

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; or EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

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

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-23-07-00004-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading “Consumer Protection Board,” by increasing the number of positions of Associate Counsel from 1 to 2.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-23-07-00005-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading “Office of General Services,” by adding thereto the position of Executive Director, New York State Executive Mansion.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-23-07-00006-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive

Department under the subheading "Office of Homeland Security," by increasing the number of positions of Special Assistant from 4 to 5.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

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

Jurisdictional Classification

I.D. No. CVS-23-07-00007-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Department of Taxation and Finance.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Taxation and Finance under the subheading "Division of Tax Appeals," by increasing the number of positions of Special Assistant from 1 to 2.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

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

Jurisdictional Classification

I.D. No. CVS-23-07-00008-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Department of Health.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health, by increasing the number of positions of Research Associate from 5 to 6.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

Jurisdictional Classification

I.D. No. CVS-23-07-00009-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Alcoholic Beverage Control," by increasing the number of positions Deputy Commissioner from 3 to 4.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-23-07-00010-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Department of Mental Hygiene.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office of Alcoholism and Substance Abuse Services," by increasing the number of positions of Associate Commissioner from 3 to 5.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

Jurisdictional Classification

I.D. No. CVS-23-07-00011-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Department of Mental Hygiene.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office of Alcoholism and Substance Abuse Services," by adding thereto the position of Assistant Public Information Officer and by increasing the number of positions of Special Assistant from 4 to 7.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-23-07-00012-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from the exempt class in the Department of Health.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health, by deleting therefrom the title of Director Bureau of Surveillance and Utilization Review.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-23-07-00013-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the exempt class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by decreasing the number of positions of Assistant Deputy Commissioner from 2 to 1 and by adding thereto the position of Executive Deputy Commissioner.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

Jurisdictional Classification

I.D. No. CVS-23-07-00014-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office for Technology," by increasing the number of positions of Assistant Director Computer System Programming from 2 to 3.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-23-07-00015-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the State University of New York.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State University of New York under the subheading "SUNY College of Environmental Science and Forestry," by adding thereto the positions of ϕ Secretary 2 (3).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-23-07-00016-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the non-competitive class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by decreasing the number of positions of ϕ Regional Manager for Parks and Recreation from 8 to 7 and by adding thereto the position of ϕ Regional Manager, Parks and Recreation, New York City (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-23-07-00017-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify positions in the non-competitive class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class in the Executive Department under the subheading "Division of Human Rights,"

by deleting therefrom the positions of ϕ Human Rights Regional Director and by adding thereto the positions of ϕ Human Rights Regional Director 1 and ϕ Human Rights Regional Director 2 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-23-07-00018-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify positions in the non-competitive class in the Department of Transportation.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Transportation, by deleting therefrom the positions of Compliance Specialist 1 (16) and ϕ Compliance Specialist 2 (1) and by adding thereto the positions of Compliance Specialist 1 and by increasing the number of positions of Compliance Specialist 2 from 7 to 17.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-23-07-00019-P

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

Proposed action: Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class and delete a position from the non-competitive class in the Department of Civil Service.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Civil Service, by adding thereto the position of Director of Affirmative Action Programs; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Civil Service, by deleting therefrom the position of Principal Econometrician (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-23-07-00020-P

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

Proposed action: Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class and delete a position from the non-competitive class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Human Rights," by adding thereto the position of Director, Affirmative Action Programs; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Human Rights," by deleting therefrom the position of Director of Affirmative Action Programs 2 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

Department of Correctional Services

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

Lakeview Correctional Facility

I.D. No. COR-23-07-00002-P

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

Proposed action: This is a consensus rule making to repeal section 100.73 and amend section 100.89 of Title 7 NYCRR.

Statutory authority: Correction Law, sections 70 and 73

Subject: Lakeview Correctional Facility.

Purpose: To consolidate two sections referring to Lakeview Correctional Facility to one section.

Text of proposed rule: Section 100.73 is repealed and reserved and section 100.89 of Title 7, NYCRR is hereby amended as follows:

§ 100.89 Lakeview Correctional Facility

(a) There shall be in the department an institution to be known as Lakeview Correctional Facility, which shall be located in the Town of Portland, Chautauqua County, New York.

(b) Lakeview Correctional Facility shall be a correctional facility for males 16 years of age or older.

(c) Lakeview Correctional Facility shall be classified as a medium security correctional facility, to be used as a general confinement [facility] and a shock incarceration facility.

Text of proposed rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 485-9613, e-mail: AJAnnucci@docs.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

The Department of Correctional Services has determined that no person is likely to object to the proposed rule as written as it merely consolidates two sections of Title 7, NYCRR which refer to the same correctional facility. This change is to make the descriptions of correctional facilities consistent to one section for each facility throughout the State and is non-controversial.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal merely consolidates two sections which refers to Lakeview Correctional Facility into one section of Title 7, NYCRR.

Department of Economic Development

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

Empire State Commercial Tax Credit Program

I.D. No. EDV-23-07-00003-P

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

Proposed action: Addition of Part 180 to Title 5 NYCRR.

Statutory authority: L. 2006, chs. 62 and 440

Subject: Empire State Commercial Tax Credit Program.

Purpose: To promulgate regulations for the program to establish procedures for the allocation of commercial production tax credits.

Substance of proposed rule (Full text is posted at the following State website: www.nylovefilm.com/tax/commercial/Regs.pdf): The Empire State commercial production tax credit program provides a three component tax credit program for eligible qualified commercial production companies.

First, under the growth credit program, an eligible company may receive a 20% credit on qualified production costs provided the applicant has met the threshold test and shown that the total qualified production costs are greater in the calendar year for which they are applying than in the average of the three previous years. Assuming this test is met, the 20% credit is applied to the amount of total qualified production costs in the calendar year the applicant is applying that are greater than the total costs of the preceding year. There is a \$300,000 tax credit cap per applicant annually.

The second component program is referred to as the downstate credit program. This credit is 5% of the qualified production costs paid or incurred in the production of a qualified commercial within the metropolitan commuter transportation district. In order to be eligible for such credit, a qualified commercial production company must have qualified produc-

tion costs in excess of \$500,000 in the metropolitan commuter transportation district during the calendar year and the credit shall be applied to only those costs exceeding such amount.

The third component program is referred to as the upstate credit program. This credit is 5% of the qualified production costs paid or incurred in the production of a qualified commercial outside of the metropolitan commuter transportation district. In order to be eligible for such credit, a qualified commercial production company must have qualified production costs in excess of \$200,000 outside of the metropolitan commuter transportation district during the calendar year and the credit shall be applied to only those costs exceeding such amount.

This rule implements Chapter 62 of the laws of 2006. Part 180 of Title 5 NYCRR is hereby created and is summarized as follows:

First, the rule makes clear that the Governor's Office for Motion Picture and Television development shall administer the Empire State commercial production tax credit program. This proposed rule does not govern the New York City commercial production tax credit program – eligibility in either the state or city program does not guarantee eligibility or receipt of a credit in the other.

Second, eligibility in the program is established through the definition of applicant. In order to be eligible to apply for the program, a business must be a qualified commercial production company or sole proprietor thereof that submits an application to the Office after it has completed a calendar year's worth of qualified commercials.

Third, an application process is created. An applicant must complete an application between the first day of business in January and April 1 of the year succeeding the year in which the commercial work was performed. The Office then reviews the application based on criteria set out in the proposed rule, including the completeness of the application and whether or not it meets the statutory requirements for qualification, including whether at least 75% of its production costs (excluding post-production) paid or incurred directly and predominantly in the actual filming or recording of each qualified commercial are qualified production costs, and whether its qualified production costs correspond to one or more of the three component tax credit programs.

Fourth, if the application is approved, the Office shall issue a certificate of tax credit to the applicant. If the application is disapproved, the applicant receives notice of its rejection from the program and may reapply at a later date.

Fifth, the proposed rule requires applicants to maintain records of qualified production costs used to calculate their potential or actual benefit under the program for a period of 3 years. Such records may be requested by the Office upon reasonable notice.

Finally, the proposed rule creates an appeal process. Applicants who have had their applications disapproved, or who have a disagreement over the dollar amount of their tax credit, have the right to appeal.

Text of proposed rule and any required statements and analyses may be obtained from: Thomas Regan, Department of Economic Development, 30 S. Pearl St., 6th Fl., Albany, NY 12245, (518) 292-5123, e-mail: tregan@empire.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

STATUTORY AUTHORITY:

Section (8)(e) of Part V of Chapter 62 of the laws of 2006 which creates a new section 28 of the tax law as well as amends sections 210, 606, and 1310 thereof as well as Chapter 440 of the laws of 2006 which amends sections 28, 1201-a and 1310 require the Commissioner of Economic Development to promulgate rules and regulations by October 31, 2006 to establish procedures for the allocation of the Empire State commercial production tax credit, including provisions describing the application process, the due dates for such applications, the standards used to evaluate the applications, and the documentation provided to taxpayers to substantiate to the State Department of Taxation and Finance the amount of the tax credit for the program itself.

LEGISLATIVE OBJECTIVES:

The proposed rule is in accord with the public policy objectives the Legislature sought to advance by creating a tax credit program for the commercial industry. This program is an attempt to create an incentive for commercial industry to bring productions to New York State as opposed to other competitive markets, such as California and overseas. It is the public policy of the State to offer a tax credit that will help provide incentive for the commercial industry to bring productions to the State. The proposed rule helps to further such objectives by establishing an application process

for the program, clarifying portions of the Program through the creation of various definitions and describing the credit allocation process itself.

NEEDS AND BENEFITS:

The proposed rule is required to be promulgated by October 31, 2006 (see section 8(e) of Part V of Chapter 62 of the laws of 2006). It is necessary to administer properly the tax credit program. The statute itself does not set out the specifics of the program; rather, it deals primarily with its creation and calculation of the actual tax credit. There are several administrative benefits that would be derived from this proposed rule making. First, the proposed rule establishes a clear and precise application process, complete with due process as there is an opportunity for applicants to appeal from denials of applications or a disagreement regarding the actual amount of the tax credit. Second, the proposed emergency rule describes in detail the standards to be used to evaluate applications created under this program. Third, it describes the documentation that will be provided to taxpayers to substantiate to the State Tax and Finance Department the amount of the tax credits allocation. Finally, it clarifies some existing definitions and creates several new definitions in order to help facilitate an effective and efficient administration of the program.

COSTS:

I. Costs to private regulated parties (the Business applicants): None. The proposed regulation will not impose any additional costs to the commercial industry.

II. Costs to the regulating agency for the implementation and continued administration of the rule: There could be additional costs to the Department of Economic Development associated with the proposed rule making as the Office will need two additional employees to help with the program's newly created administrative process. Such costs are estimated to be \$120,000 in annual salary for both employees.

III. Costs to the State government: The program shall not allocate more than \$7 million in any calendar year. The program sunsets on December 31, 2011 so the overall cost to the State would not exceed \$35 million.

IV. Costs to local governments: None. The proposed regulation will not impose any additional costs to local government.

LOCAL GOVERNMENT MANDATES:

None.

PAPERWORK:

The proposed rule creates an application process for eligible applicants, including the creation of an application, certain tax certificates and forms relating to commercial expenditures.

DUPLICATION:

The proposed rule will not duplicate or exceed any other existing Federal or State statute or regulation.

ALTERNATIVES:

No alternatives were considered in regard to creating a new regulation in response to the statutory requirement. The Department of Economic Development, through its Governor's Office for Motion Picture and Television Development, did an extraordinary amount of outreach to various interested parties before submitting this proposed rule. For example, the Department met with seven commercial industry producers to seek industry input. In addition, the Department met with both the CEO and the CFO of the Association of Independent Commercial Producers to solicit their comments. Furthermore, the Department was in close contact with representatives from the State Tax and Finance Department and the Mayor's Office of Film, Theatre and Broadcasting to coordinate the details of the proposed rule.

FEDERAL STANDARDS:

There are no federal standards in regard to the Empire State commercial production tax credit program; it is purely a state program that offers a state tax credit to eligible applicants. Therefore, the proposed rule does not exceed any federal standard.

COMPLIANCE SCHEDULE:

The effected State agencies (Economic Development) and the business applicants will be able to achieve compliance with the proposed regulation as soon as it is implemented. In terms of compliance schedule, the statute (Chapter 62 of the laws of 2006) was signed into law on June 6, 2006. The statute gave the Department until October 31, 2006 to promulgate regulations to implement the program. The program applies to taxable years beginning on or after January 1, 2007 and expires on December 31, 2011.

Regulatory Flexibility Analysis

Participation in the Empire State commercial production credit program is entirely at the discretion of qualified commercial production companies. Neither Chapter 62 of the laws of 2006 nor the proposed regulations impose any obligation on any local government or business entity to participate in the program. The proposed regulation does not impose any

adverse economic impact or compliance requirements on small businesses or local governments. In fact, the proposed regulation may have a positive economic impact on small businesses due to the possibility that these businesses may enjoy a commercial production tax credit if they qualify for the program's tax credit.

Because it is evident from the nature of the proposed rule that it will have either no impact or a positive impact on small businesses and local government, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small business and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

This program is open to participation from all qualified commercial production companies, defined by statute to include a corporation, partnership or sole proprietorship making and controlling a qualified commercial in New York. The locations of the companies are irrelevant, so long as they meet the necessary qualifications of the definition. This program may impose responsibility on statewide businesses that are qualified commercial production companies, in that they must undertake an application process to receive the Empire State commercial production credit. However, the proposed regulation will not have a substantial adverse economic impact on rural areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed regulation creates the application process for the Empire State commercial production credit program. As a tax credit program, it is designed to impact positively the commercial industry doing business in New York State and have a positive impact on job creation. The proposed regulation will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rulemaking that it will have either no impact, or a positive impact, on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

NOTICE OF ADOPTION

Bait Fish Regulations and Fish Health Inspection Reports

I.D. No. ENV-49-06-00014-A
Filing No. 505
Filing date: May 22, 2007
Effective date: June 6, 2007

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

Action taken: Amendment of Parts 10, 35, and 188 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 11-0303, 11-0305 and 11-0325

Subject: Possession and personal use of bait fish, taking bait fish for commercial purposes, and fish health inspection requirements.

Purpose: To prevent the spread of viral hemorrhagic septicemia virus (VHS) in New York, protect New York's fish resources and prevent negative effects to the State's economy that would be associated with the spread of VHS in New York.

Text of final rule: A new subdivision 10.1(f) is added to Title 6 NYCRR Part 10 to read as follows:

(f) *Special regulations for bait fish (personal use).*

(1) *Bait fish taken for personal use from any water body shall only be possessed or used in the same water body from which such bait fish were taken, and shall not be possessed or used in any other water body, except as provided in paragraph 2 of this subdivision.*

(2) *Bait fish taken for personal use in the marine and coastal district, as defined in Environmental Conservation Law Section 13-0103, shall only be possessed or used in waters of the marine and coastal district and the Hudson River as defined in 10.1(f)(7)(x), and shall not be possessed or*

used in a water body outside the marine and coastal district, except the Hudson River as defined in 10.1(f)(7)(x).

(3) *Bait fish taken for personal use from any water body shall not be transported overland, except:*

(i) *bait fish taken for human consumption pursuant to Section 10.5 of this Part, suckers taken for human consumption pursuant to Section 10.7 of this Part, and smelt, suckers, alewives and blueback herring taken for human consumption by angling may be transported overland. Such fish shall not be used as bait; and*

(ii) *bait fish taken for personal use in the marine and coastal district, as defined in Environmental Conservation Law Section 13-0103, may be transported overland only for use in waters of the marine and coastal district and only within the following counties: Queens, Kings, Richmond, New York, Bronx, Suffolk, Nassau, Rockland and Westchester.*

(4) *Environmental conservation officers may seize any bait fish possessed in violation of this subdivision. No action for damages shall lie for such seizure, and disposition of seized bait fish shall be at the discretion of the Department.*

(5) *For purposes of this subdivision, "transported overland" shall mean transport by motorized vehicle other than on the water body where the fish were taken.*

(6) *For purposes of this subdivision, "water body", shall mean any lake, river, pond, stream or any other distinct mass of water existing, in the State of New York, whether publicly or privately owned, including the banks and shores thereof. A water body shall also include all tributaries upstream to the first impassable barrier including the banks and shores thereof. For the purposes of this subdivision, locks and dams shall be considered impassable barriers.*

(7) *Notwithstanding the definition of water body in paragraph 6 of this subdivision, each of the following combined water bodies, including all tributaries up to the first barrier impassable by fish, shall be considered the same water body for purposes of this subdivision, except that where a combined water body is divided by a state or international boundary, the combined water body shall only include those portions existing within New York State.*

(i) *Lake Ontario in combination with the Lower Niagara River and the St. Lawrence River;*

(ii) *Lake Erie in combination with the Upper Niagara River, Black Rock Canal, and waters of the Erie Barge Canal from the Upper Niagara River to Lock E-35 in Lockport;*

(iii) *Oswego River from Lock 7 to junction with Oneida River & Seneca River at Three Rivers;*

(iv) *Oneida River downstream of Caughdenoy dam and Erie Barge Canal from Lock E23 to the junction with Oswego and Seneca Rivers;*

(v) *Oneida Lake and Erie Barge Canal downstream to Lock E23 and upstream to Lock E22, and the Oneida River downstream to Caughdenoy Dam;*

(vi) *Mohawk River from Barge Canal in Rome upstream to Delta Dam;*

(vii) *Erie Barge Canal from Lock E22 east to Lock E6;*

(viii) *Hudson River from the Federal Dam at Troy to Bakers Falls in the City of Hudson Falls, and the Champlain Canal up to but not above Lock 7 in Fort Edward, and the Erie Barge Canal up to but not above Lock E6 in Waterford;*

(ix) *Lake Champlain including the Champlain Canal up to, but not above Lock 12;*

(x) *Hudson River downstream from the Federal Dam at Troy to the Battery at the southern tip of Manhattan Island;*

(xi) *Susquehanna River downstream of dam in Oakland, Pennsylvania and Chenango River;*

(xii) *Saranac Chain of Lakes from Lake Flower upstream to Barlett Carry Dam.*

Part 35 of Title 6 of NYCRR is amended as follows:

Paragraph 35.2 (d) (16) is amended to read as follows:

(16) Franklin County. [Big Salmon River, Town of Fort Covington;] Floodwood Pond; Lake Clear Outlet; Middle Pond, Town of Santa Clara; Lake Colby; Lake Flower; Little Colby Pond; [Little Salmon River, from mouth at Fort Covington to dam at South Bombay;] Lower, Middle, Upper Saranac Lakes; Middle Pond; Town of Santa Clara; Lyon Brook and tributaries; [Pike Creek, Towns of Bombay and Fort Covington;] Raquette River, Town of Tupper Lake; Saranac River, from Middle Saranac Lake to dam at Union Falls; Simon Pond, Town of [Altamont] Tupper Lake; Tupper Lake; Weller Pond, Town of Santa Clara.

Paragraph 35.2 (d) (23) is amended to read as follows:

(23) Livingston County. [Conesus Lake] Hemlock Lake.

New Sections 35.3 and 35.4 are added to read as follows:

35.3 Possession, Sale and Use of bait fish taken for commercial purposes

(a) Definitions. For purposes of this section, the following definitions shall apply.

(1) "Water body," as defined in paragraphs (6) and (7) of subdivision (f) of section 10.1 of this chapter, shall apply for purposes of this section.

(2) "Transported overland" shall mean transport by motorized vehicle other than on the water body where the fish were taken.

(3) "Bait fish" shall mean those fish listed under subdivision 35.2 (a) of this Part, and shall include both live and dead bait fish.

(4) "Retail sale" shall mean the sale of bait fish to any person in the state for any purpose other than for resale.

(b) General prohibition. Bait fish taken for commercial purposes from the waters of the State shall not be possessed, sold, offered for sale, bartered, transferred or used except as authorized by this section.

(c) Bait fish taken for commercial purposes from any water body pursuant to section 35.2 of this Part shall only be possessed, sold, offered for sale, bartered, transferred or used in the same water body from which such bait fish were taken, and shall not be possessed, sold, offered for sale, bartered, transferred or used in any other water body, except:

(1) bait fish taken in the Hudson River upstream of the Tappan Zee Bridge and below the federal dam at Troy, including all tributaries up to the first barrier impassable by fish, may also be possessed, sold, offered for sale, bartered, or transferred for use in the marine and coastal district as defined in Environmental Conservation Law Section 13-0103; or

(2) pursuant to permit issued by the Department in its discretion; or

(3) bait fish may be possessed, sold, offered for sale, bartered or transferred for use as bait in any water body subject to the following conditions:

(i) the use of bait fish, or certain species of bait fish, is not prohibited in such water body pursuant to any provision of this Chapter or the Fish and Wildlife Law, and

(ii) the person selling or transferring such bait fish possesses a fish health certification report for all bait fish owned or kept at the place of sale or transfer. For purposes of this section, the place of sale or transfer shall include all buildings, structures, tanks, containers, or vehicles located at or contiguous to the place of sale or transfer, and

(iii) Documentation requirements.

(a) Retail sale of bait fish; receipt required. When engaging in the retail sale of bait fish, the seller shall issue a receipt to the purchaser pursuant to subdivision f of this section. The receipt shall be retained by the purchaser while in possession of the bait fish, and shall be valid for seven days from the date of the retail sale, including the date of sale.

(b) Sale or transfer of bait fish other than retail sale; report and receipt required. When engaging in a sale or transfer of bait fish other than a retail sale, the seller shall provide the purchaser with:

(1) a copy of the fish health certification report as defined in 188.2 for the bait fish sold to the purchaser; and

(2) a receipt pursuant to subdivision f of this section. A copy of both the fish health certification report and the receipt shall be retained by the purchaser or transferee for 30 days or until the fish are sold or transferred, whichever is greater.

(4) Dead bait fish packaged for commercial purposes, and preserved by any method other than freezing only, may be possessed, sold, offered for sale, bartered, and transported overland for use as bait in any water body except where the use of bait fish, or certain species of bait fish, is prohibited in such water body pursuant to any provision of this Chapter or the Fish and Wildlife Law. Each package of dead bait fish shall be individually labeled, identifying the name of the packager-processor, the name of the fish species, the quantity of fish packaged, and the means of preservation.

(d) Bait fish taken for commercial purposes in the marine and coastal district, as defined in Environmental Conservation Law Section 13-0103, shall only be possessed or used in waters of the marine and coastal district and the Hudson River as defined in 10.1(f)(7)(x), and shall not be possessed or used in any water body outside the marine and coastal district, except the Hudson River as defined in 10.1(f)(7)(x).

(e) Bait fish taken for commercial purposes from any water body shall not be transported overland, except:

(1) bait fish taken in the marine and coastal district, as defined in Environmental Conservation Law Section 13-0103, may be transported overland only for use in waters of the marine and coastal district and only

within the following counties: Queens, Kings, Richmond, New York, Bronx, Suffolk, Nassau, Rockland and Westchester.

(2) pursuant to permit issued by the Department in its discretion; or

(3) bait fish certified pursuant to Part 188 of this Chapter may be transported overland if all applicable requirements of subparagraph (c)(3)(iii) of this section have been satisfied.

(4) Dead bait fish packaged for commercial purposes, and preserved by any method other than freezing only, may be transported overland. Each package of dead bait fish shall be individually labeled, identifying the name of the packager-processor, the name of the fish species, the quantity of fish packaged, and the means of preservation.

(f) Receipt requirements.

(1) Retail sale. For each retail sale of bait fish, except for bait fish intended for use only in the marine and coastal district, the seller shall issue a receipt to the purchaser, containing the name of the seller, the date of the retail sale transaction, the species of fish sold, and the quantity of each species of fish sold. If bait fish that have not been certified pursuant to Part 188 of this Chapter are being sold for use only in the water body from which they were collected, the seller shall include the following information on the receipt:

(a) the water body in which the bait fish may be used, and

(b) a warning to the purchaser that the fish may not be transported by car or other motorized vehicle.

(2) Sale or transfer of bait fish other than retail sale. When engaging in the sale or transfer of bait fish other than a retail sale, except for bait fish intended for use only in the marine and coastal district, the seller shall issue a receipt to the purchaser, containing the name of the seller, the date of the sale transaction, the species of fish sold, and the quantity of each species of fish sold.

(g) Environmental conservation officers may seize any bait fish possessed in violation of this section. No action for damages shall lie for such seizure, and disposition of seized bait fish shall be at the discretion of the Department.

(h) No person shall fail to exhibit a fish health certification report or bait fish receipt upon the demand of any police officer or representative of the Department.

35.4 Sale of bait fish from waters outside the State of New York

(a) For the purposes of this section, "bait fish" shall mean those fish listed under subdivision 35.2(a) of this Part, and shall include both live and dead bait fish.

(b) Bait fish taken for commercial purposes from the waters outside the State shall not be possessed, sold, offered for sale, bartered or transferred for use as bait except:

(1) for use as bait in the Marine and Coastal District, as defined in Environmental Conservation Law Section 13-0103 and the Hudson River as defined in 10.1(f)(7)(x); or

(2) pursuant to permit issued by the Department in its discretion; or

(3) bait fish may be possessed, sold, offered for sale, bartered or transferred for use as bait in any water body subject to the following conditions:

(i) the use of bait fish, or certain species of bait fish, is not prohibited in such water body pursuant to any provision of this Chapter or the Fish and Wildlife Law, and

(ii) the person selling or transferring such bait fish possesses a fish health certification report for all bait fish owned or kept at the place of sale or transfer. For purposes of this section, the place of sale or transfer shall include all buildings, structures, tanks, containers, or vehicles located at or contiguous to the place of sale or transfer, and

(iii) Documentation requirements.

(a) Retail sale of bait fish; receipt required. When engaging in the retail sale of bait fish, the seller shall issue a receipt to the purchaser pursuant to subdivision d of this section. The receipt shall be retained by the purchaser while in possession of the bait fish, and shall be valid for seven days from the date of the retail sale, including the date of sale.

(b) Sale or transfer of bait fish other than retail sale; report and receipt required. When engaging in a sale or transfer of bait fish other than a retail sale, the seller shall provide the purchaser with:

(1) a copy of the fish health certification report as defined in 188.2 for the bait fish sold to the purchaser; and

(2) a receipt pursuant to subdivision d of this section. A copy of both the fish health certification report and the receipt shall be retained by the purchaser or transferee for 30 days or until the fish are sold or transferred, whichever is greater.

(4) Dead bait fish packaged for commercial purposes, and preserved by any method other than freezing only, may be possessed, sold, offered for

sale, or bartered for use as bait in any water body except where the use of bait fish, or certain species of bait fish, is prohibited in such water body pursuant to any provision of this Chapter or the Fish and Wildlife Law. Each package of dead bait fish shall be individually labeled, identifying the name of the packager-processor, the name of the fish species, the quantity of fish packaged, and the means of preservation.

(c) Bait fish taken for commercial purposes from waters outside of the State shall not be transported overland, except:

(1) bait fish to be possessed, sold, offered for sale, bartered or transferred for use as bait only in the marine and coastal district as defined in Environmental Conservation Law Section 13-0103, may be transported overland only within the following counties: Queens, Kings, Richmond, New York, Suffolk, Nassau, Bronx, Rockland and Westchester; or

(2) pursuant to permit issued by the Department in its discretion; or

(3) bait fish certified pursuant to Part 188 of this Chapter may be transported overland if all applicable requirements of subparagraph (b)(3)(iii) of this section have been satisfied.

(4) Dead bait fish packaged for commercial purposes, and preserved by any method other than freezing only, may be transported overland. Each package of dead bait fish shall be individually labeled, identifying the name of the packager-processor, the name of the fish species, the quantity of fish packaged, and the means of preservation.

(d) Receipt requirements.

(1) Retail sale. For each retail sale of bait fish, except for bait fish intended for use only in the marine and coastal district, the seller shall issue a receipt to the purchaser, containing the name of the seller, the date of the retail sale transaction, the species of fish sold, and the quantity of each species of fish sold.

(2) Sale or transfer of bait fish other than retail sale. When engaging in the sale or transfer of bait fish other than a retail sale, except for bait fish intended for use only in the marine and coastal district, the seller shall issue a receipt to the purchaser, containing the name of the seller, the date of the sale transaction, the species of fish sold, and the quantity of each species of fish sold.

(e) Environmental conservation officers may seize any bait fish possessed in violation of this section. No action for damages shall lie for such seizure, and disposition of seized bait fish shall be at the discretion of the Department.

(f) No person shall fail to exhibit a fish health certification report or bait fish receipt upon the demand of any police officer or representative of the Department.

Part 188 of Title 6 of NYCRR, entitled "Fish Health Inspection Requirements" is amended as follows:

Section 188.1 is repealed, and new sections 188.1 and 188.2 are added to read as follows:

Section 188.1 Prohibitions; Fish Health Certification Report.

(a) For the purposes of this section, "Water body," as defined in paragraphs (6) and (7) of subdivision (f) of section 10.1 of this chapter, shall apply for purposes of this section.

(b) No person shall place live fish into the water bodies of the State, or possess, sell, offer for sale, barter, import or transport fish for purposes of placing them into water bodies of the State unless such fish are accompanied by a fish health certification report issued within the previous twelve (12) months, except:

(1) in the marine and coastal district, as defined in Environmental Conservation Law Section 13-0103; or

(2) pursuant to permit issued by the Department in its discretion; or

(3) where a water body is contiguous with waters of another State or Province, live fish, except bait fish, taken from those waters outside of New York State, may be transported on the contiguous water across the State or Province boundary and may be released in the New York water body.

(c) This section shall not prohibit the personal use of bait fish in accordance with paragraph 10.1(f) of Part 10 of this Chapter or shall not prohibit the use of legally obtained bait fish in accordance with Sections 35.2, 35.3 and 35.4. All fish health certification reports required by this section shall comply with section 188.2 of this Part.

(d) Environmental conservation officers may seize any fish possessed in violation of this Part. No action for damages shall lie for such seizure, and disposition of seized bait fish shall be at the discretion of the Department.

(e) No person shall fail to exhibit a fish health certification report upon the demand of any police officer or representative of the Department.

Section 188.2 Fish Health Inspections

(a) All fish species.

(1) A fish health certification report shall certify that the fish being placed into the waters of the State are free of:

(i) Viral Hemorrhagic Septicemia (VHS);

(ii) Spring Viremia of Carp Virus (Infectious carp dropsy);

(2) Until January 1, 2009, a fish health certification report shall also certify the presence or absence of the following pathogens:

(i) *Aeromonas salmonicida* (Furunculosis);

(ii) *Yersinia ruckeri* (Enteric Red Mouth);

(iii) Infectious Pancreatic Necrosis Virus (IPN);

(3) Effective January 1, 2009, a fish health inspection report shall certify that the fish are free of the pathogens listed in paragraph 2 of this subdivision.

(b) Additional fish health inspection requirements for Salmonidae.

(1) In addition to the requirements of subdivision (a) of this section, a fish health certification report for Salmonidae shall certify that the fish are free of:

(i) *Myxobolus cerebralis* (whirling disease);

(ii) Infectious Hematopoietic Necrosis Virus (IHN).

(2) Until January 1, 2009, a fish health certification report for Salmonidae shall also certify the presence or absence of *Renibacterium salmoninarum* (bacterial kidney disease).

(3) Effective January 1, 2009, a fish health certification report shall certify that the Salmonidae fish are free of *Renibacterium salmoninarum* (bacterial kidney disease).

(c) Effective January 1, 2009, no fish shall be placed into the waters of the State unless a fish health certification report certifies that such fish are free of all pathogens identified in this Section.

(d) Sample collection shall be made and fish health certification reports shall be issued by one of the following independent qualified inspectors:

(1) American Fisheries Society certified fish pathologists;

(2) American Fisheries Society certified fish health inspectors;

(3) licensed veterinarians with demonstrated capability to perform sample collection and fish health inspections;

(4) government employees with demonstrated capability to perform sample collection and fish health inspections;

(5) university or college personnel with demonstrated capability to perform sample collection and fish health inspections; or

(6) private laboratory personnel with demonstrated capability to perform sample collection and fish health inspections.

(e) Fish health certification reports required by this section shall be based upon and conform with testing methods and procedures recognized by the American Fisheries Society or the World Organization of Animal Health.

(f) Fish health certification reports required by this Part shall be completed on a form provided by the Department. A copy of the completed form shall be submitted by the inspector to the Department within 7 days of the date of fish health inspection.

(g) The addition of fish that are not accompanied by a fish health certification report to a facility will invalidate any existing fish health certification report.

(h) A fish health certification report shall not be required for fish placed into an aquarium or possessed for purposes of placing such fish into an aquarium.

Final rule as compared with last published rule: Nonsubstantive changes were made Parts 10, 35 and 188.

Revised rule making(s) were previously published in the State Register on March 28, 2007.

Text of rule and any required statements and analyses may be obtained from: Shaun Keeler, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8920, e-mail: sxkeeler@gw.dec.state.ny.us

Additional matter required by statute: A programmatic impact statement is on file with the Department of Environmental Conservation.

Revised Regulatory Impact Statement

Statutory authority:

The Commissioner of Environmental Conservation, pursuant to Environmental Conservation Law (ECL) Sections 3-0301, 11-0303, and 11-0305, has authority to protect the fish and wildlife resources of New York State.

Environmental Conservation Law Section 11-0325 provides the Department of Environmental Conservation (Department) with authority to take action necessary to protect fish and wildlife from dangerous diseases. If the Department determines that an epizootic disease which endangers the health and welfare of native fish populations exists in any area of the

state, or is in imminent danger of developing or being introduced into the state, the Department is authorized to adopt measures or regulations necessary to prevent the development, spread or introduction of such disease.

Legislative objectives:

The legislative objective of ECL Sections 3-0301, 11-0303, and 11-0305 is to grant the Commissioner the powers necessary for the Department to protect New York's natural resources, including fish resources, in accordance with the environmental policy of the state.

The legislative objective of ECL Section 11-0325 is to provide the Department with broad authority to respond to the presence or threat of a disease that endangers the health or welfare of fish or wildlife populations.

Needs and benefits:

Viral hemorrhagic septicemia virus (VHS) is a serious pathogen of fish that is causing an emerging disease in the Great Lakes region of the United States and Canada. This disease causes the hemorrhaging of the fish's tissues, including internal organs, and affects all sizes of fish. Not all infected fish develop the disease, but they can continue to carry it and spread it to others. There is no known cure for VHS.

VHS was first confirmed in New York waters in May 2006 when it was linked to the death of round gobies and muskellunge in Lake Ontario and the St. Lawrence River. In the summer of 2006, VHS caused the death of walleye in Conesus Lake. The virus has now been confirmed in round goby, burbot, smallmouth bass, muskellunge, pumpkinseed, rock bass, bluntnose minnow, emerald shiner and walleye in infected waters in New York State.

Due to the potential adverse effects of Viral Hemorrhagic Septicemia (VHS) on fish populations and the desire to prevent or delay its spread to other states, the USDA Animal and Plant Health Inspection Service (APHIS) issued a federal Order on October 24, 2006, as well as an amended order on November 14, 2006 and May 4, 2007. The Amended Order prohibits the importation of certain species of live fish from Ontario and Quebec and restricts the interstate movement of the 37 fish species identified in the order from eight states bordering the Great Lakes: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin. Other than catch and release angling on international and interstate waterbodies, movement of fish from these eight states is limited to certified VHS free fish or fish destined for a fish processing facility that meets specified standards.

The Federal Order does not, however, address the movement of fish within New York State. The in-state movement of fish could potentially lead to the spread of VHS as well as other fish pathogens, in New York. In addition to VHS, Spring Viremia of Carp Virus (Infectious carp dropsy) and Infectious Hematopoietic Necrosis Virus (IHN) are internationally reportable diseases to the World Organization of Animal Health. Because they are a threat to fish hatcheries in New York and possibly to the freshwater fish populations of New York, *Aeromonas salmonicida* (Furunculosis), *Yersinia ruckeri* (Enteric Red Mouth) and Infectious Pancreatic Necrosis Virus (IPN) have been included in the proposed regulations. All pathogens identified in the regulations are considered pathogens of concern by the Great Lakes Fishery Commission Fish Health Committee and by the New England Fish Health Committee.

The spread of VHS in New York, as well as other fish pathogens, could lead to significant adverse impacts to the state's fish resources. Moreover, the spread of these diseases in New York could result in negative impacts to the state economy. More than one million New Yorkers hold state fishing licenses. Freshwater sportfishing contributes an estimated \$1.4 billion annually to the state's economy, supporting over 17,000 jobs.

Therefore, the Department is adopting regulations which address the commercial collection of bait fish, personal possession and use of bait fish, and requirements for fish health inspection reports. The promulgation of this regulation on an emergency basis is necessary in order to prevent the spread of VHS in New York and to protect New York's fish resources. It is also necessary to prevent negative impacts to the state's economy that would be associated with the spread of VHS in New York.

Costs:

Commercial hatchery operators, bait fish dealers, and other entities that possess or transport fish intended for release in New York waters, will incur costs associated with fish health inspection reports required by these regulations.

The estimated cost for testing a "lot" of fish (i.e. 60 fish) for the pathogens that are required to be tested ranges from approximately \$ 500 to \$ 1,000.

Local government mandates:

Testing for a group of pathogens will be required for local governments that raise fish to be released to the water of the State. Since the testing will

need to be conducted by qualified testers, the local government facilities will not need to establish any new technology at their facilities. The costs of the testing is described above.

Paperwork:

Commercial hatchery operators, bait fish dealers, and other entities that possess or transport fish intended for release in New York waters, will be required to maintain documentation associated with fish health inspections. Bait fish dealers will be required to provide receipts of their sales.

Duplication:

The proposed amendment does not duplicate any state or federal requirement.

Alternatives:

No action: The Department has considered and rejected the option of taking no action to address VHS. Failing to act to address VHS would allow the disease to spread unchecked to other waters of the state. The spread of VHS could compromise the health of New York's freshwater fish populations and could have significant economic impacts on commercial and recreational activities associated with the state's freshwater fish populations.

Federal standards:

The United States Department of Agriculture-Animal and Plant Health Inspection Service (USDA-APHIS) issued a federal Order on October 24, 2006, followed by amended orders on November 14, 2006 and May 4, 2007. The Order prohibits the importation of certain species of live fish from Ontario and Quebec and restricts the interstate movement of the 37 fish species from eight states bordering the Great Lakes. Other than catch and release angling on interstate and international waterbodies, movement of fish from these eight states is limited to certified VHS free fish or fish destined for a fish processing facility that meets specified standards.

Compliance schedule:

Immediate compliance will be required.

Revised Regulatory Flexibility Analysis

1. Effect of rule:

The proposed rule is intended to prevent the spread of viral hemorrhagic septicemia virus (VHS), a serious pathogen of fish that is causing an emerging disease in the Great Lakes region of the United States and Canada.

Due to the potential adverse effects of the disease on fish populations and the desire to prevent or delay its spread to other states, a federal Order was issued by the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) on October 24, 2006 and was amended on November 14, 2006 and May 4, 2007. The Order prohibits the importation of certain species of live fish from Ontario and Quebec and restricts the interstate movement of the 37 fish species identified in the order from eight states bordering the Great Lakes: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin. Other than catch and release angling on interstate and international waterbodies, movement of fish from these eight states is limited to certified VHS free fish or fish destined for a fish processing facility that meets specified standards.

For licensed commercial bait fish dealers (approximately 400), this rulemaking will limit the collection and sale of wild bait fish from New York waters for use on the same water unless permitted by the Department, and require that any other fish to be released in the waters of New York be certified as disease free.

In addition to commercial bait fish operators, private hatchery operations will also be affected by this rule. This year, DEC issued 35 licenses to rear/sell trout and salmon, and 25 licenses to rear/sell black bass (in-state). These operations will now be required to certify that fish in their possession are disease free, prior to release to the waters of New York.

2. Compliance requirements:

Fish being sold for release to state waters, largely by commercial bait fish dealers and hatcheries, must be accompanied by fish health inspection reports, from a qualified tester, certifying that the fish have been tested for the required pathogens and are disease free. Bait fish dealers will be required to provide receipts of their sales.

3. Professional services:

A fish health inspection report, issued by an independent, qualified inspector, certifying that the fish are disease free, will be required before such fish may be released into the waters of New York by any of the regulated parties. An independent qualified inspector will also be required for obtaining the fish samples to be tested.

4. Compliance costs:

Commercial hatchery operators, bait fish dealers, and other entities that possess or transport fish intended for release in New York waters, will

incur costs associated with fish health inspection reports required by these regulations.

The estimated cost for testing a "lot" of fish (i.e. 60 fish) for the pathogens that are required to be tested ranges from approximately \$ 500 to \$ 1,000.

5. Economic and technological feasibility:

Testing for a group of pathogens will be required for the small businesses that sell fish to be released to the waters of New York and for local governments that raise fish to be released to the water of the State. Since the testing will need to be conducted by qualified testers, the small businesses and local government facilities will not need to establish any new technology at their facilities. The costs of the testing is described above.

6. Minimizing adverse impact:

The rulemaking does not prohibit the collection of bait fish from waters in New York. Collection and sale of bait fish are still allowed provided the fish remain on the same water body (no overland transport). In addition, the regulations authorize the Department in its discretion to issue a permit allowing for overland transport, possession and sale of bait fish. The rulemaking also allows the commercial hatcheries to sell freshwater fish for release into the waters of New York once they have been determined to be disease free. The Department is assisting hatcheries in New York by offering to temporarily test their fish for at least one year, thus saving hatcheries the cost of having to hire independent testing contractors.

7. Small business and local government participation:

The Department's outreach efforts on this rulemaking included the issuance of a statewide news release (10/31/06) informing the public of this crisis and indicating that the Department was contemplating measures that could be taken to address VHS. On December 18, 2006, the Department issued a statewide news release announcing 11 informational meetings, subsequently held at nine locations across the State in January, 2007. In addition, DEC forwarded copies of a VHS New York information sheet, the APHIS Industry Alert, and the APHIS federal Order to the holders of Fishing Preserve Licenses in New York, licensed Private Hatchery Operators, holders of Great Lakes commercial fishing licenses, and those licensed by the Department to collect and/or sell bait fish. In 2007, the Department developed an informational brochure, which was distributed to commercial bait fish license holders and sport fishing license issuing agents.

Revised Rural Area Flexibility Analysis

1. Types and Estimated Numbers or Rural Areas:

The proposed rule will affect all rural areas in New York. Most commercial bait fish dealers and licensed fish hatcheries and most of their customers that are seeking to stock private waters pursuant to a Department permit are located in rural areas. The number of commercial bait fish licenses (allowing for the collection and/or selling of bait) that have been issued, statewide, by DEC is approximately 400. In addition to commercial bait fish operators, private hatchery operations will also be affected by this rule. This year, DEC issued 35 licenses to rear/sell trout and salmon, and 25 licenses to rear/sell black bass (in-state). Some rural counties own and operate trout hatcheries. Examples include Essex County and Warren County.

2. Reporting, Recordkeeping, and Other Compliance Requirements; Professional Services:

Commercial hatchery operators, bait fish dealers, and other entities that possess or transport fish intended for release in New York waters, will be required to maintain documentation associated with fish health inspections. Bait fish dealers will be required to provide receipts of their sales.

3. Costs:

Commercial hatchery operators, bait fish dealers, and other entities that possess or transport fish intended for release in New York waters, will incur costs associated with fish health inspection reports required by these regulations.

The estimated cost for testing a "lot" of fish (i.e. 60 fish) for the pathogens that are required to be tested ranges from approximately \$ 500 to \$ 1,000.

4. Minimizing Adverse Impact:

The rulemaking does not prohibit the collection of bait fish from waters in New York. Collection and sale of bait fish are still allowed provided the fish remain on the same water body (no overland transport). In addition, the regulations authorize the Department in its discretion to issue a permit allowing for overland transport, possession and sale of bait fish. The rulemaking also allows the commercial hatcheries to sell freshwater fish for release into the waters of New York once they have been determined to be disease free. The Department is assisting hatcheries in New York by

offering to temporarily test their fish for at least one year, thus saving hatcheries the cost of having to hire independent testing contractors.

5. Rural Area Participation:

The Department's outreach efforts on this rulemaking included the issuance of a statewide news release (10/31/06) informing the public of this crisis and indicating that the Department was contemplating measures that could be taken to address VHS. On December 18, 2006, the Department issued a statewide news release announcing 11 informational meetings, subsequently held at nine locations across the State in January, 2007. In addition, the Department forwarded copies of a VHS New York information sheet, the APHIS Industry Alert, and the APHIS federal Order to the holders of Fishing Preserve Licenses in New York, licensed Private Hatchery Operators, holders of Great Lakes commercial fishing licenses, and those licensed by the Department to collect and/or sell bait fish. In 2007, the Department developed and distributed informational brochures to commercial bait fish license holders and sport fishing license issuing agents.

Job Impact Statement

The Department has determined that this emergency rulemaking will not have a substantial adverse impact on jobs and employment opportunities, and that by its nature and purpose (protecting the freshwater fish species resource), the proposed rule will protect jobs and employment opportunities. Therefore, the Department has determined that a job impact statement is not required.

Due to the potential adverse effects of Viral Hemorrhagic Septicemia (VHS) on fish populations and the desire to prevent or delay its spread to other states, the USDA Animal and Plant Health Inspection Service (APHIS) issued a federal Order on October 24, 2006, as well as amended orders on November 14, 2006 and May 4, 2007. The Order prohibits the importation of certain species of live fish from Ontario and Quebec and restricts the interstate movement of the 37 fish species identified in the order from eight states bordering the Great Lakes: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin. Other than catch and release angling on interstate and international waterbodies, movement of fish from these eight states is limited to certified VHS free fish or fish destined for a fish processing facility that meets specified standards.

This rulemaking is necessary to protect New York's freshwater fish species and their populations from VHS and other determined fish pathogens, by preventing the spread of these fish pathogens to additional waters, thereby safeguarding the health of the freshwater fisheries of New York State. In addition to VHS, Spring Viremia of Carp Virus (Infectious carp dropsy) and Infectious Hematopoietic Necrosis Virus (IHN) are internationally reportable diseases to the World Organization of Animal Health. Because they are a threat to fish hatcheries in New York and possibly to the freshwater fish populations of New York, *Aeromonas salmonicida* (Furunculosis), *Yersinia ruckeri* (Enteric Red Mouth) and Infectious Pancreatic Necrosis Virus (IPN) have been included in the proposed regulations. All pathogens identified in the regulations are considered pathogens of concern by the Great Lakes Fishery Commission Fish Health Committee and by the New England Fish Health Committee.

Preventing the spread of these fish pathogens is intended to safeguard New York's freshwater sportfishing industry which currently contributes an estimated \$1.4 billion annually to the state's economy and supports over 17,000 jobs. Some additional jobs are likely to be generated, in order to accommodate the required fish collection, sampling and testing.

Commercial bait fish dealers and private hatchery operators are the two employment areas that will most likely be affected by this rulemaking.

For licensed commercial bait fish dealers (approximately 400), this rulemaking will limit the collection and sale of wild bait fish from NY waters for use on the same water unless permitted by the Department, and require that any other release of fish in the waters of New York be certified as disease free. However, it is unlikely that these restrictions will result in a substantial adverse impact on jobs due to several qualifying factors. First, not all licensed dealers engage in the restricted activities. For example, some licensees may operate retail establishments that do not collect fish from the waters of New York or release fish to the wild. Second, a portion of the licensed commercial baitfish dealers sell bait as just one component of their business (e.g. in conjunction with selling fishing tackle, fishing clothing, operating a marina), and would therefore remain viable even without the sale of bait. Third, allowance is made for sale of bait fish on the same water body as collected, but no overland transport of their fish. Fourth, by permit, the Department has the discretion to allow for overland transport, possession and sale in special situations with low risk. Fifth,

many bait fish operators purchase fish from a disease free source (e.g. fish farms) and therefore will not need to test the fish for disease.

Private hatchery operators will also be affected by the restrictions on fish movement noted above. In 2006, DEC issued 35 licenses to rear/sell trout and salmon, and 25 licenses to rear/sell black bass in New York. The regulations will require that these operations certify their fish as disease free if the fish are to be sold for bait or for use in the waters of the State of New York. The estimated cost for testing a "lot" of fish (i.e. 60 fish) for the pathogens that are required to be tested ranges from approximately \$ 500 to \$ 1,000. While this is not an insignificant sum, the presence of VHS in New York will likely dictate a market in which buyers require certification from sellers that the fish are disease free. Therefore, the testing requirements in the proposed regulations will likely contribute to the marketability of the hatchery operator's product.

In addition, the Department is assisting the private hatcheries in New York by temporarily offering to conduct the required disease testing, for up to one year. For this reason, it does not appear that the Department's regulations on disease testing will result in a loss of fish hatchery jobs.

The Department has determined that this emergency rulemaking will not have a substantial adverse impact on jobs and employment opportunities, and that by its nature and purpose (protecting the freshwater fish species resource), the proposed rule will in fact protect jobs and employment opportunities dependent on New York's fishery resources. While it is difficult to determine exactly how many jobs may be affected by this rulemaking, based on the above, the Department does not believe it will result in the decrease of more than one hundred jobs (or the equivalent). Therefore, the Department has determined that a job impact statement is not required.

Assessment of Public Comment

The following comments were received by the Department during the public comment period associated with the revised rule making. Some comments have been grouped together because they are related or for convenience in providing an efficient response. The Department's response is provided for each comment or group of comments.

Comment: The required receipt for the purchase and possession of bait fish, at the retail sale level and for personal use, should be extended beyond the 7 day limit.

Response: The time restriction is intended to limit the potential for abuse. Allowing the receipt to be valid for more than 7 days would increase the risk that the receipt might be used to transport uncertified bait fish. The limit of seven days is intended to give the purchaser adequate time to use leftover bait fish on another fishing trip while minimizing the risk that the will be used to transport uncertified bait fish.

Comment: The Department should allow overland transport of alewives and herring for use as bait fish on the Hudson River, for both personal and commercial use. The Department should establish a permit system to allow for overland transport, particularly for the use of herring as bait fish on the Hudson River.

Response: While much of the herring used as bait fish are likely utilized in the Hudson River system, herring are used in other waters as well (e.g. for striped bass fishing in the Delaware River; or as cut bait for fishing for other species in other waters, like catfish). Thus, it should not be assumed that all herring being used for bait will be used in the Hudson River. The general prohibition on overland transport of uncertified bait fish is intended to limit the potential for uncertified bait being used in a water body other than the water body from which the fish were taken. If uncertified bait fish could be transported by car, it would become very difficult for law enforcement personnel to determine where the person in possession intended to use the fish. This would increase the risk that diseased fish could be used in a way that would spread VHS in New York waters. The family Clupeidae (herring and alewife) is known to be susceptible to VHS.

Comment: The Department should test and certify water ways as disease free, where wild bait fish subsequently can be collected, transported and used as bait fish in other waters.

Response: Individual bodies of water can not be determined to be disease free. Natural bodies of water can have immigration and emigration of fish, and inflow from connected bodies of water. This activity and the lack of a controlled environment would undermine the reliability or certainty of the test results, at least for any meaningful period of time. Current disease testing protocols call for testing of a defined group of isolated fish - a "lot."

Comment: The Department should implement a license or permit system to allow untested minnows from backyard ponds to be used in certain waters.

Response: The most likely pathway to spread VHS and other fish diseases is through the introduction of diseased fish. Untested fish have an unknown disease status and movement of these fish may infect additional waters.

Comment: The Department should allow overland transport of bait fish, for both personal and commercial use, for use in Great Lake's waters.

Response: The general prohibition on overland transport of uncertified bait fish is intended to limit the potential for uncertified bait being used in a water body other than the water body from which the fish were taken. If uncertified bait fish could be transported by car, it would become very difficult for law enforcement personnel to determine where the person in possession intended to use the fish. This would increase the risk that diseased fish could be used in a way that would spread VHS in New York waters.

Comment: Bait fish shops located in the vicinity of the Marine and Coastal District should be exempt from the fish health certification report and receipt requirements for bait fish if they are sold only for use in the marine and coastal district.

Response: The revised rule has been modified to no longer require certification prior to sale, or the issuance of receipts at the time of sale, for bait fish that are to be used only in the marine and coastal district.

Comment: The Department should allow for the sale of uncertified bait fish to be used only in the marine and coastal district along with the sale of certified bait from the same location.

Response: Having uncertified bait fish at the same facility as certified bait fish creates a significant risk due to the potential for mixing fish. This restriction is necessary in order to prevent disease from spreading.

Comment: Establish zones around water bodies, where overland transport of bait fish collected from that water body would be allowed for personal use.

Response: The general prohibition on overland transport of uncertified bait fish is intended to limit the potential for uncertified bait being used in a water body other than the water body from which the fish were taken. If uncertified bait fish could be transported by car, it would become very difficult for law enforcement personnel to determine where the person in possession intended to use the fish. This would increase the risk that diseased fish could be used in a way that would spread VHS in New York waters. The creation of zones around waterbodies where baitfish could be transported overland would severely limit the ability of law enforcement staff to enforce the regulation because there would be no reasonable way to determine the source of the bait fish.

Comment: Temporarily ban all bait fish use.

Response: The Department took into consideration a large number of factors and concerns in proposing these regulations. Among these were the risks of disease transmission, effects on anglers, and impacts to commercial bait fish operators. In order to minimize negative effects as much as possible, it was determined that the use of bait fish would be acceptable if they are certified to be free of the diseases listed in the regulation or are used on the water where the bait fish were collected.

Comment: The regulation regarding dead, processed bait is vague and favors commercial dealers. The personal salting of bait fish, on site of collection, should be allowed.

Response: The Department is concerned that the salting of bait fish by an angler for personal use may not be an effective and adequate method for preventing the spread of VHS. There is uncertainty about this preservation process and the likelihood that individuals' treatments would be sufficiently rigorous to kill the virus. Therefore, it was determined that commercial preservation and packing, several of which render the fish incapable of harboring the virus, was the only viable option.

Comment: The Department should allow for a one year grace period before aquaculture facilities are required to use standard DEC health certificate forms because testing at these facilities occurs only once a year.

Response: Standard forms were required because of the need to quickly and easily identify test results. The use of differing forms has created confusion in the past.

Comment: The Department should allow for limited time use of in-lake holding structures (e.g., cages or pens) for wild caught baitfish during and after disease testing.

Response: In-lake holding structures separate fish physically, but because the bait fish are in lake waters, the structure do not prevent bait fish from being exposed to pathogens during the holding period. This practice was deemed a risk.

Comment: The Department should allow the importation of uncertified baitfish from "VHS-free" states.

Response: If fish have not been tested, then their disease status is unknown. Introducing fish into the waters of the state with an unknown disease status presents an unacceptable risk.

Comment: The Department should classify Lake Erie, the Niagara River, and Lake Ontario as one waterbody for the purposes of this regulation.

Response: Niagara Falls presents a barrier to fish movement between Lakes Erie and Ontario. To remain consistent with the rest of the regulation, these waters should be kept separate. Combining these waters could facilitate movement of fish between these water bodies which could not occur naturally due to the barrier. Thus, such a combination could increase the risk of VHS moving between the two water bodies.

Comment: The Department should allow fish to be moved and released across political lines on the same waterbody.

Response: The revised rule making has been modified to allow fish that have been captured in border waters to be transported to and released in the New York State portion of the waterbody.

Comment: The Department should prohibit wild fish from New York waters from being introduced into border waters with Vermont.

Response: The only wild fish that DEC is allowing into border waters from other New York waters are fish that have been certified free of the diseases listed in the regulation in accordance with AFS or OIE disease testing standards. These are the same standards used in aquaculture facilities and the risks for disease transmission are considered to be the same.

Comment: The Department should allow fish to be moved away from the waterbody for tournament weigh-in.

Response: The regulation does not allow for overland transport of uncertified fish without a permit from the Department. This rule must remain consistent in order to ensure that it is enforceable and to minimize the potential for abuse. If tournament organizers are planning to transport fish overland for tournament purposes, then they are required to obtain a permit from the appropriate Regional Fisheries Manager.

Comment: The Department should provide bait fish dealers with a quick and easy standard receipt.

Response: DEC will consult with members of the bait fish industry to determine if a standard receipt is desirable.

Department of Health

NOTICE OF ADOPTION

Hospice Residence Dually Certified Beds

I.D. No. HLT-52-06-00005-A

Filing No. 501

Filing date: May 18, 2007

Effective date: June 6, 2007

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

Action taken: Amendment of Parts 700, 717, 790, 791 and 794 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 4002(2-b)

Subject: Hospice residence dually certified beds.

Purpose: To establish the standards and procedures for hospice residence beds dually certified for residence care and inpatient care. Also, update general standards for hospice residence.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-52-06-00005-P, Issue of December 27, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Department of Health, Office of Regulatory Affairs, Rm. 2438, Empire State Plaza Tower Bldg., Albany, NY 12237-0097, (518) 473-7488

Assessment of Public Comment

The agency received no public comment.

Department of Motor Vehicles

NOTICE OF ADOPTION

Waiver of Road and Written Tests

I.D. No. MTV-13-07-00016-A

Filing No. 503

Filing date: May 22, 2007

Effective date: June 6, 2007

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

Action taken: Amendment of Part 8 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 502(4)(a)(i), (b), (f) and 508(1) and (4)

Subject: Waiver of road and written tests.

Purpose: To provide for the waiver of the road and written test if the applicant for an original license makes application for license within one year from the date he or she was last validly licensed in New York State.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-13-07-00016-P, Issue of March 28, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Michele L. Welch, Counsel's Office, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Recovery of Decommissioning and Shutdown-Related Costs by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-27-05-00010-A

Filing date: May 21, 2007

Effective date: May 21, 2007

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

Action taken: The commission, on May 16, 2007, adopted an order allowing Consolidated Edison Company of New York, Inc. to recover certain costs related to the decommissioning and shut-down of its Hudson Avenue Steam Electric Generating Unit 10/100.

Statutory authority: Public Service Law, sections 2, 4, 5, 65 and 66

Subject: Con Edison's recovery of costs related to the decommissioning and shut-down of its Hudson Avenue Steam Electric Generating Unit 10/100.

Purpose: To approve Con Edison's request for recovery of decommissioning and shut-down related costs associated with its Hudson Avenue Steam Electric Generating Unit 10/100.

Substance of final rule: The Public Service Commission adopted an order allowing Consolidated Edison Company of New York, Inc. to recover certain costs related to the decommissioning and shut-down of its Hudson Avenue Steam Electric Generating Unit 10/100, subject to the terms and conditions of 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.
(01-E-0147SA2)

NOTICE OF ADOPTION

Transfer of Property by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.

I.D. No. PSC-39-06-00016-A
Filing date: May 18, 2007
Effective date: May 18, 2007

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

Action taken: The commission, on May 16, 2007, adopted an order approving the petition of Consolidated Edison Company of New York, Inc. (Con Edison) and Orange and Rockland Utilities, Inc. (O&R) for transfer of ownership of certain utility property.

Statutory authority: Public Service Law, section 70

Subject: Transfer of property.

Purpose: To approve Con Edison and O&R to transfer ownership of certain utility transformers.

Substance of final rule: The Commission approved the petition of Consolidated Edison Company of New York, Inc (Con Edison) and Orange and Rockland Utilities, Inc. (O&R) for participation in the Edison Electric Institute's (EEI) Spare Transformer Equipment Program and authority to sell and transfer spare utility transformers, subject to the terms and conditions of 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.
(06-E-1047SA1)

NOTICE OF ADOPTION

Unbundled Bill Formats by Central Hudson Gas and Electric Corporation

I.D. No. PSC-43-06-00011-A
Filing date: May 18, 2007
Effective date: May 18, 2007

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

Action taken: The commission, on May 16, 2007, approved the proposal of Central Hudson Gas and Electric Corporation to unbundle bill formats.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), 66(1), (4), (5), (10) and (12)

Subject: Unbundled bill formats.

Purpose: To approve the unbundled bill formats of Central Hudson Gas and Electric Corporation.

Substance of final rule: The Public Service Commission approved the proposal of Central Hudson Gas and Electric Corporation (Central Hudson or the company) to unbundle bill formats and authorized Central Hudson to recover \$53,000 in incremental costs incurred for the development and implementation of unbundled bill formats and directed the company to file the necessary tariff revisions to effectuate the change, subject to the terms and conditions of 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.
(05-E-0934SA4)

NOTICE OF ADOPTION

Unbundled Bill Formats by Central Hudson Gas and Electric Corporation

I.D. No. PSC-43-06-00013-A
Filing date: May 18, 2007
Effective date: May 18, 2007

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

Action taken: The commission, on May 16, 2007, approved the proposal of Central Hudson Gas and Electric Corporation to unbundle bill formats.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), 66(1), (4), (5), (10) and (12)

Subject: Unbundled bill formats.

Purpose: To approve the unbundled bill formats of Central Hudson Gas and Electric Corporation.

Substance of final rule: The Public Service Commission approved the proposal of Central Hudson Gas and Electric Corporation (Central Hudson or the company) to unbundle bill formats and authorized Central Hudson to recover \$53,000 in incremental costs incurred for the development and implementation of unbundled bill formats and directed the company to file the necessary tariff revisions to effectuate the change, subject to the terms and conditions of 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.
(05-G-0935SA4)

NOTICE OF ADOPTION

Issuance of Stock by Chaffee Water Works Co., Inc.

I.D. No. PSC-43-06-00016-A
Filing date: May 17, 2007
Effective date: May 17, 2007

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

Action taken: The commission, on May 16, 2007, adopted an order approving the petition of Chaffee Water Works Co., Inc. to borrow up to \$381,806 from the Drinking Water State Revolving Loan Fund to finance system improvements and to surcharge customers to repay the principal amount of the loan.

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

Subject: Issues of stock, bonds and other forms of indebtedness, and water rates and surcharges to customers.

Purpose: To approve Chaffee Water Works Co., Inc. to enter into a loan agreement and surcharge its customers.

Substance of final rule: The Commission approved the Petition of Chaffee Water Works Co., Inc. to borrow up to \$381,806 from the Drinking Water State Revolving Loan Fund to rebuild its water system and to surcharge customers to repay the principal amount of the loan, 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.
(06-W-1160SA1)

NOTICE OF ADOPTION**Applicability Clauses by Consolidated Edison Company of New York, Inc.**

I.D. No. PSC-08-07-00010-A

Filing date: May 17, 2007

Effective date: May 17, 2007

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

Action taken: The commission, on May 16, 2007, adopted an order allowing Consolidated Edison Company of New York, Inc.'s (Con Edison) request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 9.

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

Subject: Applicability clause—residential service.

Purpose: To approve the revision of applicability clauses for service classifications Nos. 1 and 7.

Substance of final rule: The Public Service Commission adopted an order authorizing Consolidated Edison Company of New York, Inc.'s (the company) tariff amendments and directed the company to notify all customers converting a New York State Division of Housing and Community Renewal (DHCR) regulated multiple dwelling building from master metering to direct metering, subject to the terms and conditions of 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.
(07-E-0157SA1)

NOTICE OF ADOPTION**Water Rates and Charges by Reagans Mill Water Company, Inc.**

I.D. No. PSC-09-07-00017-A

Filing date: May 16, 2007

Effective date: May 16, 2007

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

Action taken: The commission, on May 16, 2007, adopted an order approving Reagans Mill Water Company, Inc.'s new tariff schedule, P.S.C. No. 1—Water to become effective June 1, 2007.

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

Subject: Water rates, charges and electronic tariff filing.

Purpose: To approve the increase of restoration of service charges for Reagans Mill Water Company, Inc., and approve an electronic tariff schedule, P.S.C. No. 1—Water.

Substance of final rule: The Commission adopted an order approving Reagans Mill Water company, Inc.'s new tariff schedule, P.S.C. No. 1 - Water to become effective June 1, 2007, and an increase in its restoration of service charge.

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.
(07-W-0187SA1)

NOTICE OF ADOPTION**Street Lighting—Pole Rental Charges by Central Hudson Gas and Electric Corporation**

I.D. No. PSC-11-07-00013-A

Filing date: May 16, 2007

Effective date: May 16, 2007

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

Action taken: The commission, on May 16, 2007, adopted an order in Case 07-E-0220, approving an amendment to Central Hudson Gas and Electric Corporation's (Central Hudson) schedule for electric service—P.S.C. No. 15.

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

Subject: Street lighting—pole rental charges.

Purpose: To approve Central Hudson's street lighting pole rental charges.

Substance of final rule: The Commission approved Central Hudson Gas and Electric Corporation's tariff revisions to correct the annual street light pole rental rates.

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.
(07-E-0220SA1)

NOTICE OF ADOPTION**Temporary Electric Rates by Orange and Rockland Utilities, Inc.**

I.D. No. PSC-12-07-00006-A

Filing date: May 18, 2007

Effective date: May 18, 2007

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

Action taken: The commission, on May 16, 2007, adopted as a permanent rule, the provisions of its March 1, 2007 order making temporary rates subject to refund for Orange and Rockland Utilities, Inc. (O&R).

Statutory authority: Public Service Law, sections 66(5), 72 and 114

Subject: O&R electric rates are made temporary and subject to refund at their current levels, pending the determination of permanent rates.

Purpose: To make the electric rates of O&R temporary and subject to refund at their current levels.

Substance of final rule: The Public Service Commission adopted as a permanent rule, the provisions of its March 1, 2007 order making temporary rates subject to refund for Orange and Rockland Utilities, Inc.

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.
(06-E-1433SA3)

NOTICE OF ADOPTION

Fixed Gas Costs by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-12-07-00010-A
Filing date: May 17, 2007
Effective date: May 17, 2007

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

Action taken: The commission, on May 16, 2007, approved Consolidated Edison Company of New York Inc.'s (Con Edison) request to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service P.S.C. No. 9.

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

Subject: Fixed gas costs.

Purpose: To allow the methodology for determining the fixed percentages used to allocate fixed and balancing service costs between Con Edison and Orange and Rockland Utilities, Inc. and establish a process to update these fixed percentages on an annual basis.

Substance of final rule: The Public Service Commission approved Consolidated Edison Company of New York Inc.'s (Con Edison) tariff filing to change the methodology for determining the percentages used to allocate the fixed gas costs and balancing service costs between Con Edison and Orange and Rockland Utilities, Inc. and to establish a process to update the percentages on an annual basis.

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. (07-G-0259SA1)

NOTICE OF ADOPTION

Fixed Gas Costs by Orange and Rockland Utilities, Inc.

I.D. No. PSC-12-07-00011-A
Filing date: May 17, 2007
Effective date: May 17, 2007

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

Action taken: The commission, on May 16, 2007, approved Orange and Rockland Utilities, Inc.'s (O&R) request to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service P.S.C. No. 4.

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

Subject: Fixed gas costs.

Purpose: To allow the methodology for determining the fixed percentages used to allocate fixed and balancing service costs between O&R and Consolidated Edison Company of New York, Inc. and establish a process to update these fixed percentages on an annual basis.

Substance of final rule: The Public Service Commission approved Orange and Rockland Utilities, Inc.'s (O&R) tariff filing to change the methodology for determining the percentages used to allocate the fixed gas costs and balancing service costs between O&R and Consolidated Edison Company of New York Inc. and to establish a process to update the percentages on an annual basis.

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. (07-G-0261SA1)

NOTICE OF ADOPTION

Transfer of Ownership of a Gas Fired Electric Generation Facility by Rensselaer Cogeneration LLC, et al.

I.D. No. PSC-13-07-00014-A
Filing date: May 21, 2007
Effective date: May 21, 2007

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

Action taken: The commission, on May 16, 2007, adopted an order approving the petition of Rensselaer Cogeneration LLC, Bison Power LLC, and Rensselaer Holdings LLC for the transfer of ownership interests in a 79.4 MW natural gas fired electric generation facility located in Rensselaer, NY and lightened regulation for the facility.

Statutory authority: Public Service Law, sections 2(13), 5(1)(b), 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Transfer of ownership and lightened regulation of an approximately 79 MW gas fired electric generation facility.

Purpose: To approve the transfer of ownership and lightened regulation of an approximately 79 MW gas fired electric generation facility.

Substance of final rule: The Commission adopted an order approving the Petition of Rensselaer Cogeneration LLC, Bison Power LLC, and Rensselaer Holdings LLC for the transfer of ownership interests in a 79.4 MW natural gas fired electric generation facility located in Rensselaer, New York and lightened regulation for the facility, subject to the terms and conditions of 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. (07-E-0300SA1)

NOTICE OF ADOPTION

Gas Efficiency Program by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-13-07-00015-A
Filing date: May 16, 2007
Effective date: May 16, 2007

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

Action taken: The commission, on May 16, 2007, adopted an order requiring Consolidated Edison Company of New York, Inc. (Con Edison) to implement a gas efficiency program for the 2007-08 heating season.

Statutory authority: Public Service Law, sections 2, 4, 5, 65, 66 and 66-c
Subject: Gas efficiency program for Con Edison.

Purpose: To approve filing and implementation of gas efficiency plan.

Substance of final rule: The Commission adopted an order requiring Consolidated Edison Company of New York, Inc. (Con Edison) to implement a gas efficiency program for the 2007-08 heating season, subject to the terms and conditions or 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-G-1671SA7)

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

Uniform System of Accounts by Hancock Telephone Company

I.D. No. PSC-23-07-00021-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 request from Hancock Telephone Company (Hancock) for deferred accounting treatment related to expenses resulting from a flood that occurred in June of 2006.

Statutory authority: Public Service Law, section 95

Subject: Uniform system of accounts—request for accounting authorization.

Purpose: To allow Hancock deferred accounting treatment for expenses beyond the end of the year in which it occurred.

Substance of proposed rule: The Public Service Commission is considering a request from Hancock Telephone Company (Hancock) for deferred accounting treatment for expenses related to a flood occurring in June of 2006. The Commission may approve, reject or modify, in whole or in part, the relief requested by Hancock.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, 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.

(07-C-0539SA1)

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

Supplier, Transportation, Balancing and Aggregation Service by National Fuel Gas Distribution Corporation

I.D. No. PSC-23-07-00022-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 National Fuel Gas Distribution Corporation (the company) to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service, P.S.C. No. 8—Gas, to become effective Sept. 21, 2007.

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

Subject: Service Classification No. 19—supplier, transportation, balancing and aggregation service.

Purpose: To modify Service Classification No. 19 to explicitly state in the company's tariff that the threshold level of elective upstream transmission capacity is a maximum of 112,600 Dth/day of marketer-provided upstream capacity.

Substance of proposed rule: The Commission is considering National Fuel Gas Distribution Corporation's (National Fuel or the company) request to revise the company's gas tariff, P.S.C. No. 8 - Gas, to modify S.C. No. 19 - Supplier, Transportation, Balancing and Aggregation service. The revision will explicitly state in the company's tariff the threshold level of Elective Upstream Transmission Capacity as a maximum of 112,600 Dth/day of marketer-provided upstream capacity. The revision is being proposed to conform the company's tariff to an update of a schedule currently

contained in the company's Gas Transportation Operations Procedures Manual. The Commission may approve, reject or modify, in whole or in part, National Fuel's request.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, 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.

(07-G-0594SA1)

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

System Benefit Charge Funds by the New York State Energy Research and Development Authority

I.D. No. PSC-23-07-00023-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 directing the New York State Energy Research and Development Authority to reallocate a portion of system benefit charge (SBC) funds to fund the study by one or more consultants of new and improved opportunities for energy efficiency in the State of New York under a contract entered into between the consultant and the Department of Public Service.

Statutory authority: Public Service Law, sections 2, 5 and 66

Subject: Reallocation of a portion of SBC funds to fund the study by one or more consultants of new and improved opportunities for energy efficiency in the State of New York under a contract entered into between the consultant and the Department of Public Service.

Purpose: To consider whether the commission should authorize the reallocation of a portion of SBC funds to fund the study by one or more consultants of new and improved opportunities for energy efficiency in the State of New York under a contract entered into between the consultant and the Department of Public Service.

Substance of proposed rule: The New York State Energy Research and Development Authority (NYSERDA) is the Public Service Commission's (Commission) third-party administrator for funding related to the System Benefits Charge program (SBC). The Commission is considering, on its own motion, directing the reallocation of uncommitted SBC funds to be set aside by NYSERDA for use by the Department of Public Service (Department) to contract with one or more consultants for the purpose of studying new and improved opportunities for energy efficiency in the State of New York.

The Commission may approve, reject, or modify, in whole or in part, this proposal and it may also consider other related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, 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.

(05-M-0090SA2)

State University of New York

NOTICE OF ADOPTION

Traffic and Parking Regulations at SUNY Brockport

I.D. No. SUN-05-07-00001-A

Filing No. 504

Filing date: May 27, 2007

Effective date: June 6, 2007

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

Action taken: Amendment of section 563.4 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Traffic and parking regulations of the State University of New York College at Brockport.

Purpose: To bring the traffic and parking regulations into conformity with chapter 699, Laws of 2005, by authorizing the exemption of veterans attending the State University of New York College at Brockport from parking fees.

Text of final rule: Section 563.4 is amended by adding a new subdivision (f) to read as follows:

(f) *Veterans. Any veteran, as defined in section 360 of the New York State Education Law, in attendance as a student at the college shall be exempt from parking fees upon submission by the veteran of a written request for exemption together with written certification by the veteran that such veteran was honorably discharged or released under honorable circumstances from such service.*

Final rule as compared with last published rule: Nonsubstantive changes were made in section 563.4 of Title 8 NYCRR. Notice of Proposed Rule Making (SUN-05-07-00001-P) indicated an amendment to section 563.7 of Title 8 NYCRR, this is a typo, amendment is to section 563.4 of Title 8 NYCRR.

Text of rule and any required statements and analyses may be obtained from: Angela Winn, Paralegal, State University of New York, State University Plaza, S332, Albany, NY 12246, (518) 443-5400, e-mail: Angela.Winn@suny.edu

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

The Notice of Proposed Rule Making (SUN-05-07-00001-P) was filed to amend Section 563.7 of Title 8 NYCRR. The Notice stated our intention to add new text, subsection (n) to Section 563.7. This was a typo. That same text will be added to Section 563.4 as subsection (f). The text did not change, only the place where it was to be added did. This nonsubstantive change did not effect the RIS, RFA, RAFA, or JIS statements.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Traffic Patterns and Control at SUNY at Stony Brook

I.D. No. SUN-23-07-00001-P

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

Proposed action: Amendment of Part 584 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Traffic patterns and control on the campus of the State University of New York at Stony Brook.

Purpose: To more clearly designate traffic flow and control as well as clarify new street designations and fine schedule for violations.

Substance of proposed rule (Full text is posted at the following State website: www.sunysb.edu): The proposed changes to 8 NYCRR 584 reflect alterations in existing traffic patterns and controls on the campus of the State University of New York at Stony Brook designed to further improve pedestrian and vehicular safety.

Additional amendments include vehicle registration instructions, parking permit requirements for faculty, staff, students and visitors and identification of restricted parking areas for visitors and the campus community.

Enforcement policies are also addressed, including, specifically, increases in fines for moving and stationary violations. The process for appealing citations is explained in detail.

Finally, Section 584.5 is re-written in its entirety to more clearly identify site-specific speed control, intersection controls, crosswalk designations and changes in street names.

Text of proposed rule and any required statements and analyses may be obtained from: Lynette M. Phillips, SUNY Stony Brook, Office of the University Counsel, 328 Administration Bldg., Stony Brook, NY 11794-1212, (631) 632-6110, e-mail: Lynette.Phillips@stonybrook.edu

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: Education Law § 360(1)

2. Legislative Objectives: To provide for safety and convenience of students, faculty, employees and visitors to and on the property, roads, streets and highways under the supervision and control of the State University through the regulation of vehicular and pedestrian traffic, parking and signage.

3. Needs and Benefits: Changes in traffic patterns and control designations on the State University campus are designed to enable the campus community, visitors and emergency vehicles to traverse the campus more safely and more efficiently.

4. Costs: None.

5. Local Government Mandates: None.

6. Paperwork: None.

7. Duplication: None.

8. Alternatives: None.

9. Federal Standards: There are no related Federal standards.

10. Compliance Schedule: The campus will notify those affected as soon as the rule is effective. Compliance should be immediate.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because this proposal does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments. The proposal addresses traffic pattern and control on the campus of the State University of New York at Stony Brook.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because this proposal will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping or other compliance requirements on public or private entities in any rural area. The proposal addresses traffic pattern and control changes on the campus of the State University of New York at Stony Brook.

Job Impact Statement

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses traffic pattern and control changes on the campus of the State University of New York at Stony Brook.

Department of Transportation

NOTICE OF ADOPTION

National Manual on Uniform Traffic Control Devices for Streets and Highways

I.D. No. TRN-08-07-00005-A

Filing No. 506

Filing date: May 22, 2007

Effective date: Sept. 13, 2007

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

Action taken: Repeal of Chapter V and addition of new Chapter V to Title 17 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 1680(a); and Transportation Law, section 14(18)

Subject: New York State Supplement to the National Manual on Uniform Traffic Control Devices for Streets and Highways - 2003 Edition.

Purpose: To modify certain provisions of the National Manual on Uniform Traffic Control Devices for Streets and Highways - 2003 Edition (MUTCD) in order to retain certain New York authorized traffic control devices and practices related to traffic control devices that are currently authorized by the existing 17 NYCRR Chapter V but are not recognized by the MUTCD.

Substance of final rule: This rule making repeals existing provisions of Title 17 NYCRR Chapter V relating to the regulations commonly known as the New York State Manual of Uniform Traffic Control Devices (MUTCD). The rule making is necessitated by the September 13, 2006 changes to Section 1680 of the New York State Vehicle and Traffic Law, wherein the provisions of the National Manual on Uniform Traffic Control Devices for Streets and Highways – 2003 Edition (National MUTCD) will be adopted effective September 13, 2007 as New York's standards governing the use of traffic control devices on streets, highways and bicycle paths open to public travel.

While the changes to the New York State Vehicle and Traffic Law adopt the provisions of the National MUTCD, they also allow the Commissioner to promulgate regulations to modify certain provisions of the National MUTCD in order to retain the standards and practices that currently meet the unique needs of New York. This rule making provides for the New York State Supplement and contains:

1. Existing devices not found in the National MUTCD (e.g., the YIELD TO THE BLIND sign);
2. Existing provisions that are stricter than their associated provisions in the National MUTCD (e.g., New York does not allow for the creation of new traffic control devices without Department approval);
3. Existing devices and provisions that must be retained in order to remain in conformance with New York State law (e.g., legal bridge clearances); and
4. Existing devices and provisions that differ from their parallel provisions in the National MUTCD, but do not violate any National mandates (e.g., general service symbol signs are subject to different rules of use).

While the adoption of the National MUTCD imposes some changes upon traffic control devices in New York, these regulations providing for a New York State Supplement will serve to mitigate the total number of changes that would have otherwise been made necessary due to the adoption of the National MUTCD as the New York State Standard for traffic control devices on public ways of travel. The New York State Supplement accomplishes this mitigation by modifying approximately 175 of the National MUTCD's 1000 sections, and adding approximately 50 new sections that carry forward provisions of the existing New York State Manual of Uniform Traffic Control Devices.

Final rule as compared with last published rule: Nonsubstantive changes were made in 2B.39, 2.B.45, 2B.107, 2C.29, 2C.30, 2C.37, 2C.41, 2D.03, 2D.45, Chap.3, 6F.34, 6F.106, 7B.11 and SDW3-W12.

Text of rule and any required statements and analyses may be obtained from: David Woodin, Department of Transportation, Traffic Operations Section, 50 Wolf Rd., POD 4-2, Albany, NY 12232, (518) 457-1793, e-mail: dwoodin@dot.state.ny.us

Job Impact Statement

Please be advised that the non-substantial changes in the above-referenced rule making do not affect the contents of the Job Impact Statement published in the February 21, 2007 *State Register*.

Assessment of Public Comment

The agency received no public comment.