statutory scheme does not permit the Department to regulate activities by children that are not as those described in ACAL § 35.01.

One commenter stated the phrase "in a television or broadcast performance" in the definition of "artistic and creative services" should be deleted as it changes the meaning of the term.

Response: The phrase "in a television or broadcast performance" modi-

fies “model,” not the entire paragraph. The Department moved the phrase “model in a television or broadcast performance” elsewhere in the paragraph to avoid confusion.

Definition

One commenter stated the definition of “child performer’s employer” should include the phrase “employs or engages” to cover non-traditional employment.

Response: The Department determined that the definition is consistent with the definition in the statute and therefore didn’t make this change.

Reality Shows

One commenter stated the exception to the definition of “reality show” should include activities involved in newsgathering, news magazines and similar programs.

Response: The Department determined that a broader exemption is not appropriate.

Trust Accounts

Commenters expressed concern over who is responsible for opening and contributing to a child performer’s trust account, and how funds may be protected and accounted for.

Response: The obligation to establish trust accounts remains with parents and guardians. The obligation to make transfers to trust accounts remains with the employer, broadly defined, or the payroll service company. Child Performer trusts are governed by Estates Powers and Trusts Law (EPTL) section 7-7.1 and the Uniform Transfers to Minors Act (UTMA), EPTL Article 7, Part 6. The UTMA includes provisions regarding the expenditure of funds by a custodian and requests for an accounting. The Department determined that the UTMA provides sufficient protection from misappropriation of funds.

Commenters suggested that if a parent wishes to have an employer transfer more than the minimum requirement of 15% of gross earnings into the minor’s trust account, the parent should make the request in writing and designate a specific amount or percentage.

Response: The Department made this change to the regulations at sections 186-3.5(c) and 186-4.5(b).

Comments were received regarding establishing trust accounts when child performers are either not yet in the industry or in unpaid performances.

Response: The Department determined that the regulations address these issues through the provision of a Temporary Child Performer Permit.

One commenter suggested that a notification of transfer and deductions should be reflected on the child’s “next regular” pay stub.

Response: The Department determined that this change is not necessary. The language in the regulations addresses this issue.

Responsible Person

Commenters stated that the definition of “responsible person” is ambiguous; is not required by the statute; and should require first-aid certification. Also, someone found to be on a sex offender registry should be disqualified from being a credentialed teacher.

Response: The Department determined that the definition of “responsible person” comports with the intent of the statute; is sufficient to protect the well-being of child performers; and provides enough guidance for an employer to make an informed hiring decision without discriminating against someone pursuant to the Corrections Law and the Human Rights Law.

One commenter suggested that a parent or guardian on site with the child is the emergency contact. When a responsible person oversees the child, emergency contact information should be in that person’s possession. This should be added to the definition of “responsible person” in Section 186-2.1(t).

Response: The Department determined that the regulation requires that emergency contact information and an authorization be available to the employer at all times. It already addresses this concern.

Commenters suggested that if a parent or guardian fails to designate a responsible person for a child, the employer may (instead of “shall”) designate one.

Response: The Department determined the term “may” would not adequately safeguard the well-being of child performers and did not make that change.

Commenters suggested that a responsible person should be 21 years old, rather than 18, and should be required to oversee all performers under age 18, rather than under age 16.

Response: The Department determined that 18 year-olds may be qualified to perform the duties of a responsible person. Thus, to exclude 18 to 21 year-olds would violate Executive Law § 296, which prohibits age discrimination in employment. Additionally, performers age 16 and older can assume responsibility for themselves. If a parent, guardian or employer says that a performer cannot assume such responsibility, a responsible person may be assigned to oversee the performer.

Employer Certificate of Group Eligibility

Commenters suggested that the definition of the Employer Certificate

of Group Eligibility should cover more than two days of work within certain time periods and allow children to do more than provide a background scene.

Response: The Department revised the definition (section 186-2.1(l)) to conform to 186-4.1(b), which recognizes that group certificates can be used “to establish a background scene or perform as a group” and determined that no further change is required. A party may apply for a variance whenever a group certificate is needed for a period longer than two days or within certain time frames.

Commenters requested relief from the requirement to list all children in applications for group certificates and extension of educational requirements to employers of groups.

Response: The Department revised the regulation to allow group certificates to be issued without listing members and to require the employer to maintain that list together with the certificate (see sections 186-4.2(c) and (f)). Variances for longer than two days will require address educational requirements.

Commenters suggested that the group certificate’s requirement to provide responsible persons for children under the age of 16 be changed to require one person for every 10 children (instead of 20) to make it consistent with the educational requirements.

Response: The Department determined that a responsible person overseeing 20 children is adequate considering the circumstances of a group certificate.

One commenter suggested that in Sections 186-4.2(d)(1) and (d)(2) the word “renewal” should be changed to “subsequent” to cover a situation where a permit has expired.

Response: The Department determined that the current language covers the instance of an expired document.

Comments regarding information required of employers when applying for the group certificate stated that the regulations do not adequately describe a “due diligence questionnaire,” that employers should not have to submit information regarding violations of the NYS Labor Law because the Department already has such information; and that violations of any general labor or employment law relating to the employment of child performers are not relevant to an employer’s ability to obtain a certificate of eligibility in New York.

Response: The Department determined that the required information is necessary to properly and effectively process applications for an Employer Certificate of Eligibility. It does not create an unreasonable burden for employers.

Commissioner’s Discretion

Commenters suggested that language permitting the Commissioner to request additional information not specified in the regulations creates ambiguity for affected parties.

Response: The Department determined that the language is necessary and consistent with other laws and regulations and that if additional information is required, the requested information will be clearly identified.

Education

One commenter suggested the definition of “child performer” include the requirement to attend school in New York or the jurisdiction in which the child resides.

Response: The Department determined that educational requirements are adequately set forth in subpart 186-5.

One commenter suggested teachers with credentials in other states that have reciprocal arrangements with New York be allowed to instruct child performers.

Response: The Department determined that the language of the regulations allows this.

Recordkeeping

One commenter stated that since production can take place on location, it is impractical to require employers to maintain permits at the workplace. Instead, permits should be available at an employer’s office.

Response: The Department determined that the language is consistent with other regulations governing the employment of minors where similar conditions exist.

One commenter stated that because productions are temporary, it is impractical to retain child labor permits and related documents for six years. The period should be three years.

Response: The Department determined that the requirement to keep records for six years is consistent with other labor law regulations and appropriate for this industry.

Revocations

Commenters suggested suspension or revocation of a permit or employer certificate should only be imposed in the most extraordinary circumstances or only for conduct where there is intent and knowledge on the employer’s part.

Response: The Department determined that the language is necessary to ensure that child performers are adequately protected. Affected parties have the opportunity to be heard promptly at an administrative hearing.

Variations

One commenter suggested adding a section to anticipate situations where the Department cannot respond timely to requests for variations. A request would be deemed approved if the Department doesn't respond at least two days before the modification is to be implemented.

Response: The Department determined that this is not necessary. It will dedicate resources to respond to variance requests in a timely manner.

Infants

One comment stated that the phrase "significant experience in pediatric practice" is vague and confusing.

Response: The Department determined that the phrase sufficiently describes the experience necessary. There are agencies that maintain rosters of nurses with pediatric experience.

One commenter suggested licensed pediatricians provide medical certifications for infants six weeks and younger stating that they meet certain health requirements before they are permitted to perform.

Response: The Department determined that the current requirement to provide written certification from a licensed physician is sufficient to ensure the adequate protection of child performers.

Commenters suggested that since parents and guardians of most infants bring their own equipment, for sanitary and convenience purposes, the language in the regulations be changed to: "Where age appropriate, the employer shall provide a crib or playpen at the workplace, unless provided by the parent or guardian. . . . The child's established feeding and sleeping routines shall be maintained, to the extent possible, including adequate opportunity and appropriate space for breastfeeding when it falls within the child's routine."

Response: The Department had made the requested change at section 186-6.4(d).

Work Hours

Commenters suggested that because SAG/AFTRA agreements exclude the meal period from the calculation of time at the workplace, the regulations should be changed so the amount of time at the workplace is exclusive of the meal period and Section 186-6.3(b) is deleted.

Response: The Department determined that the regulations adequately address the scenarios presented by SAG/AFTRA. The changes are unnecessary.

One commenter suggested the allowance for child performers to work two additional hours for a one-day assignment be limited to one day per week.

Response: The Department determined that this change is not necessary since other sections in this subpart limit the beginning and end times of any work day, regardless of the length of the work day.

One commenter suggested adding a sentence to Section 186-6.3(c) to reflect situations where a child provides services at his/her home.

Response: The Department made this change to the regulations.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Appoint the Town of Thompson As the Temporary Operator of the Abandoned White Knight Water System

I.D. No. PSC-10-13-00002-EP

Filing Date: 2013-02-13

Effective Date: 2013-02-13

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

Proposed Action: The PSC adopted an order appointing the Town of Thompson as the temporary operator of the abandoned White Knight water system to continue operation of the water system with the authority to operate and manage the water system, in compliance with the Company's tariff, statutory provisions and regulatory requirements.

Statutory authority: Public Service Law, sections 89-c(2) and 112-a

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

Specific reasons underlying the finding of necessity: This action is taken on an emergency basis pursuant to State Administrative Procedure Act (SAPA) § 202(6). Failure to appoint the Town of Thompson as temporary

operator of the abandoned White Knight water system will result in the continued lack of safe and adequate water service to the customers of the water system during the particularly critical winter months as well as the continued physical and financial decline of the water system. Twelve of the 64 homes in the development have already been abandoned and more could be abandoned if the Town is not immediately appointed as temporary operator of the water system. Such results would adversely impact the public safety, health and general welfare of the citizens of New York. As a result, compliance with the advance notice and comment requirements of SAPA § 202(1) would be contrary to the public interest, and an immediate appointment of the Town as Temporary Operator under Public Service Law § 112-a is necessary for the preservation of the public health, safety and general welfare.

Subject: Appoint the Town of Thompson as the temporary operator of the abandoned White Knight water system.

Purpose: Appointment will allow continued operation and management of system in compliance with tariff, statutes and regulations.

Substance of emergency/proposed rule: The Public Service Commission, on February 13, 2013, adopted an order appointing the Town of Thompson as the temporary operator of the abandoned White Knight water system to continue operation of the water system and to provide safe and adequate service to customers, with the authority to operate and manage the water system, in compliance with the Company's tariff, statutory provisions and regulatory requirements, subject to the terms and conditions set forth in the order.

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 May 13, 2013.

Text of rule may be obtained from: 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-W-0364EP2)

NOTICE OF ADOPTION

Lightened Regulatory Regime Approval for Cricket Valley Energy Center, LLC

I.D. No. PSC-51-11-00014-A

Filing Date: 2013-02-14

Effective Date: 2013-02-14

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

Action taken: On 2/13/13, the PSC adopted an order approving Cricket Valley Energy Center, LLC's petition for the provision of a lightened regulatory regime.

Statutory authority: Public Service Law, sections 4(1), 22 and 66(1)

Subject: Lightened regulatory regime approval for Cricket Valley Energy Center, LLC.

Purpose: To approve a lightened regulatory regime.

Substance of final rule: The Commission, on February 13, 2013 adopted an order approving a petition filed by Cricket Valley Energy Center, LLC for lightened ratemaking regulation in connection with its proposed natural gas-powered, 1,000 mw electric generating facility, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(11-E-0593SA1)

NOTICE OF ADOPTION

Denying Block Bidding Programs to NiMo d/b/a National Grid and O&R and Excluding Block Bidding Programs for ConEd**I.D. No.** PSC-08-12-00006-A**Filing Date:** 2013-02-19**Effective Date:** 2013-02-19

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

Action taken: On 2/13/13, the PSC adopted an order denying the addition of Block Bidding programs to the energy efficiency portfolios of Niagara Mohawk d/b/a National Grid and O&R Utilities, Inc. and also authorized Consolidated Edison to exclude block bidding.

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

Subject: Denying Block Bidding programs to NiMo d/b/a National Grid and O&R and excluding block bidding programs for ConEd.

Purpose: To deny Block Bidding programs to NiMo d/b/a National Grid and O&R and excluding block bidding programs for ConEd.

Substance of final rule: The Commission, on February 13, 2013 adopted an order denying petitions filed by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) and Orange and Rockland Utilities, Inc., (O&R), to add Block Bidding programs to their electric EEPS portfolio. The order also authorizes Consolidated Edison Company of New York, Inc. to exclude block bidding from its EEPS programs, subject to terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(07-M-0548SA48)

NOTICE OF ADOPTION

Approval, in Part, of EEPS Program Changes**I.D. No.** PSC-19-12-00014-A**Filing Date:** 2013-02-19**Effective Date:** 2013-02-19

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

Action taken: On 2/13/13, the PSC adopted an order approving, in part, Energy Efficiency Portfolio Standard (EEPS) program administrator proposals regarding substantial design and budget changes to EEPS programs.

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

Subject: Approval, in part, of EEPS program changes.

Purpose: To approve, in part, the changes of the design and budgets of EEPS programs.

Substance of final rule: The Commission, on February 13, 2013 adopted an order addressing the petitions filed by Niagara Mohawk Power Corporation, New York State Gas and Electric Corporation and Rochester Gas and Electric Corporation for Energy Efficiency Portfolio Standard (EEPS) program administrators for modifications to certain EEPS electric programs, subject to terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(07-M-0548SA59)

NOTICE OF ADOPTION

Denying O&R's Request for a New Commercial and Industrial Existing Buildings Gas Rebate Program**I.D. No.** PSC-19-12-00021-A**Filing Date:** 2013-02-19**Effective Date:** 2013-02-19

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

Action taken: On 2/13/13, the PSC adopted an order denying a petition filed by Orange and Rockland Utilities, Inc. for a new Commercial and Industrial Existing Buildings Gas Rebate Program.

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

Subject: Denying O&R's request for a new Commercial and Industrial Existing Buildings Gas Rebate Program.

Purpose: To deny Orange and Rockland Utilities, Inc.'s request for a new Commercial and Industrial Existing Buildings Gas Rebate Program.

Substance of final rule: The Commission, on February 13, 2013 adopted an order denying the April 2, 2012 petition of Orange and Rockland Utilities, Inc. for a new gas Commercial and Industrial Rebate Program within their EEPS portfolio, subject to terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(07-M-0548SA65)

NOTICE OF ADOPTION

To Approve the Terms of a Joint Proposal Allocating Property Tax Refund**I.D. No.** PSC-19-12-00032-A**Filing Date:** 2013-02-15**Effective Date:** 2013-02-15

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

Action taken: On 2/13/13, the PSC adopted an order approving terms set forth in a Joint Proposal by Long Island Water Corporation d/b/a Long Island American Water and DPS staff allocating property tax refund.

Statutory authority: Public Service Law, section 113(2)

Subject: To approve the terms of a joint proposal allocating property tax refund.

Purpose: Approval of the terms of a joint proposal allocating property tax refund.

Substance of final rule: The Commission, on February 13, 2013 adopted an order approving the terms set forth in a joint proposal allocating a property tax refund between Long Island Water Corporation d/b/a Long Island American Water and Ratepayers, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(12-W-0051SA1)

NOTICE OF ADOPTION

To Exempt Gipsy Trail Club, Inc. from PSL 89-f Requirement to Obtain Regulatory Approval for a Loan**I.D. No.** PSC-21-12-00014-A**Filing Date:** 2013-02-14**Effective Date:** 2013-02-14

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

Action taken: On 2/13/13, the PSC adopted an order on exemption from approval of a \$460,000 loan requested in a petition filed by Gipsy Trail Club, Inc.

Statutory authority: Public Service Law, section 89(c) and (f)

Subject: To exempt Gipsy Trail Club, Inc. from PSL 89-f requirement to obtain regulatory approval for a loan.

Purpose: Exemption of Gipsy Trail Club, Inc. to obtain regulatory approval for a loan.

Substance of final rule: The Commission, on February 13, 2013 adopted an order on exemption from the Public Service Law 89-f requirement to obtain regulatory approval of a \$460,000 loan requested in a petition filed by Gipsy Trail Club, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(12-W-0207SA1)

NOTICE OF ADOPTION

Determination of a Gas Transportation Contract Rate**I.D. No.** PSC-27-12-00014-A**Filing Date:** 2013-02-15**Effective Date:** 2013-02-15

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

Action taken: On 2/13/13, the PSC adopted an order determining a gas transportation rate between Alliance Energy Transmission, LLC and Seneca Partners, L.P.

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

Subject: Determination of a gas transportation contract rate.

Purpose: To determine a gas transportation contract rate.

Substance of final rule: The Public Service Commission, on February 13, 2013, adopted an order approving a determination of a gas transportation contract rate of \$0.71 per dekatherm for service from Alliance Energy Transmission LLC to Seneca Power Partners, L.P., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(12-G-0256SA1)

NOTICE OF ADOPTION

Lightened and Incidental Regulation of Steam Service**I.D. No.** PSC-29-12-00017-A**Filing Date:** 2013-02-14**Effective Date:** 2013-02-14

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

Action taken: On 2/13/13, the PSC adopted an order approving East River Housing Corporation's petition requesting incidental and lightened ratemaking regulation.

Statutory authority: Public Service Law, sections 2(22), 5(1)(b), 78, 79, 80, 81, 82, 82-a, 83, 84, 85, 88, 89, 15, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-a, 119-b and 119-c

Subject: Lightened and incidental regulation of steam service.

Purpose: To approve the lightened and incidental regulation of steam service.

Substance of final rule: The Commission, on February 13, 2013 adopted an order approving a petition filed by East River Housing Corporation requesting incidental and lightened ratemaking regulation in connection with a qualifying cogeneration facility, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(12-S-0284SA1)

NOTICE OF ADOPTION

Denying the Petition of Consolidated Edison of New York, Inc. Regarding Certain Wheeling Costs**I.D. No.** PSC-31-12-00008-A**Filing Date:** 2013-02-14**Effective Date:** 2013-02-14

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

Action taken: On 2/13/13, the PSC adopted an order denying Consolidated Edison Company of New York, Inc.'s July 9, 2012 petition requesting recovery of PJM OATT charges and disposition of amounts presently collected in base rates for expired wheeling contracts.

Statutory authority: Public Service Law, sections 65, 66(1), (2), (9), (12)(a), 72-a and 113

Subject: Denying the petition of Consolidated Edison of New York, Inc. regarding certain wheeling costs.

Purpose: To deny Consolidated Edison of New York, Inc.'s petition regarding certain wheeling costs.

Substance of final rule: The Commission, on February 13, 2013 adopted an order denying a July 9, 2012 petition filed by Consolidated Edison Company of New York, Inc. seeking recovery of charges incurred under the PJM Open Access Transmission Tariff (PJM OATT) through the Monthly Adjustment Clause (MAC), subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(09-E-0428SA5)

NOTICE OF ADOPTION

Approval of Modifications to Tariff Schedule PSC No. 1—Electricity**I.D. No.** PSC-35-12-00013-A**Filing Date:** 2013-02-15**Effective Date:** 2013-02-15

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

Action taken: On 2/13/13, the PSC adopted an order approving a petition filed by the Village of Angelica to modify its tariff schedule, PSC No. 1—Electricity to reflect New York Power Authority's approved rates.

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

Subject: Approval of modifications to tariff schedule PSC No. 1—Electricity.

Purpose: To approve modifications to tariff schedule PSC No. 1—Electricity.

Substance of final rule: The Commission, on February 13, 2013 adopted an order approving a petition filed by the Village of Angelica to modify its tariff schedule PSC No. 1—Electricity to reflect New York Power Authority's approved rates, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(12-E-0339SA1)

NOTICE OF ADOPTION

Approving, in Part, NFG's Request for Changes to Its EEPS Programs**I.D. No.** PSC-38-12-00003-A**Filing Date:** 2013-02-19**Effective Date:** 2013-02-19

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

Action taken: On 2/13/13, the PSC adopted an order approving, in part, a petition of National Fuel Gas Distribution Corporation (NFG) proposing changes to its Energy Efficiency Portfolio Standard programs.

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

Subject: Approving, in part, NFG's request for changes to its EEPS programs.

Purpose: To approve, in part, NFG's request for changes to its EEPS programs.

Substance of final rule: The Commission, on February 13, 2013 adopted an order approving, in part, the August 15, 2012 petition filed by National Fuel Gas Distribution Corporation (NFG) proposing changes to its Energy Efficiency Portfolio Standard programs, subject to terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(07-M-0548SA74)

NOTICE OF ADOPTION

Approving an Increase in the Funding Cap for On-Site Wind Generation**I.D. No.** PSC-44-12-00005-A**Filing Date:** 2013-02-14**Effective Date:** 2013-02-14

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

Action taken: On 2/13/13, the PSC adopted an order approving, in part, a petition by Distributed Wind Energy Assoc. and Sustainable Energy Developments, Inc. authorizing an increase in the funding cap applicable to the on-site wind program in the customer-sited tier.

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

Subject: Approving an increase in the funding cap for on-site wind generation.

Purpose: To approve an increase to the funding cap for on-site wind generation.

Substance of final rule: The Commission, on February 13, 2013 adopted an order approving, in part, a petition filed by Distributed Wind Energy Association and Sustainable Energy Developments, Inc. relating to on-site wind generation and authorized the New York State Energy Research Development Authority to raise the current funding cap for on-site wind generation, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(03-E-0188SA34)

NOTICE OF ADOPTION

Approval of Waiver of Certain Requirements of 16 NYCRR Sections 600.3, 609.4, 609.13(c) and 890.66**I.D. No.** PSC-45-12-00006-A**Filing Date:** 2013-02-15**Effective Date:** 2013-02-15

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

Action taken: On 2/13/13, the PSC adopted an order approving a petition of Verizon New York Inc. which would permit e-mail instead of hardcopy notification of suspension, terminating or discontinuing of services if the customer has previously consented to e-mail notice.

Statutory authority: Public Service Law, sections 4(1), 216(1), (5) and 609.17

Subject: Approval of waiver of certain requirements of 16 NYCRR sections 600.3, 609.4, 609.13(c) and 890.66.

Purpose: To approve waiver implementing a program providing for prior approved notification by e-mail rather than hardcopy notices.

Substance of final rule: The Commission, on February 13, 2013 adopted an order approving a petition filed by Verizon New York Inc. for a waiver of certain requirements of sections 16 NYCRR, permitting e-mail notification to customers who have previously consented to receive e-mail notification, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(12-C-0455SA1)

NOTICE OF ADOPTION**Customer Charges**

I.D. No. PSC-47-12-00011-A

Filing Date: 2013-02-13

Effective Date: 2013-02-13

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

Action taken: On 2/13/13, the PSC adopted an order, approving in part and denying in part, a tariff filing by Hudson Valley Water Companies, Inc. (HVWC) proposing revisions to the Company's rules and regulations contained in PSC No. 2—Water.

Statutory authority: Public Service Law, sections (4)1, 5(1)(f), 89-c(1) and (10)

Subject: Customer charges.

Purpose: To make changes to the rates, charges, rules and regulations in HVWC's tariff to become effective March 1, 2013.

Substance of final rule: The Commission, on February 13, 2013 adopted an order approving in part Hudson Valley Water Companies, Inc.'s (HVWC) tariff filing proposing revisions to HVWC's rules and regulations contained in PSC No. 2—Water, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(12-W-0505SA1)

NOTICE OF ADOPTION**Adopting Emergency Rule As a Permanent Rule**

I.D. No. PSC-49-12-00010-A

Filing Date: 2013-02-13

Effective Date: 2013-02-13

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

Action taken: On 2/13/13, the PSC adopted an order approving an emergency rule as a permanent rule to extend a temporary waiver of 16 NYCRR, Section 261.53 until November 16, 2012 to facilitate the restoration of gas service disruptions caused by Hurricane Sandy.

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

Subject: Adopting emergency rule as a permanent rule.

Purpose: To approve the adoption of the emergency rule as a permanent rule.

Substance of final rule: The Public Service Commission, on February 13, 2013, adopted an order approving an emergency rule as a permanent rule extending a temporary waiver of the notification requirement contained in 16 NYCRR Section 261.53 until November 16, 2012 to facilitate restoration of gas service related to disruptions caused by Hurricane Sandy.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(12-G-0500EA2)

NOTICE OF ADOPTION**Approval of the New York State Reliability Council's Establishment of an Installed Reserve Margin of 17.0%**

I.D. No. PSC-52-12-00011-A

Filing Date: 2013-02-19

Effective Date: 2013-02-19

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

Action taken: On 2/13/13, the PSC adopted an order approving an Installed Reserve Margin of 17.0% established by the New York Control Area for the 2013-2014 Capability Year beginning May 1, 2013 and ending April 30, 2014.

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

Subject: Approval of the New York State Reliability Council's establishment of an Installed Reserve Margin of 17.0%.

Purpose: To approve New York State Reliability Council's establishment of an Installed Reserve Margin of 17.0%.

Substance of final rule: The Commission, on February 13, 2013 adopted an order approving an Installed Reserve Margin of 17.0% established by the New York State Reliability Council for the Capability Year beginning May 1, 2013 and ending April 30, 2014, subject to terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(07-E-0088SP7)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Telephone Local Interconnection Rates**

I.D. No. PSC-10-13-00009-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 a petition filed by Verizon New York Inc. to change the procedure used to establish the Unbundled CLEC Reciprocal Compensation Charge, which is paid by local exchange carriers that use its unbundled line ports.

Statutory authority: Public Service Law, section 92(2)

Subject: Telephone local interconnection rates.

Purpose: To change the current procedure to establish and update the UCRCC.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny, or modify in whole or in part, the petition filed by Verizon New York, Inc. (Verizon) to modify the procedure for calculating a wholesale rate element known as the Unbundled CLEC Reciprocal Compensation Charge (UCRCC).

The UCRCC charge compensates Verizon in situations where it receives certain types of calls from a Competitive Local Exchange Carrier (CLEC) for hand off to a second CLEC and must make reciprocal compensation payments to that second CLEC. Currently, the UCRCC rate is recalculated on a quarterly basis to reflect the average rate per minute that Verizon pays to CLECs in termination charges over a three-month period. Verizon is proposing to eliminate the quarterly updating of the UCRCC, which is required by Commission Order¹, reducing the UCRCC rate and having the rate remain at a reduced level.

¹ Case 98-C-1357 - *Examine New York Telephone Company's Rates for Unbundled Network Elements*, Order on Unbundled Network Element Rates (issued January 28, 2002), p. 161.

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, NY 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-C-0064SP1)

Urban Development Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Innovate NY Fund

I.D. No. UDC-10-13-00003-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 4252 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, sections 9-c and 16-u; and L. 1968, ch. 174

Subject: Innovate NY Fund.

Purpose: Provide the basis for administration of the Innovate NY Fund.

Substance of proposed rule (Full text is not posted on a State website): Part 4252

INNOVATE NY FUND

Section 4252.1 Purpose

The purpose of these regulations is to facilitate administration of the Innovate NY Fund (the "Fund" or the "Program") authorized pursuant to section sixteen-u of the New York State Urban Development Corporation Act (the "Act").

Section 4252.2 Definitions

The following terms shall have the meanings given below:

1. "Beneficiary Company" shall mean a Seed Stage Business that an Investment Entity selects for a Fund investment (also referred to as a "Portfolio Company" after the Fund investment is made).

2. "Carried Interest on Capital Gains" shall mean the share of any profits that the owners, partners or members of an Investment Entity receive as compensation.

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

4. "Disbursement Process" means the process for disbursing Program funds to Investment Entities.

5. "Due Diligence" shall mean an in-depth investigative approach to evaluating the Beneficiary Company and verifying an investment opportunity, which may include assessment of the management team, business plan, financial history, financial projections, and the Beneficiary Company's technology and products/services.

6. "Emerging Technology Field" shall mean one or more of the emerging technologies, as defined in section thirty-one hundred two-e of the Public Authorities Law, or any field, area or technology that is achieving or has the potential to achieve contemporary technological advances, innovation, transformation or development.

7. "Equity" shall mean common stock, convertible preferred stock, stock warrants or convertible notes or bonds that can also convert to common stock, and similar types of securities.

8. "Follow-on Investment" shall mean a subsequent investment made by an investor after an initial round of investment in a Portfolio Company.

9. "Hybrid Investment" shall mean an investment that combines Equity and debt features, such as preferred stocks, convertible bonds, and convertible notes.

10. "Investment Entity" shall mean a regional and local economic development organization, technology development organization, research university, or investment fund that provides or is otherwise qualified to make seed-stage investments in companies located in the State of New York.

11. "Leveraging" or "leverage" shall mean utilizing investment assets alongside other sources of capital.

12. "Matching Investment Funds" shall mean monies secured in addition to Program funds.

13. "Portfolio Company" shall mean a Beneficiary Company after the Fund investment is made.

14. "Seed-Stage Business" shall mean a Small Business, located in New York State and working in one or more Emerging Technology Fields, which demonstrates a potential for substantial growth and job development, has the potential to generate additional economic activity in New York State, and that is pre-revenue, has only begun to earn revenue, or has not yet received institutional investments.

15. "Small Business" shall have the meaning as set forth in section 131 of the Economic Development Law.

16. "State" shall mean the State of New York.

Section 4252.3 Investment Objectives

The Fund objective is to invest in Seed Stage Businesses through Investment Entities that are selected by and are under contract to the Corporation. Investment priority shall be given to Seed Stage Businesses involved in commercialization of research and development or high technology manufacturing.

Section 4252.4 Selection of Investment Entities

The Corporation shall identify and select Investment Entities through one or more competitive statewide, regional or local solicitations. Investment Entity applicants shall be evaluated on criteria including, but not limited to, the applicant's: (a) record of success in raising investment funds and successfully investing them; (b) capacity to perform Due Diligence and to provide management expertise and other value-added services to Beneficiary Companies; (c) financial resources for identifying and investing in seed-stage and early-stage companies; (d) ability to secure non-State Matching Investment Funds at a ratio that is equal to or greater than one-to-one (1:1); (e) ability to evaluate the commercial potential of emerging technologies; (f) ability to secure partnerships with local or regional investors; (g) conflict of interest policy acceptable to the Corporation; (h) investment record and capacity to invest in the State; (i) management fees, promotes, share of return and other fees and charges and; (j) other criteria that the Corporation determines is relevant to making investment decisions consistent with the purposes of the Fund. Applicants must specify particular industry sector, regional or other investment strategies. The Corporation shall determine the amount of the Program funds to commit to an Investment Entity. After an Investment Entity is under contract to the Corporation, the Corporation may award additional Program funds to an Investment Entity without an additional solicitation.

Section 4252.5 General Requirements

1. The Corporation and each Investment Entity receiving Program funds shall enter into one or more written agreements governing the Corporation's investment, which may include a Limited Partnership Agreement, that are consistent and in compliance with the Act, including section 16-u thereof, this rule, and other applicable laws and regulations.

2. The Corporation shall distribute Program funds promptly pursuant to a Disbursement Process agreed to between the Corporation and the Investment Entity in order to enable the Investment Entity to fulfill its commitments to Beneficiary Companies in a timely manner.

3. The commitment period for an Investment Entity to make investments with the Program funds shall typically be three years or less.

4. Returns on investments or interest accrued with respect to Program funds received by an Investment Entity through the Fund shall be returned to the Corporation in accordance with the agreements entered into between the Investment Entity and the Corporation.

Section 4252.6 Eligible Investments in Beneficiary Companies

In order to be eligible for an initial investment, a Beneficiary Company must be a Seed-Stage Business. Prior to the investment of Program funds in a Beneficiary Company, the Beneficiary Company must agree, pursuant to a written agreement satisfactory to the Corporation, that the Beneficiary Company will be located and remain located within the State for a period satisfactory to the Corporation and that in the event that the Beneficiary Company breaches such obligation, the Corporation shall have all reme-

dies at law and such other remedies as the Corporation may set forth in the agreement with the Beneficiary Company, which may include recovery or recapture, in full or in part, of the Program funds investment.

Investment Entities shall not invest Program funds in a Beneficiary Company in an amount greater than five hundred thousand dollars, or seven hundred fifty thousand dollars in the case of a biotechnology-related Beneficiary Company, at any one time, unless the Beneficiary Company and the Investment Entity can demonstrate to the satisfaction of the Corporation that exceeding the applicable investment limit significantly increases the potential of the investment to result in substantially greater growth, job development, and additional economic activity in New York State and the Corporation consents to such greater investment in writing. Investments in Beneficiary Companies may take the form of Equity or Hybrid Investments. Program funds may be used for Follow-on Investments in Portfolio Companies, subject to the investment amount limits and exceptions set forth above. In the case of two or more Innovate NY Investment Entities investing in the same beneficiary company in the same investment round, applicable investment limits may be increased pending review and approval by the Corporation.

Section 4252.7 Fund Accounts

Each participating Investment Entity shall deposit Program funds and program related investment proceeds (including, without limiting the foregoing, returns and interest) into a bank account in a State or Federally chartered banking institution, satisfactory to the Corporation, or as otherwise agreed in writing between the Corporation and the Investment Entity.

Section 4252.8 Matching Investment Funds Requirements

At such time as an Investment Entity has invested fifty percent of the Program funds committed to such Investment Entity and annually thereafter, the aggregate investments of Program funds by the Investment Entity in Beneficiary Companies shall be leveraged with Matching Investment Funds from private sources of capital, excluding investments after the initial funding round, at a ratio equal to or greater than two to one (2:1). Investments made in funding rounds prior to the date of the initial investment of Program Funds shall not be counted toward satisfying this Matching Investment Funds requirement. Funding provided by the State of New York, including, but not limited to, Small Business Technology Investment Fund proceeds, does not satisfy this Matching Investment Funds requirement. In the case of two or more Innovate NY Investment Entities investing in the same Beneficiary Company in the same investment round, matching funds from all private sources shall be applied as determined by the Investment Entities but no amount shall be applied as matching funds more than once.

Section 4252.9 Fees and Capital Gains

The Investment Entities may charge fees, pursuant to a written schedule of fees, and receive Carried Interest on Capital Gains with the prior written approval of the Corporation. The amount of any fees and the amount of the Carried Interest on Capital Gains will be detailed in the agreements to be entered into between the Investment Entity and the Corporation. Returns to the Corporation, such as capital gains and the return of the investment, will be detailed in the agreements to be entered into between the Investment Entity and the Corporation.

Section 4252.10 Auditing, Compliance and Reporting

The Corporation shall evaluate the investment activities of each participating Investment Entity in conformance with the agreements to be entered into between the Corporation and the Investment Entity, in accordance with the criteria set forth in section 16-u of the Act, and this rule and in accordance with other applicable law and regulations. Each Investment Entity will be required to provide quarterly and annual reports outlining the impact and effectiveness of the investments made, current status, leveraged funds, business revenue, numbers of jobs created, and other items as determined by Corporation. These annual reports and additional reports as requested at the discretion of the Corporation may be required to include:

- a. The number of investments made;
- b. The type of each investment;
- c. The location of each Beneficiary Company;
- d. The amount of Program funds and private funds invested in each Beneficiary Company;
- e. The projected and actual number of jobs created or retained by each Beneficiary Company receiving Program funds;
- f. The type of product or technology being developed or produced by each Beneficiary Company; and
- g. Such other information as the Corporation may require.

The Corporation may conduct or request audits of the Investment Entities in order to ensure compliance with the provisions of section 16-u of the Act, any regulations promulgated with respect thereto and agreements between the Investment Entities and the Corporation of all aspects of the use of Program funds and investment transactions.

In the event that the Corporation finds substantive noncompliance at

any time, the Corporation may terminate the Investment Entity's participation in the Program. The agreements between the Corporation and the Investment Entity shall provide that, upon termination of an Investment Entity's participation in the Program, the Investment Entity shall return to the Corporation, promptly after its demand thereof, all Program funds held by the Investment Entity, and provide to the Corporation, promptly after its demand thereof, an accounting of all Program funds, including all currently outstanding investments that were made using Program funds. Notwithstanding such termination, the Investment Entity shall remain liable to the Corporation with respect to any unpaid amounts due from the Investment Entity pursuant to the terms of the agreements between the Corporation and the Investment Entity. In the event that an Investment Entity's participation in the Program is terminated, the Corporation, in its discretion, may transfer to one or more of the other participating Investment Entities without an additional solicitation all or part of the award made to such Investment Entity.

Section 4252.11 Confidentiality and State Employees

To the extent permitted by law, all information regarding the financial condition, marketing plans, customer lists, or other trade secrets and proprietary information of a Beneficiary Company shall be confidential and exempt from public disclosures.

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

Section 4252.12 Non-Discrimination and Affirmative Action

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

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-u of the Act provides for the creation of the Innovate NY Fund (the "Program") and authorizes the New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation"), within available appropriations, to fund investments in small businesses engaged in one or more emerging technology fields and demonstrating a potential for substantial growth and job development. These businesses shall be in the pre-revenue, recently established revenue stream phase or not yet in receipt of institutional investments. The investments will be made in these small businesses through investment entities that are selected by and are under contract with the Corporation.

2. Legislative Objectives: Section 16-u of the Act (Uncon. Laws section 6266-u, added by Chapter 103 of the Laws of 2011) sets forth the Legislative objective of authorizing the Corporation, within available appropriations, to provide funds to investment entities, including regional and local development organizations, technology development organizations, research universities and investment funds that provide seed-stage investments to support emerging New York state businesses that have demonstrated potential for substantial growth and job development in an emerging technology field and have the potential to generate additional economic activity in New York State. The adoption of 21 NYCRR Part 4252 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 \$25,922,157 of federal funds for this program. Innovate NY will provide investments to investment entities, in order to provide funding for those organizations' equity and quasi equity investments in New York's eligible small businesses.

Small businesses have been determined to be a major source of employment throughout New York State. Small businesses have historically had difficulties obtaining capital in order to remain competitive and grow their operations, and the current economic difficulties have exacerbated this problem. Making equity investments in small businesses should sustain and potentially increase the employment provided by such businesses, especially during this period of historically high unemployment and underemployment. The Program allows the Corporation to use investment entities contracted through a competitive process by the Corporation to invest Program funds. The rule further facilitates the administration of the Program by defining eligible and ineligible small businesses, permissible types of investments and other criteria to be applied by the institutions in making equity investments in small businesses.

4. **Costs:** The Program is funded by a State appropriation of federal funds in the amount of \$25,922,157 dollars. Pursuant to the rule, the amount of Program funds invested will not be greater than \$500,000 (or greater than \$750,000 in the case of any individual biotechnology-related beneficiary) at any one time, unless the beneficiary company can demonstrate to the satisfaction of the Corporation that exceeding the applicable investment limit significantly increases the potential of the investment to result in substantially greater growth, job development, and additional economic activity in New York State and the Corporation consents to such investment in writing. The costs to investment entities that participate in the Program would depend on the size of their existing fund and their particular structure for sourcing, evaluating, and monitoring investments. The investment entities will propose a compensation structure for administering the Innovate NY funds, and that structure is likely to include both a management fee and a component of carried interest on capital gains.

5. **Paperwork / Reporting:** There are no additional reporting or paperwork requirements as a result of this rule for Program participants except those required by the statute creating the Program such as quarterly and annual reports on the organization's 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 investment entities already provide small business capital, the access of seed-stage businesses to capital is very limited. The State has established the Program in order to enhance the access of small businesses to such capital, and the proposed rule provides the regulatory basis for providing investment entities for equity investments in small businesses in accordance with the statutory requirements of the Program.

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

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

Regulatory Flexibility Analysis

1. **Effects of Rule:** In the rule: "Small business" is defined as a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis; "Investment Entity" is defined a regional and local economic development organization, technology development organization, research university, or investment fund that provides or is otherwise qualified to make seed-stage investments in companies located in the State of New York and "Seed-Stage Business" is defined as a small business, located in New York State and working in one or more emerging technology fields, which demonstrates a potential for substantial growth and job development, has the potential to generate additional economic activity in New York State, and that is pre-revenue, has only begun to earn revenue, or has not yet received institutional investments. The rule will facilitate the statutory Program's purpose of having New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation") make investments in investment entities in order to provide funding in principal amounts equal to or less than five hundred thousand dollars to small businesses, or seven-hundred fifty thousand to biotechnology-related small businesses, with the possibility of additional funding under prescribed circumstances, located within the State, that are engaged in one or more emerging technology fields and demonstrating a potential for substantial growth and job

development. These businesses shall be in the pre-revenue, recently established revenue stream phase or not yet in receipt of institutional investments.

2. **Compliance Requirements:** There are no compliance requirements for local governments in these regulations. Small businesses and investment entities must comply with the federal compliance and reporting requirements this program requires. Eligible small businesses receiving funds must use the funds for a business purpose and remain in the State for a period acceptable to the Corporation. Penalties will be imposed for any failure to meet requirements. This is a voluntary program.

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

4. **Compliance Costs:** There are no compliance costs for small businesses and local governments in these regulations.

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

6. **Minimizing Adverse Impact:** This rule has no adverse impacts on small businesses or local governments because it is designed to provide funds to investment entities in order to enhance the ability of such organizations to invest in small businesses.

7. **Small Business and Local Government Participation:** A number of investment entities that provide equity or quasi-equity investing in small businesses were surveyed by the Corporation and were supportive of the Fund and its structure. A number of roundtable discussions were held as part of the 2009 Small Business Task Force as well as Legislature-sponsored sessions, where various stakeholders supported and advocated for such a fund. Creation of such a seed fund was one of the primary recommendations of the 2009 Small Business Task Force.

Rural Area Flexibility Analysis

1. **Types and Estimated Numbers of Rural Areas:** Investment entities serving all of the 44 counties defined as rural by the Executive Law § 481(7), are eligible to apply for the Innovate NY Fund (the "Program") assistance pursuant to a State-wide request for proposals.

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

3. **Costs:** The costs to investment entities that participate in the Program would depend on the size of their existing fund and their particular structure for sourcing, evaluating, and monitoring investments. The investment entities will propose a compensation structure for administering the Innovate NY funds, and that structure is likely to include both a management fee and a component of carried interest on capital gains. While industry standard is 20% carried interest in capital gains and a 2.5% yearly management fee that declines over time, we expect that respondents may be more competitive.

4. **Minimizing Adverse Impact:** The purpose of the Program is to provide funds to investment entities which will invest in seed-stage companies. This rule provides a basis for cooperation between the State and investment entities, including investment entities that serve rural areas of the State, in order to maximize the Program's effectiveness and minimize any negative impacts for such investment entities and the small businesses, including small businesses located in rural areas of the State, that such investment entities serve.

5. **Rural Area Participation:** This rule maximizes geographic participation by not limiting applicants to those located only in urban areas or only in rural areas.

Job Impact Statement

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

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

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

Bonding Guarantee Assistance Program

I.D. No. UDC-10-13-00004-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 4253 to Title 21 NYCRR.

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

Subject: Bonding Guarantee Assistance Program.

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

Substance of proposed rule (Full text is not posted on a State website):
Part 4253

Bonding Guarantee Assistance Program
4253.1 Purpose

The purpose of this rule and these regulations is to effectuate section 16-f of the New York State Urban Development Corporation Act, that authorizes the Bonding Guarantee Assistance Program, and to provide for the implementation and administration of the program by the New York State Urban Development Corporation which is authorized by the Program (i) to provide to surety companies the additional financial backing needed in order to induce such companies to issue payment and performance bonds for contractors that are small businesses, as defined in this rule, and certified, pursuant to article fifteen-A of the Executive Law, minority-owned business enterprises or women-owned business enterprises, in order for such contractors to meet payment and performance bonding requirements for construction projects, including but not limited to, government sponsored, transportation related construction projects and (ii) to provide technical assistance in completing bonding applications for such contractors seeking surety bonding in preparation for bidding on construction projects, including transportation related projects.

4253.2 Definitions

a) "Agent" shall mean a third party that has entered into an agreement with the Corporation for the purpose of administering the Program.

b) "Bid Bond" shall mean a written guaranty provided to a principal by a surety on behalf of a contractor who is submitting a bid, in order to ensure that upon acceptance of the bid by the principal, the contractor will proceed with the contract and will replace the bid bond with a performance bond.

c) "Program" shall mean the Bonding Guarantee Assistance Program created pursuant to section 16-f of the New York State Urban Development Corporation Act.

d) "Certified" shall mean certification of a business enterprise as a Minority-Owned Business Enterprise or a Women-Owned Business Enterprise pursuant to article 15-A of the Executive Law.

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

f) "Minority-Owned Business Enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (1) at least fifty-one percent owned by one or more Minority Group Members; (2) an enterprise in which such minority ownership is real, substantial and continuing; (3) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (4) an enterprise authorized to do business in this state and independently owned and operated; (5) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (6) an enterprise that is a Small Business, unless the term Minority-Owned Business Enterprise is otherwise defined in section 310 of the Executive Law, in which case the definition shall be as set forth for such term in such section.

g) "Minority Group Members" 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, unless the term Minority Group Member is otherwise defined in section 310 of the Executive Law, in which case the definition shall be as set forth for such term in such section.

h) "Payment Bond" shall mean a written guaranty provided to a principal by a surety on behalf of a contractor that guarantees that a contractor will pay suppliers, laborers, and subcontractors subject to contract terms for labor and materials.

i) "Performance bond" shall mean a written guaranty provided to a principal by a surety on behalf of a contractor that guarantees that a contractor will adhere to the terms and conditions of a contract.

j) "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, whose primary place of business is in New York State, and that employs one hundred or fewer persons on a full time basis, unless such term is otherwise defined in section 131 of the Economic Development Law, in which case the definition shall be as set forth for such term in such section.

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

l) "Surety Company" shall mean a surety company that has a certificate of solvency from, and its rates approved by, the New York State Department of Financial Services and/ or appears in the most current edition of the U.S. Department of Treasury Circular 570 as eligible to issue bonds in connection with procurement contracts for the United States of America.

m) "Women-Owned Business Enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (1) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women; (2) an enterprise in which the ownership interest of such women is real, substantial and continuing; (3) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (4) an enterprise authorized to do business in State and independently owned and operated; (5) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (6) an enterprise that is a Small Business, unless the term Women-Owned Business Enterprise is otherwise defined in section 310 of the Executive Law, in which case the definition shall be as set forth for such term in such section.

4253.3 Program Overview

a) The amount of additional Program assistance provided to a Surety Company with respect to each contract shall generally not be greater than the amount necessary to induce such Surety Company to issue the bonds required for the contract, and in no event shall exceed fifty percent of the face value of bonds to be issued by the Surety Company for such contract.

b) The Corporation may provide to Small Businesses, Certified Minority-Owned Business Enterprises and Certified Women-Owned Business Enterprises seeking surety bonding in preparation for bidding on construction projects, including transportation related projects, technical assistance in completing bonding applications. The Corporation may refer such businesses to various business service providers or the Department of Economic Development for technical assistance as such businesses may need, including, but not limited to:

1. a review of the applicant's market and business competitive strategy;

2. consultation and review of the development and planned implementation of a working capital budget;

3. assistance with applications for the receipt of funding from other financial sources and providing referrals to other appropriate public and private sources of financing; and

4. assistance from the regional offices of the Department of Economic Development, pursuant to article 11 of the Economic Development Law, and the Entrepreneurial Assistance Program, pursuant to article 9 of such law, and any other such program receiving State funds from the New York State Urban Development Corporation Act or the Department of Economic Development or any other state agency that is intended to provide technical assistance to Small Businesses, Certified Minority-owned Business Enterprises and Certified Women-owned Business Enterprises.

4253.4 Eligible Contractors

a) In order to be eligible for consideration for Program assistance, a contractor must be a Small Business, a Certified Minority-Owned Business Enterprise or a Certified Women-Owned Business Enterprise that is unable to obtain a bond from a Surety Company without Program assistance.

b) The Corporation may provide each Surety Company that participates in the Program with additional requirements or guidelines on contractor eligibility, such as minimum years in businesses, contract performance history, revenue limits or minimums, or other factors. The Surety Company may be required to verify information regarding Program

eligible contractors or to secure such assurances from prospective Program eligible contractors as the Corporation may deem necessary.

4253.5 Eligible Surety Companies

In order to be eligible to participate in the Program, a surety company must, among other requirements to be determined by the Corporation:

a) have a certificate of solvency (pursuant to section 111 of the Insurance Law) from, and have its rates approved by, the New York State Department of Financial Services and/or appear in the most current edition of the U.S. Department of Treasury Circular 570 as eligible to issue bonds in connection with procurement contracts for the United States of America;

b) have a satisfactory performance record regarding contractor default, termination of contracts, application of satisfactory underwriting standards and principles and practices for evaluating contractor credit and capacity and processing claims, including diligent and commercially reasonable recovery efforts; and

c) be rated B+ or higher if rated by A.M Best's Key Rating Guide Property/Casualty.

4253.6 Financial Backing Program Assistance

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

4253.7 Program Administration

a) In order for a Surety Company to participate in the Program, the Surety Company shall enter into a Program participation agreement with the Corporation in such form as the Corporation or the Agent may prescribe. Such agreements may include provisions for proof of contractor default; termination of contracts; underwriting standards and principles and practices used in evaluating credit and capacity; and requirements for the claims process, including requirements that the Surety Company conduct diligent and commercially reasonable recovery efforts.

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

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

d) The Corporation or the Agent shall evaluate applications for Program Assistance and make determinations as to business creditworthiness and whether to provide the requested additional financial backing Program assistance. Evaluations of eligible contractors may, among other things, include review of financial information, contract performance history, documents submitted to the Surety Company and other business information.

e) The Corporation may facilitate the provision of technical assistance to eligible Small Businesses and Certified Minority-Owned Business Enterprises and Certified Women-Owned Business Enterprises in accordance with applicable law and regulations.

f) The Corporation or the Agent shall prepare annual reports for the Program.

4253.8 Fees

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

4253.9 Confidentiality and State Employees

a) To the extent permitted by law, all information regarding the financial condition, marketing plans, customer lists, or other trade secrets and proprietary information of a person or entity requesting assistance from the Program administered through the participating Surety Company, shall be confidential and exempt from public disclosures.

b) 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.

4253.10 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 of the Executive 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: 60 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-f of the Act provides for the creation of the Bonding Guarantee Assistance Program (the "Program") and authorizes the New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation"), within available appropriations, to provide small businesses and minority and women-owned business enterprises the additional financial backing needed in order to induce surety companies to issue surety bond lines, bid bonds or payment and performance bonds necessary for such contractors to meet requirements for construction projects, including but not limited to, government sponsored, transportation related construction projects and to provide technical assistance in completing bonding applications for such contractors seeking surety bonding in preparation for bidding on construction projects, including transportation related projects.

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

3. Needs and Benefits: The State has allocated \$10,405,173.00 of Federal funds for this program. The Bond Guarantee Assistance Program will provide assistance to New York's eligible small businesses, minority-owned business enterprises and women-owned business enterprises, in order to provide the collateral support necessary to secure surety bonding. These businesses have been determined to be a major source of employment throughout New York State. These businesses have historically had difficulties obtaining financing or refinancing in order to remain competitive and grow their operations, and the current economic difficulties have exacerbated this problem. Providing assistance to these businesses should sustain and potentially increase the employment provided by such businesses, especially during this period of historically high unemployment and underemployment. The rule defines eligible and ineligible businesses and eligible uses of the assistance and other criteria to be applied to qualify for the Program.

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

5. Paperwork / Reporting: There are minimal additional reporting or paperwork requirements as a result of this rule for Program participants except those required by the statute creating the Program such as an annual report on the organization's lending activity and providing information in connection with an audit by the Corporation with respect to the

organization's use of Program funds. Standard documents used for most other assistance by the Corporation will be employed in keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients.

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

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

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

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

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

Regulatory Flexibility Analysis

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

2. Compliance Requirements: There are no compliance requirements

for local governments in these regulations. Small businesses must comply with the compliance requirements applicable to all participating surety companies regardless of size. This is a voluntary program. Companies not wishing to undertake the compliance obligations need not participate.

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

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

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

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

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

Rural Area Flexibility Analysis

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

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

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

4. Minimizing Adverse Impact: The purpose of the Program is to provide surety companies the additional financial backing needed in order to induce such companies to issue payment and performance bonds for contractors that are small businesses, certified minority-owned enterprises or women-owned business enterprises, in order for such contractors to meet payment and performance bonding requirements for construction projects, including but not limited to government sponsored transportation related construction projects and to provide technical assistance in completing bonding applications for such contractors seeking surety bonding in preparation for bidding on construction projects, including transportation related projects. This rule provides a basis for cooperation between the State and surety companies, including surety companies that serve rural areas of the State, in order to maximize the Program's effectiveness and minimize any negative impacts for such surety companies and the small businesses, including small businesses located in rural areas of the State that such surety companies serve.

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

Job Impact Statement

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

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

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

Downstate Revitalization Fund

I.D. No. UDC-10-13-00005-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 4249 to Title 21 NYCRR.

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

Subject: Downstate Revitalization Fund.

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

Substance of proposed rule (Full text is not posted on a State website):
Part 4249

DOWNSTATE REVITALIZATION FUND

Section 4249.1 General

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

Section 4249.2 Definitions

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

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

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

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

Section 4249.3 Types of Assistance

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

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

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

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

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

4249.4 Eligibility

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

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

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

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

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

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

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

(1) Business Investment Business Investments are capital expenditures that facilitate an employer's ability to create new jobs in New York State or retain jobs that are otherwise in jeopardy. Such jobs otherwise in jeopardy include, but are not limited to, jobs in danger of being eliminated, having hours and/or wages reduced or relocated outside of New York State. Within the Business Investment Track, five-year job commitments will be required of all beneficiaries; it is by underwriting these job commitments that ESDC is best able to forecast the economic benefits of providing assistance to any particular project. Applicants will therefore be required to commit to the number of jobs at risk that will be retained by the proposed project, the number of new jobs that will be created by the project, and the average salaries of each. Failure to achieve or maintain these employment commitments will subject a beneficiary to potential recapture of assistance.

(2) Infrastructure Investment The Funds will finance infrastructure investments in order to attract new businesses and expand existing businesses, thereby fostering further investment. Infrastructure investments are capital expenditures for infrastructure including transportation, water and sewer, communication, and energy generation and distribution. Infrastructure also includes the construction of parking garages. Unlike the other two Tracks, Infrastructure Investment may be used to finance planning or feasibility studies relating to capital expenditures. The Infrastructure Investment Track is appropriate only for infrastructure activity for unidentified end-users or for multiple users; infrastructure projects that will serve a single identified entity must apply for assistance under the Business Investment Track, which may be used to fund infrastructure expenses. Although projects without identified users may be funded under the Infrastructure Investment Track, preference under this Track will be given to projects with identified tenants.

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

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

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

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

Section 4249.5 Evaluation Criteria

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

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

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

Criterion	Maximum Score		
	Business	Infrastructure	Downtown
Private financing leveraged	10	10	5
Public financing leveraged	5	5	5
Return on public investment	10	5	5
Increased economic activity	10	5	5
Distressed Census Tract	10	10	10
Application supported by multiple public/private entities	7	7	7
Local/regional support	3	3	3
Significant regional breadth, likely to have wide regional impact, or likely to increase the community’s economic and social viability	5	5	5
Minority or women-owned business enterprise	5	5	5
Comports with identifiable regional development plans/initiatives	5	5	5
Loan v. grant	10	10	10
ESDC credit score (considers cash flow, collateral and guarantees)	10	10	10
Project readiness	5	5	5
Sustainable development	5	5	5
Reuse/remediation	5	5	5
Identified tenants	5	5	5
Potential to revitalize a downtown neighborhood	3	3	3
Consistency/preserve architectural character	2	2	2
President & CEO discretion	10	10	10
Total	125	115	110

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

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

Section 4249.6 Application and Approval Process

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

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

(c) If the proposal satisfies the applicable requirements and initiative funding is available, the proposal may be presented to the Corporation’s

directors for adoption consideration in accordance with applicable law and regulations. The directors normally meet once a month. If the project is approved for funding and if it involves the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of any property, the Corporation will schedule a public hearing in accordance with the Act and will take such further action as may be required by the Act and applicable law and regulations. After approval by the Corporation and a public hearing the project may then be reviewed by the State Public Authorities Control Board (“PACB”), which also generally meets once a month, in accordance with PACB requirements and policies. Following directors’ approval, and PACB approval, if required, documentation will be prepared by the Corporation. Notwithstanding the foregoing, no initiative project shall be funded if sufficient initiative monies are not received by the Corporation for such project.

Section 4249.7 Confidentiality

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

Section 4249.8 Expenses

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

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

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

Section 4249.9 Affirmative Action and Non-Discrimination

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

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, as amended (the “Act”), provides, in part, that the corporation shall, assisted by the commissioner of economic development and in consultation with the department of economic development, promulgate rules and regulations in accordance with the state administrative procedure act.

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

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

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

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

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

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

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

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

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

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

(2) Infrastructure Investment The Funds will finance infrastructure investments in order to attract new businesses and expand existing businesses, thereby fostering further investment. Infrastructure investments are capital expenditures for infrastructure including transportation, water and sewer, communication, and energy generation and distribution. Infrastructure also includes the construction of parking garages. Unlike the other two Tracks, Infrastructure Investment may be used to finance planning or feasibility studies relating to capital expenditures. The Infrastructure Investment Track is appropriate only for infrastructure activity for unidentified end-users or for multiple users; infrastructure projects that will serve a single identified entity must apply for assistance under the Business Investment Track, which may be used to fund infrastructure expenses. Although projects without identified users may be funded under the Infrastructure Investment Track, preference under this Track will be given to projects with identified tenants.

Job commitments: Infrastructure Investment projects that are able to provide job commitments will be viewed favorably. However, it is important to note that (1) few Infrastructure Investment projects are anticipated to be able to provide job commitments and (2) if the employer

will be an entity other than the Applicant, a third party guarantee of the Applicant's job commitment must be provided by the prospective employer and that prospective employer must be found by ESD to be creditworthy.

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

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

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

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

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

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

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

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

Thus far, \$34,156,000 in assistance has been awarded to eligible recipients within the three targeted tracks of business investment, infrastructure investment and downtown redevelopment. \$844,000 remains in Program funding.

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

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

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

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

Program grant involving the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of real property or the financing of machinery and equipment or any loan guarantee.

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

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

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

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

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

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

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

1. Regulations should be drafted to give priority to projects in developed areas that use smart growth principles, and that promote energy efficiency and conservation.

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

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

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

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

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

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

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

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

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

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

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

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

Regulatory Flexibility Analysis

1. Effects of Rule: “Small business” is defined by the State Economic Development law to be an enterprise with 100 or fewer employees. The

vast majority – roughly 98 percent – of New York State businesses are small businesses.

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

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

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

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

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

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

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

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

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

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

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

1. Regulations should be drafted to give priority to projects in developed areas that use smart growth principles, and that promote energy efficiency and conservation.

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

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

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

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

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

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

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

Rural Area Flexibility Analysis

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

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

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

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

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

Job Impact Statement

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

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

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

Economic Development Fund Program

I.D. No. UDC-10-13-00006-P

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

Proposed Action: Addition of sections 4243.36-4243.37 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, sections 9-c and 16-i; L. 1968, ch. 174

Subject: Economic Development Fund Program.

Purpose: Provide the basis for administration of The Champlain Bridge and August-September 2011 Storm and Flood Recovery Fund within EDF.

Substance of proposed rule (Full text is not posted on a State website): CHAMPLAIN BRIDGE AND AUGUST – SEPTEMBER 2011 STORM AND FLOOD, RECOVERY FUND

Section 4243.36 Generally

Champlain Bridge and August – September Storm and Flood Recovery Fund (the “Fund”) provides General Development Financing assistance on an emergency basis (i) for retail and service businesses (“Retail and Service Businesses”) located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, the Village of Port Henry, New York and agricultural and manufacturing businesses, located in Essex County, New York, (“Agricultural and Manufacturing Businesses”) that were adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York that were adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

Section 4243.37 Champlain Bridge and August – September 2011 Storm and Flood Recovery Fund Assistance

(a) In order to provide General Development Financing assistance to Retail and Service Businesses and Agricultural and Manufacturing Businesses in Eligible Areas (as defined below), the following provisions of the rule are modified as follows solely for Fund assistance.

(1) “Eligible Area” shall mean: (i) for assistance with respect to the closure of the Bridge Closure, as defined below, (a) with respect to assistance for Retail and Service Businesses the Towns of Crown Point, Moriah, and Ticonderoga, New York, the Village of Port Henry, New York and (b) with respect to assistance for Agricultural and Manufacturing Businesses, Essex County, New York; and (ii) for assistance with respect to damages and losses caused by or related to storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011, in Essex County, New York.

(2) “Bridge Closure” shall mean the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge.

(3) The term “Distressed Area” in paragraph 4243.2(a)(7) shall also include the Eligible Areas.

(4) The term “Eligible Applicant” in paragraph 4243.2(a)(11) shall also include all Retail and Service Businesses and Agricultural and Manufacturing Businesses.

(5) The term “Eligible Business” in paragraph 4243.2(a)(12) shall also include all Retail and Service Businesses and Agricultural and Manufacturing Businesses.

(6) The term “Eligible Recipient” in paragraph 4243.2(a)(13)(iii) shall also include all Retail and Service Businesses and Agricultural and Manufacturing Businesses.

(7) The term “Ineligible Cost” in paragraph 4243.2(a)(22) subparagraph (v) does not apply.

(8) The term “Ineligible Recipient” in paragraph 4243.2(a)(23) subparagraphs (i), (ii), (iii) and (iv) does not apply.

(9) Section 4243.7 regarding fees does not apply. There are no fees for Fund assistance.

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, as amended (the “Act”), provides, in part, that the Corporation shall, assisted by the Commissioner of Economic Development and in consultation with the Department of Economic Development, promulgate rules and regulations in accordance with the State Administrative Procedure Act.

Section 16-i of the Act established the Economic Development Fund and authorizes the New York State Urban Development Corporation d/b/a Empire State Development (the “Corporation”), within available appropriations, to provide grants for the purpose of creating or retaining jobs or preventing, reducing or eliminating unemployment or underemployment. The proposed regulations modify Chapter L, Part 4243 of Title 21 NYCRR.

2. Legislative Objectives: Section 16-i of the Act sets forth the Legislative objective of authorizing the Corporation, within available appropriations, to provide grants and loans in order to promote the economic health of New York state by facilitating the creation or retention of jobs and would increase business activity within a municipality or region of the state. The adoption of 21 NYCRR Part 4243.36 and 4243.37 will further these goals by modifying 21 NYCRR Part 4243 in order to provide General Development Financing assistance on an emergency basis to retail and service businesses (“Retail and Service Businesses”) located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York (“Agricultural Manufacturing Businesses”) that were adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York that were adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011, in order to facilitate the retention of jobs and increase business activity within those municipalities and the affected region.

3. Needs and Benefits: The Governor declared a state of emergency in Essex County and surrounding areas due to the emergency closure of the unsafe Lake Champlain Bridge (which was subsequently demolished). For nearly eighty years, the bridge had been a major transportation route between the Ticonderoga, Crown Point and Port Henry areas of the State and the Vergennes, Middlebury and Burlington areas of Vermont. The loss of the bridge resulted in a 100 mile detour until a new bridge could be designed and constructed. Even with an emergency ferry service to handle limited traffic, local businesses lost customers and incurred increased costs that would cause business closures, and require layoffs and firing. The Governor also declared a state of emergency in Essex County and surrounding areas due to the storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011. The modifications to the rule would allow affected businesses to receive economic assistance in order to retain jobs and mitigate layoffs and firings and increase business activity.

4. Costs: The Program is funded by a State appropriation for the Economic Development Fund and there are no other costs.

5. Paperwork / Reporting: There are no additional reporting or paper-

work requirements as a result of this rule on businesses participating in the Program. Standard applications and grant documents used for most other assistance by the Corporation will be employed in keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients.

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

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

8. Alternatives: There are no alternatives to this regulation for providing emergency assistance for business affected by the storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011 and the closing of the Lake Champlain Bridge in order to retain jobs in the affected area.

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

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

Regulatory Flexibility Analysis

1. Effects of Rule: The modification of the Rule pursuant to Parts 4243.36 and 4243.37 provides emergency Economic Development Fund General Development Financing assistance to retail and service businesses located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York that were adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and retail and service businesses and agricultural and manufacturing businesses located in Essex County, New York that were adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011 in order to preserve business activity and the jobs by these businesses that would otherwise be reduced or lost due to the loss of customers and increased costs arising from the unexpected permanent closing (and subsequent demolition) of the unsafe Lake Champlain Bridge and the August – September 2011 storms and floods.

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

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

4. Compliance Costs: There are no compliance costs for small businesses and local governments in these regulations.

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

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide assistance to the business listed above.

7. Small Business and Local Government Participation: The modification to the rule facilitates emergency assistance to all agricultural, manufacturing, retail, and service small businesses located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and Essex County, New York affected by the emergency closing and demolition of the Lake Champlain Bridge and the storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: Retail and Service Businesses located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York that were adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York that were adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011 are eligible to apply for Economic Development Fund General Development Financing pursuant to the Champlain Bridge Recovery Fund (the "Program").

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

3. Costs: There should be no costs to small businesses receiving assistance other than the minimal costs of preparing a simple application for program assistance.

4. Minimizing Adverse Impact: The purpose of the rule modification is to provide General Development Financing assistance from the Economic Development Fund on an emergency basis for (i) retail and service businesses located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York that were adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York that were adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

5. Rural Area Participation: This rule provides emergency assistance to agricultural, manufacturing, retail and service business in rural Essex County, New York and the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York.

Job Impact Statement

This modification to Part 4243 of Title 21 NYCRR will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of New York, particularly by providing emergency Economic Development Fund assistance to (i) retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York ("Agricultural Manufacturing Businesses") that were adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York that were adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

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