RULE MAKING ACTIVITIES

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

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

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

Department of Economic Development

EMERGENCY RULE MAKING

Empire State Jobs Retention Program Tax Credit

I.D. No. EDV-18-13-00001-E
Filing No. 389
Filing Date: 2013-04-10
Effective Date: 2013-04-10

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

Action taken: Addition of Parts 210 to 216 to Title 5 NYCRR.

Statutory authority: Economic Development Law, art. 20

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the Empire State Jobs Retention Program ("the Program") which was created by Chapter 56 of the Laws of 2011. The Program is created to support the retention of the state's most strategic businesses in the event of an emergency. The program creates a jobs tax credit for each job of a strategic business directly impacted by an emergency and retained and protects state taxpayer's dollars by ensuring that New York provide tax benefits only to businesses that can demonstrate substantial physical damage and economic harm resulting from an event leading to an emergency declaration by the governor.

The emergency rule is required in order to immediately implement the statute contained in Article 20 of the Economic Development Law, creating the Empire State Jobs Retention Program. The statute directed the Commissioner of Economic Development to adopt regulations with respect to an application process and eligibility criteria and authorized the adoption of such regulations on an emergency basis notwithstanding any provisions to the contrary in the state administrative procedures act.

In 2011, many parts of New York State were devastated by Hurricane Irene and Tropical Storm Lee. The impact of these storms is still being felt and the State needs to be able to respond quickly to provide economic development assistance to strategic businesses whose operations were several damaged or destroyed by these disasters and ensure that the impacted jobs are retained in NYS.

The Empire State Jobs Retention Program will be one of the State's key economic development tools for assisting strategic businesses impacted by Hurricane Irene and Tropical Storm Lee. It is imperative that this Program be implemented immediately so that the State can respond quickly to the dislocation and potential job losses that resulted from the devastation caused at certain facilities.

It bears noting that section 426 of the Economic Development Law directs the Commissioner of Economic Development to promulgate regulations and explicitly indicates that such regulations may be adopted on an emergency basis.

Subject: Empire State Jobs Retention Program tax credit.

Purpose: Allow department to implement the Empire State Jobs Retention Program tax credit.

Substance of emergency rule: The regulation creates new Parts 210-216 in 5 NYCRR as follows:

1) The regulation adds the definitions relevant to the empire state jobs retention program (the "Program"). Key definitions include, but are not limited to, certificate of eligibility, preliminary schedule of benefits, impacted jobs, new business, significant capital investment and substantial physical damage and economic harm.

2) The regulation creates the application and review process for the Program. In order to become a participant in the Program, an applicant must submit a complete application within (1) one hundred eighty days of the declaration of an emergency by the governor in the county in which the business enterprise is located or (2) one hundred eighty days of the enactment of Chapter 56 of the Laws of 2011, if such date is later than the date specified in (1) above. An applicant must also agree to a variety of requirements, including, but not limited to, the following: (a) allowing the exchange of its tax information between Department of Taxation and Finance and Department of Economic Development (the "Department"); (b) allowing the exchange of its tax and employer information between the Department of Labor and the Department; (c) agreeing to be permanently disqualified for empire zones benefits at any location or locations that qualify for empire state jobs retention benefits if admitted into the Program for such location or locations.

3) Upon receiving a complete application, the Commissioner of the Department shall review the application to ensure it meets eligibility criteria set forth in the statute (see 4 below). If it does not, the application shall not be accepted. If it does meet the eligibility criteria, the Commissioner may admit the applicant into the Program. If admitted into the Program, an applicant will receive a certificate of eligibility and a preliminary schedule of benefits by year based on the applicant's projections as set forth in its application.

4) The regulation sets forth the eligibility criteria for the Program. In order to qualify for the Program, a participant must: (1) be operating predominantly in one of the following strategic industries: (a) financial services data center or a financial services back office operation; (b) manufacturing; (c) software development and new media; (d) scientific research and development; (e) agriculture; (f) the creation or expansion of back office operations in the state; or (g) distribution center; and (2) must be located in a county in which an emergency has been declared by the governor on or after January first, two thousand eleven, must demonstrate substantial physical damage and economic harm resulting from the event leading to the emergency declaration by the governor, and must have had

at least one hundred full-time equivalent jobs in the county in which an emergency has been declared by the governor on the day immediately preceding the day on which the event leading to the emergency declaration by the governor occurred, and must retain or exceed that number of jobs in New York state. Jobs impacted but not retained by a participant are not eligible for the jobs retention tax credit.

In addition a business entity must be in compliance with all worker protection and environmental laws and regulations and must not owe past due federal or state taxes or local property taxes, unless those taxes are being paid pursuant to an executed payment plan. A not-for-profit business entity, a business entity whose primary function is the provision of services including personal services, business services, or the provision of utilities, a business entity engaged predominantly in the retail or entertainment industry, and a business entity engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity are not eligible to participate in the program.

5) The regulation sets forth the eleven (11) evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) whether the applicant is proposing to substantially renovate contaminated, abandoned or underutilized facilities; or (2) whether the applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (3) the degree of economic distress in the area where the applicant will locate the project identified in its application; or (4) the degree of applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (5) the degree to which the project identified in the application supports New York State's minority and women business enterprises; or (6) the degree to which the project identified in the application supports the principles of Smart Growth; or (7) the estimated return on investment that the project identified in the application will provide to the State; or (8) the overall economic impact that the project identified in the application will have on a region, including, but not limited to, the impact of any direct and indirect jobs that will be retained or created; or (9) the degree to which other state or local incentive programs are available to the applicant; or (10) the likelihood that the project identified in the application would be located outside of New York State or would not occur but for the availability of state or local incentives; or (11) the recommendation of the relevant regional economic development council or the commissioner's determination that the proposed project aligns with the regional strategic priorities of the respective region.

6) The regulation states that the Commissioner shall prepare a program report on a quarterly basis for posting on the Department's website.

7) The regulation calls for removal of a participant in the Program for failing to meet the application requirements or eligibility criteria of the statute. Upon removal, a participant will be notified in writing and have the right to appeal such removal.

8) The regulation lays out the appeal process for participant's who have been removed from the Program. A participant will have thirty (30) days to appeal to the Department. An appeal officer will be appointed and shall evaluate the merits of the appeal and any response from the Department. The appeal officer will determine whether a hearing is necessary and the level of formality required. The appeal officer will prepare a report and make recommendations to the Commissioner. The Commissioner will then issue a final decision in the case.

The full text of the emergency rule is available at the Department's website at www.empire.state.ny.us.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 8, 2013.

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 30 South Pearl Street, Albany, NY 12245, (518) 292-5123, email: tregan@empire.state.ny.us

Regulatory Impact Statement

STATUTORY AUTHORITY:

Chapter 56 of the Laws of 2011 established Article 20 of the Economic Development Law, creating the Empire State Jobs Retention Program credit and authorizing the Commissioner of Economic Development to adopt, on an emergency basis, rules and regulations governing the Program.

LEGISLATIVE OBJECTIVES:

The emergency rulemaking accords with the public policy objectives the Legislature sought to advance because they directly address the legislative findings and declarations that New York State needs, as a matter of public policy, to create competitive financial incentives to retain strategic businesses and jobs that are at risk of leaving the state due to the impact on its business operations of an event leading to an emergency declaration by the governor. The Empire State Jobs Retention Program is created to support the retention of the state's most strategic businesses in the event of an emergency. The Program creates a jobs tax credit for each retained job of a strategic business directly impacted by an emergency and protects state taxpayer's dollars by ensuring that New York provide tax benefits only to businesses that can demonstrate substantial physical damage and economic harm resulting from an event leading to an emergency declaration by the governor. The emergency rule is specifically authorized by the Legislature.

NEEDS AND BENEFITS:

The emergency rule is required in order to immediately implement the statute contained in Article 20 of the Economic Development Law, creating the Empire State Jobs Retention Program. The statute directed the Commissioner of Economic Development to adopt regulations with respect to an application process and eligibility criteria and authorized the adoption of such regulations on an emergency basis notwithstanding any provisions to the contrary in the state administrative procedures act.

In 2011, many parts of New York State were devastated by Hurricane Irene and Tropical Storm Lee. The impact of these storms is still being felt and the State needs to be able to respond quickly to provide economic development assistance to strategic businesses whose operations were several damaged or destroyed by these disasters and ensure that the impacted jobs are retained in New York State.

The Empire State Jobs Retention Program will be one of the State's key economic development tools for assisting strategic businesses impacted by Hurricane Irene and Tropical Storm Lee. . It is imperative that this Program be implemented immediately so that the State can respond quickly to the dislocation and potential job losses that resulted from the devastation caused at certain facilities.

This rule will establish the process and procedures for launching this new Program in the most efficient and cost-effective manner while protecting all New York State taxpayers with rules to ensure accountability, performance and adherence to commitments by businesses choosing to participate in the Program.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Empire State Jobs Retention Program, only voluntary participants.

B. Costs to the agency, the State, and local governments: The Department of Economic Development does not anticipate any significant costs with respect to implementation of this program. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. There are no mandates on local governments with respect to the Empire State Jobs Retention Program. This emergency rule does not impose any costs to local governments for administration of the Empire State Jobs Retention Program.

PAPERWORK:

The emergency rule requires businesses choosing to participate in the Empire State Jobs Retention Program to establish and maintain complete and accurate books relating to their participation in the Program for a period of three years beyond their participation in the Program. However, this requirement does not impose significant additional paperwork burdens on businesses choosing to participate in the Program but instead simply requires that information currently established and maintained be shared with the Department in order to verify that the business has met its job retention commitments.

DUPLICATION:

The emergency rule does not duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

FEDERAL STANDARDS:

There are no federal standards in regard to the Empire State Jobs Retention Program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes recordkeeping requirements on all businesses (small, medium and large) that choose to participate in the Empire State Jobs Retention Program. The emergency rule requires all businesses that participate in the Program to establish and maintain complete and ac-

curate books relating to their participation in the Program for the duration of their term in the Program plus three additional years. Local governments are unaffected by this rule.

2. Compliance requirements

Each business choosing to participate in the Empire State Jobs Retention Program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the program and relating to annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

The information that businesses choosing to participate in the Empire State Jobs Retention Program would be required to keep is information such businesses already must establish and maintain in order to operate, i.e. wage reporting, financial records, tax information, etc. No additional professional services would be needed by businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

Businesses (small, medium or large) that choose to participate in the Empire State Jobs Retention Program must retain jobs in order to receive any tax incentives under the Program. If businesses choosing to participate in the Program do not fulfill their job retention, such businesses would not receive the tax incentives. There are no other initial capital costs that would be incurred by businesses choosing to participate in the Empire State Jobs Retention Program. Annual compliance costs are estimated to be negligible for businesses because the information they must provide to demonstrate their compliance with their commitments is information that is already established and maintained as part of their normal operations. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this recordkeeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Empire State Jobs Retention Program is a tax credit program which creates a jobs tax credit for each retained job of a strategic business directly impacted by an emergency and protects state taxpayer's dollars by ensuring that New York provide tax benefits only to businesses that can demonstrate substantial physical damage and economic harm resulting from an event leading to an emergency declaration by the governor. The emergency rule does not impose any special reporting, recordkeeping or other compliance requirements on private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas nor on the reporting, recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Empire State Jobs Retention Program. The proposed program creates a jobs tax credit for each retained job of a strategic business directly impacted by an emergency and protects state taxpayer's dollars by ensuring that New York provide tax benefits only to businesses that can demonstrate substantial physical damage and economic harm resulting from an event leading to an emergency declaration by the governor.

This Program, given its design and purpose, will have a substantial positive impact on job retention. The emergency rule will immediately enable the Department to fulfill its mission of job retention in the state's most strategic businesses. Because this emergency rule will authorize the Department to immediately begin offering financial incentives to firms that retain jobs that are at the risk of the leaving the state due to an event leading to an emergency declaration by the governor, it will have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY RULE MAKING

Excelsior Jobs Program

I.D. No. EDV-18-13-00005-E

Filing No. 405

Filing Date: 2013-04-12

Effective Date: 2013-04-12

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

Action taken: Addition of Parts 190-196 to Title 5 NYCRR.

Statutory authority: Economic Development Law, art. 17; L. 2011, ch. 61; L. 2010, ch. 59

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the Excelsior Jobs Program which was created by Chapter 59 of the Laws of 2010 and recently amended by Chapter 61 of the Laws of 2011. The Excelsior Jobs Program will provide job creation and investment incentives to firms that create and maintain new jobs or make significant financial investment. The Excelsior Jobs Program is one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. Recent amendment to the law extends the current benefit period from five to ten years and offers an enriched package of tax credits. It is imperative that the amended Program be implemented immediately so that New York remains competitive with other States, regions, and even countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now.

This emergency rule is necessary because, in addition to establishing the application process, standards for application evaluation and procedures for businesses claiming the tax credit, it now incorporates recent statutory amendments which are designed to strengthen the Program. Immediate adoption of this rule will enable the State to begin achieving its economic development goals.

It bears noting that section 356 of the Economic Development Law directs the Commissioner of Economic Development to promulgate regulations and explicitly indicates that such regulations may be adopted on an emergency basis.

Subject: Excelsior Jobs program.

Purpose: Administer the Excelsior Jobs Program.

Substance of emergency rule: The regulation creates new Parts 190-196 in 5 NYCRR as follows:

1) The regulation adds the definitions relevant to the Excelsior Jobs Program (the "Program"). Key definitions include, but are not limited to, certificate of eligibility, certificate of tax credit, industry with significant potential for private sector growth and economic development in the State, preliminary schedule of benefits, regionally significant project and significant capital investment.

2) The regulation creates the application and review process for the Excelsior Jobs Program. In order to become a participant in the Program, an applicant must submit a complete application and agree to a variety of requirements, including, but not limited to, the following: (a) allowing the exchange of its tax information between Department of Taxation and Finance and Department of Economic Development (the "Department"); (b) allowing the exchange of its tax and employer information between the Department of Labor and the Department; (c) agreeing to be permanently decertified for empire zone benefits at any location or locations that qualify for excelsior jobs program benefits if admitted into the Excelsior Jobs Program for such location or locations; (d) providing, if requested by the Department, a plan outlining the schedule for meeting job and investment requirements as well as providing its tax returns, information concerning its projected investment, an estimate of the portion of the federal research and development tax credits attributable to its research and development activities in New York state, and employer identification or social security numbers for all related persons to the applicant.

3) Applicants must also certify that they are in substantial compliance with all environmental, worker protection and local, state and federal tax laws.

4) Upon receiving a complete application, the Commissioner of the Department shall review the application to ensure it meets eligibility criteria set forth in the statute (see 5 below). If it does not, the application shall not be accepted. If it does meet the eligibility criteria, the Commis-

sioner may admit the applicant into the Program. If admitted into the Program, an applicant will receive a certificate of eligibility and a preliminary schedule of benefits. The preliminary schedule of benefits may be amended by the Commissioner provided he or she complies with the credit caps established in General Municipal Law section 359.

5) The regulation sets forth the eligibility criteria for the Program. The strategic industries are specifically delineated in the regulation as follows: (a) financial services data center or a financial services back office operation; (b) manufacturing; (c) software development; (d) scientific research and development; (e) agriculture; (f) back office operations in the state; (g) distribution center; or (h) in an industry with significant potential for private-sector economic growth and development in this state. Per recent statutory changes to the Program, when determining whether an applicant is operating predominantly in a strategic industry, or as a regionally significant project, the commissioner will examine the nature of the business activity at the location for the proposed project and will make eligibility determinations based on such activity. Per statutory change, participants may also begin to receive tax credits once the eligibility requirements are met and can continue to receive credits based on achieving interim milestones.

6) In addition, a business entity operating predominantly in manufacturing must create at least twenty-five net new jobs; a business entity operating predominately in agriculture must create at least ten net new jobs; a business entity operating predominantly as a financial service data center or financial services customer back office operation must create at least one hundred net new jobs; a business entity operating predominantly in scientific research and development must create at least ten net new jobs; a business entity operating predominantly in software development must create at least ten net new jobs; a business entity creating or expanding back office operations or a distribution center in the state must create at least one hundred fifty net new jobs; a business entity must be a Regionally Significant Project; or a business entity operating predominantly in one of the industries referenced above but which does not meet the job requirements must have at least fifty full-time job equivalents, and must demonstrate that its benefit-cost ratio is at least ten to one (10:1).

7) A business entity must be in substantial compliance with all worker protection and environmental laws and regulations and may not owe past due state or local taxes. Also, the regulation explicitly excludes: a not-for-profit business entity, a business entity whose primary function is the provision of services including personal services, business services, or the provision of utilities, and a business entity engaged predominantly in the retail or entertainment industry, and a company engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity from eligibility for this program.

8) The regulation sets forth the evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) whether the Applicant is proposing to substantially renovate contaminated, abandoned or underutilized facilities; or (2) whether the Applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (3) the degree of economic distress in the area where the Applicant will locate the project identified in its application; or (4) the degree of Applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (5) the degree to which the project identified in the Application supports New York State's minority and women business enterprises; or (6) the degree to which the project identified in the Application supports the principles of Smart Growth; or (7) the estimated return on investment that the project identified in the Application will provide to the State; or (8) the overall economic impact that the project identified in the Application will have on a region, including the impact of any direct and indirect jobs that will be created; or (9) the degree to which other state or local incentive programs are available to the Applicant; or (10) the likelihood that the project identified in the Application would be located outside of New York State but for the availability of state or local incentives; or (11) the recommendation of the relevant regional economic development council or the commissioner's determination that the proposed project aligns with the regional strategic priorities of the respective region.

9) The regulation requires an applicant to submit evidence of achieving job and investment requirements stated in its application in order to become a participant in the Program. After such evidence is found sufficient, the Department will issue a certificate of tax credit to a participant. This certificate will specify the exact amount of the tax credit components a participant may claim and the taxable year in which the credit may be claimed.

10) A participant's increase in employment, qualified investment, or federal research and development tax credit attributable to research and development activities in New York state above its projections listed in its application shall not result in an increase in tax benefits under this article. However, if the participant's expenditures are less than the estimated amounts, the credit shall be less than the estimate.

11) The regulation next delineates the calculation of the tax credits as described in statute. Of note are the following changes made as a result of recent changes to the statute: the Excelsior Jobs Program Credit has been amended to be calculated as the product of gross wages and 6.85 percent. The Excelsior Research and Development Tax Credit has been increased from ten to fifty percent of the participant's federal research and development tax credit. The Excelsior Real Property Tax Credit is now based on the value of the property after improvements have been made. Under the amended program, a participant may claim both the Excelsior Investment Tax Credit and the investment tax credit for research and development property. In addition, the current tax benefit period for all credits has been lengthened from five years to ten years.

12) The tax credit components are refundable. If a participant fails to satisfy the eligibility criteria in any one year, it loses the ability to claim the credit for that year.

13) Pursuant to the amended statute, the regulation authorizes utilities to offer excelsior job program rates for gas or electric services to participants in the program for up to ten years.

14) The regulation requires participants to keep all relevant records for their duration of program participation plus three years.

15) The regulation requires a participant to submit a performance report annually and states that the Commissioner shall prepare a program report on a quarterly basis for posting on the Department's website.

16) The regulation calls for removal of a participant in the Program for failing to meet the application requirements or failing to meet the minimum job or investment requirements of the statute. Upon removal, a participant will be notified in writing and have the right to appeal such removal.

17) The regulation lays out the appeal process for participant's who have been removed from the Program. A participant will have thirty (30) days to appeal to the Department. An appeal officer will be appointed and shall evaluate the merits of the appeal and any response from the Department. The appeal officer will determine whether a hearing is necessary and the level of formality required. The appeal officer will prepare a report and make recommendations to the Commissioner. The Commissioner will then issue a final decision in the case.

The full text of the emergency rule is available at the Department's website at http://www.esd.ny.gov/BusinessPrograms/Excelsior.html.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 10, 2013.

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 30 South Pearl Street, Albany NY 12245, (518) 292-5123, email: tregan@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Chapter 59 of the Laws of 2010 established Article 17 of the Economic Development Law, creating the Excelsior Jobs Program and authorizing the Commissioner of Economic Development to adopt, on an emergency basis, rules and regulations governing the Program. Chapter 61 of the Laws of 2011 recently amended the statute to strengthen the Program.

LEGISLATIVE OBJECTIVES:

The emergency rulemaking accords with the public policy objectives the Legislature sought to advance because they directly address the legislative findings and declarations that New York State needs, as a matter of public policy, to create competitive financial incentives for businesses to create jobs and invest in the new economy. The Excelsior Jobs Program is created to support the growth of the State's traditional economic pillars including the manufacturing and financial industries and to ensure that New York emerges as the leader in the knowledge, technology and innovation based economy. The Program will encourage the expansion in and relocation to New York of businesses in growth industries such as clean-tech, broadband, information systems, renewable energy and biotechnology.

The emergency rule is specifically authorized by the Legislature.

NEEDS AND BENEFITS:

The emergency rule is required in order to immediately implement the statute contained in Article 17 of the Economic Development Law, creating and recently amending the Excelsior Jobs Program. The statute directed the Commissioner of Economic Development to adopt regulations with respect to an application process and eligibility criteria and authorized the adoption of such regulations on an emergency basis notwithstanding any provisions to the contrary in the state administrative procedures act.

New York is in the midst of a national economic slowdown. The impact of the national financial crisis and resulting slowed economic growth was particularly devastating to New York State and is having severe consequences on New York's immediate fiscal health and could harm its economic future.

The Excelsior Jobs Program will be one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. It is imperative that this Program be implemented immediately so that New York remains competitive with other States, regions, and even countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now.

This rule will establish the process and procedures for launching this new Program in the most efficient and cost-effective manner while protecting all New York State taxpayers with rules to ensure accountability, performance and adherence to commitments by businesses choosing to participate in the Program. The rule implements the amendments to the statute which extend the current tax benefit period from five to ten years and offer an enriched package of tax credits. In addition, the rule adds the recommendation of the relevant regional council as an evaluation criterion for determining whether to admit an applicant into the Program.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Excelsior Jobs Program, only voluntary participants.

B. Costs to the agency, the state, and local governments: The Department of Economic Development does not anticipate any significant costs with respect to implementation of this program. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. There are no mandates on local governments with respect to the Excelsior Jobs Program. This emergency rule does not impose any costs to local governments for administration of the Excelsior Jobs Program.

PAPERWORK:

The emergency rule requires businesses choosing to participate in the Excelsior Jobs Program to establish and maintain complete and accurate books relating to their participation in the Excelsior Jobs Program for a period of three years beyond their participation in the Program. However, this requirement does not impose significant additional paperwork burdens on businesses choosing to participate in the Program but instead simply requires that information currently established and maintained be shared with the Department in order to verify that the business has met its job creation and investment commitments.

DUPLICATION:

The emergency rule does not duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions. The Department conducted outreach with respect to this rulemaking. Specifically, it contacted the Citizens Budget Commission, Partnership for New York City, the Buffalo Niagara Partnership and the New York State Economic Development Council and received comments from them. The Department carefully considered all comments made with respect to the regulation. Certain comments were incorporated into the rulemaking while others deemed inappropriate were not.

FEDERAL STANDARDS:

There are no federal standards in regard to the Excelsior Jobs Program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes record-keeping requirements on all businesses (small, medium and large) that choose to participate in the Excelsior Jobs Program. The emergency rule requires all businesses that participate in the Program to establish and maintain complete and accurate books relating to their participation in the Program for the duration of their term in the Program plus three additional years. Local governments are unaffected by this rule.

2. Compliance requirements

Each business choosing to participate in the Excelsior Jobs Program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the program and relating to annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

The information that businesses choosing to participate in the Excelsior Jobs Program would be information such businesses already must establish and maintain in order to operate, i.e. wage reporting, financial records, tax information, etc. No additional professional services would be needed by businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

Businesses (small, medium or large) that choose to participate in the Excelsior Jobs Program must create new jobs and/or make capital investments in order to receive any tax incentives under the Program. If businesses choosing to participate in the Program do not fulfill their job creation or investment commitments, such businesses would not receive financial assistance. There are no other initial capital costs that would be incurred by businesses choosing to participate in the Excelsior Jobs Program. Annual compliance costs are estimated to be negligible for businesses because the information they must provide to demonstrate their compliance with their commitments is information that is already established and maintained as part of their normal operations. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Excelsior Jobs Program is a statewide business assistance program. Strategic businesses in rural areas of New York State are eligible to apply to participate in the program entirely at their discretion. Municipalities are not eligible to participate in the Program. The emergency rule does not impose any special reporting, record keeping or other compliance requirements on private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas nor on the reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Excelsior Jobs Program. The Excelsior Jobs Program will enable New York State to provide financial incentives to businesses in strategic industries that commit to create new jobs and/or to make significant capital investment. This Program, given its design and purpose, will have a substantial positive impact on job creation and employment opportunities. The emergency rule will immediately enable the Department to fulfill its mission of job creation and investment throughout the State and in economically distressed areas through implementation of this new economic development program. Because this emergency rule will authorize the Department to immediately begin offering financial incentives to strategic industries that commit to creating new jobs and/or to making significant capital investment in the State during these difficult economic times, it will have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Economic Transformation and Facility Redevelopment Program

I.D. No. EDV-18-13-00003-P

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

Proposed Action: Addition of Parts 200-204 to Title 5 NYCRR.

Statutory authority: Economic Development Law, art. 18

Subject: Economic Transformation and Facility Redevelopment Program.

Purpose: Allow department to implement the Economic Transformation and Facility Redevelopment Program.

Substance of proposed rule (Full text is posted at the following State website:www.esd.ny.gov): The regulation creates new Parts 200-204 in 5 NYCRR as follows:

1) The regulation adds the definitions relevant to the Economic Transformation and Facility Redevelopment Program (the "Program"). Key definitions include, but are not limited to, certificate of eligibility, preliminary schedule of benefits, net new jobs, new business, economic transformation area, and closed facility.

2) The regulation creates the application and review process for the Program. In order to become a participant in the Program, an applicant must submit a complete application by the later of: (1) the date that is three years after the date of the closure of the closed facility located in the economic transformation area in which the business entity would operate or (2) January 1, 2015. An applicant must also agree to a variety of requirements, including, but not limited to, the following: (a) allowing the exchange of its tax information between Department of Taxation and Finance and Department of Economic Development (the "Department"); (b) allowing the exchange of its tax and employer information between the Department of Labor and the Department; and (c) agreeing to not participate in either the Excelsior Jobs Program, the Empire Zones Program or claim any tax credits under the Brownfield Cleanup Program if admitted into the Economic Transformation and Facility Redevelopment Program specifically with regard to the facility located in the economic transformation area.

3) Upon receiving a complete application, the Commissioner of the Department shall review the application to ensure it meets eligibility criteria set forth in the statute (see 5 below). If it does not, the application shall not be accepted. If it does meet the eligibility criteria, the Commissioner may admit the applicant into the Program. If admitted into the Program, an applicant will receive a certificate of eligibility. When considering an application, the Commissioner shall consider factors including, but not limited to, the overall cost and effectiveness of the project, and whether the project is consistent with the intent of the Program. If a participant does not start construction on or acquire a qualified investment or create at least one net new job within one year of the issuance of its certificate of eligibility, the participant will not be eligible for any of the Program's tax credits.

4) The regulation sets forth the eligibility criteria for the Program. In order to qualify for the Program, (1) a participant must create and maintain at least five net new jobs in an economic transformation area, and must demonstrate that its benefit-cost ratio is at least ten to one; (2) a participant must be in compliance with all worker protection and environmental laws and regulations; (3) a participant must not owe past due federal or state taxes or local property taxes, unless those taxes are being paid pursuant to an executed payment plan; and (4) the location of the participant's operations for which it seeks tax benefits must be wholly located within the economic transformation area.

5) In addition, a business entity that is primarily operated as a retail business is not eligible to participate in the program if its application is for any facility or business location that will be primarily used in making retail sales to customers who personally visit such facilities. A business entity that is engaged in offering professional services licensed by the state or by the courts of this state is not eligible to participate in the Economic Transformation and Facility Redevelopment Program. In addition, a business entity that is or will be principally operated as a real estate holding company or landlord for retail businesses or entities offering professional services licensed by the state or by the courts of this state is also not eligible to participate in the Note, however, that that the commissioner may determine that such a business entity described in the preceding three sentences may be eligible to participate in the Program at the site of a closed facility if it is pursuant to an adaptive reuse plan for a substantial portion of such facility, the adaptive reuse plan is consistent with the strategic plan of the Regional Economic Development Council and it has been recommended by the Regional Economic Development Council to the Commissioner.

6) The regulation sets forth the fourteen (14) evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) the number of net new jobs to be created in New York State; or (2) the amount of capital investment to be made; or (3) whether the applicant is proposing to substantially renovate and reuse closed facilities; or (4) whether the applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (5) whether the application has been recommended by the Regional Economic Council representing the region where the project will be located; or (6) the degree to which the project is consistent with the strategic plan and priorities for the region; or (7) the degree of economic distress in the area where the applicant will locate the project identified in its application; or (8) the degree of an applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (9) the degree to which the project identified in the application supports New York State's minority and women business enterprises; or (10) the degree to which the project identified in the application supports the principles of Smart Growth; or (11) the estimated return on investment that the project identified in the application will provide to the state; or (12) the overall economic impact that the project identified in the application will have on a region, including, but not limited to, the impact of any direct and indirect jobs that will be created; or (13) the degree to which other state or local incentive programs are available to the applicant; or (14) the likelihood that the project identified in the application would be located outside of New York State or would not occur but for the availability of state or local incentives.

7) The regulation states that the Commissioner shall prepare a program report on a quarterly basis for posting on the Department's website.

8) The regulation calls for removal of a participant in the Program for failing to meet the application requirements or eligibility criteria of the statute. Upon removal, a participant will be notified in writing and have the right to appeal such removal.

9) The regulation lays out the appeal process for participants who have been removed from the Program. A participant will have thirty (30) days to appeal to the Department. An appeal officer will be appointed and shall evaluate the merits of the appeal and any response from the Department. The appeal officer will determine whether a hearing is necessary and the level of formality required. The appeal officer will prepare a report and make recommendations to the Commissioner. The Commissioner will then issue a final decision in the case.

The full text of the proposed rule is available at the Department's website at http://esd.ny.gov/BusinessPrograms/EconomicTransformation.html.

Text of proposed rule and any required statements and analyses may be obtained from: Thomas P. Regan, NYS Department of Economic Development, 625 Broadway, Albany, NY 12245, (518) 292-5123, email: tregan@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

STATUTORY AUTHORITY:

Chapter 61 of the Laws of 2011 established Article 18 of the Economic Development Law, creating the Economic Transformation and Facility Redevelopment Program and authorizing the Commissioner of Economic Development to adopt rules and regulations governing the Program.

LEGISLATIVE OBJECTIVES:

The proposed rulemaking accords with the public policy objectives the Legislature sought to advance because they directly address the legislative findings and declarations that New York State needs, as a matter of public policy, to create competitive financial incentives for businesses to create jobs and invest in the redevelopment of closed facilities and the economic transformation of surrounding communities. The Economic Transformation and Facility Redevelopment Program is created to support communities affected by closure of correctional and juvenile justice facilities. The Program provides tax credits to firms that create jobs and make investments in certain areas designated as economic transformation areas. The Program l leverages private sector job creation and investments and helps to transform the economies of the communities in these areas and lessens the impact of the facility closures.

NEEDS AND BENEFITS:

The proposed rule is required in order to implement the statute contained in Article 18 of the Economic Development Law, creating the Economic Transformation and Facility Redevelopment Program. The statute directed the Commissioner of Economic Development to adopt regulations with respect to an application process and eligibility criteria. Emergency regulations were adopted per Section 403 of the Economic Development Law immediately after the facilities were closed in 2011.

The Economic Transformation and Facility Redevelopment Program is one of the State's key economic development tools for creating jobs and private sector investment in communities affected by the facility closures. This rule establishes the process and procedures for launching this new Program in the most efficient and cost-effective manner while protecting all New York State taxpayers with rules to ensure accountability, performance and adherence to commitments by businesses choosing to participate in the Program.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Economic Transformation and Facility Redevelopment Program, only voluntary participants.

B. Costs to the agency, the State, and local governments: The Depart-

ment of Economic Development does not anticipate any significant costs with respect to implementation of this program. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the proposed rule making.

LOCAL GOVERNMENT MANDATES:

None. There are no mandates on local governments with respect to the Economic Transformation and Facility Redevelopment Program. This proposed rule does not impose any costs to local governments for administration of the Economic Transformation and Facility Redevelopment Program.

PAPERWORK:

The proposed rule requires businesses choosing to participate in the Economic Transformation and Facility Redevelopment Program to establish and maintain complete and accurate books relating to their participation in the Economic Transformation and Facility Redevelopment Program for a period of three years beyond their participation in the Program. However, this requirement does not impose significant additional paperwork burdens on businesses choosing to participate in the Program but instead simply requires that information currently established and maintained be shared with the Department in order to verify that the business has met its job creation and investment commitments.

DUPLICATION:

The proposed rule does not duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

FEDERAL STANDARDS:

There are no federal standards in regard to the Economic Transformation and Facility Redevelopment Program. Therefore, the proposed rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The proposed rule imposes recordkeeping requirements on all businesses (small, medium and large) that choose to participate in the Economic Transformation and Facility Redevelopment Program. The proposed rule requires all businesses that participate in the Program to establish and maintain complete and accurate books relating to their participation in the Program for the duration of their term in the Program plus three additional years. Local governments are unaffected by this rule.

2. Compliance requirements

Each business choosing to participate in the Economic Transformation and Facility Redevelopment Program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the program and relating to annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

The information that businesses choosing to participate in the Economic Transformation and Facility Redevelopment Program would be required to keep is information such businesses already must establish and maintain in order to operate, i.e. wage reporting, financial records, tax information, etc. No additional professional services would be needed by businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

Businesses (small, medium or large) that choose to participate in the Economic Transformation and Facility Redevelopment Program must create new jobs and/or make capital investments in order to receive any tax incentives under the Program. If businesses choosing to participate in the Program do not fulfill their job creation or investment commitments, such businesses would not receive the tax incentives. There are no other initial capital costs that would be incurred by businesses choosing to participate in the Economic Transformation and Facility Redevelopment Program. Annual compliance costs are estimated to be negligible for businesses because the information they must provide to demonstrate their compliance with their commitments is information that is already established and maintained as part of their normal operations. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this recordkeeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Economic Transformation and Facility Redevelopment Program is a tax credit program available to new businesses that locate in communities affected by the closure of correctional and juvenile justice facilities, create jobs and make private sector investments. Economic transformation areas will be designated through implementation of these regulations. New businesses to these areas that create jobs and make investments are eligible to apply to participate in the Program entirely at their discretion. Municipalities are not eligible to participate in the Program. The proposed rule does not impose any special reporting, recordkeeping or other compliance requirements on private entities in rural areas. Therefore, the proposed rule will not have a substantial adverse economic impact on rural areas nor on the reporting, recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed rule relates to the Economic Transformation and Facility Redevelopment Program. The Economic Transformation and Facility Redevelopment Program enables New York State to provide financial incentives to businesses that create jobs and make investments in communities affected by the closure of correctional and juvenile justice facilities. This Program, given its design and purpose, can have a substantial positive impact on job creation and employment opportunities. The proposed rule enables the Department to fulfill its mission of job creation and investment in certain areas designated as economic transformation areas. Because this proposed rule will authorize the Department to continue to offer financial incentives to firms that commit to creating new jobs and/or to making significant capital investment in these areas, it will have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Empire State Jobs Retention Program Tax Credit

I.D. No. EDV-18-13-00004-P

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

Proposed Action: Addition of Parts 210 to 216 to Title 5 NYCRR.

Statutory authority: Economic Development Law, art. 20

Subject: Empire State Jobs Retention Program tax credit.

Purpose: Allow department to implement the Empire State Jobs Retention Program tax credit.

Substance of proposed rule (Full text is posted at the following State website:www.esd.ny.gov): The regulation creates new Parts 210-216 in 5 NYCRR as follows:

1) The regulation adds the definitions relevant to the empire state jobs retention program (the "Program"). Key definitions include, but are not limited to, certificate of eligibility, preliminary schedule of benefits, impacted jobs, new business, significant capital investment and substantial physical damage and economic harm.

2) The regulation creates the application and review process for the Program. In order to become a participant in the Program, an applicant must submit a complete application within (1) one hundred eighty days of the declaration of an emergency by the governor in the county in which the business enterprise is located or (2) one hundred eighty days of the enactment of Chapter 56 of the Laws of 2011, if such date is later than the date specified in (1) above. An applicant must also agree to a variety of requirements, including, but not limited to, the following: (a) allowing the exchange of its tax information between Department of Taxation and Finance and Department of Economic Development (the "Department"); (b) allowing the exchange of its tax and employer information between the Department of Labor and the Department; (c) agreeing to be permanently disqualified for empire zones benefits at any location or locations that qualify for empire state jobs retention benefits if admitted into the Program for such location or locations.

3) Upon receiving a complete application, the Commissioner of the

Department shall review the application to ensure it meets eligibility criteria set forth in the statute (see 4 below). If it does not, the application shall not be accepted. If it does meet the eligibility criteria, the Commissioner may admit the applicant into the Program. If admitted into the Program, an applicant will receive a certificate of eligibility and a preliminary schedule of benefits by year based on the applicant's projections as set forth in its application.

4) The regulation sets forth the eligibility criteria for the Program. In order to qualify for the Program, a participant must: (1) be operating predominantly in one of the following strategic industries: (a) financial services data center or a financial services back office operation; (b) manufacturing; (c) software development and new media; (d) scientific research and development; (e) agriculture; (f) the creation or expansion of back office operations in the state; or (g) distribution center; and (2) must be located in a county in which an emergency has been declared by the governor on or after January first, two thousand eleven, must demonstrate substantial physical damage and economic harm resulting from the event leading to the emergency declaration by the governor, and must have had at least one hundred full-time equivalent jobs in the county in which an emergency has been declared by the governor on the day immediately preceding the day on which the event leading to the emergency declaration by the governor occurred, and must retain or exceed that number of jobs in New York state. Jobs impacted but not retained by a participant are not eligible for the jobs retention tax credit.

In addition a business entity must be in compliance with all worker protection and environmental laws and regulations and must not owe past due federal or state taxes or local property taxes, unless those taxes are being paid pursuant to an executed payment plan. A not-for-profit business entity, a business entity whose primary function is the provision of services including personal services, business services, or the provision of utilities, a business entity engaged predominantly in the retail or entertainment industry, and a business entity engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity are not eligible to participate in the program.

5) The regulation sets forth the eleven (11) evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) whether the applicant is proposing to substantially renovate contaminated, abandoned or underutilized facilities; or (2) whether the applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (3) the degree of economic distress in the area where the applicant will locate the project identified in its application; or (4) the degree of applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (5) the degree to which the project identified in the application supports New York State's minority and women business enterprises; or (6) the degree to which the project identified in the application supports the principles of Smart Growth; or (7) the estimated return on investment that the project identified in the application will provide to the State; or (8) the overall economic impact that the project identified in the application will have on a region, including, but not limited to, the impact of any direct and indirect jobs that will be retained or created; or (9) the degree to which other state or local incentive programs are available to the applicant; or (10) the likelihood that the project identified in the application would be located outside of New York State or would not occur but for the availability of state or local incentives; or (11) the recommendation of the relevant regional economic development council or the commissioner's determination that the proposed project aligns with the regional strategic priorities of the respective region.

6) The regulation states that the Commissioner shall prepare a program report on a quarterly basis for posting on the Department's website.

7) The regulation calls for removal of a participant in the Program for failing to meet the application requirements or eligibility criteria of the statute. Upon removal, a participant will be notified in writing and have the right to appeal such removal.

8) The regulation lays out the appeal process for participant's who have been removed from the Program. A participant will have thirty (30) days to appeal to the Department. An appeal officer will be appointed and shall evaluate the merits of the appeal and any response from the Department. The appeal officer will determine whether a hearing is necessary and the level of formality required. The appeal officer will prepare a report and make recommendations to the Commissioner. The Commissioner will then issue a final decision in the case.

The full text of the proposed rule is available at the Department's website at www.esd.ny.gov

Text of proposed rule and any required statements and analyses may be obtained from: Thomas P. Regan, NYS Department of Economic Development, 625 Broadway, Albany, NY 12245, (518) 292-5123, email: tregan@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

STATUTORY AUTHORITY:

Chapter 56 of the Laws of 2011 established Article 20 of the Economic Development Law, creating the Empire State Jobs Retention Program credit and authorizing the Commissioner of Economic Development to adopt rules and regulations governing the Program.

LEGISLATIVE OBJECTIVES:

The proposed rulemaking accords with the public policy objectives the Legislature sought to advance because they directly address the legislative findings and declarations that New York State needs, as a matter of public policy, to create competitive financial incentives to retain strategic businesses and jobs that are at risk of leaving the state due to the impact on its business operations of an event leading to an emergency declaration by the governor. The Empire State Jobs Retention Program is created to support the retention of the state's most strategic businesses in the event of an emergency. The Program creates a jobs tax credit for each retained job of a strategic business directly impacted by an emergency and protects state taxpayer's dollars by ensuring that New York provide tax benefits only to businesses that can demonstrate substantial physical damage and economic harm resulting from an event leading to an emergency declaration by the governor. The proposed rule is specifically authorized by the Legislature.

NEEDS AND BENEFITS:

The proposed rule is required in order to implement the statute contained in Article 20 of the Economic Development Law, creating the Empire State Jobs Retention Program. The statute directed the Commissioner of Economic Development to adopt regulations with respect to an application process and eligibility criteria.

In 2011, many parts of New York State were devastated by Hurricane Irene and Tropical Storm Lee. As authorized per statute, emergency regulations were promulgated. The impact of these storms is still being felt and, as evidenced by Hurricane Sandy in 2012, the threat of future storms is ever present. The State needs to be able to respond quickly in the future to provide economic development assistance to strategic businesses whose operations are several damaged or destroyed by these disasters and ensure that the impacted jobs are retained in New York State.

The Empire State Jobs Retention Program is one of the State's key economic development tools for assisting strategic businesses impacted by disasters such Hurricane Irene and Tropical Storm Lee. A permanent rule needs to be established for this Program so that the State can respond quickly in the future to the dislocation and potential job losses that results from the devastation caused at certain facilities.

This rule will establish the process and procedures for launching this Program in the most efficient and cost-effective manner while protecting all New York State taxpayers with rules to ensure accountability, performance and adherence to commitments by businesses choosing to participate in the Program.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Empire State Jobs Retention Program, only voluntary participants.

B. Costs to the agency, the State, and local governments: The Department of Economic Development does not anticipate any significant costs with respect to implementation of this program. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the proposed rule making.

LOCAL GOVERNMENT MANDATES:

None. There are no mandates on local governments with respect to the Empire State Jobs Retention Program. This proposed rule does not impose any costs to local governments for administration of the Empire State Jobs Retention Program.

PAPERWORK:

The proposed rule requires businesses choosing to participate in the Empire State Jobs Retention Program to establish and maintain complete and accurate books relating to their participation in the Program for a period of three years beyond their participation in the Program. However, this requirement does not impose significant additional paperwork burdens on businesses choosing to participate in the Program but instead simply requires that information currently established and maintained be shared with the Department in order to verify that the business has met its job retention commitments.

DUPLICATION:

The proposed rule does not duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

FEDERAL STANDARDS:

There are no federal standards in regard to the Empire State Jobs Retention Program. Therefore, the proposed rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The proposed rule imposes recordkeeping requirements on all businesses (small, medium and large) that choose to participate in the Empire State Jobs Retention Program. The proposed rule requires all businesses that participate in the Program to establish and maintain complete and accurate books relating to their participation in the Program for the duration of their term in the Program plus three additional years. Local governments are unaffected by this rule.

2. Compliance requirements

Each business choosing to participate in the Empire State Jobs Retention Program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the program and relating to annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

The information that businesses choosing to participate in the Empire State Jobs Retention Program would be required to keep is information such businesses already must establish and maintain in order to operate, i.e. wage reporting, financial records, tax information, etc. No additional professional services would be needed by businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

Businesses (small, medium or large) that choose to participate in the Empire State Jobs Retention Program must retain jobs in order to receive any tax incentives under the Program. If businesses choosing to participate in the Program do not fulfill their job retention, such businesses would not receive the tax incentives. There are no other initial capital costs that would be incurred by businesses choosing to participate in the Empire State Jobs Retention Program. Annual compliance costs are estimated to be negligible for businesses because the information they must provide to demonstrate their compliance with their commitments is information that is already established and maintained as part of their normal operations. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this recordkeeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Empire State Jobs Retention Program is a tax credit program which creates a jobs tax credit for each retained job of a strategic business directly impacted by an emergency and protects state taxpayer's dollars by ensuring that New York provide tax benefits only to businesses that can demonstrate substantial physical damage and economic harm resulting from an event leading to an emergency declaration by the governor. The proposed rule does not impose any special reporting, recordkeeping or other compliance requirements on private entities in rural areas. Therefore, the proposed rule will not have a substantial adverse economic impact on rural areas nor on the reporting, recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed permanent rule relates to the Empire State Jobs Retention Program. The program creates a jobs tax credit for each retained job of a strategic business directly impacted by an emergency and protects state taxpayer's dollars by ensuring that New York provide tax benefits only to businesses that can demonstrate substantial physical damage and economic harm resulting from an event leading to an emergency declaration by the governor.

This Program, given its design and purpose, will have a substantial positive impact on job retention. The proposed permanent rule will enable the Department to fulfill its mission of job retention in the state's most strategic businesses. Because this proposed permanent rule will authorize the Department to offer financial incentives to firms that retain jobs that are at the risk of the leaving the state due to an event leading to an emergency declaration by the governor, it will have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Health

NOTICE OF ADOPTION

Sepsis Protocols

I.D. No. HLT-07-13-00022-A

Filing No. 411

Filing Date: 2013-04-16

Effective Date: 2013-05-01

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

Action taken: Amendment of sections 405.2 and 405.4 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800 and 2803

Subject: Sepsis Protocols.

Purpose: To require hospitals to implement evidence-based protocols for the early recognition and treatment of patients with sepsis.

Text of final rule:

Paragraphs (6) and (7) of subdivision (f) of section 405.2 are amended and a new paragraph (8) is added to read as follows:

(f) Care of patients. The governing body shall require that the following patient care practices are implemented, shall monitor the hospital's compliance with these patient care practices, and shall take corrective action as necessary to attain compliance:

(6) hospitals which conduct, or propose to conduct, or otherwise authorize human research on patients or other human subjects shall adopt and implement policies and procedures pursuant to the provisions of Public Health Law, article 24-A for the protection of human subjects; [and]

(7) hospitals shall have available at all times personnel sufficient to meet patient care needs[.]*; and*

(8) hospitals shall have in place evidence-based protocols for the early recognition and treatment of patients with severe sepsis and septic shock that are based on generally accepted standards of care as required by subdivision (a) of section 405.4 of this Part.

New paragraphs (4), (5), (6), (7) and (8) are added to subdivision (a) of section 405.4 to read as follows:

405.4 Medical staff.

(a) Medical staff accountability. The medical staff shall be organized and accountable to the governing body for the quality of medical care provided to all patients.

(4) The medical staff shall adopt, implement, periodically update and submit to the Department evidence-based protocols for the early recognition and treatment of patients with severe sepsis and septic shock ("sepsis protocols") that are based on generally accepted standards of care. Sepsis protocols must include components specific to the identification, care and treatment of adults, and of children, and must clearly identify where and when components will differ for adults and for children. These protocols must include the following components:

(i) *a process for the screening and early recognition of patients with sepsis, severe sepsis and septic shock;*

(ii) *a process to identify and document individuals appropriate for treatment through severe sepsis and septic shock protocols, including explicit criteria defining those patients who should be excluded from the protocols, such as patients with certain clinical conditions or who have elected palliative care;*

(iii) *guidelines for hemodynamic support with explicit physiologic and biomarker treatment goals, methodology for invasive or non-invasive hemodynamic monitoring, and timeframe goals;*

(iv) *for infants and children, guidelines for fluid resuscitation with explicit timeframes for vascular access and fluid delivery consistent with*

current, evidence-based guidelines for severe sepsis and septic shock with defined therapeutic goals for children;

(v) *a procedure for identification of infectious source and delivery of early antibiotics with timeframe goals; and*

(vi) *criteria for use, where appropriate, of an invasive protocol and for use of vasoactive agents.*

(5) The medical staff shall ensure that professional staff with direct patient care responsibilities and, as appropriate, staff with indirect patient care responsibilities, including, but not limited to laboratory and pharmacy staff, are periodically trained to implement sepsis protocols required pursuant to paragraph (4) of this subdivision. Medical staff shall ensure updated training when the hospital initiates substantive changes to the protocols.

(6) Hospitals shall submit sepsis protocols required pursuant to paragraph (4) of this subdivision to the Department for review not later than September 3, 2013. Hospitals must implement these protocols after receipt of a letter from the Department indicating that the proposed protocols have been reviewed and determined to be consistent with the criteria established in this Part. Protocols are to be implemented no later than December 31, 2013. Hospitals must update protocols based on newly emerging evidence-based standards. Protocols are to be resubmitted at the request of the Department, not more frequently than once every two years unless the Department identifies hospital-specific performance concerns.

(7) Collection and Reporting of Sepsis Measures.

(i) The medical staff shall be responsible for the collection, use, and reporting of quality measures related to the recognition and treatment of severe sepsis for purposes of internal quality improvement and hospital reporting to the Department. Such measures shall include, but not be limited to, data sufficient to evaluate each hospital's adherence rate to its own sepsis protocols, including adherence to timeframes and implementation of all protocol components for adults and children.

(ii) Hospitals shall submit data specified by the Department to permit the Department to develop risk-adjusted severe sepsis and septic shock mortality rates in consultation with appropriate national, hospital and expert stakeholders.

(iii) Such data shall be reported annually, or more frequently at the request of the Department, and shall be subject to audit at the discretion of the Department.

(8) Definitions. For the purposes of this section, the following terms shall have the following meanings:

(i) sepsis shall mean a proven or suspected infection accompanied by a systemic inflammatory response;

(ii) for adults, severe sepsis shall mean sepsis plus at least one sign of hypoperfusion or organ dysfunction; for pediatrics, severe sepsis shall mean sepsis plus two organ dysfunctions or acute respiratory distress syndrome; and

(iii) for adults, septic shock shall mean severe sepsis with persistent hypotension or cardiovascular organ dysfunction despite adequate IV fluid resuscitation; for pediatrics, septic shock shall mean severe sepsis and cardiovascular dysfunction despite adequate IV fluid resuscitation.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 405.2(f)(8), 405.4(a)(4), (6), (7) and (8).

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

Revised Regulatory Impact Statement

Statutory Authority:

Public Health Law ("PHL") Section 2800 provides that "[h]ospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state. . ., the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital related services. . ."

PHL Section 2803 authorizes the Public Health and Health Planning Council ("PHHPC") to adopt rules and regulations to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State by promoting the efficient provision and proper utilization of high quality health services at a reasonable cost.

Needs and Benefits:

Sepsis is a range of clinical conditions caused by the body's systemic response to an infection and affects about 750,000 people in the U.S. each year. The mortality rate is alarming – between 20 percent and 50 percent – and the rate largely depends on how quickly patients are diagnosed and treated with powerful antibiotics to battle the bacteria racing through their systems.

In New York State the number of severe sepsis cases increased from 26,001 in 2005 to 43,608 in 2011 - an increase of 68%. Similarly, the number of sepsis cases in New York State increased from 71,049 in 2005 to 100,073 in 2011, an increase of 41%. Sepsis mortality is significant and ranges widely from one hospital to another. In New York, sepsis mortality ranges between 15% and 37%. A patient may have a greater chance of dying from sepsis if care is provided by an institution ill-prepared to deal with this illness or from providers not thoroughly trained in identifying and treating sepsis.

The likelihood of death following initial diagnosis of sepsis is more than 20%, and the window for administering effective treatment is short. Mortality rates from severe sepsis are on a similar scale to lung, breast, and colon cancer, and it is one of the leading causes of death in the intensive care unit. Sepsis kills more people than HIV/AIDS, prostate cancer, and breast cancer combined.

The 28-day mortality rate in sepsis patients is comparable to the 1960s hospital mortality rate for patients of acute myocardial infarction ("AMI"). Over recent years, there has been an improvement in the awareness and management of AMI, resulting in a decline in mortality, while sepsis remains an unacknowledged killer.

The number of severe sepsis cases is expected to grow at a rate of 1.5% annually, adding an additional one million cases per year in the United States alone by 2020. This will increase total mortality and increase the burden on health care resources. The increase is mainly due to the growing use of invasive procedures, immune system modifying therapies and increasing numbers of elderly and high-risk individuals, such as those with diabetes, cancer and HIV. Older people are at an increased risk of sepsis as they are more vulnerable to infections due to aging, comorbidities, use of invasive procedures, and problems associated with institutionalization. Individuals with diabetes, cancer, and HIV are at increased risk due to immune system and other dysfunction caused by their disease or its treatment.

Sepsis places a significant burden on health care resources, accounting for 40% of total ICU expenditures. Sepsis costs our health care system an estimated $17 billion annually, and the average cost of treating the condition is $50,000. (See http://www.nigms.nih.gov/Education/factsheet_sepsis.htm.)

The rapid diagnosis and management of sepsis is critical to successful treatment. The sepsis patient is usually already critically ill and requires immediate attention to avoid rapid deterioration; therefore, it is necessary to treat the patient at the same time as confirming the diagnosis. Due to the challenges of diagnosing and treating this complex condition, approximately 10% of sepsis patients do not receive prompt appropriate antibiotic therapy, which increases mortality by 10 to 15%.

In the absence of adoption of protocols as required by these regulations, it is estimated that New York will see dramatic increases in cases of sepsis and sepsis mortality as the numbers of persons who are at risk continue to increase.

Hospitals can significantly impact sepsis morbidity and mortality by adopting standard protocols. For example, since the implementation of Kaiser Permanente's Northern California sepsis program mortality has been reduced for patients admitted to hospitals with sepsis, by more than 40 percent — and saved more than 1,400 lives. Similarly, Regions Hospital in Minnesota reports that initiatives launched in 2005 led to more than a 60 percent drop in sepsis mortality by 2011, and Intermountain Health Care reports a reduction in its sepsis mortality rate from 25% to 9%, saving 85 lives and $38 million annually. (See Needles in a Haystack: Seeking Knowledge with Clinical Informatics, PwC Health Research Institute, 2012.)

In particular, these regulations will promote the early identification and treatment of sepsis at general hospitals by focusing on the following areas:

- Recognition of risk factors, signs and symptoms of sepsis;
- Resuscitation with rapid intravenous fluids and administration of antibiotics upon diagnosis of sepsis;
- Referral to appropriate clinicians and teams as appropriate;
- Measurement and evaluation of current practices for purposes of informing future policy; and
- Quality Improvement measures that will permit development and dissemination of best practices through clinical and administrative information sharing.

The Department of Health ("the Department") will publish guidance to assist facilities in developing protocols that include an appropriate process for screening all patients to ensure early recognition of patients with possible sepsis and, once possible sepsis has been documented, establishing clear timeframes for administration of antibiotics and full protocol implementation. At a conference of stakeholders, including hospital systems, convened by the Department in 2012, it emerged that the current

best practice is to pursue administration of antibiotics and fluid resuscitation within one hour of a diagnosis of sepsis, with full implementation of sepsis protocols within 3 hours for severe sepsis and six hours for septic shock. Given continual advancements in medical research and practice, these timeframes could change and accordingly will be set forth in guidance which will be updated as appropriate.

These regulations, requiring hospitals to adopt protocols to identify and treat sepsis, and another set of regulations requiring hospitals to provide patients and their parents or other medical decision-makers with critical information about the patient's care and to post a Parent's Bill of Rights, were inspired by the case of Rory Staunton, a 12-year-old boy who died of sepsis in April of 2012. Both sets of regulations, together known as ''Rory's Regulations,'' will help New York State set a "gold standard" for patient care.

COSTS:

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

Costs to the regulated entities are expected to be minimal and to be primarily associated with the following: (a) adoption of and compliance with evidence-based protocols; (b) reporting information to inform risk-adjusted sepsis mortality measures; and (c) training staff to implement the sepsis protocols. It is likely that hospitals will realize overall cost savings as a result of early identification and treatment (see below).

In fact, many hospitals throughout the State are currently implementing sepsis initiatives. The Greater New York Hospital Association ("GNYHA") and the United Hospital Fund ("UHF") have launched a joint program called the "Strengthening Treatment and Outcomes for Patients Sepsis Collaborative;" the North Shore-LIJ Health System recently launched an education program to train emergency and critical care nurses on how to identify sepsis at its earliest stages and provide treatment to improve patient outcomes; and the Healthcare Association of New York State ("HANYS") has organized a collaborative to improve the identification and management of sepsis and test the value of collaborative improvement projects versus traditional medical and clinical staff education. This regulation will build on and support these initiatives going forward.

Research conducted nationally suggests the possibility of a significant return on investment. As noted, Intermountain Health Care in Utah has reported savings of $38 million per year due to its sepsis program, and reports more favorable reimbursement from insurers for identifying potential septic patients faster and treating them in the intensive care unit earlier. (See Needles in a Haystack: Seeking Knowledge with Clinical Informatics, PwC Health Research Institute, 2012.)

In New York State, Stony Brook University Medical Center ("SBUMC") reports that a recent campaign to reduce sepsis mortality was extremely successful, resulting in a 49 percent reduction in mortality and a decrease in length of stay for patients with severe sepsis. This resulted in a cost savings of more than $740,000 for the 153 severe sepsis patients at SBUMC in 2010. (See http://www.naph.org/Homepage-Sections/Explore/Innovations/Preventing-Hospital-Acquired-Conditions/Stony-Brook-Reduces-Sepsis-Mortality.aspx.) Similarly, a recent sepsis initiative at South Nassau Communities Hospital resulted in a 44% reduction in sepsis mortality (See HANYS Quality Institute, Healthcare Association of New York State, Leading the Quest for Quality 2011 Profiles in Quality and Patient Safety.) Similar savings to those reported by SBUMC are likely.

Costs to Local and State Government:

There is no anticipated fiscal impact to State or local government as a result of this regulation, except that hospitals operated by the State or local governments will incur minimal costs, offset by savings, as discussed above.

Costs to the Department of Health:

There will be minimal additional costs to the Department of Health associated with the following: review of protocols submitted by hospitals to the Department; general programmatic oversight; development of measures to evaluate the impact of these regulations as they relate to the adoption of evidence-based sepsis protocols; and creation of a data system for purposes of analysis and reporting.

Local Government Mandates:

Hospitals operated by State or local government will be affected and be subject to the same requirements as any other hospital licensed under PHL Article 28.

Paperwork:

Consistent with these regulations all hospitals will be required to submit evidence of the following:

(a) adoption of an evidence-based sepsis protocol initially and then once every two years after that.

(b) information sufficient to evaluate each hospital's adherence to its own sepsis protocol, including adherence to timeframes and implementation of all protocol components for adults and children;

(c) data, as specified by the Department, to permit the evaluation of risk-adjusted severe sepsis mortality rates.

Duplication:

These regulations do not conflict with any State or Federal rules. Implementation of these regulations represents the first time New York State has required that facilities submit indication of adherence to evidence-based protocols for the early detection and treatment of sepsis and to report outcomes (risk-adjusted mortality). Thus, there is no duplication.

Alternative Approaches:

There are no viable alternatives. Implementation of these regulations is predicated on strong evidence indicating the effectiveness of implementing evidence-based protocols. In addition to requiring that all hospitals throughout the State develop and implement evidence–based sepsis protocols, the regulations will require submission of data to the Department. This will allow the Department to monitor adherence to protocols, measure the impact of the protocols through risk-adjusted mortality statistics, and use the data and information obtained to inform the development of quality improvement initiatives.

Federal Requirements:

Currently there are no federal requirements regarding the adoption of sepsis protocols or for reporting adherence to protocols or risk adjusted mortality.

In December 2012, the National Quality Forum included a proposed measure of adherence to treatment bundles for patients treated for sepsis. This measure, which is currently under consideration, would focus on patients 18 years of age and older who present with symptoms of severe sepsis or septic shock who are eligible for the 3 hour (severe sepsis) and/or 6 hour (septic shock) early management bundle. The regulations proposed by the Department to measure adherence with established sepsis protocols will seek to be in alignment with the NQF measure when adopted.

Compliance Schedule:

These regulations will take effect upon publication of a Notice of Adoption in the New York State Register.

Revised Regulatory Flexibility Analysis

Effect of Rule:

The provisions of these regulations will apply to the 228 general hospitals in New York State, including 18 general hospitals operated by local governments. Three general hospitals in the State are considered small businesses. These hospitals will not be affected in any way different from any other hospital.

Compliance Requirements:

Compliance requirements are applicable to those three hospitals considered small businesses as well as the 18 hospitals operated by local governments. Compliance will require: (a) adoption of and compliance with the required sepsis protocols; (b) training staff to implement the sepsis protocols; and (c) reporting information to inform risk-adjusted sepsis mortality measures.

Professional Services:

Professional services are not anticipated to be impacted as a result of the following: (a) reporting the adoption of and compliance with the required sepsis protocols; (b) training staff to implement the sepsis protocols; and (c) reporting information to inform risk-adjusted sepsis mortality measure.

Compliance Costs:

Compliance costs associated with these regulations will be minimal and will arise as a result of: (a) adopting and complying with evidence-based protocols; (b) reporting information to inform risk-adjusted Sepsis mortality measures; and (c) training staff to implement the sepsis protocols. This will apply to those hospitals (three) defined as small businesses.

Economic and Technological Feasibility:

It is economically and technologically feasible for small businesses to comply with these regulations.

Minimizing Adverse Impact:

Adverse impact will be minimized through the provision of time sufficient to comply with the regulations. More specifically impacted entities will have until December 31, 2013, to have sepsis protocols in place and at least six months before information to inform risk adjusted mortality measures will have to be reported to the Department.

Small Business and Local Government Participation:

These regulations have been discussed with hospital associations that represent hospitals throughout the state, including those that are small businesses and operated by local governments, who are supportive of this initiative.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not required.

Revised Rural Area Flexibility Analysis

Effect of Rule:

The provisions of these regulations will apply to general hospitals in

New York State, including 47 general hospitals located in rural areas of the State. These hospitals will not be affected in any way different from any other hospital.

Compliance Requirements:

Compliance requirements are applicable to those hospitals located in rural areas. Compliance will require: (a) adoption of and compliance with the required sepsis protocols; (b) training staff to implement the sepsis protocols; and (c) reporting information to inform risk-adjusted sepsis mortality measures.

Professional Services:

Professional services will not be impacted as a result of these regulations.

Compliance Costs:

Compliance costs associated with these regulations will be minimal and will arise as a result of: (a) adopting and complying with evidence-based protocols; (b) reporting information to inform risk-adjusted Sepsis mortality measures; and (c) training staff to implement the sepsis protocols. This will apply to those hospitals located in rural areas of New York State.

Minimizing Adverse Impact:

Adverse impact will be minimized through the provision of time sufficient to comply with the regulations. More specifically impacted entities will have until December 31, 2013, to have sepsis protocols in place and at least six months before information to inform risk adjusted mortality measures will have to be reported to the Department.

Rural Area Participation:

These regulations have been discussed with hospital associations that represent hospitals throughout the state, including those that are located in rural areas, who are supportive of this initiative.

Revised Job Impact Statement

Pursuant to the State Administrative Procedure Act (SAPA) section 201-a(2)(a), a Job Impact Statement for this amendment is not required because it is apparent from the nature and purposes of the proposed rules that they will not have a substantial adverse impact on jobs and employment opportunities.

Assessment of Public Comment

1. General Applicability

One commenter requested clarifying language regarding the applicability of the proposed regulations and noted that they should apply only to the ED and inpatient settings.

Response: The regulations generally apply to all general hospitals. We are aware that certain facilities may not be appropriate for care and treatment of severe sepsis and would likely transfer such patients - such as rehabilitation or specialty hospitals. Specific guidance regarding protocols for such hospitals will be provided as part of the overall guidance document.

2. Implementation Schedule

Several entities commented that the proposed implementation schedule is quite ambitious and it may be difficult for hospitals to comply – particularly those hospitals with more limited experience in this area and also with respect to pediatric and inpatient protocols. Recommendations include extending the deadline for protocol submission to October 1, 2013 (three-month extension) and extending the deadline for protocol implementation after receipt of protocol approval be extended from 45 days to six months.

Response: To assure that hospitals are afforded the time needed to develop thoughtful and well-constructed protocols while at the same time ensuring that protocols are adopted and implemented in a timely manner, given the urgent and potentially life-threatening nature of sepsis, the Department adopts the following:

- Protocols are to be submitted to NYS DOH by September 3, 2013 (rather than July 1st), a two-month extension, and protocols will be required to be implemented no later than December 31, 2013.

3. Use of a Central Line

Several comments were received commenting on wording regarding use of central lines as a treatment protocol and suggesting that the wording be revised to more clearly indicate that use of a central line is an option that may or may not be adopted by any given institution.

Response: The regulations require that each institution develop its own protocols, so long as they are consistent with established protocols and generally accepted standards of care. As such, the regulations allow for but do not require use of a central line. Given evolving evidence and use of central lines in some protocols it has been determined that broad flexibility is key to ensure hospitals latitude to determine the best possible protocols for adoption and implementation. As stated throughout the regulations all protocols are subject to change based on evolving clinical evidence.

4. Regulatory Scope Clarification - Sepsis, Severe Sepsis and Septic Shock

Several noted some inconsistencies in describing the scope of the regulations and recommended that NYS DOH clarify that the scope of the regulations applies to patients with severe sepsis and septic shock, consistent with the national guidelines.

Response: The regulations have been revised to clarify that the proposed protocols are to address early identification of sepsis (as the initial stage of infection) and treatment protocols are to apply to severe sepsis and septic shock.

5. Required Screening and treatment for persons with sepsis, severe sepsis and septic shock and for children

Several organizations noted some internal inconsistencies in the wording used in the regulations (sepsis, septic shock and severe sepsis). This has been addressed in the adopted regulations.

Other organizations noted concerns, particularly for pediatric cases, regarding the requirement that protocols be in place for the early recognition and treatments of patients with sepsis, severe sepsis and septic shock noting that this may result in inappropriate application of the protocol as many children present with fever, which may be symptomatic of conditions such as influenza, which do not require broad spectrum antibiotics, blood cultures and lactic acid levels. It was noted that overzealous application of this definition could lead to the sepsis protocol being invoked for children with even minor illnesses, such as upper respiratory infections, otitis media, and the like.

It was recommended that regulatory requirements be more general in nature both for adults and for children, but rely on evidence based guidance that would be provided in the form of an interpretive policy document to be prepared by the department based on input from critical care experts.

Response: Sepsis is by its very nature a continuum of symptoms and clinical manifestations. As such the progression from sepsis to severe sepsis to septic shock is unique and individual and so too must be the clinical approaches. Given that early identification is key to be able to halt this progression effectively and reduce potential harm to the patient institutions are asked to develop protocols that ensure appropriate, early identification and treatment. The regulations allow for adoption of protocols that reflect clinical judgment as deemed appropriate by the facility.

In addition, the Department will be issuing a guidance document that provides more detailed information regarding requirement elements of protocols along with examples of protocols deemed to be acceptable. This guidance document will reflect input and suggestions from expert clinicians involved in sepsis identification, care and treatment from throughout the State and nation.

6. Time Zero

Several commented on how best to define time zero. One entity noted that the true "time zero" is when sepsis is identified per the hospital protocol (i.e. diagnostic criteria are met and/or lactate resulted). This would allow for a "time zero" that applies to both the emergency department setting as well as the inpatient setting.

Response: The need for and appropriateness of more than one time zero has been well established and will be reflected in a subsequent guidance document that will be issued by the Department to respond to requests for more detailed information not appropriate for inclusions as part of regulations.

7. Collection and Reporting of Sepsis Process Measures: 405.4(a)(7) Data Submission Requirements

Reporting of hospital protocol adherence and mortality to DOH should be delayed until the protocols are fully implemented. Reporting for the ED, for all other hospital units, and for pediatric patients should be phased in incrementally.

The Department of Health will be requiring submission of data regarding risk adjusted sepsis mortality rates. It was recommended that data collection for reporting not begin until hospitals have six months experience with the measures and that DOH and the Sepsis Advisory Work Group consider how to address useful elements of the NQF-endorsed sepsis bundle and other measures used by state and national campaigns to prevent duplicative data collection and reporting, where possible.

Response: NYS DOH will continue to work with the sepsis advisory work group to develop data collection and reporting guidelines that are streamlined and recognize current national efforts, minimize duplication and maximize efficiencies where possible. Unresolved issues including identification of inclusions and exclusions, definition of time zero, intention to treat, and other considerations will be addressed in a guidance document to be issued soon after the regulation are adopted and will be informed through ongoing discussion with the DOH Sepsis Advisory Work Group.

8. Use Of The Term "Medical Staff"

Several noted that use of the term medical staff may not be appropriate given the overall coordination responsibilities of the hospital administration and recommended that the terminology be changed to reflect this. More specifically it was recommended that paragraph four (4) be amended

to terminology such as "the hospital governing board" or "hospital administration."

Others noted that the proposed regulations mandate that hospital governing bodies ensure evidence-based protocols for sepsis care are in place and that existing regulations already require that the hospital's governing body oversee the quality of care.

Response: To address both sets of responsibilities and assure institutional collaboration and coordination, two sections of NYCRR were amended – 405.2 which address hospital administration and 405.4 which addressed medical staff. Multiple members of the sepsis advisory committee recommended this approach to ensure systemic adoption and implementation of protocols.

9. Applicability to Children

Several noted that the proposed sepsis regulations are based on definitions that are more directly applicable to adults than to children, noted that the diagnostic approach and therapeutic response to sepsis, severe sepsis and septic shock in children differ substantially from those in adults and voiced concern regarding the appropriate identification and treatment of children with severe sepsis and septic shock. It was also suggested that the wording of the regulation be changed to ''commonly accepted standards of care'' rather than evidence-based protocols or guidelines. Finally, there was a recommendation that a specific committee or council be allowed to review and offer recommendations regarding implementation of these regulations with respect to pediatrics.

• Response: NYS DOH agrees that the initial evaluation and clinical response differ in children and adults. As a result the regulations as adopted clarify and more clearly make a distinction in section 405.4(a)(8) between pediatric and adult definitions as follows:

"for adults, severe sepsis shall mean sepsis plus at least one sign of hypoperfusion or organ dysfunction; for pediatrics, severe sepsis shall mean sepsis plus two organ dysfunctions or acute respiratory distress syndrome" and "for adults, septic shock shall mean severe sepsis with persistent hypotension or cardiovascular organ dysfunction despite adequate IV fluid resuscitation; for pediatrics, septic shock shall mean severe sepsis and cardiovascular dysfunction despite adequate IV fluid resuscitation." With respect to the recommendation to change the wording to "commonly accepted standards of care" the wording and the intent is to have regulated parties use the best available evidence at the given time to guide their protocol development. We do not believe the requested wording change is necessary as the regulations as written clearly refer to generally accepted standards of care as follows:

"The medical staff shall adopt, implement, periodically update and submit to the Department evidence-based protocols for the early recognition and treatment of patients with severe sepsis and septic shock ("sepsis protocols") that are based on generally accepted standards of care."

With respect to the recommendation to allow a specific committee to review the proposed regulations we note that NYSDOH has convened a broad expert panel including a pediatric subcommittee. A member of the specific children's EMS committee recommended has been participating in these expert panels. The entire committee will be consulted, as appropriate, for further input as the regulations are implemented.

10. Request for Additional/More Detailed Guidance

Several requested guidance given multiple ongoing ambitious clinical trials, multiple definitions of time zero and evolving evidence with respect to protocols for inpatient use and for pediatric use.

Response: SDOH will develop and issue a detailed guidance document with greater detail than is reflected in the regulations. This approach was determined to be the most effective and efficient manner given evolving clinical guidance with respect to identification and treatment of adults and children with sepsis. The guidance document will be shared with all facilities and will be updated as appropriate consistent with evolving science and clinical research.

11. Sepsis Prevention

Several organizations and individuals wrote to highlight the critical import of sepsis prevention and suggested tools and mechanisms for both prevention and early detection.

Response: While NYSDOH fully support prevention efforts and promotes early detection of sepsis these regulation are intended to address severe sepsis and septic shock identification and prompt treatment consistent with generally accepted standards of care. Prevention while important is outside the scope of these regulations.

12. Future Reporting

One commentator asked whether sepsis measures will be included in the annual hospital report card, Prevention Quality Indicators and/or added to the Prevention Agenda or have its own reporting. Further information was requested regarding the method of reporting (paper or electronic).

Response: As per the regulations the Department will collect data necessary to develop risk-adjusted mortality measures which will be publicly reported. The method for reporting information to the Department is to be determined but every effort will be made to minimize workload for the reporting institutions and assure consistency with federal reporting requirements as they may evolve.

Department of Motor Vehicles

NOTICE OF ADOPTION

Drinking Driver Program

I.D. No. MTV-41-12-00012-A
Filing No. 408
Filing Date: 2013-04-15
Effective Date: 2013-05-01

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

Action taken: Amendment of sections 134.7, 134.10 and 134.11 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 1196(5) and (7)(a)

Subject: Drinking Driver Program.

Purpose: Restrict conditional license eligibility & require persons who complete DDP to serve the full period of suspension or revocation.

Text or summary was published in the October 10, 2012 issue of the Register, I.D. No. MTV-41-12-00012-EP.

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

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Relicensing After Permanent Revocation

I.D. No. MTV-41-12-00013-A
Filing No. 407
Filing Date: 2013-04-15
Effective Date: 2013-05-01

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

Action taken: Amendment of sections 136.4, 136.5 and 136.10 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 501(2)(c), 510(6), 1193(2)(b)(12), (c)(2)(1) and 1194(2)(d)(1)

Subject: Relicensing after permanent revocation.

Purpose: To establish strict criteria for relicensing after permanent revocation.

Text of final rule: Paragraph (3) of subdivision (b) of section 136.1 is amended to read as follows:

(3) History of abuse of alcohol or drugs. A history of abuse of alcohol or drugs shall consist of a record of two or more incidents, within a [10] *25* year period, of operating a motor vehicle while under the influence of alcoholic beverages and/or drugs or of refusing to submit to a chemical test not arising out of the same incident, whether such incident was committed within or outside of this state.

Subdivision (b) of section 136.4 is amended and a new subdivision (b)(1) is added to read as follows:

(b)*(1)* An [applicant] *application* for a driver's license [shall] *may* be denied if a review of the entire driving history provides evidence that the applicant constitutes a problem driver, as defined in section 136.1(b)(1) of this Part. If an application is denied pursuant to this paragraph, no application shall be considered for a minimum of one year from the date of denial. *In lieu of such denial, the applicant may be issued a license or permit with a problem driver restriction, as set forth in section 3.2(c)(4) of this Chapter and paragraph (2) of this subdivision.*

(2) Upon the approval of an application for relicensing of a person who is deemed a problem driver under this subdivision, the Commissioner may impose a problem driver restriction on such person's license or permit, as set forth in section 3.2(c)(4) of this Title. As a component of this restriction, the Commissioner may require such person to install an ignition interlock device in any motor vehicle owned or operated by such person. The ignition interlock requirement will be noted on the attachment to the driver license or permit held by such person. Such attachment must be carried at all times with the driver license or permit.

(3) Revocation of license or permit with problem driver restriction. A license or permit that contains a problem driver restriction shall be revoked (i) upon the holder's conviction of a traffic violation or combination of violations, committed while such restriction is in effect, which the Commissioner deems serious in nature; or (ii) for the holder's failure to install and maintain an ignition interlock device in motor vehicles owned or operated by the holder, when required to do so under such restriction. The attachment, provided for in paragraph (2) of this subdivision, shall set forth the violation or violations that will result in such a revocation. A revocation for any of the above reasons shall be issued without a hearing based upon receipt of a certificate or certificates of conviction. The Commissioner may also revoke a license or permit with a problem driver restriction, without a hearing, upon receipt of a certificate of conviction that indicates that the applicant has driven in violation of the conditions of such restriction.

(4) Employer vehicle. A person required to operate a motor vehicle owned by such person's employer in the course and scope of his or her employment may operate that vehicle without installation of an ignition interlock device only in the course and scope of such employment and only if such person carries in the motor vehicle written documentation indicating the employer has knowledge of the restriction imposed and has granted permission for the person to operate the employer's vehicle without the device only for business purposes. Such documentation shall display the employer's letterhead and have an authorized signature of the employer. A motor vehicle owned by a business entity that is wholly or partly owned or controlled by a person subject to the problem driver restriction is not a motor vehicle owned by the employer for purposes of the exemption provided in this paragraph and shall be deemed to be owned by the person subject to the problem driver restriction.

(b)(1) An application for a driver's license may be denied if the applicant has been convicted of a violation of section 125.10, 125.12, 125.13, 125.14, 125.15, 125.20, 125.22, 125.25, 125.26 or 125.27 of the Penal Law arising out of the operation of a motor vehicle, or if the applicant has been convicted of a violation of section 1192 of the Vehicle and Traffic Law where death or serious physical injury, as defined in section 10.00 of the Penal Law, has resulted from such offense.

Section 136.5 is amended to read as follows:

136.5 [Miscellaneous grounds for denial.] *Special rules for applicants with multiple alcohol- or drug-related driving convictions or incidents.*

[(a) Notwithstanding any other provision of this Part, two convictions for driving while intoxicated, with personal injury involvement in each, regardless of the extent of such injury, shall result in a denial of an application.

(b) Notwithstanding any other provision of this Part, the Commissioner may deny an application where the revocation sought to be terminated was imposed as a result of a conviction for a violation of section 125.10, 125.12, 125.13, 125.14, 125.15, 125.20, 125.22, 125.25, 125.26 or 125.27 of the Penal Law arising out of the operation of a motor vehicle, or a conviction for a violation of section 1192 of the Vehicle and Traffic Law which resulted in a death or serious injury, as defined in section 10.00 of the Penal Law. The ground for such denial shall be set forth in writing and a copy shall be made available to the applicant.]

(a) For the purposes of this section:

(1) "Alcohol- or drug-related driving conviction or incident" means any of the following, not arising out of the same incident: (i) a conviction of a violation of section 1192 of the Vehicle and Traffic Law or an out-of-state conviction for operating a motor vehicle while under the influence of alcohol or drugs; (ii) a finding of a violation of section 1192-a of the Vehicle and Traffic Law; provided, however, that no such finding shall be considered after the expiration of the retention period contained in paragraph (k) of subdivision 1 of section 201 of the Vehicle and Traffic Law; (iii) a conviction of an offense under the Penal Law for which a violation of section 1192 of the Vehicle and Traffic Law is an essential element; or (iv) a finding of refusal to submit to a chemical test under section 1194 of the Vehicle and Traffic Law.

(2) "Serious driving offense" means (i) a fatal accident; (ii) a driving-related Penal Law conviction; (iii) conviction of two or more violations for which five or more points are assessed on a violator's driving record pursuant to Section 131.3 of this subchapter; or (iv) 20 or more points from any violations.

(3) "25 year look back period" means the period commencing upon the date that is 25 years before the date of the revocable offense and ending on and including the date of the revocable offense.

(4) "Revocable offense" means the violation, incident or accident that results in the revocation of the person's drivers license and which is the basis of the application for relicensing. Upon reviewing an application for relicensing, the Commissioner shall review the applicant's entire driving record and evaluate any offense committed between the date of the revocable offense and the date of application as if it had been committed immediately prior to the date of the revocable offense. For purposes of this section, "date of the revocable offense" means the date of the earliest revocable offense that resulted in a license revocation for which the revocation has not been terminated by the Commissioner's subsequent approval of an application for relicensing.

(b) Upon receipt of a person's application for relicensing, the Commissioner shall conduct a lifetime review of such person's driving record. If the record review shows that:

(1) the person has five or more alcohol- or drug-related driving convictions or incidents in any combination within his or her lifetime, then the Commissioner shall deny the application.

(2) the person has three or four alcohol- or drug-related driving convictions or incidents in any combination within the 25 year look back period and, in addition, has one or more serious driving offenses within the 25 year look back period, then the Commissioner shall deny the application.

(3)(i) the person has three or four alcohol- or drug-related driving convictions or incidents in any combination within the 25 year look back period but no serious driving offenses within the 25 year look back period and (ii) the person is currently revoked for an alcohol- or drug-related driving conviction or incident, then the Commissioner shall deny the application for at least five years after which time the person may submit an application for relicensing. Such waiting period shall be in addition to the revocation period imposed pursuant to the Vehicle and Traffic Law. After such waiting period, the Commissioner may in his or her discretion approve the application, provided that upon such approval, the Commissioner shall impose the A2 restriction on such person's license for a period of five years and shall require the installation of an ignition interlock device in any motor vehicle owned or operated by such person for such five-year period. If such license with an A2 restriction is later revoked for a subsequent alcohol- or drug-related driving conviction or incident, such person shall thereafter be ineligible for any kind of license to operate a motor vehicle.

(4)(i) the person has three or four alcohol- or drug-related driving convictions or incidents in any combination within the 25 year look back period but no serious driving offenses within the 25 year look back period and (ii) the person is not currently revoked as the result of an alcohol- or drug-related driving conviction or incident, then the Commissioner shall deny the application for at least two years, after which time the person may submit an application for relicensing. Such waiting period shall be in addition to the revocation period imposed pursuant to the Vehicle and Traffic Law. After such waiting period, the Commissioner may in his or her discretion approve the application, provided that upon such approval, the Commissioner shall impose an A2 restriction, with no ignition interlock requirement, for a period of two years. If such license with an A2 restriction is later revoked for a subsequent alcohol- or drug-related driving conviction or incident, such person shall thereafter be ineligible for any kind of license to operate a motor vehicle.

(5) the person has two alcohol- or drug-related driving convictions or incidents in any combination within the 25 year look back period, then the Commissioner may in his or her discretion approve the application after the minimum statutory revocation period is served.

(6) the person has been twice convicted of a violation of subdivision three, four or four-a of section 1192 of the Vehicle and Traffic Law or of driving while intoxicated or of driving while ability is impaired by the use of a drug or of driving while ability is impaired by the combined influence of drugs or of alcohol and any drug or drugs where physical injury, as defined in section 10.00 of the Penal Law, has resulted from such offense in each instance, then the Commissioner shall deny the application.

(c) The grounds for any denial shall be set forth in writing and a copy shall be made available to the person making the application for relicensing.

(d) While it is the Commissioner's general policy to act on applications in accordance with this section, the Commissioner shall not be foreclosed from consideration of unusual, extenuating and compelling circumstances that may be presented for review and which may form a valid basis to deviate from the general policy, as set forth above, in the exercise of discretionary authority granted under sections 510 and 1193 of the Vehicle and Traffic Law. If an application is approved based upon the exercise of such discretionary authority, the reasons for approval shall be set forth in writing and recorded.

(e) If, after an application for relicensing is approved, the Commis-

sioner receives information that indicates that such application should have been denied, the Commissioner shall rescind such approval and the license granted shall be revoked.

Section 136.10 is amended to read as follows:

136.10 Application for relicensing.

(a) Application by the holder of a post-revocation conditional license. Upon the termination of the period of probation set by the court, the holder of a post-revocation conditional license may apply to the Commissioner for restoration of a license or privilege to operate a motor vehicle. An application for licensure [shall] *may* be approved if the applicant demonstrates that he or she:

[(a)]*(1)* has a valid post-revocation conditional license; and

[(b)]*(2)* has demonstrated evidence of rehabilitation as required by this Part.

(b) Application after permanent revocation. The Commissioner may waive the permanent revocation of a driver's license, pursuant to Vehicle and Traffic Law section 1193(2)(b)(12)(b) and (e), only if the statutorily required waiting period of either five or eight years has expired since the imposition of the permanent revocation and, during such period, the applicant has not been found to have refused to submit to a chemical test pursuant to Vehicle and Traffic Law section 1194 and has not been convicted of any violation of section 1192 or section 511 of such law or a violation of the Penal Law for which a violation of any subdivision of such section 1192 is an essential element. In addition, the waiver shall be granted only if:

(1) The applicant presents proof of successful completion of a rehabilitation program approved by the Commissioner within one year prior to the date of the application for the waiver; provided, however, if the applicant completed such program before such time, the applicant must present proof of completion of an alcohol and drug dependency assessment within one year of the date of application for the waiver; and

(2) The applicant submits to the Commissioner a certificate of relief from civil disabilities or a certificate of good conduct pursuant to Article 23 of the Correction Law; and

(3) The application is not denied pursuant to section 136.4 or section 136.5 of this Part; and

(4) There are no incidents of driving during the period prior to the application for the waiver, as indicated by accidents, convictions or pending tickets. The consideration of an application for a waiver when the applicant has a pending ticket shall be held in abeyance until such ticket is disposed of by the court or tribunal.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 136.5(b)(3)(ii) and (4)(ii).

Revised rule making(s) were previously published in the State Register on February 22, 2013.

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

Revised Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. VTL Section 501(2)(c) authorizes the Commissioner to provide for driver's license restrictions based upon the types of vehicles or other factors deemed appropriate by the Commissioner. Section 510(6) of such law provides that where revocation is mandatory no new license shall be issued except in the discretion of the Commissioner. VTL section 1193(2)(b)(12) authorizes the Commissioner to waive the permanent revocation of a driver's license, where such revocation arises out of multiple alcohol- or drug-related offenses, if the applicant for the waiver meets certain criteria. Section 1193(2)(c)(1) provides that where a license is revoked as the result of a mandatory revocation arising out of an alcohol- or drug-related offense, no new license shall be issued except in the discretion of the Commissioner. Section 1194(2)(d)(1) provides that where a license is revoked arising out of a chemical test refusal, no new license shall be issued except in the discretion of the Commissioner.

2. Legislative objectives: Chapter 732 of the Laws of 2006 added a new subparagraph twelve to paragraph (b) of subdivision two of section 1193 of the Vehicle and Traffic Law to provide for the permanent revocation of a driver's license or privilege if the driver is convicted and/or adjudicated of multiple alcohol- or drug-related offenses within a specific time period. The law provides that the Commissioner may waive the permanent revocation after a minimum of five years (or eight years, depending on the number of prior offenses) if the driver meets certain criteria. The statute establishes specific criteria for waiver eligibility, but also provides that the Commissioner may refuse to restore a license if, on a case by case basis, the Commissioner determines that the applicant poses a risk to public safety. The proposed rule accords with these legislative objectives by identifying highway safety factors that would justify the denial of a waiver and by granting the Commissioner of Motor Vehicles broad discretion to determine whether a motorist should be relicensed after revocation. As noted above, three sections of the Vehicle and Traffic Law provide that no person shall be re-issued a license except in the Commissioner's discretion.

In accordance with the objective of protecting the motoring public, this proposal strengthens the standards used to evaluate a motorist's lifetime record, with a particular focus on alcohol- or drug-related convictions and incidents and serious driving offenses. The proposal is consistent with the current "problem driver" review conducted under Part 136, but specifies in detail the scope of such review. In addition, if such review concludes that the applicant is a problem driver, this proposal would permit the Commissioner to assign the A2-Problem Driver restriction on the driver's license or permit. The problem driver restriction will limit the driving activities of the motorist and, if appropriate, require such motorist to install an ignition interlock device in all motor vehicles owned or operated by the motorist. This restriction strikes a balance between protecting the public and allowing the motorist to engage in certain essential activities involving his or her employment, medical care, child care and educational opportunities.

3. Needs and benefits: The amendments to section 136.4 would create a new A2-Problem Driver restriction that would limit the driving privileges of certain persons who are approved for relicensure after revocation but who may present highway safety concerns.

A person whose driver's license is revoked must apply to the Department of Motor Vehicles for relicensure. Such person's driving record is subject to a review pursuant to Part 136 of the Commissioner's regulations. The Department reviews the applicant's entire driving history in order to assess his or her risk to the motoring public. Under current regulations, an application will be denied, for example, if a motorist has numerous alcohol- or drug-related offenses with insufficient rehabilitative effort or if the applicant has 25 or more negative units on the driving record. In addition, an application may be denied if the motorist is deemed a "problem driver" as defined in section 136.1(b)(1) of this Part: that is, the motorist's driving record indicates a "series of convictions, incidents and/or accidents or has a medical or mental condition, which in the judgment of the commissioner or his or her designated agent, upon review of the applicant's entire driving history, establishes that the person would be an unusual and immediate risk upon the highways."

Although a person may have convictions and incidents on his or her driving record, such person may raise safety concerns without meriting denial of the application. In such cases, it would be appropriate to relicense the applicant but restrict his or her driving privileges. The amendments to section 136.4 provide for a "problem driver" restriction that would restrict the person's privileges to those currently allowed for the holder of a restricted use license. This restriction allows the person to drive only for particular activities, such as driving to and from work, doctor's appointments, and classes at an accredited school or university. When appropriate, the Commissioner, as part of this restriction, would require the applicant to install an ignition interlock device in motor vehicles owned or operated by such person. The interlock device prevents a motorist from starting the vehicle if such motorist has consumed alcohol. The device is a useful tool in dealing with the recidivist drunk driver, as it prevents such driver from operating while intoxicated on the State's highways.

The proposed amendments to section 136.5 would, consistent with the current regulation regarding "problem drivers," establish specific rules for relicensure of applicants who have multiple alcohol- or drug-related convictions and incidents on their driving records. For example, the proposed rule provides that an application will be denied if the applicant has five or more such convictions or incidents on his or her entire record or if such person has three or four such convictions or incidents plus one or more serious driving offense within the 25 year period prior to the date of the revocable offense. If a person has three or four alcohol- or drug-related offenses within 25 years and no serious driving offense, such person's application shall be denied and the person may re-apply after five years. At such time the Commissioner may approve the application, impose the A2 Problem Driver restriction and require the installation of an ignition interlock device in all motor vehicles owned or operated by the applicant. These proposals will provide a critical step in protecting the motoring public from recidivist alcohol- and drug-related offenders.

The proposed amendments to section 136.10 are also necessary to inform motorists whose licenses have been permanently revoked, pursuant to Vehicle and Traffic Law section 1193(2)(b)(12), about the criteria to obtain a waiver of such permanent revocation. This regulation is also necessary to ensure that drivers who pose a risk to the motoring public do not have their licenses restored.

Chapter 732 of the Laws of 2006 provided for the permanent revocation of a driver's license or privilege if the driver is convicted and/or adjudicated of multiple alcohol- or drug-related offenses within a specified time period. The law provides that the Commissioner may waive the permanent

revocation after five years (or after 8 years if the applicant for the waiver has more prior offenses) if the driver meets certain criteria.

The proposed rule, in part, tracks statutory language by requiring the applicant for the waiver to produce proof of rehabilitation and a certificate of relief from disabilities or certificate of good conduct. In addition, pursuant to the statute, the applicant must, during the period of revocation, have not been found to have refused a chemical test, or been convicted of aggravated unlicensed operation or certain alcohol- or drug-related offenses set forth in the Vehicle and Traffic Law and the Penal Law.

In terms of the discretionary review criteria, the Commissioner may deny an application for a waiver if the applicant is deemed a problem driver, as defined in section 136.4(b) or had any incidents of driving during the revocation period. As part of the review of the applicant's entire driving record, the Department shall also consider: the number of Penal Law or Vehicle and Traffic Law convictions that are misdemeanors or felonies offenses involving the operation of a motor vehicle; fatal accidents; if the applicant accumulated 20 or more points within 25 years; or if the person had two five-point convictions within 25 years.

The Commissioner shall impose the A2-Problem Driver restriction for applicants approved for the waiver and for drivers whose licenses are restored but whom the Commissioner determines should have limited driving privileges. In cases where the license was revoked for an alcohol- or drug-related offense, the driver must install an ignition interlock device in motor vehicles that he or she owns or operates.

By denying an application for a waiver based upon these criteria and imposing the Problem Driver restriction, the Department would take a major step to ensure that high-risk drivers do not operate on our roads and highways, an important safety benefit for the general motoring public.

This regulation is both necessary and beneficial to the general motoring public because it will restrict the driving privileges of persons who may pose a significant highway safety threat.

In response to comments on the proposed rule, the Commissioner has made four non-substantial changes to the revised rule. First, section 136.5(a)(1) has been revised to make clear that a zero tolerance finding (VTL section 1192-a) will not be considered after the expiration of the retention period contained in VTL section 201(1)(k). Second, a new paragraph (e) has been added to section 136.5(a) in order to define the term "25 year look back period." Third, the 25 year look back period is now used as the measuring period in section 136.5(b) to evaluate whether the Commissioner shall approve or deny an application for relicensing. Fourth, a technical amendment is made to section 136.10(b) to clarify that the waiver of permanent revocation applies to revocations issued to Vehicle and Traffic Law section 1193(2)(b)(12)(b) and (e). The original amendment did not reference subparagraph (e).

The revised rule makes three substantive changes. First, the original language in section 136.5(b), which was deleted in the proposed rule, is reinstated in a new subdivision (b-1) of section 136.4. This provision authorizes the Commissioner to deny an application based upon a single conviction of certain Penal Law violations or if the applicant has been convicted of a violation of section 1192 of the Vehicle and Traffic Law where death or serious injury has resulted from such offense. Second, a new subdivision (e) is added to section 136.5 to provide that if after an application for relicensing is approved, the Commissioner receives information that indicates that such application should have been denied, the Commissioner shall rescind such approval and the license granted shall be revoked. Occasionally, the Commissioner is notified of a finding or conviction after an application is approved. If the notification had been made prior to such approval, the application would have been denied. This amendment authorizes the Commissioner to rescind approval upon such a notification and reinstate the license revocation. A similar provision already exists in relation to the issuance of conditional licenses in section 134.7(b). Finally, section 136.1(b)(3) is amended to provide that a "history of abuse of alcohol or drugs" shall be defined as two or more alcohol/drug related incidents within a 25 year period. Currently, if an applicant has two or more incidents within a 10 year period, such applicant must produce proof of rehabilitation. As a result of this amendment, applicants will have to produce proof of rehabilitation if their record indicates two or more alcohol/drug related incidents within 25 years of the date of application. An application is denied under section 136.4(a)(2) if there is insufficient proof of rehabilitative effort.

Two non-substantive revisions are made upon adoption of this regulation. First, the definition of "alcohol or drug-related driving conviction or incident," in section 136.5(a)(1), is amended to include "an out-of-state conviction for operating a motor vehicle while under the influence of alcohol or drugs." Because the Department already counts out-of-state convictions when evaluating an application for relicensing, this revision does not affect current procedures. The revision does, however, clarify the procedure for applicants and practitioners. Second, paragraphs (3) and (4) of section 136.5(b) are amended to make clear that the applicant must serve the statutory revocation period imposed upon the applicant before the respective five or two year waiting period commences.

4. Costs: a. Cost to regulated parties and customers: Motorists with a history of driving while intoxicated who qualify for a license with the problem driver restriction will be required to install and maintain an ignition interlock device in vehicles that they own or operate. There are various models of available interlock devices. The average cost of installation and monthly maintenance is slightly over $1,000 a year.

b. Costs to the agency and local governments: There is no cost to local governments. There will be minimal costs to the Department in developing the problem driver restriction. The Department must design and produce an attachment that will designate the limitations of the problem driver restriction and, when appropriate, indicate the ignition interlock requirement.

5. Local government mandates: There are no local government mandates.

6. Paperwork: The Department must design and produce an attachment that will designate the limitations of the problem driver restriction and, when appropriate, indicate the ignition interlock requirement.

7. Duplication: This proposal does not duplicate, overlap or conflict with any relevant rule or legal requirement of the State and federal governments.

8. Alternatives: The Department deliberated extensively about how to restrict the driving privileges of persons who are eligible for relicensure but who might continue to present highway safety concerns. Imposing a new problem driver restriction was deemed the most expeditious, effective and fair alternative. A no action alternative was not considered.

9. Federal standards: The proposal does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The Department would begin compliance immediately.

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

A Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement is not attached because changes made to the rule do not necessitate to the previously published Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The agency received no public comment.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Conforming Amendments to Chapter 498 of the Laws of 2012

I.D. No. PDD-08-13-00008-A

Filing No. 410

Filing Date: 2013-04-16

Effective Date: 2013-05-01

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

Action taken: Amendment of section 624.8(c)(3) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b) and 33.25

Subject: Conforming amendments to chapter 498 of the Laws of 2012.

Purpose: Extends the deadline for requests for release of records pertaining to allegations of abuse.

Text or summary was published in the February 20, 2013 issue of the Register, I.D. No. PDD-08-13-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office for People With Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830, email: Barbara.Brundage@opwdd.ny.gov

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Whether Demand Energy Networks Energy Storage Systems Should be Designated Technologies for Standby Rate Eligibility Purposes

I.D. No. PSC-18-13-00007-P

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

Proposed Action: The Commission is considering whether to grant, deny or modify, in whole or in part the petition of Demand Energy Networks seeking tariff amendments to allow its energy storage systems to be ''designated technologies'' for standby service from Con Edison.

Statutory authority: Public Service Law, sections 2, 5, 64, 65, 66(1), (12)(a), (b) and (e)

Subject: Whether Demand Energy Networks energy storage systems should be designated technologies for standby rate eligibility purposes.

Purpose: Whether Demand Energy Networks energy storage systems should be designated technologies for standby rate eligibility purposes.

Substance of proposed rule: The Commission is considering whether to grant, deny or modify, in whole or in part the petition of Demand Energy Networks (DEN) seeking amendments to the electric tariff of Consolidated Edison Company of New York, Inc. that would allow its energy storage systems to be treated as ''designated technologies'' so that its customers may take standby electric service. DEN states its systems store energy in deep cycle rechargeable batteries, and return that energy through either an induction generator or a UL1741 listed solid state power conversion system.

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

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

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

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

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

(13-E-0094SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Allocation of Previously Authorized Funds between Three Commission Ordered EEPS Technical Activities

I.D. No. PSC-18-13-00008-P

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

Proposed Action: The Commission is considering whether to delegate authority to Staff to approve reallocations of previously authorized funds between EEPS technical service contracts supporting services, protocol development and database development related to evaluation.

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

Subject: Allocation of previously authorized funds between three Commission ordered EEPS technical activities.

Purpose: Provide flexibility to reallocate funds among three Commission ordered EEPS activities to address evolving needs and priorities.

Substance of proposed rule: The Public Service Commission is considering whether to delegate authority to the Director of the Office of Energy Efficiency and the Environment (OEEE) to approve reallocations of funds previously authorized between three Energy Efficiency Portfolio Standard (EEPS) activities: (1) independent consulting evaluation services; (2) Statewide Evaluation Protocol Development; and (3) Statewide Database Development which are administered by the New York State Energy Research and Development Authority (NYSERDA) under Department of Public Service (DPS) Staff direction. Per previous Commission Orders, all three activities are funded through System Benefit Charge (SBC) or EEPS interest earnings, or NYSERDA's evaluation budget.

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

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

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

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

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

(07-M-0548SP75)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Consider the Petition for Clarification from North Town Roosevelt, LLC

I.D. No. PSC-18-13-00009-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition for clarification filed by North Town Roosevelt, LLC.

Statutory authority: Public Service Law, sections 2, 4(1), 22, 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: To consider the petition for clarification from North Town Roosevelt, LLC.

Purpose: To consider the petition for clarification from North Town Roosevelt, LLC.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by North Town Roosevelt, LLC seeking clarification of the Commission's September 17, 2009 Order regarding its submetering plan at Roosevelt Landings in the Territory of Consolidated Edison Company of New York, Inc. North Town Roosevelt, LLC's revised submetering plan would disaggregate plug load electricity from baseboard heating electricity. Residents would pay for plug load electricity usage and not for baseboard heating electricity.

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

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

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

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

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

(08-E-0838SP7)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Con Edison's 2012 Performance Report Concluding That it Met All Targets and Incurred no Revenue Adjustment

I.D. No. PSC-18-13-00010-P

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

Proposed Action: The Commission is considering whether to adopt or reject, in whole or in part, Con Edison's Report on 2012 Performance under the Electric Service Reliability Performance Mechanism, concluding that it met all targets and incurred no revenue adjustment.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Con Edison's 2012 Performance Report concluding that it met all targets and incurred no revenue adjustment.

Purpose: To consider Con Edison's 2012 Performance Report concluding that it met all targets and incurred no revenue adjustment.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to adopt or reject, in whole or in part, Consolidated Edison Company of New York, Inc.'s (Con Edison or Company) Report on 2012 Performance under the Electric Service Reliability Performance Mechanism (2012 RPM Report), concluding that it met all targets and incurred no revenue adjustment. Specifically, the Commission will consider whether Con Edison has met all of the required performance standards set forth in the utility's rate plan. Con Edison states in its 2012 RPM Report that a revenue adjustment of $39 million is not applicable for its failure to meet its network duration, network outages per 1000 customers, and major outage metric because interruptions were caused by excludable overhead major storms that have impacted its network system. In addition, Con Edison states that a revenue adjustment of $1.5 million is not applicable for its failure to meet its shunt removal program standard due to a major storm. The utility states that it has met all the remaining performance metrics, which include the radial frequency and duration threshold standards, summer network feeder open automatics, radial restoration, pole repairs, no current streetlight and traffic signal repairs, remote monitoring system and over duty circuit breaker replacements.

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

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

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

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

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

(09-E-0428SP6)

Department of State

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Temporary Licenses and Verification of Education

I.D. No. DOS-18-13-00006-P

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

Proposed Action: Amendment of sections 160.5 and 160.33 of of Title 19 NYCRR.

Statutory authority: General Business Law, section 402

Subject: Temporary Licenses and Verification of Education.

Purpose: To implement the appearance enhancement phase of the E-Licensing Initiative.

Text of proposed rule: Section 160.5 of Title 19 NYCRR is amended to read as follows:

§ 160.5 Temporary license

An applicant who meets all requirements of licensure but for the passage of a written and/or practical examination may make application for a temporary license. Such temporary license shall expire six months from issuance. A second temporary license will not be issued without proof that the applicant has passed the [relevant,] written *or practical* examination.

Section 160.33 of Title 19 NYCRR is amended to read as follows:

§ 160.33 Verification of education

An application for licensure must be verified by a representative of the approved appearance enhancement school [in the space provided therefor, such verification to be accompanied by the raised seal of such approved school]. A school shall authorize such individual to make such verification, and file such authorization with the department.

Text of proposed rule and any required statements and analyses may be obtained from: Whitney Clark, NYS Department of State, Division of Licensing Services, 1 Commerce Plaza, 99 Washington Avenue, Albany NY 12231, (518) 473-2728, email: whitney.clark@dos.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:

General Business Law § 402 authorizes the Department of State to promulgate rules and regulations with respect to the examination of applicants and their qualifications.

2. Legislative objectives:

The statutory intent of Article 27 of the General Business Law is to further the health, safety and welfare of the public by ensuring that appearance enhancement licensees are properly qualified.

3. Needs and benefits:

The proposed rule will advance the statutory intent of Article 27 of the General Business Law by ensuring the qualifications of appearance enhancement licensees. Prospective licensees are required to complete an education program and pass pre-licensing examinations. The Department of State has adopted regulations to implement these requirements.

The Department of State is one of six pilot agencies selected to participate in a statewide "E-Licensing" initiative. Upon implementation of the initiative, license applicants will be permitted to apply to schedule examinations and apply for licenses on-line, thereby reducing the processing and wait time for both considerably. The appearance enhancement portion of the E-Licensing initiative is near completion and is scheduled to be implemented in June 2013. The instant rule-making is being proposed in furtherance of this initiative. If it is adopted, applicants will be permitted to schedule the written and practical examinations, receive exam dates, check examination results, and apply for licenses online. This is expected to greatly expedite the licensing process and permit the Department of State to make better use of examination administration resources.

19 NYCRR 150.5 permits applicants who have completed qualifying education to apply for a temporary license pending passage of the written or practical examination. The regulation currently requires that before a second temporary license may be issued, the applicant must present proof of having passed the written examination. The Department seeks to amend this regulation in furtherance of the e-Licensing initiative both to permit an applicant to obtain a second temporary license upon submitting proof of having passed either the written or practical examination and to allow an applicant to take both exams concurrently. Both examinations test an applicant's knowledge of appearance enhancement principles. The Department has determined that passage of either examination is sufficient evidence that the applicant possesses the requisite knowledge and skill so as to permit the issuance of a second temporary license. Amending the regulation in this manner will also expedite the licensing process for applicants.

Currently, prospective appearance enhancement licensees must submit a written application to the Department of State. Upon processing the application, the Department mails the applicant an examination admission card. The applicant can then select a date, time and exam site from a prepublished schedule to take their exam. After the examination, the Department processes the examination results and notifies the applicant of same, in writing. If the applicant has passed the written portion of the examination, the Department of State schedules him or her for a practical examination and sends, by mail, an examination admission notice. After the examination, the Department processes the examination results and notifies the applicant of same, in writing. This antiquated process takes, on average, two to six a number of months to complete.

The proposed rule making would also amend 19 NYCRR 160.33. Insofar as the e-Licensing initiative will allow for the electronic submission of school certificates, there will no longer be a need for school certificates to contain a raised seal.

4. Costs:

a. Costs to regulated parties:

The proposed rule will not impose any new costs on prospective licensees. Examination and application fees are set forth in General Business Law section 409. These fees cannot be, and are not being, amended by the instant rulemaking. The relevant statutorily required fees are as follows: $40 for an individual practitioner license, $10 for a temporary license, $60 for an appearance enhancement business license, and $15 for taking an examination.

b. Costs to the Department of State:

The rule does not impose any new costs upon the Department of State. The Department of State currently issues temporary licenses and processes license applications. These licensing functions will continue to be performed by existing staff.

5. Local government mandates:

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

6. Paperwork:

The rule does not impose any new paperwork requirements. It is expected that the rule will reduce paperwork by making amendments to regulations in furtherance of the E-Licensing initiative so that most licensing transactions may be conducted online.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department considered not seeking an amendment to 19 NYCRR 160.5 and 160.33. It was determined, however, that amendments were required to fully implement the E-Licensing initiative.

9. Federal standards:

There are no federal standards regulating the issuance of temporary appearance enhancement licenses or verification of education for appearance enhancement applicants. Consequently, this rule does not exceed any existing federal standard.

10. Compliance schedule:

The General Business Law and existing regulations require prospective appearance enhancement applicants to complete an approved course of education and pass examinations. The proposed regulation does not alter these requirements and, rather, is intended to make compliance easier for prospective licensees. As such, the rule will be effective upon publication of the Notice of Adoption in the State Register and will not include a cure period.

Regulatory Flexibility Analysis

1. Effect of rule:

Upon adoption, the rule will permit appearance enhancement applicants to obtain a second temporary license upon submitting proof of having passed either the written or practical examination, will permit applicants to take both examinations concurrently and will permit schools to submit electronic copies of school certificates to the Department of State.

The rule does not apply to local governments.

2. Compliance requirements:

The proposed rule does not impose any reporting or new recordkeeping requirements on appearance enhancement schools or applicants.

3. Professional services:

Appearance enhancement applicants and schools will not need to rely on professional services to comply with the requirements of the proposed rule. As part of the E-Licensing Initiative, the State is designing an online platform that will permit appearance enhancement applicants to perform most licensing tasks, such as submitting applications and scheduling examinations, online. This platform is intended to be user-friendly, and applicants and schools should not require professional services to use it.

4. Compliance costs:

The proposed rule will not impose any new costs on prospective licensees. Examination and application fees are set forth in General Business Law section 409. These fees cannot be, and are not being, amended by the instant rulemaking. The relevant statutorily required fees are as follows: $40 for an individual practitioner license, $10 for a temporary license, $60 for an appearance enhancement business license, and $15 for taking an examination.

5. Economic and technological feasibility:

The Department has determined that it will be economically and technologically feasible for small businesses to comply with the proposed rule. Most have access to the Internet. To accommodate those who do not, the Department will continue to accept and process applications by traditional methods.

6. Minimizing adverse economic impact:

The Department of State has not identified any adverse economic impact of this rule. The rule does not impose any reporting or recordkeeping requirements on appearance enhancement applicants. It is believed that the rule will expedite the licensing process, allowing qualified applicants to enter the job force more quickly.

7. Small business participation:

Prior to proposing the rule, the Department of State discussed the proposal at an open meeting of the NYS Appearance Enhancement Advisory Committee. At this meeting, members of the public were invited to provide comment. No comments were made on the proposed regulation. In addition, the Department published a copy of the proposed text on its website. No comments were received in response. The Department of State will continue its outreach after the rule is formally proposed as a Notice of Proposed Rule Making in the State Register. The publication of the rule in the State Register will provide additional notice to small businesses. Additional comments will be received and entertained by the Department during the formal public comment period indicated in this Notice of Proposed Rule Making.

8. Compliance

The General Business Law and existing regulations require prospective appearance enhancement applicants to complete an approved course of education and pass examinations. The proposed regulation does not alter these requirements and, rather, is intended to make compliance easier for prospective licensees. As such, the rule will be effective upon publication of the Notice of Adoption in the State Register and will not include a cure period.

Rural Area Flexibility Analysis

1. Effect of the rule:

Upon adoption, the rule will permit appearance enhancement applicants to obtain a second temporary license upon submitting proof of having passed either the written or practical examination, will permit applicants to take both examinations concurrently and will permit schools to submit electronic copies of school certificates to the Department of State.

Some appearance enhancement applicants reside in rural areas.

2. Compliance requirements:

The proposed rule does not impose any reporting or new recordkeeping requirements on appearance enhancement applicants.

3. Professional services:

Appearance enhancement applicants and schools will not need to rely on professional services to comply with the requirements of the proposed rule. As part of its E-Licensing Initiative, the State is designing an online platform that will permit appearance enhancement applicants to perform most licensing tasks, such as submitting applications and scheduling examinations, online. This platform is intended to be user-friendly, and applicants and schools should not require professional services to use it.

4. Compliance costs:

The proposed rule will not impose any new costs on prospective licensees. Examination and application fees are set forth in General Business Law Section 409. These fees cannot be, and are not being, amended by the instant rulemaking. The relevant statutorily required fees are as follows: $40 for an individual practitioner license, $10 for a temporary license, $60 for an appearance enhancement business license, and $15 for taking an examination.

5. Minimizing adverse economic impacts:

The Department of State has not identified any adverse economic impact of this rule. The rule does not impose any reporting or recordkeeping requirements on appearance enhancement applicants. The rule will expedite the licensing process, allowing qualified applicants to enter the job force more easily.

6. Rural area participation:

Prior to proposing the rule, the Department of State discussed the proposal at an open meeting of the NYS Appearance Enhancement Advisory Committee. At this meeting, members of the public were invited to provide comment. No comments were made on the proposed regulation. In addition, the Department published a copy of the proposed text on its website. No comments were received in response. The Department of State will continue its outreach after the rule is formally proposed as a Notice of Proposed Rule Making in the State Register. The publication of the rule in the State Register will provide additional notice to small businesses. Additional comments will be received and entertained by the Department during the formal public comment period indicated in this Notice of Proposed Rule Making.

Job Impact Statement

The Department has determined that the proposed rule will not have a substantial adverse impact on jobs and employment opportunities for appearance enhancement practitioners. The proposed rule will expedite the licensing process for appearance enhancement applicants, thereby enabling them to complete to process and enter the job market more quickly.

This should have a positive impact on jobs and employment opportunities in appearance enhancement.

Urban Development Corporation

EMERGENCY RULE MAKING

Small Business Revolving Loan Fund

I.D. No. UDC-18-13-00002-E
Filing No. 391
Filing Date: 2013-04-10
Effective Date: 2013-04-10

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

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

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

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

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

Subject: Small Business Revolving Loan Fund.

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

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

Section 4250.1 Purpose.

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

Section 4250.2 Definitions.

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

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

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

d) "Community Based Lending Organizations" shall mean community development financial institutions, small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks.

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Black;

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

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

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

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

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

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

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

v) "Small Business" shall mean a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis.

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

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

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

Section 4250.3 Eligible Business, Eligible Projects and Ineligible Projects.

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

An "Eligible Business" is a:

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

2. independently owned and operated,

3. not dominant in its field, and

4. employs one hundred or fewer persons.

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

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

Section 4250.4 Eligible Uses.

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

1. working capital;

2. acquisition and/ or improvement of real property;

3. acquisition of machinery and equipment; and

4. refinancing of debt obligations provided that:

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

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

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

Section 4250.5 Fees.

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

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

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

Section 4250.7 Business Loan Types and Limits.

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

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

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

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

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

Section 4250.8 General Evaluation Criteria.

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

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

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

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

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

Section 4250.9 General Requirements.

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

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

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

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

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

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

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

f) If the use of a community development financial institution is not

practicable based upon an assessment of geographic and administrative capacity and other factors as determined by the Corporation, then the Corporation is authorized, within available appropriations, to provide low interest loans to the following other local community based lending organizations: small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks.

Section 4250.10 Loan Fund Accounts.

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

Section 4250.11 Application and Approval Process.

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

Section 4250.12 Auditing, Compliance and Reporting.

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

1. The number of Business Loans made;
2. The amount of each Business Loan;
3. The amount of Program Loan proceeds used to fund each Business Loan;
4. The use of Business Loan proceeds by the borrower;
5. The number of jobs created or retained;
6. A description of the economic development generated;
7. The status of each outstanding Business Loan; and
8. Such other information as the Corporation may require.

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

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

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

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

Section 4250.13 Confidentiality.

a) To the extent permitted by law, all information regarding the financial condition, marketing plans, manufacturing processes, production costs, customer lists, or other trade secrets and proprietary information of a person or entity requesting assistance from the Loan Fund administered through the selected Community Based Lending Organizations by the Corporation, shall be confidential and exempt from public disclosures.

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

Section 4250.14 Non-Discrimination and Affirmative Action.

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 8, 2013.

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

Regulatory Impact Statement

1. Statutory Authority: Section 9-c of the New York State Urban Development Corporation Act Chapter 174 of the Laws of 1968 (Uncon. Laws section 6259-c), as amended (the "Act"), provides, in part, that the Corporation shall, assisted by the Commissioner of Economic Development and in consultation with the Department of Economic Development, promulgate rules and regulations in accordance with the State Administrative Procedure Act.

Section 16-t of the Act provides for the creation of the Small Business Revolving Loan Fund (the "Program") and authorizes the New York State Urban Development Corporation d/b/a Empire State Development Corporation (the "Corporation"), within available appropriations, to provide low interest loans to Community Development Financial Institutions and other Community Based Lending Organizations, in order to provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit.

2. Legislative Objectives: Section 16-t of the Act (Uncon. Laws section 6266-t, added by Chapter 59, Part N, section 1, of the Laws of 2010) sets forth the Legislative objective of authorizing the Corporation, within available appropriations, to provide low interest loans to community development financial institutions and other community based lending organizations, in order to provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit. The adoption of 21 NYCRR Part 4250 will further these goals by setting forth the types of available assistance, evaluation criteria, the application process and related matters for the Program.

3. Needs and Benefits: The State has allocated $25 million to provide low interest loans to community development financial institutions and other community based lending organizations, in order to provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit. Small businesses have been determined to be a major source of employment throughout the State. Small businesses have historically had difficulties obtaining financing or refinancing in order to remain competitive and grow their operations, and the current economic difficulties have exacerbated this problem. Providing loans to small businesses should sustain and potentially increase the employment provided by such businesses, especially during this period of historically high unemployment and underemployment. As of December 31, 2012, over $51.5 million have been loaned to 2,204 small businesses through the Program. Almost $18 million of these funds are from the Corporation.

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

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

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

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

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

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

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

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

Regulatory Flexibility Analysis

1. Effects of Rule: In the rule: "Small business" is defined as a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis; "Community Development Financial Institution" is defined as community based organization that provides financial services and products to communities, businesses and people underserved by traditional financial institutions; and "Community Based Lending Organizations" is defined as Community Development Financial Institutions, small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks. The rule will facilitate the statutory Program's purpose of having New York State Urban Development Corporation d/b/a Empire State Development Corporation (the "Corporation") make low interest loans to community based lending organizations in order to provide funding for those lending organizations' loans (including microloans in principal amounts equal to or less than twenty-five thousand dollars) to small businesses, located within the State, that are unable to obtain adequate credit or credit terms for such credit.

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

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

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

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

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide low interest loans to community based lending organizations in order to enhance the ability of such organizations to fund loans to small businesses.

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

Rural Area Flexibility Analysis

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

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

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

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

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

Job Impact Statement

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

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