

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 Financial Services

EMERGENCY RULE MAKING

Excess Line Placements Governing Standards

I.D. No. DFS-29-13-00002-E

Filing No. 867

Filing Date: 2013-08-30

Effective Date: 2013-08-30

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

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

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

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

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

On July 21, 2010, President Obama signed into law the Nonadmitted and Reinsurance Reform Act of 2010 (“NRRA”), which prohibits any state, other than the insured’s home state, from requiring a premium tax payment for nonadmitted insurance. The NRRA also subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured’s home state, and provides that only an

insured’s home state may require an excess line broker to be licensed to sell, solicit, or negotiate nonadmitted insurance with respect to such insured. On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amended the Insurance Law to implement the provisions of the NRRA.

The sections of Part I of Chapter 61 that amend the Insurance Law to bring New York into conformance with the NRRA took effect on July 21, 2011, which is when the NRRA took effect. The regulation was previously promulgated on an emergency basis on July 22, 2011, October 19, 2011, January 16, 2012, April 16, 2012, July 13, 2012, October 10, 2012, January 7, 2013, April 5, 2013, and July 3, 2013. The regulation was also proposed in June 2013, and was published in the *State Register* on July 17, 2013.

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

Subject: Excess Line Placements Governing Standards.

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

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

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

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

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

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

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

Section 27.2 is not amended.

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

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

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

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

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

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

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

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

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

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

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

Section 27.15 is not amended.

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

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

Section 27.22 is not amended.

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

Section 27.24 is not amended.

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-29-13-00002-P, Issue of July 17, 2013. The emergency rule will expire October 28, 2013.

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

Regulatory Impact Statement

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

The federal Nonadmitted and Reinsurance Reform Act of 2010 (the "NRRA") significantly changes the paradigm for excess line insurance placements in the United States. Chapter 61 of the Laws of 2011 amends

the Insurance Law and the Tax Law to conform to the NRRA. The NRRA and Chapter 61 have been impacting excess line placements since their effective date of July 21, 2011.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

With regard to the trust fund amendment, on the one hand, excess line insurers may incur costs if they choose to establish and maintain a trust fund in order to be exempt from Insurance Law Section 1213. On the other hand, it should be significantly less expensive to establish and maintain a trust fund rather than comply with Insurance Law Section 1213. This is a

business decision that each insurer will need to make. The trust fund, if established and maintained, will be for the purpose of protecting all United States policyholders.

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

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

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

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

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

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

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

Regulatory Flexibility Analysis

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

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

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

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

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

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Assessment of Public Comment

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

NOTICE OF EXPIRATION

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

Unfair Claims Settlement Practices and Claim Cost Control Measures

I.D. No.	Proposed	Expiration Date
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DFS-35-12-00003-P

August 29, 2012

August 29, 2013

Department of Health

EMERGENCY RULE MAKING

Capital Projects for Federally Qualified Health Centers (FQHCs)

I.D. No. HLT-38-13-00001-E

Filing No. 859

Filing Date: 2013-08-28

Effective Date: 2013-08-28

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

Action taken: Amendment of section 86-4.16 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-z(9)

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

Specific reasons underlying the finding of necessity: The proposed amendment establishes a payment methodology to reimburse Federally Qualified Health Centers for the costs of capital projects with a total budget of less than \$3 million exempt from Certificate of Need (CON) requirements.

Public Health Law section 2807-z(9) provides the Commissioner of Health with authority to issue emergency regulations in order to implement the provisions of PHL Section 2807-z. Emergency adoption of the proposed regulation is necessary to provide timely revision to rate-setting regulations to comply with the requirements of PHL Section 2807-z. This amendment is anticipated to be effective in early 2013.

Subject: Capital Projects for Federally Qualified Health Centers (FQHCs).

Purpose: Capital Projects with a total budget of less than \$3 million shall be exempt from Certificate of Need (CON) requirements.

Text of emergency rule: Subdivision (d) of section 86-4.16 of 10 NYCRR is amended to read as follows:

(d) Documented increases in overall operating costs of a facility resulting from capital renovation, expansion, replacement or the inclusion of new programs, staff or services approved by the commissioner through the certificate of need (CON) process may be the basis for an application for revision of a certified rate, *provided, however, that such CON approval shall not be required with regard to such applications for rate revisions which are submitted by federally qualified health centers or rural health centers which are exempt from such CON approval pursuant to section 2807-z of the Public Health Law.* To receive consideration for reimbursement of such costs in the current rate year, a facility shall submit, at the time of appeal or as requested by the commissioner, detailed staffing documentation, proposed budgets and financial data, anticipated utilization expressed in terms of threshold visits and/or procedures and, where relevant, the final certified costs of construction approved by the department. An appeal may be submitted pursuant to this paragraph at any time throughout the rate period. Any modified rate certified or approved pursuant to this paragraph shall be effective on the date the new service or program is implemented or, in the case of capital renovation, expansion or replacement, on the date the project is completed and in use.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 25, 2013.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Public Health Law (PHL) § 2807-z(9), which authorizes the Commissioner to promulgate regulations implementing the provisions of PHL § 2807-z, which, among other things, exempts diagnostic and treatment centers (DTCs) which are federally qualified health centers (FQHCs) from certificate of need (CON) requirements for capital projects which are budgeted at under \$3 million. The rate regulation revisions presented here are set forth in

section 86-4.16(d) of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR) and allows certain Medicaid rate adjustments related to such CON exempt capital projects.

Legislative Objectives:

PHL § 2807-z exempts FQHCs from having to seek CON review and approval for certain capital projects with budgeted costs under \$3 million. This will allow such projects to go forward more quickly. The proposed regulation amendment implements this statute by deleting the requirement in § 86-4.16(d) for CON approval as a condition for FQHCs to secure Medicaid rate adjustments associated with such now CON exempt capital projects.

Needs and Benefits:

The proposed regulation implements the provisions of PHL Section 2807-z, which exempts certain types of diagnostic and treatment centers from CON review for capital projects under \$3 million. As specified in PHL § 2807-z(6) and (7), the exempted facilities are those which receive federal grant funding reflecting their designation by the federal government as FQHCs or as rural health centers.

COSTS:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties.

Costs to State Government:

The enacted state budget for SFY 2012-13 does not include any state share annually to cover the anticipated 12 month total incremental cost to the Medicaid Program for providing reimbursement related to eligible capital projects. As the FQHC payment rate will not be effective until after January 1, 2013, less spending will occur in the current SFY due to the nine month delay in implementation.

Costs of Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this proposed regulation.

Local Government Mandates:

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

Paperwork:

No additional paperwork is required to be filed by FQHCs.

Duplication:

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

Alternatives:

No significant alternatives are available. The enhanced reimbursement available to FQHCs as a result of this proposed regulation ensures that their Medicaid rates reflect appropriate adjustments related to CON exempt capital projects and are therefore, are reasonable to meet the needs of the diverse patient populations they serve.

Federal Standards:

The proposed regulation does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The proposed regulation conforms Medicaid rate regulations with the provisions of enacted provisions of the Public Health Law. There is no period of time necessary for regulated parties to achieve compliance with the regulation.

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent from the nature and purpose of the proposed rule that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation establishes a Federally Qualified Health Center (FQHC) rate-setting methodology to reimburse Diagnostic and Treatment Centers for the

capital costs of less than \$3 million which are not subject to the regulation regarding certificate of need process or requirements. The proposed regulation has no adverse implications for job opportunities. Rather, the additional revenue generated by FQHCs as a result of the new payment rate may provide them with the financial resources they need to add staff, thus enhancing their ability to provide expanded services.

EMERGENCY RULE MAKING

NYS Medical Indemnity Fund

I.D. No. HLT-38-13-00003-E

Filing No. 868

Filing Date: 2013-08-30

Effective Date: 2013-08-30

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

Action taken: Amendment of Part 69 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2999-j

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

Specific reasons underlying the finding of necessity: These regulations are being promulgated on an emergency basis because of the need for the Fund to be operational as of October 1, 2011. Authority for emergency promulgation was specifically provided in section 111 of Article VII of the New York State 2011-2012 Budget.

Subject: NYS Medical Indemnity Fund.

Purpose: To provide the structure within which the NYS Medical Indemnity Fund will operate.

Substance of emergency rule: As required by section 2999-j(15) of the Public Health Law ("PHL"), the New York State Commissioner of Health, in consultation with the Superintendent of Financial Services, has promulgated these regulations to provide the structure within which the New York State Medical Indemnity Fund ("Fund") will operate. Included are (a) critical definitions such as "birth-related neurological injury" and "qualifying health care costs" for purposes of coverage, (b) what the application process for enrollment in the Fund will be, (c) what qualifying health care costs will require prior approval, (d) what the claims submission process will be, (e) what the review process will be for claims denials, (f) what the review process will be for prior approval denials, and (g) how and when the required actuarial calculations will be done.

The application process itself has been developed to be as streamlined as possible. Submission of (a) a completed application form, (b) a signed release form, (c) a certified copy of a judgment or court-ordered settlement that finds or deems the plaintiff to have sustained a birth-related neurological injury, (d) documentation regarding the specific nature and degree of the applicant's neurological injury or injuries at present, (e) copies of medical records that substantiate the allegation that the applicant sustained a "birth-related neurological injury," and (f) documentation of any other health insurance the applicant may have are required for actual enrollment in the Fund.

The parent or other authorized person must submit the name, address, and phone number of all providers providing care to the applicant at the time of enrollment for purposes of both claims processing and case management. To the extent that documents prepared for litigation and/or other health related purposes contain the required background information, such documentation may be submitted to meet these requirements as well, provided that this documentation still accurately describes the applicant's condition and treatment being provided.

Those expenses that will or can be covered as qualifying health care costs are defined very broadly. Prior approval is required only for very costly items, items that involve major construction, and/or out of the ordinary expenses. Such prior approval requirements are similar to the prior approval requirements of various Medicaid waiver programs and to commercial insurance prior approval requirements for certain items and/or services.

Reviews of denials of claims and denials of requests for prior approval will provide enrollees with full due process and prompt decisions. Enrollees are entitled to a conference with the Fund Administrator or his or her designee and a review, which will involve either a hearing before or a document review by a Department of Health hearing officer. In all reviews, the hearing officer will make a recommendation regarding the issue and the Commissioner or his designee will make the final determination. An expedited review procedure has also been developed for emergency situations.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 27, 2013.

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

Regulatory Impact Statement

Statutory Authority:

Section 2999-j(15) of the Public Health Law (PHL) specifically states that the Commissioner of Health, in consultation with the Superintendent of Financial Services (the Superintendent of Insurance until October 3, 2011), "shall promulgate. . . all rules and regulations necessary for the proper administration of the fund in accordance with the provisions of this section, including, but not limited to those concerning the payment of claims and concerning the actuarial calculations necessary to determine, annually, the total amount to be paid into the fund as otherwise needed to implement this title."

Legislative Objectives:

The Legislature delegated the details of the Fund's operation to the two State agencies that have the appropriate expertise to develop, implement and enforce all aspects of the Fund's operations. Those two agencies are the Department of Health and the Department of Financial Services. These proposed regulations reflect the collaboration of both agencies in providing the administrative details for the manner in which the Fund will operate.

Needs and Benefits:

The regulations have the goal of establishing a process to provide that persons who have obtained a settlement or a judgment based on having sustained a birth-related neurological injury as the result of medical malpractice will have lifetime medical coverage.

Costs to Regulated Parties:

There are no costs imposed on regulated parties by these regulations. Qualified plaintiffs will not incur any costs in connection with applying for enrollment in the Fund or coverage by the Fund.

Costs to the Administering Agencies, the State, and Local Governments:

Costs associated with the Fund will be covered by applicable appropriations. The Department of Health will also seek Federal Financial Participation for the health care costs of qualified plaintiffs that otherwise would be covered by Medicaid. No costs are expected to local governments.

Local Government Mandates:

None.

Paperwork:

The proposed regulations impose no reporting requirements on any regulated parties.

Duplication:

There are no other State or Federal requirements that duplicate, overlap, or conflict with the statute and the proposed regulations. Although some of the services to be provided by the Fund are the same as those available under certain Medicaid waivers, the waivers have limited slots. Coordination of benefits will be one of the responsibilities of the Fund Administrator. Health care services, equipment, medications or other items that any commercial insurer providing coverage to a qualified plaintiff is legally obligated to provide will not be covered by the Fund (except for copayments and/or deductibles) nor will the Fund cover any health care service, equipment, or other item that either (1) is already being provided through another State or Federal program or similar program in another country, if applicable, such as the Early Intervention Program or as part of an Individualized Education Plan or (2) is not being provided to a qualified plaintiff through another State or Federal program or similar program in another country, if applicable, for which the qualified plaintiff is eligible but for which the parent or guardian cannot demonstrate that he or she has made a reasonable effort to obtain such service, equipment or item for the qualified plaintiff through the applicable program.

Alternatives:

Given the statute's directive, there are no alternatives to promulgating the proposed regulations.

Federal Standards:

There are no minimum Federal standards regarding this subject.

Compliance Schedule:

The Fund was required to be operational by October 1, 2011.

Regulatory Flexibility Analysis

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

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 necessary.

Rural Area Flexibility Analysis

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

Job Impact Statement

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

EMERGENCY RULE MAKING

Presumptive Eligibility for Family Planning Benefit Program**I.D. No.** HLT-38-13-00006-E**Filing No.** 869**Filing Date:** 2013-09-03**Effective Date:** 2013-09-03

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

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

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

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

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

Subject: Presumptive Eligibility for Family Planning Benefit Program.

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

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

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

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

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

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

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

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

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

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

(5) *An individual who has been determined presumptively eligible for*

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

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

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

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

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

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

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

(i) *hospital based and free standing clinics;*

(ii) *county health department clinics;*

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

(iv) *obstetricians and gynecologists;*

(v) *family practice physicians;*

(vi) *licensed midwives, nurse practitioners; and*

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 1, 2013.

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

Regulatory Impact Statement**Statutory Authority:**

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

Legislative Objectives:

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

Needs and Benefits:

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

COSTS:

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

This amendment will not increase costs to the regulated parties.

Costs to State and Local Government:

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

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

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

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Certificate of Public Advantage

I.D. No. HLT-38-13-00007-P

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

Proposed Action: Addition of Subpart 83-1 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2999-bb

Subject: Certificate of Public Advantage.

Purpose: For the health care industry to obtain reasonable protections from antitrust liability through an active state oversight program.

Substance of proposed rule (Full text is posted at the following State website: www.health.ny.gov): The proposed rule would add a new subpart 83-1 to 10 NYCRR titled Certificate of Public Advantage.

Section 83-1.1 Contains definitions for purposes of this Subpart, including definitions for "Attorney General," "Certificate of Public Advantage," "Cooperative agreement," "Federal or State antitrust laws," "Health care provider" and "Person."

Section 83-1.2 Certificate of Public Advantage. Describes the effect of obtaining a Certificate of Public Advantage and sets forth the basic contents of an application.

Section 83-1.3 Public Notice. Provides for public notice of an application, by both the department and each party to the agreement or proposed agreement for which approval is sought.

Section 83-1.4 Fees for applications and monitoring. Sets forth fees and costs to be paid in relation to applications and renewals.

Section 83-1.5 Review Process. Sets forth the factors to be considered by the Department in its review of applications for a Certificate of Advantage.

Section 83-1.6 Issuance of a Certificate. Provides for consultation with the Attorney General and the Public Health and Health Planning Council in the issuance of a Certificate of Public Advantage (COPA), sets forth examples of conditions which may be imposed in the issuance of a COPA, and provides for the period for which such COPA may be valid.

Section 83-1.7 Record keeping. Requires the Department to maintain a record of all cooperative agreements for which certificates of public advantage are in effect and a copy of the certificate, including any conditions imposed in it.

Section 83-1.8 Modification and Termination. Provides that any material modification of an approved cooperative agreement is subject to the prior review and approval of the Department in consultation with the Attorney General and the Public Health and Health Planning Council, and that any party to a terminated approved cooperative agreement must file notice of such termination with the Department and the Attorney General at least sixty days prior to the termination.

Section 83-1.9 Periodic Reports. Requires periodic filing of reports of activity pursuant to a COPA, and sets forth the frequency and contents of such reports.

Section 83-1.10 Review after issuance of certificate. Provides for Department review of reports, and includes provisions addressing corrective measures the Department may take under certain circumstances.

Section 83-1.11 Application for renewal. Provides for renewal of an approved COPA.

Section 83-1.12 Revocation. Provides for revocation of a COPA by the Department under certain circumstances, and a procedure for doing so.

Section 83-1.13 Hearing right. Provides for a right of hearing prior to the Department's revocation of a COPA.

Section 83-1.14 Voluntary surrender. Allows for the voluntary surrender of a COPA.

83-1.15 Effect of Consultation or Recommendations. Clarifies treatment of input received pursuant to consultations with, or recommendations from, the Attorney General or the Public Health and Health Planning Council.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the proposed addition of a new Subpart 83-1 to Title 10 NYCRR is Article 29-F of the Public Health Law (PHL).

Legislative Objectives:

In March 2011, Governor Cuomo's Medicaid Re-Design Team (MRT), recommended providing support for integration and collaboration among health care providers by conferring immunity from state and federal antitrust liability through the active state supervision of such activities. In April 2011, the Legislature accepted the recommendation of the MRT and enacted Article 29-F of the Public Health Law.

The MRT and the Legislature found that coordination of health care services is essential to the improvement of health care quality, efficiency, access and outcomes. In addition, the Legislature found that collaborative arrangements among, or consolidation, mergers or acquisition of, providers may be necessary to preserve access to essential services in some communities, while improving the quality of the services they provide, the efficiency of their operations, and containing costs. Furthermore, health system reform proposals at the federal and state levels, including mechanisms such as accountable care organizations, health homes, patient-centered medical homes, and payment reforms such as penalties for potentially preventable readmissions, all rely on integration and collaboration among providers.

The Legislature concluded that competition as currently mandated by federal and state antitrust laws should be supplanted by a regulatory program to permit and encourage mergers, acquisitions, and cooperative, collaborative and integrative agreements among health care providers, and others, in order to assure access to essential health care services, to improve health care quality and outcomes, to enhance efficiency, or to minimize the cost of health care. According to the Legislature, regulatory oversight of such arrangements should be provided to ensure that the

benefits of such agreements outweigh any disadvantages attributable to any reduction in competition that may result from the agreements, and to provide "state action immunity" to the parties engaged in such activities subject to active state supervision under the program.

Current Requirements:

Providers seeking to merge or to create a common active parent are currently required to receive approval from the Department as part of the Certificate of Need process. However, a Certificate of Need does not provide protection from antitrust liability at the state or federal levels. Many other collaborative arrangements among providers and other entities, or between non-provider entities, may proceed without Certificate of Need approval, are subject to little or no state oversight, and have no protection from antitrust scrutiny.

Other statutory provisions provide for state supervision for the purpose of promoting health care collaborations and immunity from antitrust liability in specific contexts. These include the multi-payer patient-centered medical home demonstration program (Article 29-AA), accountable care organization demonstration (Article 29-E), and Article 29-A, relating to rural health networks and rural health care access.

Needs and Benefits:

Increased integration and collaboration among health care providers, and among providers, payors and other healthcare-related entities, are essential to many of the health system reform proposals under the Affordable Care Act and the state MRT initiatives. In addition, payment reforms, such as penalties for potentially preventable readmissions and value-based purchasing, will encourage integration and collaboration among providers. These collaborations promise to improve health care quality and outcomes, strengthen care coordination among providers, reduce inappropriate utilization, increase efficiency and contain health care costs. Further, a collaboration between a strong provider and a weak one may be able to protect the weaker provider from financial failure and preserve access to care in the community.

However, some collaborative arrangements might be construed as anti-competitive under the antitrust laws and might expose the participants to antitrust liability. Federal case law provides for a defense against federal antitrust enforcement ("state action immunity") where the arrangement is: subject to active state supervision to ensure that the public benefits derived from the integrative and collaborative arrangements outweigh any anticompetitive effects; pursuant to a state-created oversight and approval process; and based upon the state's explicit intent to supplant competition with state oversight and to confer state action immunity upon those entities and activities approved under the process. Article 29-F expresses that intent, and the proposed regulations implement the program provided for by the statute, including the active supervision necessary to provide a "state action immunity" defense to a federal antitrust claim.

Under these regulations, health care providers that are entering into cooperative agreements with other providers, or other healthcare-related entities, may gain limited protection from liability under state antitrust laws, and a defense against federal antitrust claims, by obtaining a certificate of public advantage. This process is optional – providers and other entities may continue to enter into cooperative agreements without seeking such protection. For example, an entity may determine that the risk of antitrust liability resulting from their arrangement is low and that a certificate of public advantage is not necessary. However, these regulations will provide a path to pursue protection from antitrust liability for those providers that choose to seek a certificate of public advantage, and which are engaging in collaborations that would preserve or expand access to care, improve quality and outcomes, enhance efficiency, and/or curb costs, and which otherwise meet the criteria for approval under the program.

COSTS

Costs to Private Regulated Parties:

As a certificate of public advantage is optional, this regulation creates no mandatory burdens or costs to regulated parties. However, applicants will be charged a \$5,000 fee for initial applications, and for renewals, and will be required to pay for any consultants needed by the Department to analyze the application and the balance of benefits and disadvantages presented by the proposed collaborative arrangement. Applicants will also have ongoing costs with regard to periodic reporting and response to issues arising in the course of oversight. Those costs will vary depending on the size and nature of the project, the complexity of the review, the extent of any issues arising subsequent to initial approval, and other factors. In most cases, however, such costs will be more than offset by the savings resulting from not having to go through federal antitrust reviews, which require similar analysis. Such costs could be several multiples of the cost of participating in the program, even with imposition of the application and consultant fees. Entities need not participate if they choose not to, whether for financial or any other reason. Accordingly, the program may often provide an opportunity for cost savings.

Costs to Local Government:

There are no costs to local government, except to the extent that a local

government chooses to seek a certificate of public advantage for its covered activity.

Costs to the Department of Health:

The review of certificate of public advantage applications will require the commitment of staff resources. However, the number of applications is expected to be small, and the reviews will be conducted largely by consultants paid for by the applicants.

Costs to Other State Agencies:

The regulations will require the dedication of some staff resources by the Antitrust Bureau of the Attorney General's Office, which will also review these applications. However, the number of applications is expected to be small, and the Attorney General already engages in antitrust-related reviews. Accordingly, the associated costs to other state agencies should be nonexistent or minimal.

Local Government Mandates:

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

Paperwork:

The proposed regulation requires the submission of an application if the parties to a cooperative agreement wish to seek protection from antitrust liability, together with subsequent ongoing reports and provision of additional information as requested by the Department where necessary during the course of its active supervision of the arrangement. Such paperwork will likely be less burdensome than would be associated with obtaining approval from state and federal antitrust authorities, in addition to possible ongoing enforcement risks in the absence of state action immunity.

Duplication:

There are no relevant State regulations which duplicate, overlap or conflict with the proposed amendment.

Alternatives:

The certificate of public advantage (COPA) process has been adopted in several other states. The Department opted for this type of process because it is known to the federal antitrust enforcement agencies and has withstood their scrutiny. The Department considered alternative fee requirements and determined that a \$5,000 fee plus the costs of needed consultants would be appropriate for both initial applications and renewals. The Department also considered making all COPAs valid for the same number of years, but determined that the better course would be to tailor the COPA and its duration to the particular arrangement in question.

Federal Standards:

These regulations do not duplicate or conflict with any federal regulations.

Compliance Schedule:

The proposed amendment will be effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments. The Department bases this determination on the voluntary nature of the program, the fact that any obligations associated with participation in the program are no different for small business or local governments than for any other participant, and the fact that participation will likely be chosen only if the costs and burdens associated with participation, including those associated with reporting or other obligations, will be less than the overall costs associated with not participating, and foregoing the opportunity for obtaining state action immunity for the relevant activity.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas. The Department bases this determination on the voluntary nature of the program, the fact that any obligations associated with participation in the program are no different for rural areas than for any other participant, and the fact that participation will likely be chosen only if the costs and burdens associated with participation, including those associated with reporting or other obligations, will be less than the overall costs associated with not participating, and foregoing the opportunity for obtaining state action immunity for the relevant activity.

Job Impact Statement

No Job Impact Statement is required pursuant to section 201 a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the

proposed amendment, that it will not have an adverse impact on jobs and employment opportunities.

Department of Labor

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Unemployment Insurance

I.D. No. LAB-38-13-00009-P

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

Proposed Action: Renumbering of section 473.4 to 473.5; and addition of new section 473.4 to Title 12 NYCRR.

Statutory authority: Labor Law, sections 21(11), 530(1) and 591(2)

Subject: Unemployment Insurance.

Purpose: To comply with requirement that the Commissioner promulgate work search regulations for those receiving unemployment insurance.

Text of proposed rule: 12 NYCRR 473.4 is renumbered 473.5 and a new section 473.4 is added to read as follows:

Section 473.4 Work Search

(a) In order to continue to be eligible for benefits, the claimant must establish that he or she is ready, willing, and able to work; and actively seeking work during each week for which he or she is claiming benefits. Labor Law section 591.2 requires that in order to be considered to be actively seeking work, a claimant must be engaged in "systematic and sustained efforts to find work". The claimant must provide proof of these work search efforts to the Department of Labor upon request, unless exempted pursuant to subdivision (k).

(b) A claimant's "systematic and sustained efforts to find work" must include at least three work search activities per week in an effort to obtain suitable work. These activities must be conducted on different days of the week, and must include at least one activity from activities 1-5 listed in subdivision (c). The reemployment services orientation and initial assessment at the Career Center may satisfy the three work search activities for that week. The Department of Labor is authorized to develop a written work search plan for a claimant pursuant to subdivision (l) which may include the work search activities listed in subdivision (c) or additional activities specified in the plan.

(c) Work search activities may include, but are not limited to:

(1) Using employment resources available at the local Career Center, such as:

- (i) meeting with Career Center advisors
- (ii) receiving job market information from Career Center staff regarding the availability of jobs for a particular industry or region
- (iii) participating in skills assessments for occupation matching
- (iv) participating in instructional workshops
- (v) obtaining and following up with employers on job referrals and job matches from the Career Center

(2) Visiting a job site and completing a job application in person with employers who may reasonably be expected to have openings.

(3) Submitting a job application and/or resume, in response to a public notice or want ad, or to employers who may reasonably be expected to have openings.

(4) Attending job search seminars, scheduled career networking meetings, job fairs, or employment-related workshops that offer instruction in improving individual skills for obtaining employment.

(5) Interviewing with potential employers.

(6) Applying for employment with former employer(s).

(7) Registering with and checking in with private employment agencies, placement services, unions, and placement offices of schools, colleges or universities, and/or professional organizations.

(8) Using the telephone, business directories, internet, or online job matching systems to search for jobs, get leads, request referrals, or make appointments for job interviews.

(9) Applying and/or registering for and taking Civil Service examination(s) for government job openings.

(d) The term "suitable work," as used throughout this section, is defined as work for which the claimant is reasonably fitted by training and/or experience.

(e) After ten (10) full weeks of benefits are claimed, the definition of suitable work will be expanded to include any work that the claimant is

capable of performing, whether or not he or she has any experience or training in such work, pursuant to Labor Law section 593.2.

(f) Proof of work search efforts must include a written weekly record of work search activity. All information in the record must be true, accurate, and verifiable. Whenever possible, supporting documentation (job fair employer list, printouts from online search efforts, a prospective employer's business card, etc.) should be maintained with the work search record.

(g) The work search record must include:

(1) Names, addresses (mail, e-mail, or web address) and telephone numbers of potential employers contacted and, if available, the names and/or job titles of specific people contacted.

(2) Dates, contact methods used, and, if known, the results of contacts.

(3) Position or job title applied for or seeking.

(4) Date, location, and description of other work search efforts. Examples include meeting with an advisor at the local Career Center, attending workshops or a job fair at a local community college, searching online job listings at the local library, updating resume, etc.

(h) Weekly written work search records must be retained for one year, unless submitted online through the Department of Labor website. The Department of Labor may request work search records to verify continued eligibility for benefits, or in connection with a claim review, audit, or a hearing or appeal in which work search is an issue. The claimant is expected to keep clear and detailed records as specified in subdivision (g), and shall provide the written records required by this section upon request. If a claimant fails to provide records, the claimant will be subject to sanctions identified in subdivision (j). The Commissioner of Labor may require the submission of the weekly work search record to the Department of Labor.

(i) A claimant who has willfully made a false statement or representation about work search activities will be subject to a denial of benefits, repayment of benefits received, and penalties being imposed. These penalties shall be consistent with any other penalties imposed under the Labor Law or any state or federal statute.

(j) In relation to any failure to conduct a systematic and sustained work search or keep a work search record as discussed in subdivision (g), or provide a work search record pursuant to subdivision (h):

(1) If claimant has an established work search plan then these failures shall result in a determination of ineligibility for benefits.

(2) If claimant has no established work search plan, the claimant shall be required to report to their Career Center for the establishment of a work search plan as discussed in subdivision (l). Any failure to report to establish the work search plan shall result in a determination of ineligibility for benefits.

(k) A claimant is exempted from work search requirements on the following bases:

(1) A temporary layoff or seasonal loss of employment where the employer has given a definite return-to-work date of four weeks or less.

(2) A union member who must obtain work through the union. The union member must be in compliance with union membership and work search requirements.

(3) Participation in a training program approved by the Department of Labor, such as those approved pursuant to Labor Law section 599.

(4) Serving on a jury.

(5) Participation in a Department of Labor-approved Shared Work Program.

(6) Participation in a Department of Labor-approved Self Employment Assistance Program.

(7) Any exemption required by state or federal law.

(l) Written Work Search Plan

(1) The Department of Labor will develop a work search plan with a claimant when:

(i) In the Department's judgment, the claimant's work search is inadequate or the claimant has failed to maintain or provide a work search record;

(ii) The claimant requests a work search plan; or

(iii) Federal programs require a work search plan.

(2) The work search plan shall include strategies and approaches which are tailored to the claimant's specific skills, experience, training and circumstances. If a claimant is limiting his or her work search for any reason, the work search plan will discuss these restrictions. The Department of Labor will advise the claimant whether these restrictions will be a barrier to the claimant's eligibility for benefits. If such a barrier exists, the claimant will be given an opportunity to remove the restriction. For example, these restrictions may include salary expectations, expectations regarding hours of work, or limits on work location.

(m) Good Cause

(1) Unless the Department of Labor determines in its sole discretion that there is good cause, a claimant may not limit his or her work search. The standards for determining good cause for acceptable limitations on work search shall be consistent with the standards for determining good cause pursuant to Sections 591(2) and 593(2) of the Labor Law.

(2) *Good cause may include, but is not limited to the following:*

(i) *Location or geographic area – a claimant may limit his or her work search to exclude employment which is at an unreasonable distance from his or her residence, or travel to and from the place of employment involves expense substantially greater than that required in his or her former employment;*

(ii) *Number of hours, days of the week, or compensation – a claimant may limit his or her work search to exclude employment where the wages or compensation or hours or conditions offered are substantially less favorable to the claimant than those prevailing for similar work in the locality, or are such as tend to depress wages or working conditions;*

(iii) *Interference with labor organization – a claimant may limit his or her work search to exclude employment which would interfere with a claimant's right to join or retain membership in any labor organization or otherwise interfere with or violate the terms of a collective bargaining agreement;*

(iv) *Strike, lockout or industrial controversy – a claimant may limit his or her work search to exclude employment where there is a strike, lockout, or other industrial controversy in the establishment in which the employment is offered; or*

(v) *Part-time employment – A claimant may limit his or her work search to exclude employment where the offer of employment is not comparable to his or her part-time work as defined in section 596(5) of the Labor Law.*

(3) *It is not good cause for a claimant to limit his or her work search to a specific position or type of work when suitable work is available to the claimant.*

(n) *The claimant must notify the Department of Labor if the claimant is incapable or unavailable for work, in which case the claimant's benefits will be suspended until the claimant is once again capable and available for work.*

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

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

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

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

Regulatory Impact Statement

1. **Statutory Authority:** Labor Law, Section 21(11) authorizes the Commissioner of Labor to issue such regulations governing any provision of this chapter (the Labor Law) as he finds necessary and proper. Labor Law, Section 530(1) provides that the Commissioner of Labor shall administer this article (Article 18, Unemployment Insurance Law) and for such purpose he shall have power to make all rules and regulations. Labor Law, Section 591(2) provides that the Commissioner of Labor shall promulgate regulations defining systematic and sustained efforts to find work and setting standards for proof of work search efforts.

2. **Legislative Objectives:** To add a new Title 12 NYCRR Section 473.4 to define systematic and sustained efforts to find work and provide standards for the proof of work search efforts as required by amendments made to Labor Law Section 591(2) by Chapter 57 of the Laws of 2013.

3. **Needs and Benefits:** Section 591(2) of the Labor Law was amended by chapter 57 of the Laws of 2013 to require that in order to be actively seeking work an unemployment insurance claimant must be engaged in systematic and sustained efforts to find work. Chapter 57 also amended Section 591 to require that the Commissioner of Labor promulgate regulations defining systematic and sustained efforts to find work and setting standards for the proof of work search efforts. This rule making follows that directive to promulgate such regulations.

4. **Costs:** No additional costs will be incurred pursuant to the adoption of these proposed regulations.

5. **Local Government Mandates:** The proposed rule does not impose any program, service, duty, or responsibility upon local governments. The rule making provides additional requirements for unemployment insurance claimants.

6. **Paperwork:** This rule making imposes additional record keeping requirements on unemployment insurance claimants because they are required to keep a written record of their work search efforts. This written record is required because Labor Law Section 591(2) now requires that claimants have proof of work search efforts.

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

8. **Alternatives:** No significant alternatives were considered since the amendment to Labor Law Section 591(2) clearly sets forth requirements that are addressed in these regulations.

9. **Federal Standards:** Under the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96), states must require that "as condition of

eligibility for regular compensation for any week, a claimant must be able to work, available to work, and actively seeking work."

10. **Compliance Schedule:** These regulations will be effective on January 1, 2014.

Regulatory Flexibility Analysis

1. **Effect of Rule:** This rule will have no effect on small businesses and local governments.

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

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

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

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

6. **Minimizing Adverse Impact:** The proposed rule will have no adverse economic impact on small businesses and local governments.

7. **Small Business and Local Government Participation:** Comments can be forwarded to the agency during the 45 day public comment period immediately following publication of the Notice of Proposed Rule Making in the State Register. The Department of Labor did not conduct any outreach efforts to gain small business and local government participation because this rule making has no impact on small business or local government.

8. Chapter 57 of the Laws of 2013 amended Labor Law Section 594(4) to add a new civil penalty for unemployment insurance claimants who received unemployment insurance benefits as a result of making a false statement or representation to the Department of Labor. The penalty is equal to the greater of one hundred dollars or fifteen percent of the total overpaid unemployment insurance benefits. The statute does not provide for a cure period regarding this penalty.

Rural Area Flexibility Analysis

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

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

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

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

5. **Rural Area Participation:** Comments can be forwarded to the agency during the 45 day public comment period immediately following publication of the Notice of Proposed Rule Making in the State Register. The Department of Labor did not conduct any outreach efforts to gain rural area participation because this rule making has no adverse impact on rural areas.

Job Impact Statement

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

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

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

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

Public Service Commission

ERRATUM

A Notice of Proposed Rule Making, I.D. No. PSC-37-13-00008-P, pertaining to Establish a Temporary Surcharge to Recover Costs, published in the September 11, 2013 issue of the *State Register* contained an incorrect citing in the statutory authority. Following is the correct statutory authority:

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether to Permit the Use of the Mini Meter Electric Submeter

I.D. No. PSC-38-13-00005-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 approve, deny or modify, in whole or in part, a petition filed by Leviton Manufacturing Co., Inc. for approval to use the Mini Meter electric submeter.

Statutory authority: Public Service Law, section 67(1)

Subject: Whether to permit the use of the Mini Meter electric submeter.

Purpose: Pursuant to 16 NYCRR Parts 93 and 96, is necessary to permit the use of the Mini Meter electric submeter.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Leviton Manufacturing Co., Inc. to use the Leviton Mini Meter electric submeter in residential submetering applications.

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, Three Empire State Plaza, Albany, New York 10007, (518) 486-2659, email: deborah.swatling@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, Three Empire State Plaza, Albany, NY 10007, (518) 474-6530, 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-0386SP1)

Department of State

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of State publishes a new notice of proposed rule making in the *NYS Register*.

Will Require Local Government Agencies to Post Contact Information for Records Access Officers Online Where Practicable

I.D. No.	Proposed	Expiration Date
DOS-35-12-00005-P	August 29, 2012	August 29, 2013

Department of Taxation and Finance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Tax Return Preparers

I.D. No. TAF-38-13-00002-P

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

Proposed Action: Addition of Part 2600; repeal of section 158.12(1)(iv); and amendment of section 158.12(1)(v)-(ix) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 32, 171, subdivision First, and 697(a); and L. 2009, ch. 59, part VV, section 4

Subject: Tax Return Preparers.

Purpose: To regulate the tax return preparer industry.

Substance of proposed rule (Full text is posted at the following State website: www.tax.ny.gov): Section 32 of the Tax Law, enacted by Part VV of Chapter 59 of the Laws of 2009, sets forth the registration requirements for tax return preparers, as well as certain conduct requirements and penalties for non-compliance with section 32 or regulations promulgated by the Commissioner. Section 4 of Part VV required the Commissioner of Taxation and Finance to convene a Task Force on Regulation of Tax Return Preparers (the "Task Force") to prepare a report ("the Report") regarding the regulation of tax return preparers, and authorizes the Commissioner to promulgate regulations to implement any of the recommendations of the Task Force.

This rule adds a new Part 2600 to 20 NYCRR to implement certain of the recommendations of the Task Force set forth in its report dated September 28, 2011. The Report makes recommendations regarding the scope of the regulatory scheme and appropriate professional qualifications for tax return preparers, including educational qualifications, continuing professional education requirements ("CPE"), and standards of conduct.

The rule provides that commercial tax return preparers (those who prepare 10 or more returns annually for compensation) who prepare New York State personal income tax returns must attain the following minimum qualifications:

- Meet any applicable IRS requirements;
- If new to the field of New York State personal income tax, take a 16-hour basic tax course prior to preparing returns for compensation;
- Pass a New York State competency exam prior to preparing returns for compensation;
- Annually participate in 4 hours of continuing professional education ("CPE") in New York State personal income tax topics, and;
- Be at least 18 years old and a high school graduate or equivalent.

The rule also provides minimum standards of conduct for registered tax return preparers. Violation of these standards could result in a range of disciplinary actions, from remedial education to suspension or cancellation of a preparer's registration. A tax return preparer who receives notice of disciplinary action may request a hearing before the Division of Tax Appeals, under Article 40 of the Tax Law. The rule outlines the procedures for providing tax return preparers with notice of disciplinary action.

The rule also repeals section 158.12(d)(1)(iv) of 20 NYCRR, which indicates that a person may be considered an income tax return preparer without regard to educational qualifications and professional status requirements, as new Part 2600 requires that registered tax return preparers satisfy minimum age, education, competency, and conduct requirements.

Credentialed tax return preparers (attorneys, certified public accountants, public accountants, and enrolled agents) are generally not subject to the requirements of new Part 2600; however, the rule provides that the department will coordinate with other taxing authorities and professional licensing or other regulatory bodies to make disciplinary referrals with respect to such individuals.

This rule is effective upon publication in the State Register. The educational and testing requirements, however, are to be phased in over time. Thus, the annual CPE requirement will not apply to tax return preparers until the calendar year immediately succeeding the date on which the department publishes a list of certified CPE providers or courses. The competency test requirement will first apply to registrations for the third calendar year following the date on which an exam has been made available. Additionally, the department may initially limit the testing and education requirements to tax return preparers who prepare personal income tax returns in order to gain experience in administering the requirements before imposing them on other tax return preparers.

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4145, email: tax.regulations@tax.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Tax Law, sections 32, 171, subdivision First; and 697(a), and section 4 of Part VV of Chapter 59 of the Laws of 2009. Section 32 of the Tax Law, which was enacted by Chapter 59 of the Laws of 2009, sets forth registration and certain conduct requirements for registered tax return preparers. In addition, there are stated penalties for non-compliance with section 32 or regulations promulgated by the

Commissioner. Section 171, subdivision First, provides for the Commissioner to make reasonable rules and regulations consistent with the law that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. Section 697(a) provides such authority specifically with respect to personal income taxes. Section 4 of Part VV required the Commissioner of Taxation and Finance to convene a Task Force on Regulation of Tax Return Preparers (the "Task Force") to prepare a report ("the Report") regarding the regulation of tax return preparers, and authorizes the Commissioner to promulgate regulations to implement any of the recommendations of the Task Force.

2. Legislative objectives: This rule is being proposed pursuant to this authority to implement certain of the recommendations of the Task Force set forth in its report dated September 28, 2011. The Report makes recommendations regarding the scope of the regulatory scheme and appropriate professional qualifications for tax return preparers, including, but not limited to, educational qualifications and continuing professional education requirements ("CPE").

3. Needs and benefits: The Task Force was charged with examining the need for additional oversight of tax return preparers and making recommendations regarding the scope of the regulatory scheme and appropriate professional qualifications. It was composed of state government representatives from the Department of Taxation and various other agencies. Representatives of the New York City Department of Finance, New York City Department of Consumer Affairs, and the Internal Revenue Service ("IRS") also participated. Non-governmental representatives included individuals from the academic sector, the New York State Bar Association, the New York State Society of Certified Public Accountants, the New York State Society of Enrolled Agents, the National Association of Tax Professionals, and other representatives of the tax return preparation industry.

The Task Force, after reviewing several studies, as well as the regulatory frameworks of other states and the Internal Revenue Service ("IRS"), concluded that regulation of tax return preparers is necessary. The problems identified by the Task Force range from deficiencies in the general quality of tax preparation services stemming from limitations in knowledge and education to outright fraudulent conduct.

The Task Force balanced the need to protect taxpayers against the need to avoid imposing unnecessarily burdensome requirements on commercial tax return preparers (those who prepare 10 or more returns annually for compensation); it sought to make the requirements both reasonable and effective. The Report recommends that commercial tax return preparers who prepare New York State personal income tax returns be required to attain the following minimum qualifications:

- Meet any applicable IRS requirements;
- If new to the field of the preparation of New York State personal income tax returns, take a 16-hour basic tax course prior to preparing returns for compensation;
- Pass a New York State competency exam prior to preparing returns for compensation;
- Annually participate in 4 hours of continuing professional education ("CPE") in New York State personal income tax topics, and;
- Be at least 18 years old and a high school graduate or equivalent.

The Report also recommends minimum standards of eligibility and conduct for tax return preparers. Violation of these standards could result in disciplinary measures including the denial of a new, or cancellation of an existing registration. As noted in the rule, a tax return preparer who receives notice of disciplinary action may request a hearing before the Division of Tax Appeals under Article 40 of the Tax Law. The rule also outlines the procedures for providing tax return preparers with notice of disciplinary action.

The rule protects taxpayers from unscrupulous and incompetent tax preparation without imposing undue burdens on tax return preparers. The education, testing, and disciplinary provisions will enhance the competency and integrity of the tax preparation industry.

4. Costs: (a) Costs to regulated persons: When the CPE and exam requirements are implemented, the department estimates that it will take 50 minutes per credit hour to complete required courses, and 1 hour to complete the competency exam. No additional study should be required to prepare for the exam beyond the CPE coursework itself. Assuming a rate of \$31 per hour (equivalent to a Grade 18 New York State position), the initial cost for time spent by a beginning commercial tax return preparer will be approximately \$413. The estimated annual cost for time spent by these beginning preparers in subsequent years, and for experienced commercial tax return preparers, is approximately \$103. Commercial tax return preparers would incur an additional \$31 one-time cost for time expended to take the exam.

In addition to the time required for the CPE and testing requirements, there will be fees for required coursework. Prior to the decision in *Loving v. IRS* (U.S. District Court, District of Columbia, January 18, 2013), the

IRS required preparers to complete CPE coursework. Based on the range of fees for such coursework, the department assumed a cost of \$12 per credit hour. This is on the high end of the range for most providers that offered IRS- required CPE. At \$12 per credit hour, beginning commercial tax return preparers will incur CPE fees of \$192, bringing their first year cost to approximately \$636, excluding exam fees. Experienced preparers will incur a one-time cost of approximately \$31 for time spent completing the exam, plus \$103 for time spent completing coursework, and approximately \$48 for course fees, for a total initial cost to experienced preparers of \$182, excluding exam fees.

(b) Costs to the agency and to the State and local governments for the implementation and continuation of this rule: The department estimates the cost for the implementation and continued administration of the rule to be \$776,300. A significant percentage of the functions necessary to administer and implement the rule are already being performed by staff in the various divisions of the department. An Office of Professional Responsibility ("OPR") has been created, however, to perform certain new functions, such as developing training programs and monitoring training, as well as overseeing the overall coordination of various departmental divisions to implement and administer the rule.

The administration of the program will be performed largely by existing department staff, but it will be necessary to allocate additional staff to OPR. It is anticipated that outside vendors will provide CPE and administer the competency exams. The cost of outside vendor services is not known at this time.

OPR will require investigative and legal staffing. Anticipated "start-up" staffing requirements for this unit are as follows:

4 investigators—SG-18	\$205,100
2 Taxpayer Service Specialist 2—SG-18	\$130,400
½ Sr. Admin Analyst or Business Systems Analyst—SG-18	\$32,600
1 Taxpayer Service Specialist 3—SG-23	\$84,000
1 Attorney—SG—25	\$73,800
1 Taxpayer Service Specialist—SG-27	\$94,500
1 Secretary 2—SG—15	\$53,400
	\$673,800

It is anticipated that the implementation and administration of the rule will also cause the department to incur approximately \$102,500 in additional expenses relating to the printing and mailing of forms.

(c) Information and methodology: These conclusions are based upon an analysis of the rule from the Department's Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: The rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: The rule imposes minimal additional reporting requirements, forms, or other paperwork upon the regulated parties beyond those required by existing law and regulations. Tax return preparers who must currently register under section 32 of the Tax Law will also be required to complete educational and testing requirements, and submit proof of completion to the department. These recordkeeping requirements do not require any specific professional skills other than general recordkeeping skills already needed to own and operate a small business or to competently act as a tax return preparer. The IRS estimated that registered tax return preparers required to complete 15 hours of CPE would annually spend approximately 30 minutes to one hour in maintaining required records. 76 Fed. Reg. at 32,299. It is reasonable to assume that New York State beginning commercial tax return preparers initially required to complete 16 credit hours of CPE would need to dedicate a similar amount of time to maintaining records; the recordkeeping requirement thereafter and for experienced tax return preparers would be minimal, as only 4 credits of annual CPE would be required.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

8. Alternatives: The Report recommends that its proposed standards of conduct should apply to all individuals who prepare tax returns for compensation, regardless of whether they are required to register under section 32 of the Tax Law, as amended. Section 32, however, excludes from the definition of "tax return preparer" attorneys, public accountants, certified public accountants, and enrolled agents. As previously noted, section 4 of Part VV of the Laws of 2009 required the Commissioner to convene a task force to determine the appropriate scope of a program for

regulation of tax return preparers and commercial tax return preparers. The department concluded that it would be more appropriate to exclude from the ambit of the rule the same individuals excluded from the definition of tax return preparer under section 32. The rule provides that the department will coordinate with other taxing authorities and professional licensing or other regulatory bodies to make disciplinary referrals with respect to such individuals.

In developing the rule, the department solicited feedback from various industry groups and associations (see Section 7 of the Regulatory Flexibility Analysis for Small Businesses and Local Governments) as well as participants in the Task Force. The department considered a suggestion that tax return preparers complete more hours of required annual CPE coursework, but deferred to the Task Force's conclusion that the current annual requirements strike the appropriate balance between protecting taxpayers and burdening registered tax return preparers. The Task Force reviewed the educational requirements of other states and the IRS, and concluded that its CPE recommendations would be effective and reasonable. Additionally, the rule provides that the department may require additional education of deficient preparers.

9. Federal standards: As this rule applies to preparers of New York State tax returns, it does not exceed any minimum standards of the Federal government for the same or similar subject area. Following the decision in *Loving*, supra, the tax return preparers to whom the rule applies are largely not subject to federal regulation with respect to preparation of federal returns.

10. Compliance schedule: The amendments will take effect when the Notice of Adoption is published in the State Register. The educational and testing provisions, however, will be phased in over time. The annual CPE requirement will not apply to tax return preparers until the calendar year immediately succeeding the date on which the department publishes a list of certified CPE providers or courses. The competency test requirement will first apply to registrations for the third calendar year following the date on which an exam has been made available. Additionally, the department may initially limit the testing and education requirements to tax return preparers who prepare personal income tax returns in order to gain experience in administering the requirements before imposing them on other tax return preparers.

Regulatory Flexibility Analysis

1. Effect of rule: The rule is applicable to tax return preparers required to register under section 32 of the Tax Law, whether or not associated with a small business. The continuing professional education ("CPE") and competency exam requirements apply only to commercial tax return preparers (those who prepare 10 or more returns annually for compensation). The department does not have the information to estimate the number of small businesses that may be affected with any degree of certainty. However, the Report of the Task Force on Regulation of Tax Return Preparers estimates that for calendar year 2010, over 20,000 individuals registered and remitted the required fee for commercial tax return preparers, who are subject to the educational and testing requirements of the rule. Through July 20, 2011, over 17,000 individuals registered and remitted the fee. It may be assumed that a number of these commercial tax return preparers are associated with small businesses. Local governments are not affected.

2. Compliance requirements: The rule imposes minimal additional reporting requirements, forms, or other paperwork upon the regulated parties beyond those required by existing law and regulations. Commercial tax return preparers who must currently register under section 32 of the Tax Law will also be required to complete educational and testing requirements, and submit proof of completion to the department. This recordkeeping does not require any specific professional skills other than general recordkeeping skills already needed to own and operate a small business or to competently act as a tax return preparer. It is estimated that the necessary recordkeeping will take 30 minutes to 1 hour annually. (See Part 6 of the Regulatory Impact Statement.) The department believes that this rule will not impose any additional compliance requirements on tax return preparers associated with small businesses.

3. Professional services: No professional services will be required in order to comply with this rule.

4. Compliance costs: When the CPE and exam requirements of the rule are implemented, tax return preparers will incur certain associated costs. (See Part 4 of the Regulatory Impact Statement.) These costs include the cost of the preparer's time, CPE tuition, and competency exam fees. It is estimated that beginning tax return preparers will incur an initial annual cost of \$605 for CPE tuition and time spent completing CPE coursework. Beginning preparers who have satisfied their initial annual requirements, as well as experienced preparers, will incur an estimated annual cost of \$151. There will be an additional one-time cost of approximately \$31 for time spent completing the competency exam, plus a fee for taking the exam. These costs are necessary to protect taxpayers from unscrupulous and incompetent tax preparation, without imposing undue burdens on tax return preparers.

5. Economic and technological feasibility: The rule does not impose any adverse economic and technological requirements on small businesses or local governments.

6. Minimizing adverse impact: The rule does not distinguish between affected small businesses and other types of businesses as there is no distinction in the requirements imposed on such businesses. The rule places no burdens on small businesses beyond those imposed on individual registered tax return preparers. It imposes no burdens on local governments. Additionally, the educational and testing requirements of the rule are phased in over time, giving tax return preparers ample notice of their responsibilities and time to comply.

7. Small business and local government participation: The following organizations were given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of New York State Department of State; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; the Retail Council of New York State; and the New York Association of Convenience Stores. A draft of the regulation was sent to the participants in the Task Force on Regulation of Tax Return Preparers, which was composed of representatives from various agencies of the New York State, New York City, and United States governments, non-governmental representatives from the academic sector, the New York State Bar Association, the New York State Society of Certified Public Accountants, the New York State Society of Enrolled Agents, and the National Association of Tax Professionals, and other representatives of the tax return preparation industry.

8. For rules that either establish or modify a violation or penalties associated with a violation: The rule provides for a range of disciplinary measures sufficiently flexible to address deficiencies in knowledge or understanding through remediation, and to respond to unscrupulous conduct with harsher sanctions. As provided in Article 40 of the Tax Law, a tax return preparer who receives a notice of proposed disciplinary action may request a hearing before the Division of Tax Appeals as a matter of right. For these reasons, no cure period was included in the rule.

9. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: The proposed initial review period for this rule is 5 years after the year in which it is adopted, rather than 3 years. The educational and testing requirements of the rule are to be phased in over time. The annual CPE requirement will not apply to tax return preparers until the calendar year immediately succeeding the date on which the department publishes a list of certified CPE providers or courses. The competency test requirement will first apply to registrations for the third calendar year following the date on which an exam has been made available. For these reasons, a three-year review period is insufficient to assess the practical application of the rule and determine whether modification is in order. The department invites public comment during the public comment period for the rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Types and estimated numbers of rural areas: The purpose of these amendments is to implement certain of the recommendations of the Task Force on Regulation of Tax Return Preparers (the "Task Force"), convened pursuant to section 4 of Part VV of the Laws of 2009, to make recommendations regarding the scope of the regulatory scheme and appropriate professional qualifications for tax return preparers, including, but not limited to, educational qualifications and continuing professional education requirements ("CPE"). The Task Force submitted a report, dated September 28, 2011, containing its recommendations. In keeping with these recommendations, the rule imposes certain educational, testing, and conduct requirements on registered tax return preparers. Some taxpayers affected by these rules may be located in rural areas throughout the State. There are 43 counties throughout this State that are rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 or fewer people per square mile).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule imposes minimal additional reporting requirements, forms, or other paperwork upon the regulated parties beyond those required by existing law and regulations. Commercial tax return preparers who must currently register under section 32 of the Tax Law will be required to complete educational and testing requirements, and submit proof of completion to the department. This recordkeeping does not require any specific professional skills other than general recordkeeping skills already needed to own and operate a small business or to competently act as a tax return preparer. It is estimated that the necessary recordkeeping will take tax return preparers 30 minutes to 1 hour annually. (See Part 6 of the Regulatory Impact Statement.) The department believes that this rule will not impose any compliance requirements

on taxpayers in rural areas. Tax return preparers in rural areas also will not require professional services to comply with this rule.

3. Costs: Costs to regulated persons: When the CPE and exam requirements of the rule are implemented, tax return preparers will incur certain associated costs. (See Part 4 of the Regulatory Impact Statement.) These costs include the cost of the preparer's time, CPE tuition, and competency exam fees. Beginning tax return preparers will incur an initial annual cost of \$605, for CPE tuition and time spent completing CPE coursework. Beginning preparers who have satisfied their initial annual requirements, as well as experienced preparers, will incur an estimated annual cost of \$151. There will be a one-time additional cost of approximately \$31 for time spent completing the competency exam, plus a fee for taking the exam.

4. Minimizing adverse impact: The rule does not distinguish between rural areas and non-rural areas as there is no distinction in the requirements imposed on registered tax return preparers in these areas. The rule strikes a balance between protecting taxpayers from incompetent, undereducated, or unscrupulous tax return preparers and imposing minimal costs on preparers.

5. Rural area participation: The following organizations were given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Division of Local Government Services of New York State Department of State; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; the Retail Council of New York State; and the New York Association of Convenience Stores. A draft of the regulation was sent to the participants in the Task Force on Regulation of Tax Return Preparers, which was composed of representatives from various agencies of the New York State, New York City, and United States governments, non-governmental representatives from the academic sector, the New York State Bar Association, the New York State Society of Certified Public Accountants, the New York State Society of Enrolled Agents, and the National Association of Tax Professionals, and other representatives of the tax return preparation industry.

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: The proposed initial review period for this rule is 5 years after the year in which it is adopted, rather than 3 years. The educational and testing requirements of the rule are to be phased in over time. The annual CPE requirement will not apply to tax return preparers until the calendar year immediately succeeding the date on which the department publishes a list of certified CPE providers or courses. The competency test requirement will first apply to registrations for the third calendar year following the date on which an exam has been made available. For these reasons, a three-year review period is insufficient to assess the practical application of the rule and determine whether modification is in order. The department invites public comment during the public comment period for the rule.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it could have no impact on jobs and employment opportunities. The purpose of the rule is to advance tax administration, elevate the professionalism of the tax return preparation industry, and protect NYS taxpayers. The rule imposes educational and testing requirements, and provides minimum standards of conduct for registered tax return preparers. The rule further provides for sanctions for failure to satisfy these requirements, or for deviation from the conduct standards.

The rule imposes minimal educational and testing requirements, as well as basic standards of conduct. A beginning commercial tax return preparer must initially complete 16 credit hours of annual continuing professional education ("CPE") and pass a one-time competency exam; after satisfying this requirement for one year, he or she must complete only 4 hours of CPE annually. Experienced tax return preparers are required to complete 4 hours of CPE annually and pass the one-time competency exam. These requirements balance the need to protect taxpayers against the need to avoid imposing undue burdens on tax return preparers.

Office of Temporary and Disability Assistance

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standard Utility Allowances for the Supplemental Nutrition Assistance Program

I.D. No. TDA-38-13-00008-EP

Filing No. 870

Filing Date: 2013-09-03

Effective Date: 2013-10-01

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

Proposed Action: Amendment of section 387.12 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 95; 7 USC, section 2014(e)(6)(C); 7 CFR, section 273.9(d)(6)(iii)

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

Specific reasons underlying the finding of necessity: It is of great importance that the federally mandated and approved standard utility allowances for the Supplemental Nutrition Assistance Program (SNAP) are applied to SNAP benefit calculations effective October 1, 2013 and thereafter until new amounts eventually are approved by the United States Department of Agriculture. If past standard utility allowances were to be used in calculating ongoing SNAP benefits, thousands of SNAP households would receive SNAP underpayments each month. These emergency amendments protect the public interest by setting forth the federally approved standard utility allowances as of October 1, 2013 and by helping to meet the nutritional needs of SNAP recipients.

It is noted that the amendments are being promulgated pursuant to a combined "Notice of Emergency Adoption and Proposed Rule Making," instead of a "Notice of Proposed Rule Making," due to time constraints. On July 26, 2013, the United States Department of Agriculture approved the Office of Temporary and Disability Assistance's (OTDA's) proposed federal fiscal year 2014 standard utility allowances, effective October 1, 2013. The approval was then provided to OTDA. This did not provide sufficient time for OTDA to publish a "Notice of Proposed Rule Making" and have the new standard utility allowances be effective on October 1, 2013. An emergency adoption is necessary to have the new standard utility allowances be effective on October 1, 2013. Although these regulations are being promulgated on an emergency basis to protect the public interest, OTDA will receive public comments on its combined "Notice of Emergency Adoption and Proposed Rule Making" until 45 days after publication of this notice.

Subject: Standard Utility Allowances for the Supplemental Nutrition Assistance Program.

Purpose: These regulatory amendments set forth the federally mandated and approved standard utility allowances as of October 1, 2013.

Text of emergency/proposed rule: Clauses (a) and (b) of subparagraph (v) of paragraph (3) of subdivision (f) of section 387.12 of Title 18 NYCRR are amended to read as follows:

(a) The standard allowance for heating/cooling consists of the costs for heating and/or cooling the residence, electricity not used to heat or cool the residence, cooking fuel, sewage, trash collection, water fees, fuel for heating hot water and basic service for one telephone. The standard allowance for heating/cooling is available to households which incur heating and/or cooling costs separate and apart from rent and are billed separately from rent or mortgage on a regular basis for heating and/or cooling their residence, or to households entitled to a Home Energy Assistance Program (HEAP) payment or other Low Income Home Energy Assistance Act (LIHEAA) payment. A household living in public housing or other rental housing which has central utility meters and which charges the household for excess heating or cooling costs only is not entitled to the standard allowance for heating/cooling unless they are entitled to a HEAP or LIHEAA payment. Such a household may claim actual costs which are paid separately. Households which do not qualify for the standard allowance for heating/cooling may be allowed to use the standard allowance for utilities or the standard allowance for telephone. As of October 1, [2012]

2013, but subject to subsequent adjustments as required by the United States Department of Agriculture ("USDA"), the standard allowance for heating/cooling for SNAP applicant and recipient households residing in New York City is [\$725] \$753; for households residing in either Suffolk or Nassau Counties, it is [\$675] \$702; and for households residing in any other county of New York State, it is [\$599] \$623.

(b) The standard allowance for utilities consists of the costs for electricity not used to heat or cool the residence, cooking fuel, sewage, trash collection, water fees, fuel for heating hot water and basic service for one telephone. It is available to households billed separately from rent or mortgage for one or more of these utilities other than telephone. The standard allowance for utilities is available to households which do not qualify for the standard allowance for heating/cooling. Households which do not qualify for the standard allowance for utilities may be allowed to use the standard allowance for telephone. As of October 1, [2012] 2013, but subject to subsequent adjustments as required by the USDA, the standard allowance for utilities for SNAP applicant and recipient households residing in New York City is [\$287] \$298; for households residing in either Suffolk or Nassau Counties, it is [\$265] \$275; and for households residing in any other county of New York State, it is [\$242] \$252.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire December 1, 2013.

Text of rule and any required statements and analyses may be obtained from: Jeanine S. Behuniak, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, New York 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@otda.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority:

The United States Code (USC) at 7 USC § 2014(e)(6)(C) provides that in computing shelter expenses for budgeting under the federal Supplemental Nutrition Assistance Program (SNAP), a State agency may use a standard utility allowance as provided in federal regulations.

The Code of Federal Regulations (CFR) at 7 CFR § 273.9(d)(6)(iii) provides for standard utility allowances in accordance with SNAP. Clause (A) of this subparagraph states that with federal approval from the Food and Nutrition Services (FNS) of the United States Department of Agriculture, a State agency may develop standard utility allowances to be used in place of actual costs in calculating a household's excess shelter deduction. Federal regulations allow for the following types of standard utility allowances: a standard utility allowance for all utilities that includes heating or cooling costs; a limited utility allowance that includes electricity and fuel for purposes other than heating or cooling, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection; and an individual standard for each type of utility expense. Clause (B) of the subparagraph provides that a State agency must review the standard utility allowances annually and make adjustments to reflect changes in costs, rounded to the nearest whole dollar. Also State agencies must provide the amounts of the standard utility allowances to the FNS when they are changed and submit methodologies used in developing and updating the standard utility allowances to the FNS for approval whenever the methodologies are developed or changed.

Social Services Law (SSL) § 20(3)(d) authorizes the New York State Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to carry out its powers and duties.

SSL § 95 authorizes OTDA to administer SNAP in New York State and to perform such functions as may be appropriate, permitted or required by or pursuant to federal law.

2. Legislative objectives:

It was the intent of the Legislature to implement the federal SNAP Act in New York State in order to provide SNAP benefits to eligible New York State residents.

3. Needs and benefits:

The regulatory amendments set forth the standard utility allowances within New York State as of October 1, 2013. OTDA is amending its standard utility allowances in 18 NYCRR § 387.12(f)(3)(v)(a) and (b) to reflect an increase in fuel and utility costs, which is indicated in the Consumer Price Index (CPI) fuel and utilities values (which includes components for water, sewage and trash collection).

The following chart sets forth the standard utility allowance categories; the past standard utility allowances ("Past SUA") that were in effect for federal fiscal year (FFY) 2013, from October 1, 2012 through September 30, 2013; and the new standard utility allowances ("New SUA") that are in effect for FFY 2014, effective October 1, 2013:

	Past SUA	New SUA	Past SUA	New SUA	Past SUA	New SUA
Heating/Air Conditioning SUA	\$725	\$753	\$675	\$702	\$599	\$623
Basic Utility SUA	\$287	\$298	\$265	\$275	\$242	\$252
Phone SUA	\$33 (Unchanged for all Counties)					

To determine the new standard utility allowance values for FFY 2014, the CPI Fuel and Utility value for June 2013 was compared to the CPI Fuel and Utility value for June 2012, the CPI value that was used to determine the adjustment for the FFY 2013 standard utility allowance values. The percentage change between June 2012 and June 2013 was then applied to the FFY 2013 standard utility allowance figures and rounded to the nearest dollar. The June 2013 CPI Fuel and Utility value was 3.930% higher than the June 2012 value. The June CPI values were used because they were the most recent month for which CPI values were available at the time when the programming of the new SUA values into the Welfare Management System (WMS) had to be done in order to comply with the October 1, 2013 effective date.

OTDA has all required approvals from the FNS pertaining to these changes and is required to apply the standard utility allowances for FFY 2014 in its SNAP budgeting effective October 1, 2013. As of October 1, 2013, OTDA does not have federal approval or authority to apply past standard utility allowances in its prospective SNAP budgeting.

It is of great importance that the federally mandated and approved standard utility allowances for SNAP are applied to SNAP benefit calculations effective October 1, 2013 and thereafter. If past standard utility allowances were to be used in calculating ongoing SNAP benefits, thousands of SNAP households would receive SNAP underpayments each month. They would not receive the full amount of SNAP benefits for which they are eligible. Thus it is necessary for the preservation of the public health and the general welfare to set forth the federally-approved standard utility allowances as of October 1, 2013 in order to comply with federal requirements and to help meet the nutritional needs of SNAP recipients.

4. Costs:

The amendments will not result in any impact to the State financial plan, and they will not impose costs upon the social services districts because SNAP benefits are 100 percent federally funded, and these amendments comply with federal statute and regulation to implement federally approved standard utility allowances.

5. Local government mandates:

The amendments do not impose any mandates upon social services districts since the amendments simply set forth the federally approved standard utility allowances, effective October 1, 2013. Also it is noted that the calculation of SNAP budgets, which incorporates the standard utility allowances, and the resulting issuances of SNAP benefits are mostly automated processes in New York City and the rest of the State using OTDA's Welfare Management System. To the extent that the processes are not automated, the amendments do not impose any additional requirements upon the social services districts than already exist in terms of calculating SNAP budgets.

6. Paperwork:

The amendments do not impose any new forms, new reporting requirements or other paperwork upon the State or the social services districts.

7. Duplication:

The amendments do not duplicate, overlap or conflict with any existing State or federal statutes or regulations.

8. Alternatives:

One alternative is not to implement the revised standard utility allowances. However, this alternative is not a viable option because if New York State were to opt not to implement the new standard utility allowances or were otherwise judicially precluded from doing so, then New York State would be out of compliance with federal statutory and regulatory requirements.

9. Federal standards:

The amendments do not conflict with or exceed minimum standards of the federal government.

10. Compliance schedule:

Since the amendments set forth the federally approved standard utility allowances effective October 1, 2013, the State and all social services districts will be compliance with the amendments.

Regulatory Flexibility Analysis

1. Effect of Rule:

The amendments will have no effect on small businesses. The amendments do not impose any mandates upon social services districts since the amendments simply set forth the federally approved standard utility al-

New York City	Nassau/Suffolk Counties	Rest of State
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lowance amounts, effective October 1, 2013. The calculation of Supplemental Nutrition Assistance Program (SNAP) budgets, which incorporates the standard utility allowances, and the resulting issuances of SNAP benefits are mostly automated processes in New York City and the rest of the State using OTDA's Welfare Management System, and to the extent the processes are not automated, the amendments do not impose any additional requirements upon the social services districts than already exist in terms of calculating SNAP budgets.

2. Compliance Requirements:

The amendments do not impose any reporting, recordkeeping or other compliance requirements on social services districts.

3. Professional Services:

The amendments do not require social services districts to hire additional professional services to comply with the new regulations.

4. Compliance Costs:

The amendments do not impose initial costs or any annual costs upon social services districts because SNAP benefits are 100 percent federally funded, and these amendments comply with federal statute and regulation to implement federally approved standard utility allowances.

5. Economic and Technological Feasibility:

All social services districts have the economic and technological ability to comply with these regulations.

6. Minimizing Adverse Impact:

The amendments will not have an adverse impact on social services districts.

7. Small Business and Local Government Participation:

On August 20, 2013, OTDA provided a General Information System (GIS) release, GIS 13 TA/DC 031, to social services districts in New York State setting forth, in part, the new standard utility allowances for SNAP effective October 1, 2013. Social services districts have not raised any concerns or objections related to the implementation of the October 1, 2013 standard utility allowances set forth in the GIS release. The GIS release also has been posted to OTDA's internet site.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The amendments will have no effect on small businesses in rural areas. The amendments do not impose any mandates upon the forty-four social services districts in rural areas of the State. Rather, the amendments simply set forth the federally approved standard utility allowance amounts, effective October 1, 2013. The calculation of Supplemental Nutrition Assistance Program (SNAP) budgets, which incorporates the standard utility allowances, and the resulting issuances of SNAP benefits are mostly automated processes in New York City and the rest of the State using OTDA's Welfare Management System. To the extent the processes are not automated, the amendments do not impose any additional requirements upon the social services districts than already exist in terms of calculating SNAP budgets.

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

The amendments do not impose any reporting, recordkeeping or other compliance requirements on the social services districts in rural areas. Also the social services districts in rural areas do not need to hire additional professional services to comply with the regulations.

3. Costs:

The amendments do not impose initial capital costs or any annual costs upon the social services districts in rural areas because SNAP benefits are 100 percent federally funded, and these amendments comply with federal statute and regulation to implement federally approved standard utility allowances.

4. Minimizing adverse impact:

The amendments will not have an adverse impact on the social services districts in rural areas.

5. Rural area participation:

On August 20, 2013, OTDA provided a General Information System (GIS) release, GIS 13 TA/DC 031, to social services districts in New York State setting forth, in part, the new standard utility allowances for SNAP effective October 1, 2013. The social services districts in rural areas have not raised any concerns or objections related to the implementation of the October 1, 2013 standard utility allowances set forth in the GIS releases. The GIS release also has been posted to OTDA's internet site.

Job Impact Statement

A Job Impact Statement is not required for the amendments. It is apparent from the nature and the purpose of the amendments that they will not have a substantial adverse impact on jobs and employment opportunities in either the public or the private sectors. The amendments will have no effect on small businesses. The amendments will not affect in any significant way the jobs of the workers in the social services districts or the State. These regulatory amendments set forth the federally approved standard utility allowances for the Supplemental Nutrition Assistance Program

(SNAP) as of October 1, 2013. The calculation of SNAP budgets, which incorporates the standard utility allowances, and the resulting issuances of SNAP benefits are mostly automated processes in New York City and the rest of the State using OTDA's Welfare Management System. To the extent the processes are not automated, the amendments do not impose any additional requirements upon the social services districts than already exist in terms of calculating SNAP budgets. Thus the changes will not have any adverse impact on jobs and employment opportunities in New York State.

Urban Development Corporation

NOTICE OF ADOPTION

Small Business Revolving Loan Fund

I.D. No. UDC-26-13-00005-A

Filing No. 871

Filing Date: 2013-09-03

Effective Date: 2013-09-18

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

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

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

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 or summary was published in the June 26, 2013 issue of the Register, I.D. No. UDC-26-13-00005-P.

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

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

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.