

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; or C for first Continuation.)

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Standards for Conduct of Fairs

I.D. No. AAM-05-04-00004-A
Filing No. 375
Filing date: April 5, 2004
Effective date: April 21, 2004

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

Action taken: Amendment of Part 350 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 287

Subject: Standards for conduct of fairs.

Purpose: To repeal the maximum entry fee requirements for local fairs and clarify existing regulatory language.

Text or summary was published in the notice of proposed rule making, I.D. No. AAM-05-04-00004-P, Issue of February 4, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Ray Christensen, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-4418

Assessment of Public Comment

The agency received no public comment.

Banking Department

NOTICE OF ADOPTION

Registration of Representative Offices of Banks, Trust Companies, Savings and Loan Associations and Savings Banks

I.D. No. BNK-03-04-00005-A
Filing No. 378
Filing date: April 6, 2004
Effective date: April 21, 2004

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

Action taken: Amendment of Supervisory Policy G-8 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 14(1), 132 and 258

Subject: Registration of representative offices of banks, trust companies, savings and loan associations, and savings banks chartered under the laws of New York State or any other state of the United States.

Purpose: To set forth the circumstances under which banks, trust companies, savings banks and savings and loan associations chartered under the laws of New York State, or any other state, may establish representative offices in New York; expand the permissible activities of representative offices to closely parallel those activities permissible under Federal law; and allow representative offices of State-chartered institutions operating in New York to also approve loans and execute loan documents.

Text or summary was published in the notice of proposed rule making, I.D. No. BNK-03-04-00005-P, Issue of January 21, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Christine M. Tomczak, Secretary to the Banking Board, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1642, e-mail: christine.tomczak@banking.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Laboratory Accreditation

I.D. No. CJS-16-04-00019-P

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

Proposed action: Amendment of section 6190.5(b) of Title 9 NYCRR.

Statutory authority: Executive Law, sections 837(13) and 995-b(1)

Subject: Laboratory accreditation.

Purpose: To require interim inspections during the mid-point of forensic laboratories' re-accreditation cycle.

Text of proposed rule: Subdivision (b) of section 6190.5 of Title 9 NYCRR is amended to read as follows:

(b) A forensic laboratory that receives NYS accreditation in disciplines other than forensic DNA testing will retain its accreditation for the same period as its ASCLD/LAB or ABFT accreditation unless a shorter period is specified in the certificate or its NYS accreditation is revoked pursuant to section 6190.6 of this Part. To retain NYS accredited status, the laboratory shall continue to meet the standards under which it was accredited and shall participate in any proficiency testing mandated by the commission. *In addition, a forensic laboratory that is accredited by ASCLD/LAB shall request ASCLD/LAB to conduct an interim inspection during the third year of the five-year accreditation period. A [Such] forensic laboratory must submit to the division a copy of any documentation submitted to ASCLD/LAB or ABFT or received therefrom as part of the continuing compliance requirements, including any notification of disciplinary action taken by ASCLD/LAB or ABFT against such laboratory. Such documentation shall be reviewed by the commission, and appropriate action may be taken against such laboratory, if necessary.*

Text of proposed rule and any required statements and analyses may be obtained from: Mark Bonacquist, Division of Criminal Justice Services, Four Tower Place, Albany, NY 12202, (518) 457-8420

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: Executive Law sections 837(13) and 995-b(1).

2. Legislative objectives: Executive Law section 995-b(1) requires the development of minimum standards and a program of accreditation for all forensic laboratories in New York State. Executive Law section 995-b(3)(a) provides that the program of accreditation shall include an initial inspection and routine inspections, as necessary, to ensure compliance with accreditation requirements. Thus, the Legislature clearly intended that accreditation standards, including provisions for inspections during the accreditation cycle, be established.

3. Needs and benefits: Executive Law section 995-b(1) requires forensic laboratories to obtain New York State accreditation. Executive Law section 995-b(3)(a) requires that the program of accreditation include routine inspections, as necessary, to ensure compliance accreditation requirements.

Part 6190 requires a forensic laboratory to be accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) or the American Board of Forensic Toxicology, Inc. (ABFT) in order to obtain New York State accreditation. The ABFT accreditation remains valid for a two year period, while the ASCLD/LAB accreditation remains valid for five years.

Under current rules, inspections by the ASCLD/LAB are conducted every five years with self-assessments conducted annually by the laboratory. Other organizations involved in accreditation and quality assurance programs call for more frequent external inspections. For example, the FBI's Quality Assurance Standards for Forensic DNA Analysis call for external inspections every two years as does the NYS Department of Health (DOH) (regarding private forensic DNA laboratory certifications). Other organizations such as the American Association for Laboratory Accreditation (A2LA) and the National Forensic Science Technology Center (NFSTC) will accredit forensic laboratories using the criteria of the International Organization for Standardization (ISO) and these, too, call for external inspections on a two-year cycle.

The length of the ASCLD/LAB accreditation cycle and the absence of external inspection during the cycle have been a concern of the Commission for several years. Several Commission members have voiced their concern that the length of the ASCLD/LAB accreditation cycle may contribute to continued non-compliance with accreditation standards. For example, at a recent meeting of the Commission a review was conducted of the status of laboratories that had recently undergone inspections for re-accreditation. During the period October 6, 2002 through April 29, 2003, seven public forensic laboratories in New York State underwent inspections by ASCLD/LAB to renew accreditation. In addition to satisfying other requirements, a laboratory must demonstrate compliance with all criteria rated by the accrediting body as "essential." There were an average of seven findings of non-compliance with "essential" criteria for these laboratories, with the number of non-compliant criteria falling in a range

from two to fifteen. It was noted by the Commission that in the annual self-assessment reports submitted by the individual laboratories prior to the re-inspection by ASCLD/LAB, all had indicated compliance with all "essential" criteria. Obviously, these findings call into question the reliability of self-assessments to ensure on-going compliance with accreditation standards.

Moreover, because the ASCLD/LAB accreditation cycle is five years, non-compliance can, and often does, linger over several years. When this occurs, a laboratory's integrity may be seriously compromised, with the potential consequence that the results of case work performed by the laboratory will be questioned or impeached by criminal defendants.

In an attempt to address its concerns, the Commission formed a working group in 2002 to review forensic laboratory accreditation standards and to make recommendations for a program of external audits of NYS accredited laboratories. The advisory group met on two occasions and concluded that an external audit midway through the ASCLD/LAB five-year re-accreditation cycle would enhance the NYS public forensic laboratory certification process. The inspections were proposed to be conducted under the direction of the Division's Office of Forensic Services utilizing staff from the forensic laboratories in New York State.

This proposal was presented to the New York Crime Laboratory Advisory Committee (NYCLAC) for its review and input. NYCLAC represents all of the public forensic laboratories in New York that are subject to the Commission's accreditation requirements. After much discussion over the details of the interim inspections, NYCLAC recommended that if the Commission were to implement interim inspections they should be conducted by ASCLD/LAB as a full inspection.

The Commission believes this is a serious matter that must be addressed to ensure the integrity of forensic laboratories in New York and the quality of case work they perform. Therefore, the Commission seeks to require interim inspections of forensic laboratories during the third year of the five year ASCLD/LAB accreditation cycle. Such inspections will be conducted by ASCLD/LAB pursuant to their accreditation procedures.

The proposed revisions are endorsed by the Commission of Forensic Science in accordance Executive Law sections 995-b(1).

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: ASCLD/LAB charges a fee for conducting inspections based on the size of the lab. Applying the current fee structure used by ASCLD/LAB and assuming the rule will apply to laboratories that reach the mid-point of their ASCLD/LAB accreditation cycle one year after the targeted July 2004 implementation date, the chart below sets forth anticipated costs per laboratory for the period 2004-2009.

Lab	2004	2005	2006	2007	2008	2009
Erie County			\$4,400			
Monroe County			\$4,400			
Nassau County Police Dept.		\$6,000				
Nassau County Medical Examiner			\$2,600			
New York City Police Dept.				\$51,000		
New York State Police			\$24,900			
Niagara County			\$3,300			
Onondaga County					\$5,200	
Suffolk County		\$7,800				
Westchester County						\$5,500
Westchester Dept. Public Safety		\$2,600				
Yonkers		\$2,200				

It is expected that funds from the State Aid to Localities (Crime Labs) program will be set aside for this purpose. In addition, the Division anticipates that federal funds from the Paul Coverdell Forensic Science Improvement Act may be available to offset these costs.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. Regulatory oversight will be accomplished using existing resources.

c. The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The cost analysis is based on the current fee structure used by ASCLD/LAB, and assumes the regulation will be effective in September 2003 and will apply to laboratories that reach the mid-point of their ASCLD/LAB cycle within one year after the rule is adopted.

5. Local government mandates: The rule requires interim inspections of forensic laboratories during the third year of the five year ASCLD/LAB

accreditation cycle. Such inspections will be conducted by ASCLD/LAB pursuant to their accreditation procedures.

6. Paperwork: Additional paperwork, consistent with accreditation inspections currently conducted by ASCLD/LAB, will result from the interim inspections. Specifically, when submitting an application for accreditation by ASCLD/LAB, laboratories must submit a 2 page application form and attach a completed 8 page self-assessment checklist, a map of the service area, an organizational chart, a list of staff personnel, a floor plan, copies of procedures manuals, a statement of laboratory objectives, the laboratory budget, and previous inspection reports. This information may be submitted in electronic format.

7. Duplication: There are no other State or federal requirements governing accreditation of forensic DNA laboratories.

8. Alternatives: The Commission considered an interim inspection scheme that would have been coordinated by the Division's Office of Forensic Services using quality management personnel from forensic laboratories in New York State that were subject to the audits. Under this scheme, the inspections would have been more limited than those ASCLD/LAB will conduct, taking about one-half the time. There would have been no fee for such inspections, although a laboratory would have been required to provide from its staff an inspector for no more than one audit per year and no more than three audits over a five year period, resulting in a maximum of five person/workdays being required from any laboratory in a given year. Travel, lodging, and meal expenses would have been paid by the Division. This alternative was rejected by the Commission, however, based on NYCLAC's preference to have ASCLD/LAB conduct full inspections, rather than have the Division of Criminal Justice Services coordinate less comprehensive inspections.

9. Federal standards: The Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Analysis require an annual self-audit, and require involvement by an external agency in the audit every two years.

10. Compliance schedule: No laboratory will be due for an interim inspection in 2004. Two laboratories, Nassau County Police Department and Suffolk County, will be due for an interim inspection in 2005, while most other laboratories will not come due until 2006. All laboratories are expected to be able to comply with the proposed rule.

Regulatory Flexibility Analysis

1. Effect of rule: The proposed rule applies to nine county laboratories and two city laboratories. The proposed rule does not apply to small businesses.

2. Compliance requirements: The proposed rule requires interim inspections of forensic laboratories during the third year of the five year American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) accreditation cycle. Such inspections will be conducted by ASCLD/LAB pursuant to their accreditation procedures.

3. Professional services: No professional services not already being utilized by a laboratory will be needed to comply with the proposed rule.

4. Compliance costs: The proposed rule will require laboratories to undergo an interim inspection by the ASCLD/LAB. The ASCLD/LAB charges a fee for conducting inspections based on the size of the lab. Applying the current fee structure used by ASCLD/LAB and assuming the rule will apply to laboratories that reach the mid-point of their ASCLD/LAB accreditation cycle one year after the targeted July 2004 implementation date, the chart below sets forth anticipated costs per laboratory for the period 2004-2009.

Lab	2004	2005	2006	2007	2008	2009
Erie County			\$4,400			
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New York State Police Niagara County			\$24,900			
			\$3,300			
Onondaga County					\$5,200	
Suffolk County		\$7,800				
Westchester County						\$5,500
Westchester Dept. Public Safety		\$2,600				
Yonkers		\$2,200				

5. Economic and technological feasibility: No economic or technological impediments to compliance have been identified.

6. Minimizing adverse impact: The Commission attempted to minimize adverse impact on local governments by considering an interim inspection scheme that would have been coordinated by the Division's Office of Forensic Services using quality management personnel from forensic laboratories in New York State that were subject to the audits. Under this scheme, the inspections would have been more limited than those ASCLD/LAB will conduct, taking about one-half the time. There would have been no fee for such inspections, although a laboratory would have been required to provide an inspector for no more than one audit per year and no more than three audits over a five year, resulting in a maximum of five person/workdays being required from any laboratory in a given year. Travel, lodging, and meal expenses would have been paid by the Division. This alternative was rejected by the Commission, however, based on NYCLAC's preference to have ASCLD/LAB conduct full inspections, rather than have the Division of Criminal Justice Services coordinate less comprehensive inspections.

7. Small business and local government participation: The Commission and the Division consulted with the New York Crime Laboratory Advisory Committee (NYCLAC) for its review and input. NYCLAC represents all of the public forensic laboratories in New York that are subject to the Commission's accreditation requirements and would be subject to the proposed rule.

Rural Area Flexibility Analysis

The proposal applies to eleven forensic laboratories operated by municipalities, none of which is located in a "rural area." As such, it will not impose any adverse economic impact on rural areas, or reporting, record keeping, or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

The proposed rule provides for an additional laboratory inspection by the American Society of crime Laboratory Directors/ Laboratory Accreditation Board during the third year of the five year accreditation cycle. As such, it is apparent from the nature and purpose on the proposal that it will have no impact on jobs and employment opportunities.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Asian Carp and Snakehead Fish

I.D. No. ENV-04-04-00007-E

Filing No. 376

Filing date: April 6, 2004

Effective date: April 6, 2004

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

Action taken: Addition of section 180.9 to Title 6 NYCRR.

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

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

Specific reasons underlying the finding of necessity: This rule making is necessary to protect New York's freshwater fish populations and fisheries from the damage that would occur if certain non-native nuisance fish species were introduced into New York waters. Asian Carp (bighead, silver and black carp), which are native to Asia, have been imported into North America for use in the aquaculture industry in the lower Mississippi River region. Bighead and silver carp are plankton feeders and are proliferating throughout the Mississippi basin following escape from aquaculture facilities. They grow to large sizes (60+ lb.) and compete with native fishes for food. Black carp feed on mollusks, but have not yet been reported as reproducing populations in natural waters, although this is considered likely in the near future. Black carp pose a serious threat to native mollusk species if they escape from aquaculture facilities.

Asian carp are poised to enter Lake Michigan through the Chicago Sanitary Canal system, which would lead to rapid spread throughout the Great Lakes and connecting waterways, including the Hudson River. Efforts are underway to block entrance into Lake Michigan with an electric barrier. Asian carp are also sold live as food fish. A live Bighead carp recovered from a fountain in Toronto last year was probably imported into Canada for this purpose. Snakeheads pose a similar threat. They include 28 non-native fish species that are voracious predators and have the potential to colonize New York waters, adversely affecting native fishes. If Asian carp or snakeheads become established in New York waters, they could cause significant damage to native aquatic life. For this reason, emergency regulatory action is needed to prohibit traffic in live Asian carp and snakeheads within the state.

New York and other Great Lakes States have been suffering the consequences of the introduction of non-indigenous nuisance species for decades. For example, the zebra mussel, which was introduced in the 1990s, has created significant ecological problems for many states, including New York. Every Great Lakes state, except New York, now prohibits the possession and transportation of live Asian carp within their jurisdictions. In addition, snakeheads were recently listed as an injurious wildlife species by the federal government under the Lacey Act, which prohibits importation and interstate commerce. The state regulations adopted herein, in conjunction with existing federal regulations, will offer much needed protection for New York's aquatic resources.

A large, important market for live Bighead carp has been identified in the New York City area. In recognition of this market, along with the need for a transportation corridor to markets in the Boston area, New York City (Manhattan, Bronx, Queens, Brooklyn, and Staten Island) and the Towns of Rye, Harrison, and Mamaronek in Westchester County are exempted from the prohibitions contained herein concerning live Bighead carp. No other species were identified as important in this primarily Asian market, and no other New York communities are known to have these markets present. It is unlikely that Bighead carp could survive if accidentally liberated to the wild in the exempted areas because these areas drain into salt water within a short distance.

Subject: An immediate prohibition of the sale, possession, transport, import, or export of live individuals or viable eggs of Asian carp or snakeheads in New York State except for the five boroughs of New York City and the Towns of Rye, Harrison, and Mamaronek in Westchester County.

Purpose: To prevent the introduction of Asian carp and snakehead fish into the waters of New York State, and the damage that could be caused if introduction were to occur.

Text of emergency rule: Part 180 of Title 6 of NYCRR is amended by adding a new section 180.9, entitled "Fish dangerous to indigenous fish populations," to read as follows:

§ 180.9 Fish dangerous to indigenous fish populations.

(a) Purpose. The purpose of this section is to list species of native or non-native fish that present a danger to the health or welfare of indigenous fish populations, and to the health or welfare of people of the state.

(b) Prohibitions.

(1) Except as provided in subdivisions c and d of this section, no person shall buy, sell or offer for sale, possess, transport, import or export, or cause to be transported, imported or exported live individuals or viable eggs of the following species of fish, which the Department of Environmental Conservation (department) has determined present a danger to indigenous fish populations:

- (i) Silver carp (*Hypophthalmichthys molitrix*)
- (ii) Bighead carp (*Hypophthalmichthys nobilis*)
- (iii) Black carp (*Mylopharyngodon piceus*)
- (iv) Snakehead fish of the genera *Channa* and *Parachanna* (or the generic synonyms of *Bostrychoides*, *Opicephalus*, *Ophiocephalus*, and *Parophiocephalus*) of the Family *Channidae*, including but not limited to:

- (a) *Channa amphibeus* (Chel or Borna snakehead)
- (b) *Channa argus* (Northern or Amur snakehead)
- (c) *Channa asiatica* (Chinese or Northern Green snakehead)
- (d) *Channa aurantimaculata*
- (e) *Channa bankanensis* (Bangka snakehead)
- (f) *Channa baramensis* (Baram snakehead)
- (g) *Channa barca* (barca or tiger snakehead)
- (h) *Channa bleheri* (rainbow or jewel snakehead)
- (i) *Channa cyanospilos* (bluespotted snakehead)
- (j) *Channa gachua* (dwarf, gaucha, or frog snakehead)
- (k) *Channa harcourtbutleri* (Inle snakehead)
- (l) *Channa lucius* (shiny or splendid snakehead)

- (m) *Channa maculata* (blotched snakehead)
- (n) *Channa marulius* (bullseye, murrel, Indian, great, or cobra snakehead)
- (o) *Channa maruloides* (emperor snakehead)
- (p) *Channa melanoptera*
- (q) *Channa melasoma* (black snakehead)
- (r) *Channa micropeltes* (giant, red or redline snakehead)
- (s) *Channa nox*
- (t) *Channa orientalis* (Ceylon or Ceylonese Green snakehead)
- (u) *Channa panaw*
- (v) *Channa pleurophthalmus* (ocellated, spotted, or eyespot snakehead)
- (w) *Channa punctata* (dotted or spotted snakehead)
- (x) *Channa stewartii* (golden snakehead)
- (y) *Channa striata* (chevron or striped snakehead)
- (z) *Parachanna africana* (Niger or African snakehead)
- (aa) *Parachanna insignis* (Congo, square-spotted African, or light African snakehead)
- (bb) *Parachanna obscura* (dark African, dusky or square-spotted snakehead)

(2) No person shall liberate to the wild any species listed in this section, cause such species to be liberated to the wild or allow such species to exist in a state or condition where it is likely to escape into the wild.

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

(d) Permits. The department may issue permits, the term of which shall not exceed one year, to possess, transport, import or export species of live fish listed in this section only for educational, exhibition or scientific purposes, as defined in section 175.2 of this chapter. Permits issued pursuant to this section may contain terms, conditions and standards designed to prevent escapement while fish species listed in the permit are held in captivity, and to ensure safe disposition of those species following expiration of the permit or cessation of the permitted activity. The permit fee shall be \$500, except that the fee may be waived for bona fide employees, representatives or affiliates of accredited colleges or universities, research institutions, government agencies, or public museums or aquariums.

(e) Seizure. Environmental conservation officers, forest rangers and members of the state police may seize species of fish listed in this section that are possessed without a permit. No action for damages shall lie for such seizure, and disposition of seized animals shall be at the discretion of the department.

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 published a notice of emergency/proposed rule making, I.D. No. ENV-04-04-00007-EP, Issue of January 28, 2004. The emergency rule will expire June 4, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: William J. Culligan, Department of Environmental Conservation, Lake Erie Fisheries Research Unit, 178 Point Dr. N, Dunkirk, NY 14048, (716) 366-0228, e-mail: wjcullig@gw.dec.state.ny.us

Additional matter required by statute: A negative declaration has been prepared in accordance with art. 8 of the Environmental Conservation Law and is available for review.

Regulatory Impact Statement

Statutory authority:

The Commissioner of Environmental Conservation, pursuant to Environmental Conservation Law (ECL), Section 3-0301, has authority to protect the wildlife resources of New York State.

Environmental Conservation Law Section 11-0511 provides the Department of Environmental Conservation (Department) with authority to regulate the possession of live native or non-native wildlife or fish where the Department finds the possession, transportation, importation or exportation of such species would present a danger to the health or welfare of the people of the state, an individual resident or indigenous fish or wildlife.

Legislative objectives:

The legislative objective of ECL Section 3-0301 is to grant the Commissioner the powers necessary for the Department to protect New York's

natural resources, including fish and wildlife, in accordance with the environmental policy of the state.

The legislative objective of ECL Section 11-0511 is to provide the Department with broad authority to prohibit the possession of live specimens of fish or wildlife that are deemed to present a danger to the health or welfare of the people of the state, an individual resident or indigenous fish or wildlife.

Needs and benefits:

This rule making is necessary to protect New York's freshwater fish populations and fisheries from the damage that would occur if certain non-native nuisance fish species were introduced into New York waters. Asian Carp (bighead, silver and black carp), which are native to Asia, have been imported into North America for use in the aquaculture industry in the lower Mississippi River region. Bighead and silver carp are plankton feeders and are proliferating throughout the Mississippi basin following escape from aquaculture facilities. They grow to large sizes (60+lb.) and compete with native fishes for food. Black carp feed on mollusks, but have not yet been reported as reproducing populations in natural waters, although this is considered likely in the near future. Black carp pose a serious threat to native mollusk species if they escape from aquaculture facilities.

Asian carp are poised to enter Lake Michigan through the Chicago Sanitary Canal system, which would lead to rapid spread throughout the Great Lakes and connecting waterways, including the Hudson River. Efforts are underway to block entrance into Lake Michigan with an electric barrier. Asian carp are also sold live as food fish. A live Bighead carp recovered from a fountain in Toronto last year was probably imported into Canada for this purpose.

Snakeheads pose a similar threat. They include 28 non-native fish species that are voracious predators and have the potential to colonize New York waters, adversely affecting native fishes. If Asian carp or snakeheads become established in New York waters, they could cause significant damage to native aquatic life. For this reason, emergency regulatory action is needed to prohibit traffic in live Asian carp and snakeheads within the state.

New York and other Great Lakes States have been suffering the consequences of the introduction of non-indigenous nuisance species for decades. For example, the zebra mussel, which was introduced in the 1990s, has created significant ecological problems for many states, including New York. Every Great Lakes state, except New York, now prohibits the possession and transportation of live Asian carp within their jurisdictions. In addition, snakeheads were recently listed as an injurious wildlife species by the federal government under the Lacey Act, which prohibits importation and interstate commerce. The state regulations adopted herein, in conjunction with existing federal regulations, will offer much needed protection for New York's aquatic resources.

A large, important market for live Bighead carp has been identified in the New York City area. In recognition of this market, along with the need for a transportation corridor to markets in the Boston area, New York City (Manhattan, Bronx, Queens, Brooklyn, and Staten Island) and the Towns of Rye, Harrison, and Mamaronek in Westchester County are exempted from the prohibitions contained herein concerning live Bighead carp. No other species were identified as important in this primarily Asian market, and no other New York communities are known to have these markets present. It is unlikely that Bighead carp could survive if accidentally liberated to the wild in the exempted areas because these areas drain into salt water within a short distance.

Costs:

There will be no costs to state or local governments from this rule making, except the minor cost of issuing permits by the Department for educational, exhibition, or educational purposes.

Due to the proposed exemptions, there will be little or no cost to small businesses. There is no effect in other areas of the state because there is no interest in these markets in those locations, and there is no interest in purchasing live species other than Bighead carp.

Local government mandates:

The proposed rule does not impose any mandates on local government.

Paperwork:

No new paperwork is required.

Duplication:

The proposed regulation would compliment and strengthen existing federal regulations that prohibit the interstate transportation and importation of snakeheads.

Alternatives:

No Action: The Department has rejected this option. Failing to address the threat posed to New York's freshwater fish populations would be

contrary to the Department's responsibility to protect New York's natural resources, in accordance with the environmental policy of the state.

Complete ban on possession of live fish: The Department has rejected this option because after consultation with potentially affected small businesses, it was determined that a complete statewide ban would have a significant affect on a number of ethnic, live fish markets in the New York City area for Bighead carp. It was also determined that a transportation corridor was needed to transport live Bighead carp to markets in the Boston area. Therefore, it was decided to exempt New York City and part of Westchester County to protect these small businesses and allow a transportation corridor along Interstate 95 through New York State. Because this exempted area is surrounded by salt water, there should be limited risk of these fish successfully becoming established in the wild.

Federal standards:

The proposed New York State regulations will compliment and strengthen federal regulations which prohibit the interstate transfer and importation of snakeheads. There are no federal standards for the other species.

Compliance schedule:

This rule becomes effective upon filing with the Department of State. Immediate compliance with the rule is required to protect the fish and wildlife resources of the state by preventing the importation of live Asian carp and snakeheads into New York State and their possible introduction to the wild.

Regulatory Flexibility Analysis

1. Effect of rule:

No local governments will be affected by this rule. The small businesses affected by this rule are small pet shops that may sell snakeheads. However, now that the federal government has listed snakeheads as an injurious species under the Lacey Act, they can no longer be legally transported across state lines. Because of the proposed exemptions for New York City and parts of Westchester County, all known fish markets that sell Bighead carp will be unaffected. There may be a small number of fish markets that currently sell a few live snakeheads for food, but this was not identified as a major item. Due to the Federal Lacey Act, live snakeheads are no longer able to be transported across state lines. A transportation route for live Bighead carp to markets in the Boston area will be available along Interstate 95.

2. Compliance requirements:

There are no reporting or recordkeeping requirements that local governments or small businesses will be required to take to comply with the rule.

3. Professional services:

The rule will not require local governments or small businesses to engage professional services in order to comply with this rule.

4. Compliance costs:

There will be no compliance costs associated with this rule.

5. Economic and technological feasibility:

There is no economic or technological affect on local governments. Small businesses will not be affected because of the exemption for Bighead carp in the New York City area.

6. Minimizing adverse impact:

The proposed exemption for the New York City area and parts of Westchester County will significantly reduce any adverse impacts of the regulation. This exemption is possible without creating significant risk to the freshwater resource of the State because all surrounding waters in the exempted areas quickly drain into salt water, where Bighead carp will not survive.

7. Small business and local government participation:

After consultation with small businesses, it was learned that there was a significant market for live Bighead carp in the New York City area and an important need for wholesale sellers of live Bighead carp to maintain a route through New York to markets in the Boston area. Other species of Asian Carp and snakeheads were not important to these markets, and all known retail establishments were in the New York City area. An exception for live Bighead carp is proposed for New York City and three towns in southern Westchester County.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed rule will not directly affect any of the rural areas of the state. All known users of the listed species are in the ethnic Asian communities of New York City.

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

The proposed rule imposes no reporting, recordkeeping, or other compliance requirements. No professional services are required to comply with the proposed rule.

3. Costs:

There will be no initial capital costs incurred by public or private entities in rural areas in order to comply with this rule.

4. Minimizing adverse impact:

No attempts have been made to minimize impacts because none of the state's rural areas will be affected.

5. Rural area participation:

No rural area participation has been solicited because none of the state's rural areas will be affected.

Job Impact Statement

1. Nature of impact:

Because of the proposed exception for Bighead carp in the New York City area, the job impact of this rule making will be minimal. A small business survey of Asian fish markets indicated that they do not sell other species of Asian carp, and snakeheads are now banned from importation and interstate transport by the Federal Lacey Act.

2. Categories and numbers affected:

Fewer than 100 small businesses may be slightly impacted. Businesses that may be impacted are all Asian live fish markets.

3. Regions of adverse impact:

The proposed rule would have an effect throughout the New York City area only.

4. Minimizing adverse impact:

The proposed exception for live Bighead carp in the New York City area will significantly reduce the potential job impact of this rule. Small businesses indicated that Bighead carp were the only regulated species that they sold in significant numbers. All known Asian fish markets that sell these fish are in the New York City area. The proposed exception for parts of Westchester County will allow transport of live Bighead carp to identified markets in the Boston area.

5. Self-employment opportunities:

The proposed rule would not prevent a person from starting a new fish market that sells live Bighead carp in the New York City area. However, it will prohibit the live sale of other species of Asian carp and snakeheads, although no known markets exist for these species. Markets are not known to exist in other parts of New York for live sale of these species.

Proposed action: This is a consensus rule making to amend section 800.3 of Title 12 NYCRR.

Statutory authority: Labor Law, section 27-a.4(a)

Subject: Public employee occupational safety and health standards.

Purpose: To incorporate by reference into New York State occupational safety and health standards those safety and health standards adopted by the U.S. Department of Labor, Occupational Safety and Health Administration, as of Dec. 31, 2003.

Substance of proposed rule: The proposed rule amends Section 800.3 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York, which sets forth those standards of the Occupational Safety and Health Administration which are incorporated by reference into state regulations. It is amended so as to incorporate those standards revised as of December 31, 2003.

The material incorporated by reference in Part 800.3 contains the following parts of Title 29 of the Code of Federal Regulations, revised as of the dates following the title of each part:

Part 1910 - General Industry Standards; July 1, 1988 edition

Part 1915 - Shipyard Employment Standards; July 1, 1988 edition

Part 1917 - Marine Terminal Standards edition; July 1, 1988 edition

Part 1918 - Longshoring Standards; July 1, 1988 edition

Part 1926 - Construction Standards; July 1, 1988 edition

Part 1928 - Agricultural Standards; July 1, 1988 edition

Certain revisions to these standards, published in the Federal Register through November 7, 2002, have been adopted previously.

Since the standards were last updated, the Department of Labor has obtained one additional standard:

1. Respiratory Protection for M. Tuberculosis; Final Rule — 68:75776-75780.

Text of proposed rule and any required statements and analyses may be obtained from: Diane Wallace Wehner, Legal Assistant II, Department of Labor, Counsel's Office, Rm. 509, State Office Campus, Bldg. 12, Albany, NY 12240, (518) 457-4380, e-mail: usbdww@labor.state.ny.us

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

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

Consensus Rule Making Determination

This amendment is necessary because Section 27-a(4)(a) of the Labor Law directs the Commissioner to adopt by rule, for the protection of the safety and health of public employees, all safety and health standards promulgated under the U.S. Occupational Safety and Health Act of 1970, and to promulgate and repeal such rules and regulations as may be necessary to conform to the standards established pursuant to OSHA. This insures that public employees will be afforded the same safeguards in their workplaces as are granted to employees in the private sector.

Job Impact Statement

As the proposed action does not affect jobs and employment opportunities but simply affords workplace safety and health guidelines to improve job performance and safety, a job impact statement is not submitted.

Department of Health

NOTICE OF WITHDRAWAL

Emergency Ambulance Service Vehicles

I.D. No. HLT-11-04-00025-W

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

Action taken: Notice of proposed rule making, I.D. No. HLT-11-04-00025-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on March 17, 2004.

Subject: Emergency ambulance service vehicles.

Department of Labor

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Employee Occupational Safety and Health Standards

I.D. No. LAB-16-04-00001-P

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

Division of the Lottery

EMERGENCY RULE MAKING

Video Lottery Gaming

I.D. No. LTR-28-03-00009-E

Filing No. 377

Filing date: April 6, 2004

Effective date: April 6, 2004

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

Action taken: Addition of Part 2836 to Title 21 NYCRR.

Statutory authority: Tax Law, section 1617-a

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

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

The New York Lottery operates lottery games to fund education in New York State. The current financial situation in New York State is such that funds are urgently needed to meet revenue shortfalls, particularly after the September 11th disaster and the general economic downturn that followed. It is projected that the operation of video lottery gaming in New York State may generate over \$1 Billion for education annually when fully implemented. Any game delay that jeopardizes start up of video lottery gaming this fiscal year could result in a loss of approximately \$1 to 4 Million weekly in aid to education.

Since passage of the legislation in October 2001 authorizing the Division to license the operation of video lottery gaming at racetracks around New York State, the Division has worked diligently with contractors and racetrack owners to develop the game and the gaming facilities. With commencement of gaming anticipated sometime around the end of this year, the Division continues to finalize the gaming product and to work with the racetracks to design their business operations. These regulations are a result of that product development, and have only now been completed. Consequently, this is the earliest the regulations could have been drafted, leaving inadequate time prior to the anticipated start date to comply with the normal rule making procedure set forth in the State Administrative Procedure Act Section 202(1).

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

The cause of the need is set forth in paragraph (1) above. The consequence of filing this emergency rule making is that the Division will begin to generate needed aid to education through the operation of video lottery gaming. In July 2003, the first draft of these regulations was published. The Division received a number of comments during the public comment period. Revisions to the proposed regulations based on comments received from the public and arising from internal product development are included in these emergency regulations. The Division intends to file shortly a Notice of Revised Rule Making pursuant to the State Administrative Procedure Act Section 202(4-a) to continue the normal rule making procedures relative to these regulations.

(3) Compliance with the requirements of Section 202(1) of the State Administrative Procedure Act would be contrary to the public interest because it would delay implementation of the game and deprive the state of needed revenue to education. The approximately \$1 to 4 Million in weekly aid to education lost this fiscal year by this delay would need to be taken from other revenue sources.

(4) Circumstances necessitate that the public and interested parties be given less than the minimum period of 30 days for notice and comment because any game delay would result in a loss of approximately \$1 to 4 Million weekly this fiscal year in aid to education. As mentioned above, the Division continues to finalize the gaming product and to work with the racetracks to design their business operations. These regulations are a result of that product development, and have only now been completed. Consequently, this is the earliest the regulations could have been finalized, leaving inadequate time prior to the anticipated start date to comply with the normal rule making procedure set forth in the State Administrative Procedure Act Section 202(1). Delaying the commencement of gaming for the time needed to utilize the normal rule making process would mean a loss in aid to education of approximately \$1 to 4 Million per week which would have to be made up from other state revenues.

Subject: Video lottery gaming.

Purpose: To allow for the licensed operation of video lottery gaming.

Substance of emergency rule: Chapter 383 of the Laws of 2001 as amended by Chapter 85 of the Laws of 2002, as amended by Chapter 62 of the Laws of 2003, codified as § 1617-a of the New York State Tax Law, authorized the Division of the Lottery to license the operation of video lottery gaming at eligible racetracks around New York State. That legislation directed the Division to promulgate rules and regulations for the licensing and operation of those games.

The regulations begin by setting forth the general provisions, construction, and application of the rules. This section contains the definitions for key terms that are used throughout the body of the document.

Many of the regulations set forth the licensing procedures for the various participants needed to bring video lottery gaming into operation. Licensees include the racetracks that are eligible under the enabling legislation to operate video lottery gaming, and their employees, as well as gaming and non-gaming vendors that will supply goods and services to both the Division and the racetracks. Licensing procedures include financial disclosure and, in some instances, background investigations for prin-

ciples and key employees. Non-gaming vendors supplying goods and services below a certain threshold will not be required to undergo the licensing process, but will have to register as suppliers.

The racetracks, referred to in the regulations as video lottery gaming agents, will be required to submit business plans for approval by the Division prior to licensing, and to establish a set of internal control procedures pursuant to guidelines provided by the Division. The agents will be required to submit periodic financial reports and undertake other financial controls. The regulations set forth the continuing obligations of video lottery gaming agents following licensure, and identify penalties that may be imposed on licensees for violation of the regulations.

The regulations establish rules for the conduct and operation of video lottery gaming. Movement of the terminals is closely regulated, and surveillance and security systems are established at each facility.

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 published a notice of proposed rule making, I.D. No. LTR-28-03-00009-P, Issue of July 16, 2003. The emergency rule will expire May 31, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Susan E. Beaudoin, Counsel, Division of the Lottery, One Broadway Center, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: sbeaudoin@lottery.state.ny.us

Additional matter required by statute: A negative declaration has been prepared and is on file for this rule making.

Regulatory Impact Statement

1. **Statutory Authority:** On October 31, 2001, Governor Pataki signed into law Part C of Chapter 383 of the Laws of 2001, as amended by Chapter 85 of the laws of 2002, as amended by Chapters 62 and 63 of the Laws of 2003, codified as 1617-a and 1612 of the New York State Tax Law, which authorizes the New York State Division of the Lottery ("Division") to license the operation of video lottery gaming at racetrack locations around the state. That legislation directs the Division to promulgate regulations allowing for the licensed operation of video lottery gaming. These regulations fulfill that mandate, enabling the licensing and operation of video lottery gaming at authorized racetracks.

2. **Legislative Objectives:** These proposed regulations advance the legislative objective of raising additional revenue for education by establishing video lottery gaming.

3. **Needs and Benefits:** The regulations satisfy a legislative mandate directing the Division to promulgate regulations for the design, licensing and implementation of video lottery gaming. Pursuant to a Memorandum of Understanding between the Division and the Racing and Wagering Board, potential duplicative licensing requirements for the racetrack employees have been eliminated.

The regulations set forth the manner in which the regulated community will be licensed to conduct video lottery gaming. Additionally, they describe the game operation, financial operations, terminal design, the manner in which the security systems must operate, and certain requirements for the physical layout of the gaming facilities. These regulations provide the regulated community with the details and guidance to effectively implement video lottery gaming in New York State. While the Division considers video lottery gaming to be very similar to other lottery games that the Division has successfully conducted for over twenty-five years, some components set it apart from those more traditional games. For example, most of the Division's current licensed agents are food and beverage retailers. Video lottery gaming will require the Division to license racetrack venues as video lottery gaming agents, in addition to licensing video lottery gaming and non-gaming suppliers, as well as principals, key employees, and employees. In furtherance of its statutory mandate to design a game that is comparable to others in the industry, the Division has spent a considerable amount of time since the legislation was signed studying video lottery gaming venues in other states, namely, Delaware, Rhode Island, and West Virginia. In some respects, the video lottery gaming design in these regulations is modeled after those states; however, there are significant differences. For example, the video lottery games and the video lottery terminals are designed to meet specific legal requirements unique in this state. A Notice of Proposed Rulemaking was published in July 2003. Since that time, the game design has continued to develop during the start up phase of the project. Because of this, and based on comments received during the public comment period, it was necessary to revise the proposed regulations. These emergency regulations include the revisions. By way of example, sections were added authorizing the issuance of badges for temporary employees, expressly setting forth a procedure to request exemption from the regulations, and authorizing the

video lottery gaming agents to use Division logos and other copyrighted material to advertise and promote video lottery gaming at the licensed facilities.

In response to comments received from prospective licensees, the video lottery gaming agents were given increased latitude in managing their business operations. For example, rather than adhering to internal controls procedures prescribed by the Division, each agent will design their own in compliance with guidelines established by the Division. License applications with minor deficiencies can be resubmitted without the need to wait a lengthy resubmission time. If temporary employees are needed intermittently, they may utilize a badging system instead of undergoing a lengthy licensing process. Gaming agents will be able to utilize a Division logo in their advertising program, and will be able to sell all lottery products. Grammatical and formatting changes were made for clarity and ease of use.

These regulations will assist the regulated parties to fully understand and comply with all the requirements of the operation of video lottery gaming, while generating sales and revenue to aid education in the State of New York.

4. **Costs:** This is a voluntary program. Members of the regulated community need only apply for licenses if they choose to enter into video lottery gaming. It is expected that the decision to apply for a license will result from the exercise of sound business judgment.

The regulations, as well as the legislation, require facilities be in conformance with state and local building codes. These requirements, in addition to the necessary changes to facilities to accommodate video lottery terminals and related peripheral equipment, will result in each video lottery gaming agent incurring construction costs.

According to data provided by the racetracks, total costs for new construction, rehabilitation of facilities and readying facilities for the installation of the video lottery terminals will approximate \$240 million if all eligible venues participate. Each racetrack's proposed project differs. The cost for each facility ranges from \$4 million to over \$100 million dollars. The regulations require video lottery gaming agents housing over 2,500 terminals to equip the facility with an alternate emergency power source. It is estimated that this could cost those agents an additional \$250-\$300 per video lottery terminal. The individual facilities will also be incurring closing costs and interest expenses on any funds borrowed to pay project costs. Each track's expenditures in readying the facility for compliance with the regulations include adequate heating, venting, air conditioning, cashier's cages, electrical and communication upgrades.

The racetracks will incur certain labor costs associated with operating video lottery gaming. The gaming facilities throughout the state are expected to employ upwards of a total estimated 1,900 people. Individual gaming agents will be employing approximately 70 to 700 people. The average number of employees at each facility is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual salaries ranging from \$22,000 to \$250,000. Total annual payroll for each racetrack will range from \$1.8 million to over \$10.8 million, with an average payroll of over \$6.6 million.

There are other incidental costs that will be incurred by the video lottery gaming agents. These include costs relative to providing sufficient internal controls to satisfy Division guidelines as well as auditing, both expected to exceed what is currently in place at the racing facilities. It is anticipated that most of these controls will be established through sufficient experienced racetrack personnel. Additional external auditing costs are expected to average approximately \$65,000 annually.

Members of the regulated community will be required to expend money for licensing costs. Gaming vendors will be required to pay a \$10,000 licensing fee to cover costs related to conducting background investigations of their principals and key employees. Principals and employees will be required to pay approximately \$100 to cover the cost of fingerprints. Total costs for the State, the tracks and vendors for start up and a full year of operations are estimated to be approximately \$300 million, with total revenue for the project for that time period estimated to be over \$1.2 billion.

5. **Local Government Mandates:** No local mandates are imposed by rule upon any county, city, village, etc. The legislation permits local communities which have racetracks not expressly identified in the legislation to pass local laws authorizing video lottery gaming at racetracks in their communities, if they so choose.

6. **Paperwork:** The regulations require that the regulated entities complete a licensing application, including fingerprints, and to update and renew the application periodically. The application will follow a standard multi-state format used by other states that license similar gaming activi-

ties. Completion of these applications will be a new responsibility for the video lottery gaming agents, their principals, and key employees. Agents, their principals and key employees will be required to provide more detailed disclosure than they have previously been required to provide for licensure. This level of disclosure is common in other gaming states. Provisional licenses will be granted under certain circumstances, so that the licensing review process is not expected to pose a barrier to immediate entry into the business.

The regulated vendors should be familiar with these licensing forms and reporting requirements as they are similar to those required in other states where these vendors currently do business. In fact, gaming vendors routinely have regulatory compliance departments to assist in fulfillment of these requirements.

Vendors supplying goods or services not directly related to gaming must register to do business with the video lottery gaming agents. However, if their contracts exceed certain thresholds outlined in the regulations, they will be required to undergo a full licensing procedure. In particular, non-gaming vendors will be required to submit license applications if any of the following conditions exist:

(a) the non-gaming vendor has a contract with a video lottery gaming agent that exceeds \$100,000.00 in any twelve (12) month period;

(b) the non-gaming vendor has contracts with more than one video lottery gaming agent that combined exceed \$150,000.00 in any twelve (12) month period;

(c) the non-gaming vendor has contract(s) for a portion of a video lottery gaming facility construction project that exceeds \$500,000.00 in any twelve (12) month period;

(d) the non-gaming vendor has combined contracts for a portion of more than one video lottery gaming facility construction project exceeding \$1,000,000.00 within any twelve (12) month period.

Agents will be required to submit business plans that will include floor plans of the gaming areas, staffing plans, internal control procedures, marketing plans, and security plans. These will need to be updated periodically.

In order to ensure the financial integrity and security of video lottery gaming, the video lottery gaming agents will be required to develop internal control procedures, to undergo an auditing process and to submit financial reports. These financial reports are produced during the regular course of business, and their submission should not prove burdensome. These will need to be updated periodically.

7. **Duplication:** This rule will not duplicate, overlap or conflict with any State or Federal statute or rules. Currently, the New York State Racing and Wagering Board must license the operation of pari-mutuel wagering at the racetracks as well as licensing racetrack employees. Because the operation of video lottery gaming is separate and distinct from pari-mutuel wagering, and further because only the Division may license the operation of video lottery gaming, dual licensing of the racetracks is not duplicative. Pursuant to a Memorandum of Understanding between the Division and that agency, potential duplicative licensing requirements for the racetrack employees have been eliminated.

8. **Alternatives:** In furtherance of its statutory mandate to design a game that is comparable to others in the industry, the Division has spent a considerable amount of time since the legislation was signed studying video lottery gaming venues in other states, namely, Delaware, Rhode Island, and West Virginia. In some respects, the video lottery gaming design in these regulations is modeled on those states; however, there are significant differences. For example, the video lottery games and the video lottery terminals are designed to meet specific legal requirements unique in this state. Prior to publication of the first proposed regulations, members of the regulated community were contacted and comments to the proposed draft regulations solicited. In response, the Division received hundreds of comments that were carefully and thoroughly examined. These comments fell broadly into the following general categories:

(a) That the requirements to become licensed and operate video lottery gaming appeared oftentimes unclear or vague;

(b) That many of the requirements established in the proposed draft regulations were overly burdensome;

(c) That the licensing authority of the Division was questionable;

(d) That the regulations imposed excessive costs to satisfy unnecessary regulatory requirements; and

(e) That the regulations contained definitions that were inconsistent, inaccurate or ambiguous.

As a result of this outreach effort, a number of revisions were made and included in the first proposed regulations published in July 2003. The public comment period which followed elicited a number of comments

primarily from prospective licensees. Many of those comments proved valuable in drafting these emergency regulations which both meet the needs of the regulated community while maintaining the high standards established by the Division to operate and regulate its games. All comments received are available for public review by contacting Susan E. Beaudoin, Esq., Counsel, New York State Division of the Lottery at One Broadway Center, P.O. Box 7500, Schenectady, New York 12301 or by calling 518-388-3408 or e-mailing to sbeaudoin@lottery.state.ny.us.

While the majority of requests for revision were accommodated whenever feasible, the Division did not accept any requests for change that in its estimation would undermine the security and integrity of the game. For example, when asked to make changes which would reduce the costs of developing or operating their businesses, the Division generally accommodated those requests when possible. Conversely, though comments were received that the stringent licensing application process was overly burdensome, the Division did not lessen these requirements.

As another alternative, the Division entered into a Memorandum of Understanding with the Racing and Wagering Board to avoid potential duplicative licensing requirements for the racetrack employees.

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

10. Compliance Schedule: The licenses must be issued prior to commencement of video lottery gaming. In many instances, the license applicants will be issued provisional licenses immediately upon filing their application. All requirements concerning the conduct and operation of video lottery gaming must be complied with prior to actual commencement of the games and maintained on-going throughout the operation of the games.

Regulatory Flexibility Analysis

1. Effect of Rule: The Division of the Lottery finds that the rule will not adversely affect local government. The rule will impact a number of different types of businesses:

(a) Licensed racetracks: It is expected that the racetracks will employ greater than 100 employees at their facilities and, therefore, are not "small businesses" as that term is defined in New York State Administrative Procedure Act § 102;

(b) Gaming vendors: Vendors wishing to supply gaming products and services must be licensed. These include the supplier of the central computer system that will support the video lottery games, the companies supplying the games and terminals, management companies and certain leaders. It is anticipated that once video lottery gaming has commenced, these companies will recoup any costs associated with licensing and start-up;

(c) Non-gaming vendors: Most vendors supplying goods and services not directly related to gaming will be required to complete a registration process. However, if their contract exceeds a certain value, they will be required to comply with licensing provisions. While it is difficult to estimate all costs associated with doing business with a video lottery gaming agent, the costs of registration will be minimal. The costs of licensing, should that be necessary, will conform to the costs of licensing discussed in paragraph (c) below. However, non-gaming vendors who must undergo a licensing process will not be required to pay a licensing fee other than the costs of fingerprinting.

Participation in video lottery gaming by any of these entities is voluntary and it is expected they will use good business judgment when deciding whether or not to participate in these games. It is expected there will be no adverse economic impact on any of these regulated businesses.

2. Compliance Requirements: These rules will not require small businesses to complete burdensome forms or reports. To the extent that any small business becomes a non-gaming vendor to a video lottery agent, a contract value threshold of \$100,000 applies before licensing is necessary. Completion of the licensing application will be required. Certain small vendors may not even be required to register.

3. Professional Services: It is not anticipated that any professional services by a small business or local government will be needed to comply with these proposed rules.

4. Compliance Costs: This is a voluntary program. Members of the regulated community need only apply for licenses if they choose to enter into video lottery gaming. It is expected that the decision to apply for a license will result from the exercise of sound business judgment.

The regulations, as well as the legislation, require facilities be in conformance with state and local building codes. These requirements, in addition to the necessary changes to facilities to accommodate video lottery terminals and related peripheral equipment, will result in each video lottery gaming agent incurring construction costs.

Based on forecasted estimates provided by the racetracks themselves, total costs for new construction, rehabilitation of facilities and readying facilities for the installation of the video lottery terminals will exceed \$240 million if all eligible venues participate. Each facility's proposed project differs. The cost for each facility ranges is from \$4 million to over \$100 million dollars. The regulations require video lottery gaming agents housing over 2,500 terminals to equip the facility with an alternate emergency power source. It is estimated that this will cost those agents an additional \$250-\$300 per installed video lottery terminal. The individual facilities will also be incurring closing costs and interest expenses on any funds borrowed to pay project costs. Each track's expenditures in readying the facility for compliance with the regulations include adequate heating, venting, air conditioning, cashier's cages, electric and communication upgrades.

The gaming facilities throughout the state are expected to employ upwards of a total estimated 1,900 people. Individual gaming agents will be employing between approximately 70 to 700 people. The average number of employees at each facility is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual hourly salaries between \$22,000 to \$250,000. Total annual payroll for each racetrack will range from \$1.8 million to over \$10.8 million, with an average payroll of over \$6.6 million.

There are other incidental costs which will be incurred by the video lottery gaming agents. These include costs relative to providing sufficient internal controls to satisfy Lottery guidelines as well as auditing, both expected to exceed what is currently in place at the racing facilities. The majority of these controls are put in place through adequate experienced personnel and the personnel costs are set forth above. Additional external auditing costs are expected to average approximately \$65,000 annually.

Members of the regulated community will be required to expend money for licensing costs. Gaming vendors will be required to pay a \$10,000 licensing fee to cover costs related to conducting background investigations of their principals and key employees. Principals and employees will be required to pay approximately \$100 to cover the cost of fingerprints.

5. Economic and Technological Feasibility: The economic and technological impact of these rules on local government is minimal.

There are no expected adverse economic or technological impact on small businesses in complying with these regulations.

6. Minimizing Adverse Impact: In the case of smaller, non-gaming vendor contracts, these vendors will not be required to comply with licensing and background checks. Small businesses supplying non-gaming goods and services pursuant to contracts valued at less than \$25,000 annually will be exempt from any registration or licensing requirements, and businesses supplying non-gaming goods and services pursuant to contracts valued at less than \$100,000 will only need to complete a registration process.

7. Small Business and Local Government Participation: During the pre-proposal stage of the regulatory process, members of the regulated community were contacted and given the opportunity to participate in the formation of these regulations. The New York Lottery received numerous comments from members of the community, many of which were incorporated during the final drafting of the proposed regulations. After publication of the Notice of Proposed Rulemaking on July 16, 2003, the Lottery received numerous comments mostly from prospective licensees, during the public comment period. These emergency regulations include revisions made to the regulations as a result of that comment period.

Rural Area Flexibility Analysis

Many of the racetracks eligible for video lottery gaming licenses are located within "rural areas" as that term is defined in New York State Executive Law Section 481(7): Batavia Downs in Genesee County, Finger Lakes Racetrack in Ontario County, Saratoga Harness Track in Saratoga County, and Monticello Racetrack in Sullivan County

However, the Division has determined that these regulations will impose no adverse impact on these rural areas. The rule places no additional requirements on racetracks, other businesses or communities located within the rural areas than it does on racetracks, businesses or communities located outside rural areas.

The Division believes that there will be positive impact on these rural areas, as this new industry brings increased levels of business and employment to the communities.

Job Impact Statement

The Division has determined that the rule will not have a substantial adverse impact on jobs and employment opportunities. To the contrary, the

agency has determined the rule will have a positive impact on jobs and employment opportunities.

According to estimates provided by the racetracks, it is anticipated that racetracks, or gaming agents, throughout the state are expected to employ upwards of 1,900 people. Individual gaming agents will be employing between approximately 70 to 700 people. The average number of employees at each gaming facility (incremental over current operations) is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual salaries between \$22,000 to \$250,000. Total annual payroll for each racetrack will range from \$1.8 million to over \$10.8 million, with an average payroll of over \$6.6 million.

In addition to added employment from gaming operations, needed construction to the racetrack facilities will generate many new jobs. Undoubtedly, employment in the surrounding communities will increase to service the increased labor population and influx of patrons to the racetracks.

Assessment of Public Comment

The agency received no public comment.

Office of Mental Retardation and Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fee Setting for Various HCBS Waiver Habilitation Services

I.D. No. MRD-16-04-00020-P

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

Proposed action: Amendment of sections 635-10.5, 635-99.1 and 686.99 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09 and 43.02

Subject: Fee setting for various HCBS waiver habilitation services provided under the auspices of OMRDD.

Purpose: To clarify the provisions governing the reimbursement of HCBS waiver residential habilitation services and supported employment services, and to make various other technical and conforming amendments to update affected glossary definitions.

Text of proposed rule: Clauses 635-10.5(b)(8)(ii)(a) and (b) are amended as follows:

(a) The full month supervised IRA residential habilitation price shall be paid for services provided to a consumer who meets the enrollment requirement in subparagraph (11)(i) of this subdivision and who receives face-to-face residential habilitation service(s) *in accordance with the consumer's Individualized Service Plan (ISP) and residential habilitation plan* on each of the 22 days of the enrollment requirement. These are known as countable service days.

(b) One-half of the full month supervised IRA residential habilitation price shall be paid for services provided to a consumer who meets the enrollment requirement in subparagraph (11)(ii) of this subdivision and who receives face-to-face residential habilitation services *in accordance with the consumer's ISP and residential habilitation plan* on each of the 11 days of the enrollment requirement. These are known as countable service days.

Clauses 635-10.5(b)(9)(ii)(a) and (b) are amended as follows:

(a) The full month supportive IRA residential habilitation services price shall be paid for services provided to a consumer who meets the enrollment requirement in subparagraph (11)(i) of this subdivision and who receives face-to-face residential habilitation service(s) *in accordance with the consumer's ISP and residential habilitation plan* on 4 of the 22 days of the enrollment requirement. Services provided on these 4 days must be delivered, initiated or concluded at the site. No more than 2 days of service within a week may be counted toward the 4 day requirement. These 4 days are countable service days.

(b) One-half of the full month supportive IRA price shall be paid for services provided to a consumer who meets the enrollment re-

quirement in subparagraph (11)(ii) of this subdivision and who receives face-to-face residential habilitation services *in accordance with the consumer's ISP and residential habilitation plan* on 2 of the 11 days of the enrollment requirement. Services provided on these 2 days must be delivered, initiated or concluded at the site. No more than 1 day of service within a week may be counted toward the 2 day requirement. These 2 days are countable service days.

Clauses 635-10.5(b)(10)(ii)(a)-(d) are amended as follows:

(a) The full month site-specific supervised IRA price shall be paid for services provided to a consumer who meets the enrollment requirement in subparagraph (11)(i) of this subdivision and who receives face-to-face residential habilitation service(s) *in accordance with the consumer's ISP and residential habilitation plan* on each of the 22 days of the enrollment requirement. These 22 days are countable service days.

(b) One-half of the full month site-specific supervised IRA price shall be paid for services provided to a consumer who meets the enrollment requirement in subparagraph (11)(ii) of this subdivision and who receives face-to-face residential habilitation services *in accordance with the consumer's ISP and residential habilitation plan* on each of the 11 days of the enrollment requirement. These 11 days are countable service days.

(c) The full month site-specific supportive IRA price shall be paid for services provided to a consumer who meets the enrollment requirement in subparagraph (11)(i) of this subdivision and who receives face-to-face residential habilitation service(s) *in accordance with the consumer's ISP and residential habilitation plan* on 4 of the 22 days of the enrollment requirement. The services provided on these 4 days must be delivered, initiated or concluded at the site. No more than 2 days of service within a week may be counted toward the 4 day requirement. These 4 days are countable service days.

(d) One-half of the full month site-specific supportive IRA price shall be paid for services provided to a consumer who meets the enrollment requirement in subparagraph (11)(ii) of this subdivision and who receives face-to-face residential habilitation services *in accordance with the consumer's ISP and residential habilitation plan* on 2 of the 11 days of the enrollment requirement. The services provided on these 2 days must be delivered, initiated or concluded at the site. No more than 1 day of service within a week may be counted toward the 2 day requirement. These 2 days are countable service days.

Subparagraph 635-10.5(b)(12)(v) is amended as follows:

(v) Services provided on countable service days must be documented. *On any countable service day there must be documentation of at least one residential habilitation service delivered to the person by IRA staff on that day.*

Subparagraphs 635-10.5(d)(2)(i) and (ii) are amended as follows:

(i) A provider may claim the monthly supported employment service fee, as calculated in clause (1)(ii)(c) of this subdivision, for an eligible person who is employed and to whom the provider has rendered, on separate days, at least two face-to-face documented supported employment services [as specified] *in accordance with the person's individualized service plan (ISP) and supported employment plan.*

(ii) A provider may claim the monthly supported employment service fee, as calculated in clause (1)(ii)(c) of this subdivision, for an eligible person for whom the provider is actively engaged in preparatory and placement activities leading to competitive employment or reemployment. The provider must have rendered, on separate days, at least four such documented supported employment services, [as specified] *in accordance with the person's ISP and supported employment plan*, of which at least two are face-to-face contacts.

Paragraph 635-10.5(d)(3) is amended as follows:

(3) Reimbursement shall be contingent upon OMRDD's prior approval of HCBS waiver supported employment service to the person and documentation that the service is provided in accordance with the person's [individualized service plan (ISP)] *ISP and supported employment plan.*

Subdivision 635-99.1(be) is amended as follows:

(be) Plan, individualized service (ISP). [Within a home and community-based service (HCBS) waiver district, the] *The written document that is developed by a person's chosen [case manager] service coordinator, the [waiver participant] person and/or his or her advocate [. It] , which describes the services, activities and supports, regardless of funding source, and which constitutes the person's individualized service environment. The goal of the individualized service plan is to ensure the provision of those things necessary to sustain the person in his/her chosen environment and preclude movement to an ICF/MR. These services, activities and supports, identified in the ISP, are to reflect the preferences, capabilities*

and capacities of the person and emphasize the development of self-determination (i.e., making personal choices), independence, productivity, and integration into the community. The [individualized service plan] *ISP*, identified by personal descriptive and identification information, contains at a minimum:

- (1) assessment information and recommendations;
- (2) an identification of each service, service provider (including type), the amount, frequency, and duration of each service, and effective dates for service delivery;
- (3) an identification of the person's personal goals, preferences, capabilities, and capacities which are then related to habilitation or support needs stated in terms of outcomes to be achieved within specified timeframes; and
- (4) [case management waiver services] *service coordination*, including assessment, service planning and coordination, linkage and referral, follow-up and monitoring.

It is the responsibility of the person's chosen [case manager] *service coordinator* to ensure that the *ISP* is reviewed at least semi-annually and includes consideration of the information obtained from other-than-OMRDD providers (if any), who are providing services (i.e., as appropriate, the individualized written rehabilitation plan (IWRP) or the individualized education plan (IEP)). The [case manager] *service coordinator* should also ensure that a review of the *ISP* occurs when the person and/or his or her advocate request it; or when the capabilities, capacities or preferences of the person have changed and warrant a review; or *when it is determined by the [case manager] service coordinator that the prevailing plan (or portions thereof) is/are ineffective. If habilitation services are provided (i.e. residential habilitation, day habilitation, supported employment, pre-vocational services), the relevant habilitation plan(s) must be developed and reviewed semi-annually by the habilitation service provider. The service coordinator shall attach the relevant habilitation plan(s) to the ISP. With the following documents as attachments to the ISP, the ISP is complete:*

- (1) *all relevant habilitation plans (for persons receiving habilitation services); and*
- (2) *the individual plan for protective oversight (for residents of an individualized residential alternative (IRA), see section 686.16(a)(6)).*

The *ISP* is equivalent to a clinical record for the purposes of [Parts 604 and 636 of this Title, and their requirements, relative to] confidentiality and access.

Subdivision 686-99(ab) is amended as follows:

(ab) Plan, individualized service (*ISP*). [Within a home and community-based service (HCBS) waiver district, the] *The* written document that is developed by a person's chosen [case manager] *service coordinator*, the [waiver participant] *person* and/or his or her advocate [. It] , *which* describes the services, activities and supports, regardless of funding source, *and* which constitutes the person's individualized service environment. The goal of the individualized service plan is to ensure the provision of those things necessary to sustain the person in his/her chosen environment and preclude movement to an ICF/MR. These services, activities and supports, identified in the *ISP*, are to reflect the preferences, capabilities and capacities of the person and emphasize the development of self-determination (i.e., making personal choices), independence, productivity, and integration into the community. The [individualized service plan] *ISP*, identified by personal descriptive and identification information, contains at a minimum:

- (1) assessment information and recommendations;
- (2) an identification of each service, service provider (including type), the amount, frequency, and duration of each service, and effective dates for service delivery;
- (3) an identification of the person's personal goals, preferences, capabilities, and capacities which are then related to habilitation or support needs stated in terms of outcomes to be achieved within specified timeframes; and
- (4) [case management waiver services] *service coordination*, including assessment, service planning and coordination, linkage and referral, follow-up and monitoring.

It is the responsibility of the person's chosen [case manager] *service coordinator* to ensure that the *ISP* is reviewed at least semi-annually and includes consideration of the information obtained from other-than-OMRDD providers (if any), who are providing services (i.e., as appropriate, the individualized written rehabilitation plan (IWRP) or the individualized education plan (IEP)). The [case manager] *service coordinator* should also ensure that a review of the *ISP* occurs when the person and/or his or her advocate request it; or when the capabilities, capacities or

preferences of the person have changed and warrant a review; or *when it is determined by the [case manager] service coordinator that the prevailing plan (or portions thereof) is/are ineffective. If habilitation services are provided (i.e. residential habilitation, day habilitation, supported employment, pre-vocational services), the relevant habilitation plan(s) must be developed and reviewed semi-annually by the habilitation service provider. The service coordinator shall attach the relevant habilitation plan(s) to the ISP. With the following documents as attachments to the ISP, the ISP is complete:*

- (1) *all relevant habilitation plans (for persons receiving habilitation services); and*
- (2) *the individual plan for protective oversight (for residents of an individualized residential alternative (IRA), see section 686.16(a)(6)).*

The *ISP* is equivalent to a clinical record for the purposes of [Parts 604 and 636 of this Title, and their requirements, relative to] confidentiality and access.

Text of proposed rule and any required statements and analyses may be obtained from: Barbara Brundage, Acting Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority:

a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) statutory responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

b. OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09.

c. OMRDD's responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates and fees for services in facilities licensed by OMRDD.

2. Legislative Objectives: These proposed amendments further the legislative objectives embodied in sections 13.07, 13.09, and 43.02 of the Mental Hygiene Law by making necessary revisions to clarify the rate/fee setting regulations governing the reimbursement of HCBS waiver habilitation services. The proposed amendments will clarify funding provisions for voluntary agency providers of Home and Community-based (HCBS) Waiver residential habilitation and supported employment services (amendments to section 635-10.5). The amendments also make various other technical and conforming amendments to update pertinent glossary definitions (amendments to sections 635-99.1 and 686.99).

3. Needs and Benefits: From the time of their inception and implementation in New York State, OMRDD has provided funding for HCBS waiver habilitation services delivered under its auspices by voluntary agency providers of developmental disabilities services. Implementation of the HCBS waiver and the services provided have evolved and policies have been developed which give guidance to providers regarding expectations and responsibilities. By policy, providers have been required to develop various waiver service-specific habilitation plans, which are appended as a part of the Individualized Service Plan (ISP). The proposed regulatory changes will incorporate the policy that has evolved by requiring that habilitation services be delivered in accordance with the relevant habilitation plan. The proposed regulatory amendments will help to assure that consumers receive the supports and services that have been identified in the *ISP* and specified in the habilitation plan as important steps in attaining valued outcomes. In addition, the proposed amendments will enhance accountability in the delivery of services.

The proposed amendments will clarify requirements for the reimbursement of residential habilitation services and supported employment services. Recently, OMRDD amended its reimbursement regulations for IRA residential habilitation services to recognize either a monthly or a half-monthly unit of service and corresponding price. The proposed amendments clarify that in order for the provider to claim payment for these and other habilitation services, they must be delivered to the consumer according to the specifications in the consumers Individualized Service Plan (ISP) and in the relevant habilitation plan.

The proposed amendments also include revisions to pertinent glossary definitions. These are primarily conforming changes which clarify the

relationship of the service specific habilitation plans to the overall Individualized Service Plan (ISP). In addition to such conforming revisions, the changes also include minor technical amendments which update the definitions to reflect past regulatory revisions and evolution in the administration of habilitation services. For example, references to "case manager" have been changed to "service coordinator."

4. Costs:

a. Costs to the Agency and to the State and its local governments: The clarifying amendments related to the provision of HCBS Waiver residential habilitation services and supported employment services will not have any cost implications for OMRDD, the State, or for local governments. The changes do not create any new service options or institute any new compliance requirements.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the amendments. The amendments clarify existing service documentation requirements that are associated with the billing and payment of providers of these habilitation services. None of the proposed revisions will have any fiscal impacts for providers of services because they include no additional compliance requirements and will not affect overall amounts of reimbursement to providers.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: No additional paperwork will be required by the proposed amendments. The proposed amendments merely clarify a requirement that residential habilitation services and supported employment services are delivered as planned and that the provision of the service be adequately documented. In keeping with existing administrative practice, the amendments specify that the particular habilitation service be delivered in accordance with the consumer's ISP and the relevant habilitation plan. Current regulations already require that residential habilitation services provided in IRAs on countable service days must be documented. This standard is clarified in the proposed amendments by establishing a minimal threshold for documentation of at least one residential habilitation service per countable service day to satisfy this requirement.

The pertinent glossary entries have also been amended with conforming revisions to the definitions of Individualized Service Plan (ISP). These changes merely update the definition to reflect subdivision of the planning and other processes which evolved with many years of actual HCBS waiver service provision.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to the above cited facilities or services for persons with developmental disabilities.

8. Alternatives: The proposed rule making contains what OMRDD believes to be necessary amendments to clarify and update the reimbursement regulations for the referenced facilities and services. There are no alternatives to promulgation of these changes if the regulations are to clearly articulate expectations regarding the provision of residential habilitation and supported employment services.

9. Federal Standards: The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: OMRDD expects to adopt the proposed amendments as soon as possible within the time frames mandated by the State Administrative Procedure Act. However, these amendments do not impose any new requirements with which regulated parties are expected to comply.

Regulatory Flexibility Analysis

1. Effect on Small Business: These proposed regulatory amendments will apply to voluntary not-for-profit corporations that provide Home and Community-based (HCBS) Waiver services. New York State currently funds authorized agencies which operate HCBS Waiver Individualized Residential Alternatives (IRAs) and provide the residential habilitation and supported employment services which are subject to the proposed amendments. As of March 2004, approximately 15,000 persons were receiving residential habilitation services delivered at approximately 3,170 authorized IRA sites. As of December 2003, there were approximately 3,300 persons receiving HCBS waiver supported employment services.

The OMRDD has determined, through a review of the certified cost reports, that the organizations which operate the above sites and provide the developmental disabilities services in question employ fewer than 100 employees at the discrete certified or authorized sites throughout the State and would be therefore be classified as small businesses.

The proposed amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will clarify the provisions governing the reimbursement of the referenced small business service providers and that they will continue to provide appropriate funding for small business providers of developmental disabilities services. Further, OMRDD expects that the proposed amendments will not cause undue hardship to small business providers due to increased costs for additional services or increased compliance requirements.

Pursuant to the Social Services Law, local governments incur no costs for the above referenced facilities or services, or the State reimburses local governments for their share of the cost of most of these Medicaid funded programs and services. Although there may be a local government share in the costs of providing the referenced services, there will be no additional costs to local governments associated with the proposed amendments because they only clarify reimbursement provisions and do not affect levels of reimbursement or service frequency.

2. Compliance Requirements: There are no additional compliance requirements for small businesses or local governments that would result from the implementation of these proposed amendments.

The proposed amendments will clarify requirements for the reimbursement of residential habilitation services and supported employment services. Effective July 1, 2002, OMRDD amended its reimbursement regulations for residential habilitation services to recognize either a monthly or a half-monthly unit of service and corresponding price. The proposed amendments clarify that in order for the provider to claim payment for these and other habilitation services, they must be delivered to the consumer according to the specifications in the consumers Individualized Service Plan (ISP) and in the relevant habilitation plan. Since consumers typically receive several habilitation services, sometimes from different providers, the relevant habilitation plan is a part of the overall ISP that is maintained by the entity providing the specific habilitation service. These service specific habilitation plans provide greater detail and have been a long-standing administrative requirement attendant to the proper delivery and documentation of habilitation services. These changes do not, therefore, institute any new requirements for providers.

The proposed amendments also include revisions to pertinent glossary definitions. These are primarily conforming changes which clarify the relationship of the service specific habilitation plans to the overall Individualized Service Plan (ISP). In addition to such conforming revisions, the changes also include minor technical amendments which update the definitions to reflect past regulatory revisions and evolution in the administration of such habilitation services. Again, such technical conforming changes to update the glossary do not add any compliance requirements for small businesses or local governments.

3. Professional Services: No additional professional services are required as a result of these amendments. The amendments will not add to the professional service needs of local governments or provider agencies.

4. Compliance Costs: There are no additional compliance costs to small business regulated parties or local governments associated with the implementation of, and continued compliance with, these proposed amendments.

5. Economic and Technological Feasibility: The proposed amendments do not impose on regulated parties the use of any new technological processes.

6. Minimizing Adverse Economic Impact: As discussed in the Regulatory Impact Statement, the amendments will have no fiscal effect on State or local governments, or on regulated parties.

OMRDD has also reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. There are, however, no adverse economic impacts attributable to these proposed amendments.

7. Small Business and Local Government Participation: OMRDD consulted extensively with and had the input of representative providers and/or members of provider organizations during the development of the revised unit of service methodology for the reimbursement of HCBS Waiver residential habilitation services provided in IRAs. Since its implementation, providers have also been trained and kept abreast of the attendant billing features so that the clarifying amendments that are currently being proposed have been anticipated and will be well understood.

Rural Area Flexibility Analysis

A rural area flexibility analysis for these amendments was not submitted because the amendments will not impose any adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This is because the proposed

amendments only clarify existing requirements concerning the reimbursement of HCBS waiver residential habilitation and supported employment services. Specifically, the proposed amendments clarify that in order for the provider to claim payment for these and other habilitation services, they must be delivered to the consumer according to the specifications in the consumers Individualized Service Plan (ISP) and in the relevant habilitation plan. The amendments do not affect levels of reimbursement or service frequency and will therefore not have an adverse economic impact on regulated entities whether they operate in rural or urban settings.

Job Impact Statement

A Job Impact Statement for these amendments was not being submitted because it is apparent from the nature and purposes of the amendments that they will not have an impact on jobs and/or employment opportunities. This finding is based on the fact that the proposed rule making only clarifies existing requirements concerning the reimbursement of HCBS waiver residential habilitation and supported employment services. Since the amendments do not affect levels of reimbursement or service frequency, they will not have any effect on and jobs or employment opportunities in New York State.

Public Service Commission

NOTICE OF ADOPTION

Internal Corporate Ownership Restructuring by Charter Communications Holding Company, LLC

I.D. No. PSC-43-03-00039-A
Filing date: April 2, 2004
Effective date: April 2, 2004

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

Action taken: The commission, on Jan. 21, 2004, adopted an order in Case 03-V-1379 authorizing the restructuring of subsidiary level ownership of Charter Communications Holding Company, LLC (Charter).

Statutory authority: Public Service Law, section 222

Subject: Corporate restructuring.

Purpose: To allow Charter to undertake an internal reorganization.

Substance of final rule: The Commission approved the internal corporate ownership restructuring of Charter Communication Holding Company, LLC (Charter Communications) including new intermediate corporate parent entities affecting the ownership of various cable service systems operating as Charter Communications, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-V-1379SA1)

NOTICE OF ADOPTION

Revolving Credit Agreement by Central Hudson Gas and Electric Corporation

I.D. No. PSC-45-03-00011-A
Filing date: April 6, 2004
Effective date: April 6, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in Case 03-M-1510, granting Central Hudson Gas & Electric Corporation

(Central Hudson) permission to enter into a new revolving credit agreement and to issue and sell medium-term notes.

Statutory authority: Public Service Law, section 69

Subject: Issuance of debt.

Purpose: To provide funding for construction, maturing debt, benefit programs and pension obligations.

Substance of final rule: The Commission approved a request by Central Hudson Gas & Electric Corporation (Central Hudson) to issue and sell \$85 million of Medium-Term Notes in one or more transactions, not later than December 31, 2006 and allowed Central Hudson to enter into a new Revolving Credit Agreement in an amount not to exceed \$77 million for a period of up to five years, commencing July 1, 2004, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-M-1510SA1)

NOTICE OF ADOPTION

Transfer of Property by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-02-04-00007-A
Filing date: March 31, 2004
Effective date: March 31, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in case 03-M-1737, allowing Consolidated Edison Company of New York, Inc.'s (Con Edison) to sell and transfer property.

Statutory authority: Public Service Law, sections 5(b), (c), 65(1), 66(1), (2), (5), (8), (9), (10), (11), (12) and 70

Subject: Sale and transfer of property.

Purpose: To sell property that is no longer required by Con Edison for generation purposes.

Substance of final rule: The Commission approved a request by Consolidated Edison Company of New York, Inc. for the sale and transfer of 2.15 acres of land, a single-family house and garage, located at 23 Maisello Road in the Town of Clermont, New York to Ms. Christine Hanson, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-M-1737SA1)

NOTICE OF ADOPTION

Transfer of Cable System Facilities from Hornell Television Services, Inc. to Atlantic Broadband Penn, LLC

I.D. No. PSC-03-04-00015-A
Filing date: March 31, 2004
Effective date: March 31, 2004

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

Action taken: The commission, on March 16, 2004, adopted an order in Case 03-V-1783, allowing Hornell Television Service, Inc. d/b/a Charter

Communications to transfer certain cable system franchises to Atlantic Broadband Penn, LLC (Atlantic Broadband).

Statutory authority: Public Service Law, section 222

Subject: Transfer of certain cable system facilities.

Purpose: To approve the transfer.

Substance of final rule: The Commission approved the assignment and transfer of control of certain cable television franchises of Hornell Television Service, Inc. d/b/a Charter Communications to Atlantic Broadband Penn, LLC, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-V-1783SA1)

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

Federal Communications Commission's Triennial Review Order by Verizon New York Inc.

I.D. No. PSC-16-04-00002-P

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

Proposed action: The Public Service Commission is considering a petition filed by Verizon New York Inc. (Verizon) on March 10, 2004 to amend or modify its interconnection agreements with various parties to implement the Federal Communications Commission's (FCC) triennial review order: FCC 03-36, released Aug. 21, 2003 (TRO). The commission may also consider the effect of the TRO and court decisions related to it on Verizon's interconnection agreements.

Statutory authority: Public Service Law, sections 92(1) and 94(2)

Subject: Interconnection agreements of recent FCC and court decisions.

Purpose: To consider the effect on interconnection agreements of TRO and related court decisions.

Substance of proposed rule: The Commission is considering a petition filed by Verizon New York Inc. (Verizon) on March 10, 2004 to amend or modify its interconnection agreements with various parties to implement the Federal Communications Commission's (FCC) Triennial Review Order: FCC 03-36, released August 21, 2003 (TRO). The Commission may also consider the effect of the TRO and court decisions related to it on Verizon's interconnection agreements.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(04-C-0314SA1)

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

Federal Communications Commission's Triennial Review Order by AT&T Communications of New York Inc.

I.D. No. PSC-16-04-00003-P

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

Proposed action: The Public Service Commission is considering a petition filed by AT&T Communications of New York Inc. (AT&T) on March 10, 2004 to amend or modify its interconnection agreements with various parties to implement the Federal Communications Commission's (FCC) triennial review order: FCC 03-36, released Aug. 21, 2003 (TRO). The commission may also consider the effect of the TRO and court decisions related to it on AT&T's interconnection agreements.

Statutory authority: Public Service Law, sections 92(1) and 94(2)

Subject: Interconnection agreements of recent FCC and court decisions.

Purpose: To consider the effect on interconnection agreements of TRO and related court decisions.

Substance of proposed rule: The Commission is considering a petition filed by AT&T Communications of New York (AT&T) on March 10, 2004 to amend or modify its interconnection agreements with various parties to implement the Federal Communications Commission's (FCC) Triennial Review Order: FCC 03-36, released August 21, 2003 (TRO). The Commission may also consider the effect of the TRO and court decisions related to it on AT&T interconnection agreements.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(04-C-0318SA1)

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

Standby Service by Central Hudson Gas & Electric Corporation

I.D. No. PSC-16-04-0004-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 or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 15 to become effective July 1, 2004.

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

Subject: Standby service.

Purpose: To revise the rates, terms and conditions for the provisions of standby service.

Substance of proposed rule: On March 31, 2004, Central Hudson Gas & Electric Corporation (Central Hudson) filed proposed tariff revisions to Schedule P.S.C. No. 15—Electricity to become effective July 1, 2004. Central Hudson proposes to revise the rates, terms and conditions for the provisions of standby service pursuant to Clause 5 of Commission order issued December 4, 2003 in Case 02-E-1108.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(02-E-1108SA2)

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

Request for Lightened Regulation by NYC ENERGY, LLC

I.D. No. PSC-16-04-00005-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 or reject, in whole or in part, a request by NYC ENERGY, LLC (NYC ENERGY) that it be lightly regulated as an electric corporation operating in the wholesale electric market.

Statutory authority: Public Service Law, sections 4(1), 66(1), 69, 70 and 110

Subject: NYC ENERGY's request for lightened regulation.

Purpose: To establish the regulatory requirements for NYC ENERGY as an electric corporation.

Substance of proposed rule: By petition filed March 30, 2004, NYC ENERGY seeks an order providing for lightened regulation of it as an electric corporation. While framed as a petition for a declaratory ruling, the desired result is not simply a declaration of entitlement to lightened regulation but an order providing for such regulation. This request is in the context of a licensing application that seeks approval to construct a barge-mounted electric generating facility to be located at the Brooklyn Navy Yard in Brooklyn, New York. NYC ENERGY requests that it be regulated in a similar manner to others that sell electric energy exclusively at wholesale.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaelyn A. Brillig, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.
(04-E-0428SA1)

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

Payment of Interest on Customer Overcharges by Niagara Mohawk Power Corporation

I.D. No. PSC-16-04-00006-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 207.

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

Subject: Rule No. 33—payment of interest on customer overcharges.

Purpose: To revise the manner in which the company refunds customer overpayments and interest when the overpayments were caused by a company error.

Substance of proposed rule: Niagara Mohawk Power Corporation proposed to revise Rule No. 33—Payment of Interest on Customer Overcharges in its electric tariff schedule, P.S.C. No. 207, in regards to the manner the company refunds customer overpayments and interest when overpayments were caused by a company error.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaelyn A. Brillig, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.
(04-E-0461SA1)

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

Curtailement Penalty Charges by Central Hudson Gas & Electric Company

I.D. No. PSC-16-04-00007-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 or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 12.

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

Subject: Curtailement penalty charges.

Purpose: To clarify the curtailement penalties the company charges under Service Classification Nos. 8 and 9 and to retail suppliers under the balancing and settlement provisions of the company's Retail Access Program and the penalty rate charge under Service Classification No. 11 for all gas consumed during a curtailement.

Substance of proposed rule: Central Hudson Gas & Electric Corporation (Central Hudson) proposes to clarify the penalties the company charges under S.C. No. 8 — Interruptible Gas Sales, S.C. No. 9 — Interruptible Transportation Service and to Retail Suppliers under the Balancing and Settlement provisions of Central Hudson's Retail Access Program, for all natural gas consumed during service curtailements. Central Hudson also proposes to modify the penalty rate under S.C. No. 11 — Firm Transportation — Core for all gas consumed during a curtailement.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaelyn A. Brillig, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.
(04-G-0435SA1)

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

Payment of Interest on Customer Overcharges by Niagara Mohawk Power Corporation

I.D. No. PSC-16-04-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 219.

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

Subject: Rule No. 21—payment of interest on customer overcharges.

Purpose: To revise the manner in which the company refunds customer overpayments and interest when the overpayments were caused by a company error.

Substance of proposed rule: Niagara Mohawk Power Corporation proposes to revise Rule No. 21—Payment of Interest on Customer Overcharges in its gas tariff schedule, P.S.C. No. 219, in regards to the manner the company refunds customer overpayments and interest when the overpayments were caused by a company error.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(04-G-0460SA1)

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

Service Quality Assurance Program by Niagara Mohawk Power Corporation

I.D. No. PSC-16-04-00009-P

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

Proposed action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a proposal of Niagara Mohawk Power Corporation (Niagara Mohawk) for modifications to its Service Quality Assurance Program as contemplated in attachment 9 of the joint proposal that was approved by the commission in Opinion No. 01-6, issued Dec. 3, 2001.

Statutory authority: Public Service Law, section 66

Subject: Service Quality Assurance Program.

Purpose: To modify certain performance indicators and targets.

Substance of proposed rule: The New York State Public Service Commission is considering whether to accept, reject or modify, in whole or in part, a proposal by the Niagara Mohawk Power Corporation to modify certain components of the utility's Service Quality Assurance Program as contemplated in Attachment 9 of the Joint Proposal approved by the Commission in Opinion NO. 01-6, issued December 3, 2001.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(01-M-0075SA21)

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

Calculation of Franchise Fees by Cablevision Systems Long Island Corp. and the Village of Sea Cliff

I.D. No. PSC-16-04-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision Systems Long Island Corp. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees.

Statutory authority: Public Service Law, section 216(1)

Subject: Calculation of franchise fees.

Purpose: To allow Cablevision Systems Long Island Corp. and the Village of Sea Cliff to agree to exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross receipts.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision Systems Long Island Corp. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Village of Sea Cliff (Nassau County). Section 595.1(o)(2) requires franchise contract language to express franchise fees as a percentage of gross revenues derived from the operation of the cable system. Gross revenues are defined in the referenced section as "all revenues required to be reported to the commission . . . pursuant to 9 NYCRR Part 595". Section 595.1(o)(2) permits exclusions from that revenue base, but requires that such base include all "revenues received directly from subscribers from any cable services purchased by subscribers on a regular, recurring monthly basis." Franchise fee collections fall within these definitions of gross revenues. Therefore, a waiver of rules is required to permit exclusion of franchise fee collections from calculation of gross revenues.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(97-V-0319SA1)

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

Calculation of Franchise Fees by Cablevision Rockland/Ramapo, Inc. and the Village of Suffern

I.D. No. PSC-16-04-00011-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 or reject, in whole or in part, a petition by Cablevision Rockland/Ramapo, Inc. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees.

Statutory authority: Public Service Law, section 216(1)

Subject: Calculation of franchise fees.

Purpose: To allow Cablevision Rockland/Ramapo, Inc. and the Village of Suffern to agree to exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross receipts.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision Rockland/Ramapo, Inc. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Village of Suffern (Rockland County). Section 595.1(o)(2) requires franchise contract language to express franchise fees as a percentage of gross revenues derived from the operation of the cable system. Gross revenues are defined in the referenced section as "all revenues required to be reported to the commission . . . pursuant to 9 NYCRR Part 595". Section 595.1(o)(2) permits exclusions from that revenue base, but requires that such base include all "revenues received directly from subscribers for any cable services purchased by subscribers on a regular, recurring monthly basis". Franchise fee collections fall within these definitions of gross revenues. Therefore, a waiver of rules is required to permit exclusion of franchise fee collections from calculation of gross revenues.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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. (99-V-0838SA1)

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

Calculation of Franchise Fees by Cablevision of Southern Westchester, Inc. and the Village of Pelham

I.D. No. PSC-16-04-00012-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 or reject, in whole or in part, a petition by Cablevision of Southern Westchester, Inc. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees.

Statutory authority: Public Service Law, section 216(1)

Subject: Calculation of franchise fees.

Purpose: To allow Cablevision of Southern Westchester, Inc. and the Village of Pelham to agree to exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross receipts.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision of Southern Westchester, Inc. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Village of Pelham (Westchester County). Section 595.1(o)(2) requires franchise contract language to express franchise fees as a percentage of gross revenues derived from the operation of the cable system. Gross revenues are defined in the referenced section as "all revenues required to be reported to the commission . . . pursuant to 9 NYCRR Part 595". Section 595.1(o)(2) permits exclusions from that revenue base, but requires that such base include all "revenues received directly from subscribers for any cable services purchased by subscribers on a regular, recurring monthly basis". Franchise fee collections fall within these definitions of gross revenues. Therefore, a waiver of rules is required to permit exclusion of franchise fee collections from calculation of gross revenues.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-V-1598SA1)

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

Calculation of Franchise Fees by Cablevision Systems Long Island Corp. and the Village of Manorhaven

I.D. No. PSC-16-04-00013-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 or reject, in whole or in part, a petition by Cablevision Systems Long Island Corp. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees.

Statutory authority: Public Service Law, section 216(1)

Subject: Calculation of franchise fees.

Purpose: To allow Cablevision Systems Long Island Corp. and the Village of Manorhaven to agree to exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross receipts.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision Systems Long Island Corp. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Village of Manorhaven (Nassau County). Section 595.1(o)(2) requires franchise contract language to express franchise fees as a percentage of gross revenues derived from the operation of the cable system. Gross revenues are defined in the referenced section as "all revenues required to be reported to the commission . . . pursuant to 9 NYCRR Part 595". Section 595.1(o)(2) permits exclusions from that revenue base, but requires that such base include all "revenues received directly from subscribers for any cable services purchased by subscribers on a regular, recurring monthly basis". Franchise fee collections fall within these definitions of gross revenues. Therefore, a waiver of rules is required to permit exclusion of franchise fee collections from calculation of gross revenues.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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. (04-V-0050SA1)

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

Calculation of Franchise Fees by Cablevision of Wappingers Falls, Inc. and the Village of Croton-on-Hudson

I.D. No. PSC-16-04-00014-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 or reject, in whole or in part, a petition by Cablevision of Wappingers Falls, Inc. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees.

Statutory authority: Public Service Law, section 216(1)

Subject: Calculation of franchise fees.

Purpose: To allow Cablevision of Wappingers Falls, Inc. and the Village of Croton-on-Hudson to agree to exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross receipts.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision of Wappingers Falls, Inc. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Village of Croton-on-Hudson (Westchester County). Section 595.1(o)(2) requires franchise contract language to express franchise fees as a percentage of gross revenues derived from the operation of the cable system. Gross revenues are defined in the referenced section as "all revenues required to be reported to the commission . . . pursuant to 9 NYCRR Part 595". Section 595.1(o)(2) permits exclusions from that revenue base, but requires that such base include all "revenues received directly from subscribers for any cable services purchased by subscribers on a regular, recurring monthly basis." Franchise fee collections fall within these definitions of gross revenues. Therefore, a waiver of rules is required to permit exclusion of franchise fee collections from calculation of gross revenues.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillong, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.
(04-V-0319SA1)

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

Calculation of Franchise Fees by Cablevision of Wappingers Falls, Inc. and the Town of Monroe

I.D. No. PSC-16-04-00015-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 or reject, in whole or in part, a petition by Cablevision of Wappingers Falls, Inc. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees.

Statutory authority: Public Service Law, section 216(1)

Subject: Calculation of franchise fees.

Purpose: To allow Cablevision of Wappingers Falls, Inc. and the Town of Monroe to agree to exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross receipts.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision of Wappingers Falls, Inc. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Town of Monroe (Orange County). Section 595.1(o)(2) requires franchise contract language to express franchise fees as a percentage of gross revenues derived from the operation of the cable system. Gross revenues are defined in the referenced section as "all revenues required to be reported to the commission . . . pursuant to 9 NYCRR Part 595". Section 595.1(o)(2) permits exclusions from that revenue base, but requires that such base include all "revenues received directly from subscribers for any cable services purchased by subscribers on a regular, recurring monthly basis." Franchise fee collections fall within these definitions of gross revenues. Therefore, a waiver of rules is required to permit exclusion of franchise fee collections from calculation of gross revenues.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillong, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.
(04-V-0382SA1)

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

Initial Tariff Schedule by Emerald Green Lake Louise Marie Water Company, Inc.

I.D. No. PSC-16-04-00016-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 or reject, in whole or in part, or modify, Emerald Green Lake Louise Marie Water Company, Inc.'s initial tariff schedule, P.S.C. No. 1—Water, to become effective Aug. 1, 2004.

Statutory authority: Public Service Law, section 89-e(2)

Subject: Initial tariff schedule—electronic filing.

Purpose: To approve a tariff schedule.

Substance of proposed rule: On March 26, 2004, Emerald Green Lake Louise Marie Water Company, Inc. (Emerald Green or the company), filed an electronic initial tariff schedule, P.S.C. No. 1—Water, which sets forth the rates, charges, rules and regulations under which the company will operate to become effective August 1, 2004. Emerald Green's filed tariff covers the service territory formerly served by Lake Louise Marie Water Company, Inc. Emerald Green is a homeowner's association and has 539 customers, but anticipates significant customer growth in the next ten years because of an increase in construction activity in the area. Emerald Green is located in two real estate developments known as Lake Louise Marie and Emerald Green in Rock Hill, Town of Thompson, Sullivan County. The company proposes an annual per premises rate of \$472. The tariff defines when a bill will be considered delinquent and establishes a late payment charge and a returned check charge. The restoration of service charge is \$50.00 during normal business and outside of normal business hours Monday through Friday, and \$75.00 on weekends and public holidays. When the shut off is not easily located and extensive digging is required to shut-off, the charge will be \$250.00 at all times. In addition, Emerald Green is proposing to establish a Capital Reserve Fee (Statement No. 1) (CRF) of \$4,000 for each new home which comes online after August 1, 2004. Emerald Green's tariff is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) - located under the file room - Tariffs. The Commission may approve or reject, in whole or in part, or modify the company's request.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillong, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.
(04-W-0349SA1)

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

Water Rates and Charges by the Birch Hill Water Supply Corporation

I.D. No. PSC-16-04-00017-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 or reject, in whole or in part, or modify, a request filed by the Birch Hill Water Supply Corporation to make various changes in the rates and charges contained in its tariff schedule P.S.C. No. 3—Water, to become effective July 15, 2004.

Statutory authority: Public Service Law, section 89-c(10)

Subject: Water rates and charges.

Purpose: To increase Birch Hill Water Supply Corporation's annual revenues by about \$38,950 or 100 percent.

Substance of proposed rule: On March 29, 2004, Birch Hill Water Supply Corporation (Birch Hill) filed to become effective July 15, 2004, First Revised Leaf No. 12 to its tariff schedule P.S.C. No. 3—Water. Birch Hill currently provides water service to 65 customers and is located in the Town of Beekman, Dutchess County. The proposed filing would increase the rates by 100% and annual revenues by \$38,950. The Commission may approve or reject, in whole or in part, or modify the company's request.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillong, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.
(04-W-0430SA1)

Department of State

NOTICE OF ADOPTION

Approval of Real Estate Courses

I.D. No. DOS-31-03-00001-A

Filing No. 373

Filing date: April 2, 2004

Effective date: April 21, 2004

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

Action taken: Amendment of Part 176 of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-k(2) and (3)

Subject: Approval of real estate courses leading to qualification for a license as a real estate broker or salesperson.

Purpose: To update existing rules relating to the approval of real estate courses and schools offering qualifying education to prospective real estate brokers and salespersons, and eliminate obsolete portions of the existing rules.

Text or summary was published in the notice of proposed rule making, I.D. No. DOS-31-03-00001-P, Issue of August 6, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Bruce Stuart, Department of State, 84 Holland Ave., Albany, NY 12208, (518) 473-2728

Assessment of Public Comment

The agency received no public comment.

AMENDED NOTICE OF ADOPTION

Fire Safety Standards for Cigarettes

I.D. No. DOS-53-02-00018-AA

Filing No. 374

Filing date: April 2, 2004

Effective date: June 28, 2004

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

Action taken: Addition of Part 429 to Title 19 NYCRR.

Amended action: This action amends the rule that was filed with the Secretary of State on December 31, 2003, to be effective June 28, 2004, File No. 1486. The notice of adoption, I.D. No. DOS-53-02-00018-A, was published in the January 21, 2004 issue of the *State Register*.

Statutory authority: Executive Law, section 156-c(2)(a)

Subject: Fire safety standards for cigarettes.

Purpose: To set fire safety standards for cigarettes which will insure that such cigarettes meet performance standards which limit the risk that such cigarettes will ignite upholstered furniture, mattresses, or other household furnishings.

Text of amended rule: PART 429

FIRE SAFETY STANDARDS FOR CIGARETTES

1. General Requirements.

(a) On and after June 28, 2004, no cigarettes subject to the provisions of section 156-c of the Executive Law shall be sold or offered for sale in this state unless:

(1) such cigarettes have been tested in accordance with the test method prescribed in section 3 of this Part;

(2) such cigarettes meet the performance standard specified in section 4 of this Part; and

(3) a written certification has been filed by the manufacturer with the Department of State, Office of Fire Prevention and Control, 41 State Street, Albany, New York, 12231-0001, and the Office of the Attorney General, Cigarette Fire Safety Certifications, Administration Office, State Capitol, Albany, New York 12224 in accordance with section 6 of this Part.

(b) Nothing in this Part shall prohibit wholesale dealers or retail dealers from selling their inventory of cigarettes existing on June 28, 2004, provided that such wholesale dealer or retail dealer can establish that New York State tax stamps were affixed to such cigarettes pursuant to Article 20 of the Tax Law prior to June 28, 2004, and provided further that such wholesale dealer or retail dealer can establish that such inventory was purchased prior to June 28, 2004 in comparable quantity to the inventory purchased during the same period of 2003.

2. Definitions. For the purposes of this Part:

(a) "Agent" shall have the same meaning as subdivision eleven of section four hundred seventy of the tax law.

(b) "Cigarette" shall mean any roll for smoking whether made wholly or in part of tobacco or any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(c) "Manufacturer" shall mean:

(1) any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to be sold in New York State, including cigarettes intended to be sold in the United States through an importer; or

(2) the first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(3) any entity which becomes a successor of an entity described in paragraph (1) or (2) of this subdivision.

(d) "Repeatability" shall mean the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 per cent of the time.

(e) "Retail dealer" shall have the same meaning as subdivision nine of section four hundred seventy of the tax law.

(f) "Sale" shall mean any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefor. In addition to cash and credit sales, the giving of cigarettes as samples, prizes or gifts, and the exchanging of cigarettes for any consideration other than money are considered sales.

(g) "Sell" shall mean to sell, or to offer or agree to do the same.

(h) "Quality control and quality assurance program" shall mean the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment related problems do not effect the results of the testing. This program ensures that the testing repeatability remains within the required repeatability values stated in section 3(e) of this Part for all test trials used to certify cigarettes in accordance with this regulation.

(i) "Wholesale dealer" shall have the same meaning as subdivision eight of section four hundred seventy of the tax law.

3. Test Method.

(a) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials ("ASTM") standard E2187-02b "Standard Test Method for Measuring the Ignition Strength of Cigarettes," subject to the modifications stated in Appendix A to this Part. This standard may be obtained from the publisher at ASTM International, 100 Barr Harbor Drive, P.O. Box C700, W. Conshohocken, Pennsylvania 19428-2959. This material is available for public inspection and distribution at the Department of State, Office of Fire Prevention and Control, 41 State Street, Albany, New York 12231-0001.

(b) Testing shall be conducted on 10 layers of filter paper.

(c) Forty replicate tests shall comprise a complete test trial for each cigarette tested.

(d) The performance standard required by section 4 of this Part shall only be applied to a complete test trial.

(e) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19 pursuant to section 4 of this Part.

4. Performance Standard.

(a) When tested in accordance with section 3 of this Part, no more than 25 percent of the cigarettes tested in a test trial shall exhibit full length burns.

(b) Each cigarette listed in a certification submitted pursuant to section 6 of this Part that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in subdivision (a) of this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column (or 10 millimeters from the labeled end of the tobacco column for a non-filtered cigarette).

(c) The manufacturer or manufacturers of a cigarette that the Office of Fire Prevention and Control determines cannot be tested in accordance with the test method prescribed in section 3 of this Part shall propose a test method and performance standard for such cigarette to the Office of Fire Prevention and Control. Upon approval of the proposed test method and a determination by the Office of Fire Prevention and Control that the performance standard proposed by the manufacturer or manufacturers is equivalent to the performance standard prescribed in section 4 of this Part, the manufacturer or manufacturers may employ such test method and performance standard to certify such cigarette pursuant to section 6 of this Part. All other applicable requirements of this Part shall apply to such manufacturer or manufacturers.

5. Test Data.

In order to ensure compliance with the performance standard specified in section 4 of this Part, data from testing conducted by manufacturers to comply with this performance standard shall be kept on file by such manufacturers for a period of 3 (three) years and shall be sent to the Office of Fire Prevention and Control upon its request, and to the Office of the Attorney General upon its request, at the addresses specified in section 1(a)(3) of this Part.

6. Certification.

(a) Each manufacturer shall submit a written certification attesting that:

(1) each cigarette listed in the certification has been tested in accordance with section 3 of this Part; and

(2) each cigarette listed in the certification meets the performance standard set forth in section 4 of this Part.

(b) Each cigarette listed in the certification shall be described with the following information:

1. brand (i.e., the trade name on the package)
2. style (e.g., light, ultra light)
3. length in millimeters
4. circumference in millimeters
5. flavor (e.g., menthol, chocolate) if applicable
6. filter or non-filter
7. package description (e.g., soft pack, box)
8. marking approved in accordance with section 8 of this Part.

(c) Each cigarette certified under this section shall be re-certified every three years.

7. Notification of Certification.

Manufacturers certifying cigarettes in accordance with section 6 of this Part shall provide a copy of such certifications to all wholesale dealers and agents to which they sell cigarettes, and shall also provide sufficient copies of an illustration of the cigarette packaging marking utilized by the manufacturer pursuant to section 8 of this Part for each retailer to which the wholesale dealers and agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these cigarette packaging markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the Office of Fire Prevention and Control to inspect markings of cigarette packaging marked in accordance with section 8 of this Part.

8. Marking of Cigarette Packaging.

(a) Cigarettes which have been certified by a manufacturer in accordance with section 6 of this Part shall be marked to indicate compliance with the requirements of this Part. Such marking shall be in eight point type or larger and consist of:

(1) Modification of the product UPC Code to include a visible mark printed at or around the area of the UPC Code. Such mark may consist of alphanumeric or symbolic character(s) permanently stamped, engraved, embossed or printed in conjunction with the UPC; or

(2) Any visible combination of alphanumeric or symbolic character(s) permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or

(3) Printed, stamped, engraved or embossed text that indicates that the cigarettes meet New York Standards.

(b) Such marking shall be unique to packages that meet New York Standards.

(c) A manufacturer must use only one marking, and must apply this marking uniformly for all packages (including but not limited to packs, cartons, and cases) and brands marketed by that manufacturer.

(d) The Office of Fire Prevention and Control must be notified at the address specified in section 1(c) of this Part as to the marking which is selected.

(e) Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the Office of Fire Prevention and Control for approval. Upon receipt of the request, the Office of Fire Prevention and Control will approve or disapprove the marking offered. Proposed markings shall be deemed approved if the Office of Fire Prevention and Control fails to act within 10 business days of receiving a request for approval.

(f) No manufacturer shall modify its approved marking unless the modification has been approved by the Office of Fire Prevention and Control in accordance with this section.

9. Severability.

If any clause, sentence, paragraph, or section of this Part be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof but shall be applied in its operation to the clause, sentence, paragraph, or section hereof directly involved in the controversy in which such judgment shall have been rendered.

APPENDIX A TO PART 429 OF TITLE 19 NYCRR

The provisions of American Society of Testing and Materials ("ASTM") standard E2187-02b "Standard Test Method for Measuring the Ignition Strength of Cigarettes," referenced in section 3(a) of Part 429 of Title 19 NYCRR, are modified for the purposes of this rule as follows:

(1) Section 6.2.2. is changed to read:

Respiratory equipment shall be made available for personnel upon request or if the environmental conditions in the laboratory warrant.

(2) Sections 7.3 to 7.5. are changed to allow the following dimensions and allowances for the test apparatus:

	inches		mm	
	Dimension	Tolerance	Dimension	Tolerance
Test Chamber				
Height	13.4	1	340	25
Width	11.5	0.25	292	6
Depth	15.5	0.25	394	6
Thickness	0.25	nominal	6	nominal
Chimney Height	6.5	0.5	165	13
Chimney I.D.	6.0	0.25	152	6
Filter Paper Holder				
O.D.	6.5	0.04	165	1
I.D.	5.0	0.04	127	1
Height	1.97	0.04	50	1
Recess Depth	0.4	0.1	10	2.5
Recess I.D.	6.0	0.04	152	1
Metal Rim				
O.D.	5.9	0.08	150	2
I.D.	5.1	0.08	130	2
Thickness	0.25	0.04	6.4	1
Pin Diameter	0.04	nominal	1	nominal
Pin Separation	0.32	0.02	8.1	0.05
Pin Length	0.65	0.15	17	4

Note: the outer diameter of the metal rim is not to exceed the inner diameter of the recess in the filter paper holder.

(3) Section 7.6 is changed to read that the holder shall not contact the cigarette within a nominal 30 mm (1.2 in) of its lit end.

(4) Section 7.7. is changed to delete the word "pencil" in describing the mark on the cigarette.

(5) Section 8.1.2. is changed to read:

The non-turbulent smoke column height is to be a nominal 150 mm (6 in) above the lit end of the cigarette.

(6) Section 9.1. is changed to read:

Cigarette test specimens and filter paper substrates are sensitive to contamination. Test cigarettes shall be handled only by the last nominal 25 mm (1 in) of the end of the cigarette that is not to be lit. The sheets of filter paper shall not be handled in the vicinity where the cigarette will contact the paper during a test. In all cases, the materials shall be handled with dry hands only.

Note: The use of clean, dry, non-powdered surgical gloves can mitigate incidental contamination of the test materials while maintaining operator dexterity.

(7) The last sentence in Section 9.2.1. is changed to read:

If the specimens are to be stored by the testing laboratory for more than one week, they shall be placed in a freezer at approximately 0 C (32 F) to -20 C (-4 F) reserved for the sole protection of cigarette specimens to minimize the risk of contamination.

(8) Section 9.2.2. is changed to read:

Prior to testing, cigarette test specimens shall be marked, using a #2 or softer graphite pencil or other marking, 5 mm ±1 mm and 15 mm ±1 mm (0.2 in and 0.6 in, each ±0.04 in) from the end of the cigarette that will be lit. These marks are used to establish the start (11.4) and completion (11.5.4) of a uniform pre-burn period, respectively. Neither the process of marking the cigarette nor the mark itself shall significantly affect the cigarette burn rate.

(9) In Section 9.3 and its subparagraphs, the mean mass, rather than the median mass shall be used in all cases. In addition, the following Section 9.3.3 is added to Section 9.3.:

9.3.3 Pending assurance of the availability of filter paper that meets the specifications in Sections 9.3.1 and 9.3.2, the following provisions shall apply:

Paper with a mean conditioned mass of 25.1g to 26.6g (for 15 sheets) and a mean dry mass of 23.7g to 25.2g shall be used for the testing of cigarettes.

The standard deviation of at least five samples (dry and conditioned) shall not exceed 0.4 g.

(10) Section 10.1. is changed to read:

Cigarettes shall be conditioned at a relative humidity of 55±5% and a temperature of 23±3°C (73± 5°F) for at least 24h prior to testing. The cigarettes shall be placed in a clean, open container, with the number of cigarettes being sufficiently small as to enable free air access to the specimens, for example, a maximum of 20 cigarettes in a 250 mL polyethylene or glass beaker.

(11) The following note is added to section 11.4.1:

Note: This provision need not be followed by an individual test operator if that operator has demonstrated that lifting the restriction does not introduce error that significantly changes either the measured ignition strength or the uncertainty of that measurement. This determination is the responsibility of the testing laboratory.

(12) Section 11.5 is changed to read:

Holding the cigarette vertically, coal end up, transport the cigarette to the test chamber.

Note: It has been found that holding a 600mL beaker over the cigarette coal is helpful in mitigating the likelihood of a foreign object or room air current impacting the cigarette during transport and thus leading to the need to terminate the determination.

Amended rule as compared with adopted rule: Nonsubstantive revisions were made in section 429.5 and Appendix A.

Text of amended rule and any required statements and analyses may be obtained from: John Mueller, Chief, Fire Prevention Bureau, Office of Fire Prevention and Control, Department of State, 41 State St., Albany, NY 12231, (518) 474-6746

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

This Amended Notice of Adoption contains nonsubstantial revisions. These revisions do not necessitate that a revised Regulatory Impact Statement, revised Regulatory Flexibility Analysis for Small Businesses and Local Governments, revised Rural Area Flexibility Analysis, or revised Job Impact Statement be issued.

Office of Temporary and Disability Assistance

NOTICE OF EXPIRATION

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

Residency Requirements for Public Assistance Recipients

I.D. No.	Proposed	Expiration Date
TDA-40-03-00005-P	October 8, 2003	April 5, 2004

Department of Transportation

NOTICE OF EXPIRATION

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

Public Transportation Safety Board

I.D. No.	Proposed	Expiration Date
TRN-40-03-00004-P	October 8, 2003	April 5, 2004

