

# RULE MAKING ACTIVITIES

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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.

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## Department of Agriculture and Markets

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### EMERGENCY RULE MAKING

#### Dairy Assistance Program

**I.D. No.** AAM-18-07-00001-E  
**Filing No.** 386  
**Filing date:** April 16, 2007  
**Effective date:** April 16, 2007

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

**Action taken:** Addition of Part 23 to Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 18(6) and 258-pp

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

**Specific reasons underlying the finding of necessity:** The rule is being adopted as an emergency measure because of the April 9, 2007 enactment of art. 21-D of the Agriculture and Markets Law by L. 2007, ch. 57. Said article establishes a Dairy Assistance Program within the Department of Agriculture and Markets, directs that payment be made to milk producers no later than 30 days following the effective date of the article and authorizes the commissioner to promulgate any additional rules and regulations necessary to implement the provisions of the article. This rule establishes a

definition for “eligible producer” and includes provisions relating to payment limit, target prices and the verification of production data and is necessary to implement the provisions of Agriculture and Markets Law article 21-D so that payment may be made to milk producers within the time period established by said article.

**Subject:** Payment of milk producers pursuant to the Dairy Assistance Program established by L. 2007, ch. 57.

**Purpose:** To implement the provisions of Agriculture and Markets Law art. 21-D.

**Text of emergency rule:**

Part 23

Dairy Assistance Program

**23.1 Eligible producer.** For the purposes of the Dairy Assistance Program established pursuant to Agriculture and Markets Law § 258-pp, “eligible producer” means a New York State producer who was in operation on April 1, 2007 and who produced milk during the 2006 calendar year.

**23.2 Payment limit.** For purposes of administering the payment limitations prescribed by Agriculture and Markets Law § 258-pp, the following shall apply:

(a) For producers who participate in the federal Milk Income Loss Contract Extension (MILCX) Program, determinations under that Program as to whether the producer is a combined or separate dairy operation shall be used in applying the four million eight hundred thousand pounds of milk reimbursement limit established by subdivision four of Agriculture and Markets Law § 258-pp.

(b) For producers who operate multiple farms and do not participate in the MILCX Program, any producer using the same tax identification or Social Security number for such farms shall be considered to be one producer for purposes of applying the four million eight hundred thousand pounds of milk reimbursement limit established by subdivision four of Agriculture and Markets Law § 258-pp.

**23.3 Target Price.** For purposes of distributing the State funding provided by Chapter 57 of the Laws of 2007, the target price shall be the price that results in the payment rate to eligible producers in accordance with the formula set forth in subdivision one of Agriculture and Markets Law § 258-pp.

**23.4 Verification of production data.** For the purposes of verifying production data pursuant to subdivision two of Agriculture and Markets Law § 258-pp:

(a) the production data for producers who participate in the MILCX Program shall be the production information provided to the Department by the United States Department of Agriculture’s Farm Service Agency (FSA) as requested by the Department pursuant to such subdivision; provided, however, if the required data is not available from the FSA, the data may be obtained from the producers’ milk cooperative, processor or handler. In the event production data is not available from any of the foregoing sources, the data shall be obtained directly from producers in accordance with subdivision (b) of this section;

(b) the production data for producers who do not participate in the MILCX Program shall be milk marketing payment stubs, bulk tank records, milk handler records, daily milk marketing records and such other evidence of monthly milk marketing as the Commissioner may deem acceptable.

**This notice is intended** to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire July 14, 2007.

**Text of emergency rule and any required statements and analyses may be obtained from:** Will Francis, Director of Milk Control, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-1772

#### **Regulatory Impact Statement**

##### 1. Statutory Authority:

Section 18(6) of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department.

Section 258-pp of the Agriculture and Markets Law provides that the Commissioner is authorized to promulgate any additional rules and regulations necessary to implement the provisions of Agriculture and Markets Law Article 21-D.

##### 2. Legislative Objectives:

Agriculture and Markets Law section 258-oo sets forth the Legislative intent of the Dairy Assistance Program. Said Section states that the Legislature finds that the State's dairy farmers continue to labor under a combination of extremely low milk prices well below those of twenty-five years ago, along with very high fuel, feed, energy, fertilizer and other operating costs. It further indicates that these conditions have resulted in unprecedented losses for dairy farmers, that the price of milk continues to be well below the cost of production, and that the vendors and service industries serving dairy farmers have had to provide an increasing amount of credit to such farmers.

The Legislative intent states that Agriculture and Markets Law Article 21-D is intended to assist the dairy farmers of this State and their industry in a time of great need and to prevent further loss in the dairy industry and its infrastructure which are critical to the State's agricultural economy.

The adoption of 1 NYCRR Part 23 will further these goals by implementing the provisions of Agriculture and Markets Law Article 21-D so that payment may be made to milk producers within the time period established by said Article.

##### 3. Needs and Benefits:

As set forth in Legislative Objectives herein, Agriculture and Markets Law Article 21-D is intended to assist the dairy farmers of this State and their industry in a time of great need and to prevent further loss in the dairy industry and to the infrastructure which are critical to the State's agricultural economy. Said article directs that payment be made to milk producers no later than thirty days following the effective date of the Article and authorizes the Commissioner to promulgate any additional rules and regulations necessary to implement the provisions of the Article. This rule implements the provisions of Agriculture and Markets Law Article 21-D so that payment may be made to New York State milk producers within the time period established by said Article.

The definition of "eligible producer" establishes, within the statutory framework of Chapter 57 of the Laws of 2007, which producers are eligible to participate in the Dairy Assistance Program. The provision relating to payment limit provides for the application of the statutory reimbursement limit. The provision relating to target prices provides for the target prices referred to in Agriculture and Markets Law '258-pp. The provision relating to verification of production data provides for the means of determining milk production for producers.

##### 4. Costs:

(a) Costs to regulated parties: None.

(b) Costs to agency, state and local governments: None.

##### 5. Local Government Mandates:

None.

##### 6. Paperwork:

The regulation provides that for purposes of subdivision two of Agriculture and Markets Law § 258-pp the production data for producers who do not participate in the MILCX Program shall be milk marketing payment stubs, bulk tank records, milk handler records, daily milk marketing records and such other evidence of monthly milk marketing as the Commissioner may deem acceptable.

##### 7. Duplication:

None.

##### 8. Alternatives:

The alternative of not promulgating a regulation was considered, but it was determined that the proposed regulation was necessary to implement Article 21-D of the Agriculture and Markets Law so that payment may be made to milk producers within the time period established by said Article.

##### 9. Federal Standards:

None.

##### 10. Compliance Schedule:

It is anticipated that regulated parties can immediately comply with the rule.

#### **Regulatory Flexibility Analysis**

##### 1. Effect of Rule:

There are approximately 6,000 dairy farms in New York State, most of which are small businesses. The rule would have no effect on local governments.

##### 2. Compliance Requirements:

The rule provides that for purposes of subdivision two of Agriculture and Markets Law § 258-pp, the production data for producers who do not participate in the MILCX Program shall be milk marketing payment stubs, bulk tank records, milk handler records, dairy milk marketing records and such other evidence of monthly milk marketing as the Commissioner may deem acceptable.

##### 3. Professional Services:

It is not anticipated that regulated parties will have to secure any professional services in order to comply with this rule.

##### 4. Compliance Costs:

(a) Costs to regulated parties: None.

(b) Costs to the agency, state and local governments: None.

##### 5. Economic and Technological Feasibility:

The economic and technological feasibility of complying with the proposed regulation has been assessed. The rule is economically feasible. The regulation will implement the provisions of Agriculture and Markets Law Article 21-D so that payment may be made to milk producers within the time period established by said Article. The rule is technologically feasible. The recordkeeping requirements of the rule involve records that are already being kept and existing technologies that are already in use.

##### 6. Minimizing Adverse Impact:

In conformance with State Administrative Procedure Act section 202-b(1), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses by limiting the requirements to those necessary to implement the provisions of Agriculture and Markets Law Article 21-D.

The rule would have no impact on local governments.

##### 7. Small Businesses and Local Government Participation:

In developing the rule, the Department has taken into consideration the concerns of small businesses. The rule is being adopted on an emergency basis in order to implement Agriculture and Markets Law Article 21-D so that payment may be made to milk producers within the time period established by said Article. During the rule making process the Department will receive input from small businesses and the organizations that represent them.

#### **Rural Area Flexibility Analysis**

##### 1. Types and Estimated Numbers of Rural Areas:

The approximately 6,000 dairy farms in New York State are located throughout the rural areas of the State.

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

The rule provides that for purpose of subdivision two of Agriculture and Markets Law § 258-pp, the production data for producers who do not participate in the MILCX Program shall be milk marketing payment stubs, bulk tank records, milk handler records, dairy milk marketing records and such other evidence of monthly milk marketing as the Commissioner may deem acceptable. It is not anticipated that regulated parties will have to secure any professional services in order to comply with this rule.

##### 3. Costs:

(a) Costs to regulated parties: None.

(b) Costs to agency, state and local governments: None.

##### 4. Minimizing Adverse Impact:

In conformance with State Administrative Procedure Act section 202-b(1), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses by limiting the requirements to those necessary to implement the provisions of Agriculture and Markets Law Article 21-D.

##### 5. Rural Area Participation:

In developing the rule, the Department took into consideration the concerns of the New York State dairy farmers who reside in rural areas throughout the State. The rule is being adopted on an emergency basis in order to implement Agriculture and Markets Law Article 21-D so that payment may be made to producers within the time period established by said Article.

#### **Job Impact Statement**

##### 1. Nature of Impact:

It is anticipated that the rule will have a positive impact on jobs and employment opportunities by helping New York State dairy farms remain economically viable.

2. Categories and Numbers Affected:

New York State's approximately 6,000 dairy farms provide employment for thousands of persons.

3. Regions of Adverse Impact:

The approximately 6,000 dairy farms in New York State are located throughout the rural areas of the State.

4. Minimizing Adverse Impact:

By implementing Agriculture and Markets Law Article 21-D so that payment may be made to milk producers within the time period established by said Article this rule will help to preserve the jobs of those employed in this agricultural industry.

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

**Specific reasons underlying the finding of necessity:** The reforms enacted in L. 2005, ch. 63 require reconfiguration of the existing Empire Zones by Jan. 1, 2006. Immediate guidance to the affected parties is required.

**Subject:** Empire Zones Program.

**Purpose:** To conform the regulations to existing statute and recent statutory amendments (L. 2005, ch. 63) and clarify and improve administrative procedures.

**Substance of emergency rule:** The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2005, as well as a comprehensive review of administrative procedures and existing regulations. The amended laws require the existing Empire Zones to identify revised zone boundaries—that is, placement of zone acreage into “distinct and separate contiguous areas”—to the Department of Economic Development by January 1, 2006. The existing regulations are affected by this requirement, but at the same time the zones need immediate guidance which requires amending the existing regulations in an accelerated fashion. At the same time, the existing regulations contain several outdated references, and the Department has also taken the opportunity to improve its administrative procedures. The Empire Zone regulations contained in 5 NYCRR Parts 10 through 14 are hereby amended as follows:

First, pursuant to Chapter 63 of the Laws of 2000 and Chapter 63 of the Laws of 2005, the emergency rule would reflect the name change of the program from Economic Development Zones to the Empire Zones and add reference to three new tax benefits: the Qualified Empire Zone Enterprise (“QEZE”) Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

Second, the emergency rule would conform the regulations to existing statutory terminology, definitions and practices. For example, an incorrect reference to a local empire zone administrator is being corrected to read local empire zone certification officer or simply, the local empire zone, if applicable. Pursuant to statute, the chief executive officer must ensure that the information on a designation application is accurate and complete, not the local legislative body. The requirements for a shift resolution did not contain all the criteria as set forth in statute. Certain regulatory provisions regarding application for zone designation were not in accord with the statute, such as whether certain information must be contained in local law rather than the application itself. In addition, tracking the statutory changes from Chapter 63 of the Laws of 2005, census tract zones are renamed “investment zones”, county-created zones are renamed “development zones”, and the new term “cost-benefit analysis” is defined. The emergency regulation also tracks the amended statute’s deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

Third, the emergency rule would amend the Department’s discretionary provision that limits the designation of nearby lands in investment zones to 320 acres. Such regulatory limitations are arbitrary and unnecessarily exceed or are inconsistent with State statute, and at the same time place undue limits on the reconfiguration of zones; municipalities cannot effectively utilize zone acreage to create opportunities for business investment and job growth in economically distressed areas that are not necessarily located in eligible or contiguous census tracts. At the same time, the Department is required to provide guidance in regulation on placement of nearby zone lands, and cannot countenance abuse of the program’s requirements on acreage placement. Thus, placement of nearby lands can exceed 320 acres provided that the municipality demonstrates that (1) there is insufficient existing or planned infrastructure within eligible or contiguous tracts to accommodate business development in a highly distressed area, or to accommodate development of strategic businesses or (2) placing up to 960 acres in eligible or contiguous census tracts would be inconsistent with open space and wetland protection or (3) there are insufficient lands available for further business development within eligible or contiguous census tracts or (4) lands previously designated in the eligible or contiguous census tracts that were otherwise suitable for development and have not had any appreciable commercial activity or capital investment or (5) changes to eligible census tracts as a result of the 2000 Census, combined with the requirement in the amended statute that the distinct and separate contiguous areas accommodate already designated lands, alter the amount of nearby acreage used and available for development.

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## Department of Audit and Control

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### NOTICE OF ADOPTION

**Required Training for Commissioners of Fire Districts**

**I.D. No.** AAC-07-07-00001-A

**Filing No.** 391

**Filing date:** April 17, 2007

**Effective date:** May 2, 2007

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

**Action taken:** Addition of Part 153 to Title 2 NYCRR.

**Statutory authority:** Town Law, section 176-e; L. 2006, ch. 242, section 2; State Finance Law, section 8(14)

**Subject:** Required training for commissioners of fire districts.

**Purpose:** To prescribe a training course for commissioners of fire districts, and the manner, frequency and the duration of the course.

**Text or summary was published** in the notice of proposed rule making, I.D. No. AAC-07-07-00001-P, Issue of February 14, 2007.

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

**Text of rule and any required statements and analyses may be obtained from:** Michael Kupferman, Assistant Counsel, Office of the State Comptroller, 110 State St., 14th Fl., Albany, NY 12236-0001, (518) 474-6191, e-mail: localgov@osc.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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## Department of Economic Development

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### EMERGENCY RULE MAKING

**Empire Zones Program**

**I.D. No.** EDV-18-07-00003-E

**Filing No.** 388

**Filing date:** April 17, 2007

**Effective date:** April 17, 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 through 14 of Title 5 NYCRR.

**Statutory authority:** General Municipal Law, art. 18-B, section 99

Fourth, the emergency rule clarifies the statutory requirement from Chapter 63, L. 2005 that development zones (formerly county zones) create up to three areas within their reconfigured zones as investment (formerly census tract) zones. The rule would require that 75% of the acreage used to define these investment zones be included within an eligible or contiguous census tract. Furthermore, the rule would not require a development zone to place investment zone acreage within a municipality in that county if that particular municipality already contained an investment zone, and the only eligible census tracts were contained within that municipality. The purpose of this is to fulfill the intent of the new statutory amendments that the counties place a substantial portion of the zone acreage within eligible or contiguous census tracts, and this provision follows essentially the same method for concentrating acreage within distressed areas as the General Municipal Law employed for census tract zones.

Fifth, the emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage, however, any subsequent additions after their official redesignation by the Designation Board will still require unanimous approval by that Board.

Sixth, the emergency rule tracks the new statutory requirement that certain defined "regionally significant" projects can be located outside of the new distinct and separate contiguous areas. There are four categories of projects identified in Chapter 63; only one category of applications, manufacturers projecting the creation of 50 or more jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. The emergency rule identifies a timetable for meeting the minimum job creation requirement: 25% of the minimum jobs required to meet the definition of regionally significant project within 2 years of the date of designation of the project as regionally significant, 50% of the minimum jobs within 3 years, 75% of the minimum jobs within 4 years, and 100% of the minimum jobs within 5 years. Failure to achieve a milestone would trigger a decertification process.

Seventh, the emergency rule elaborates on the "demonstration of need" requirement mentioned in Chapter 63 of the Laws of 2005 for the addition (for both investment and development zones) of an additional distinct and separate contiguous area. A zone can demonstrate the need for a fourth or, as the case may be, a seventh distinct and separate contiguous area if (1) there is insufficient existing or planned infrastructure within the three (or six) distinct and separate contiguous areas to (a) accommodate business development and there are other areas of the applicant municipality that can be characterized as economically distressed and/or (b) accommodate development of strategic businesses as defined in the local development plan, or (2) placing all acreage in the other three or six distinct and separate contiguous areas would be inconsistent with open space and wetland protection, or (3) there are insufficient lands available for further business development within the other distinct and separate contiguous areas.

Eighth, the emergency rule clarifies Chapter 63's permission for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The area which will be "grandfathered" shall be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

Ninth, the emergency rule tracks Chapter 63's requirement that new zone development plans, created in the conjunction with the new distinct and separate contiguous areas to be approved by the Empire Zones Designation Board, are to be approved by the Department within 90 days of submission. The emergency rule defines the date of submission for each zone as the date of approval of the distinct and separate contiguous areas by the Empire Zones Designation Board.

Tenth, the emergency rule fulfills the requirements of Chapter 63 to subject all businesses applying for zone benefits to meet a "cost-benefit analysis". The cost-benefit analysis is to be included in the zone development plan by the applicant municipality. The definition included in the emergency rule lays out the basic formula for calculating the benefits received to the costs incurred.

Eleventh, the emergency rule clarifies the status of community development projects as a result of the reconfiguration of the zones pursuant to

Chapter 63. The current regulations require the community development projects to be located in an Empire Zone in order for investments in those projects to qualify for tax benefits. Drawing distinct and separate contiguous areas around community development projects would severely limit the ability of Empire Zones to include as many eligible businesses as possible into the new distinct and separate contiguous areas. Community development projects are not necessarily required to be certified. There is a strong public policy preference for these projects and there is an expectation by their sponsors that they continue to offer tax credits to contributors until fundraising for the projects are completed. To that end, all community development projects approved by the Department before April 1, 2005 would be considered to be located within its respective Empire Zone, and a community development project will be considered to be located in the Empire Zone if it can demonstrate that a zone has been working with the project before April 1, 2005 for the purpose of submitting a boundary revision for inclusion in to the Zone that would include job creation.

Twelfth, the emergency rule would revise the application process in order to ensure timely action and improve efficiency and accountability. For example, the proposed process would no longer require the applicant to submit an application to both the Department and the Department of Labor. In addition, the proposed process allows the applicant to cure incomplete or deficient applications within a set time period.

Lastly, the emergency rule would add certain programmatic information that is helpful to zone administrators, applicants, and practitioners such as the method for determining the effective dates for certifications and boundary revisions.

The full text of the rule is available at [www.empire.state.ny.us](http://www.empire.state.ny.us)

**This notice is intended** to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire July 15, 2007.

**Text of emergency rule and any required statements and analyses may be obtained from:** Thomas Regan, Department of Economic Development, 30 S. Pearl St., Albany, NY 12245, (518) 292-5120, e-mail: [tregan@empire.state.ny.us](mailto:tregan@empire.state.ny.us)

#### **Regulatory Impact Statement**

##### **STATUTORY AUTHORITY:**

Section 959(a) of the General Municipal Law authorizes the Commissioner of Economic Development to adopt rules and regulations governing the criteria of eligibility for empire zone designation, the application process, and the joint certification of a business enterprise.

##### **LEGISLATIVE OBJECTIVES:**

The rulemaking accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to recent statutory amendments and the remaining revisions conform the regulations to existing statute or clarify administrative procedures of the program. It is the public policy of the State to offer special incentives and assistance that will promote the development of new businesses, the expansion of existing businesses and the development of human resources within areas designated as Empire Zones. The proposed amendments help to further such objectives by enabling the Department of Economic Development to administer the program in a more efficient manner.

##### **NEEDS AND BENEFITS:**

The emergency rule is required in order to bring the regulations into accord with statute and to improve the overall administration and effectiveness of the program. There are several benefits that would be derived from this emergency rulemaking. First, the emergency regulations would conform to statutory provisions and thereby eliminate potential confusion to the practitioner. Second, the emergency rule would clarify the application process to ensure timely action and improve efficiency and accountability.

##### **COSTS:**

I. Costs to private regulated parties (the Business applicants): None. The emergency regulation will not impose any additional costs to the business applicants beyond the existing program. In fact, there may be a cost savings due to a clearer application and the ability to cure application deficiencies rather than being immediately denied.

II. Costs to the regulating agency for the implementation and continued administration of the rule: While there will be additional costs to the Department of Economic Development associated with the emergency rule making, this is a result of the statutory changes which the emergency regulation language tracks or interprets. All existing Empire Zones have to revise their boundaries as a result of the statutory changes, with certain exceptions tied to specific types of business or the timing of certain applications. This results in more paperwork and additional staff time over the course of the next twelve months as the program is reconfigured.

However, over time staff and paperwork costs will be minimized because the statutory changes have clarified eligibility for the program and the revised regulations have made procedures for processing applications easier to understand.

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

IV. Costs to local governments (the Local Zone administration): None. The emergency regulation will not impose any additional costs to the local zone administration beyond any additional costs associated with implementing the statutory requirements which reform the program. In the long term, there may be some cost savings in regards to staff time due to a clarification of program requirements.

#### LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones Program. If a local government chooses to participate, there is a cost associated with local administration. However, this emergency rule does not impose any additional costs to the local governments beyond any additional costs associated with implementing the statutory requirements which reform the program.

#### PAPERWORK:

The emergency rule does create additional paperwork, insofar as the various Empire Zones have to refile applications to reconfigure their Zone acreage, identify regionally significant projects and "grandfathered" businesses where necessary, and process boundary revisions before deadlines enumerated in statute which are reproduced verbatim from the statute.

#### DUPLICATION:

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

#### ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions. Certain alternatives to policies seeking to be adopted were considered in certain subject areas where the Legislature provided some room for interpretation; for example, acreage devoted to existing businesses outside of the reconfigured zone areas, creation of investment zones within development zones, the placement of "nearby" acreage, the location of "grandfathered" businesses and the continuation of community development projects. In each case, interpretation was geared to preserving, to the extent possible, the expectation of benefits for existing zone businesses, making zone reconfiguration as clear as possible for existing zones, and enabling zone acreage to be utilized in the most effective manner. Finally, with regard to the application process, an alternative was considered to include more time for review of the application at the State level. This alternative was rejected because it was determined that certification of a business, which has a complete and sufficient application, should not be delayed.

#### FEDERAL STANDARDS:

There are no federal standards in regard to the Empire Zones program; it is purely a state program that offers, among other things, state and local tax credits. Therefore, the emergency rule does not exceed any Federal standard.

#### COMPLIANCE SCHEDULE:

The affected State agencies (Economic Development and Labor), local zone administration and the business applicants will be able to achieve compliance with the emergency regulation as soon as it is implemented.

#### Regulatory Flexibility Analysis

Participation in the Empire Zones Program is entirely at the discretion of each eligible municipality and business enterprise. Neither General Municipal Law Article 18-B nor the emergency regulations impose an obligation on any local government or business entity to participate in the program. The emergency regulation does not impose any adverse economic impact, reporting, recordkeeping, or other compliance requirements on small businesses and/or local governments. In fact, the emergency regulations may have a positive economic impact on the small businesses and local governments that do participate due to clarifying changes, the added flexibility and a new application process. The administrative structure of the program was designed to offer a streamlined application and approval process by extracting only essential information from the applicants. In addition, the changes to the regulations that track changes in statute and result in a reconfiguration of zones will actually enhance the ability of businesses yet to apply which are located in distressed areas to receive program benefits. Local governments will have the additional short-term burden of taking the legal and administrative steps necessary to reconfigure their zones, but this is a statutorily imposed burden, not solely a regulatory one. Because it is evident from the nature of the emergency rule that it will have either no substantive impact, or a positive impact, on small businesses and local

governments, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local government is not required and one has not been prepared.

#### Rural Area Flexibility Analysis

The program is a statewide program. There are eligible municipalities and businesses in rural areas of New York State. However, participation is entirely at the discretion of eligible applicant municipalities and eligible business enterprises. The program does impose some responsibility on those municipalities and businesses which participate in the program such as submitting applications and reports. The emergency rule will not impose any additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency regulation will not have a substantial adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

#### Job Impact Statement

The emergency regulation relates to the Empire Zones Program. The Empire Zones Program itself is a job creation incentive. The emergency regulation will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency regulations, which result from statutory-based reforms, will enable the program to better fulfill its mission: job creation and investment for economically distressed areas. At the same time, businesses currently receiving benefits will not have their status jeopardized as a result of the emergency regulations. Because it is evident from the nature of the emergency regulations 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.

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## Department of Health

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### EMERGENCY RULE MAKING

#### Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content

**I.D. No.** HLT-18-07-00004-E

**Filing No.** 389

**Filing date:** April 17, 2007

**Effective date:** April 17, 2007

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

**Action taken:** Amendment of Part 59 of Title 10 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, section 1194(4)(c); and Environmental Conservation Law, section 11-1205(6)

**Finding of necessity for emergency rule:** Preservation of public safety.

**Specific reasons underlying the finding of necessity:** Immediate adoption of this amendment is necessary for preservation of the public safety. The amendment, once adopted, will enable law enforcement agencies to use a breath alcohol testing device, which, while not currently listed in 10 NYCRR Section 59.4, is approved for use by the National Highway Traffic Safety Administration.

A new Conforming Products List was published in the Federal Register on June 29, 2006, adding a state-of-the-art evidential breath test instrument: the DataMaster DMT. Under a Division of Criminal Justice Services project fully funded through the Governor's Traffic Safety Committee, the DataMaster DMT will replace 475 breath test instruments currently used by more than 420 police agencies statewide. The Division of Criminal Justice Services has informed the Department of its expectation to begin distribution of the first lot of approximately 40 DataMaster DMT instruments on or about April 30, 2007.

Failure to update the list by emergency rulemaking will result in confusion as to the DataMaster DMT's approval for use in New York State, resulting in defense challenges to the legal admissibility of evidentiary results obtained with the device. Such failure would obviously impede law

enforcement efforts to combat drunk driving, particularly as more and more of the older DataMaster models become unusable, thereby adversely affecting public safety. Moreover, the federal and State lists of approved breath testing devices must be identical to avoid legal challenges to prosecutions for alcohol-related offenses and preclude inadmissibility of evidence, and to ensure effective enforcement of the laws against driving while intoxicated.

**Subject:** Chemical analyses of blood, urine, breath or saliva for alcoholic content.

**Purpose:** To update the conforming products list of breath alcohol testing devices currently approved for use by the National Highway Traffic Safety Administration. Such updating is necessary to enable New York State law enforcement agencies to use state-of-the-art devices, avoid legal challenges to prosecutions for alcohol related offenses, preclude inadmissibility of evidence and ensure effective enforcement of the laws against driving while intoxicated.

**Text of emergency rule:** Subdivision (c) of Section 59.1 is amended as follows:

(c) Chemical tests/analyses include breath tests conducted on those instruments found on the Conforming Products List of Evidential Breath Measurement Devices as established by the U.S. Department of Transportation/National Highway Traffic Safety Administration, published in the *Federal Register* on [June 4, 1999] *June 29, 2006*. Such list is set forth in section 59.4 of this Part.

Subdivision (b) of Section 59.4 is amended as follows:

(b) The commissioner has adopted the Conforming Products List of Evidential Breath Measurement Devices, as hereinafter set forth, established by the U.S. Department of Transportation/National Highway Traffic Safety Administration, as meeting the above criteria. Unless otherwise noted, the devices are approved for both mobile and nonmobile use.

#### Conforming Products List

(1) Alcohol Countermeasure Systems [,] Corp., Mississauga, Ontario, Canada:

- (i) Alert J3AD.
- (ii) *Alert J4X.ec.*
- [(ii)] (iii) PBA3000C.

(2) BAC Systems, Inc., Ontario, Canada: Breath Analysis Computer.

(3) CAMEC Ltd., North Shields, Tyne and Ware, England: IR Breath Analyzer.

(4) CMI, Inc., Owensboro, KY:

- (i) Intoxilyzer 200.
- (ii) Intoxilyzer 200D.
- (iii) Intoxilyzer 300.
- (iv) Intoxilyzer 400.
- (v) *Intoxilyzer 400PA.*

[(v)] (vi) Intoxilyzer 1400.

[(vi)] (vii) Intoxilyzer 4011.

[(vii)] (viii) Intoxilyzer 4011A.

[(viii)] (ix) Intoxilyzer 4011AS.

[(ix)] (x) Intoxilyzer 4011AS-A.

[(x)] (xi) Intoxilyzer 4011AS-AQ.

[(xi)] (xii) Intoxilyzer 4011AW.

[(xii)] (xiii) Intoxilyzer 4011A27-10100.

[(xiii)] (xiv) Intoxilyzer 4011A27-10100 with filter.

[(xiv)] (xv) Intoxilyzer 5000.

[(xv)] (xvi) Intoxilyzer 5000 (with Cal. Vapor Re-Circ.).

[(xvi)] (xvii) Intoxilyzer 5000 (with 3/8" ID hose option).

[(xvii)] (xviii) Intoxilyzer 5000CD.

[(xviii)] (xix) Intoxilyzer 5000CD/FG5.

[(xix)] (xx) Intoxilyzer 5000EN.

[(xx)] (xxi) Intoxilyzer 5000 (CAL DOJ).

[(xxi)] (xxii) Intoxilyzer 5000 VA.

[(xxii)] (xxiii) *Intoxilyzer 8000.*

[(xxiii)] (xxiv) Intoxilyzer PAC 1200.

[(xxiv)] (xxv) Intoxilyzer S-D2.

[(xxv)] (xxvi) *Intoxilyzer S-D5.*

[(5) Decator Electronics, Decator, IL: Alco-Tector model 500 (nonmobile only.)]

[(6)] (5) Draeger Safety, Inc., Durango, CO:

(i) *Alcotest 6510.*

(ii) *Alcotest 6810.*

[(i)] (iii) Alcotest 7010.

[(ii)] (iv) Alcotest 7110.

[(iii)] (v) Alcotest 7110 MKIII.

[(iv)] (vi) Alcotest 7110 MKIII-C.

[(v)] (vii) Alcotest 7410.

[(vi)] (viii) Alcotest 7410 Plus.

[(vii)] (ix) Breathalyzer 900.

[(viii)] (x) Breathalyzer 900A.

[(ix)] (xi) Breathalyzer 900 BG.

[(x)] (xii) Breathalyzer 7410.

[(xi)] (xiii) Breathalyzer 7410-II.

[(7)] (6) Gall's Inc., Lexington, KY: Alcohol Detection System-A.D.S. 500.

(7) *Guth Laboratories, Inc., Harrisburg, PA:*

(i) *Alcotector BAC-100.*

(ii) *Alcotector C2H5OH.*

(8) Intoximeters, Inc., St. Louis, MO:

(i) Photo Electric Intoximeter (nonmobile only).

(ii) GC Intoximeter MK II.

(iii) GC Intoximeter MK IV.

(iv) Auto Intoximeter.

(v) Intoximeter 3000.

(vi) Intoximeter 3000 (rev B1).

(vii) Intoximeter 3000 (rev B2).

(viii) Intoximeter 3000 (rev B2A).

(ix) Intoximeter 3000 (rev B2A) w/FM option.

(x) Intoximeter 3000 (Fuel Cell).

(xi) Intoximeter 3000 D.

(xii) Intoximeter 3000 DFC.

(xiii) Alcomonitor (nonmobile only).

(xiv) Alcomonitor CC.

(xv) Alco-Sensor III.

[(xvi)] *Alco-Sensor III (Enhanced with Serial Numbers above 1,200,000).*

[(xvi)] (xvii) Alco-Sensor IV.

[(xvii)] *Alco-Sensor IV-XL.*

[(xviii)] (xix) Alco-Sensor AZ.

[(xix)] *Alco-Sensor FST.*

[(xx)] (xxi) RBT-AZ.

[(xxi)] (xxii) RBT III.

[(xxii)] (xxiii) RBT III-A.

[(xxiii)] (xxiv) RBT IV.

[(xxiv)] (xxv) RBT IV with CEM (cell enhancement module).

[(xxv)] (xxvi) Intox EC/IR.

[(xxvi)] *Intox EC/IR II.*

[(xxvii)] (xxviii) Portable Intox EC/IR.

(9) Komyo Kitagawa, Kogyo, K.K., *Japan:*

(i) Alcolyzer DPA-2.

(ii) Breath Alcohol Meter PAM 101B.

(10) Lifeloc Technologies, Inc. (formerly Lifeloc, Inc.), Wheat Ridge, CO:

(i) PBA 3000B.

(ii) PBA 3000-P.

(iii) PBA 3000C.

(iv) Alcohol Data Sensor.

(v) Phoenix.

(vi) *EV 30.*

(vii) *FC 10.*

(viii) *FC 20.*

(11) Lion Laboratories, Ltd., Cardiff, Wales, UK:

(i) Alcolmeter 300.

(ii) Alcolmeter 400.

[(iii)] Alcolmeter AE-D1.]

[(iv)] (iii) Alcolmeter SD-2.

[(v)] (iv) Alcolmeter EBA.

[(vi) Auto-Alcolmeter (nonmobile only).]

[(vii)] (v) Intoxilyzer 200.

[(viii)] (vi) Intoxilyzer 200D.

[(ix)] (vii) Intoxilyzer 1400.

[(x)] (viii) Intoxilyzer 5000 CD/FG5.

[(xi)] (ix) Intoxilyzer 5000 EN.

(12) Luckey Laboratories, San Bernardino, CA:

(i) Alco-Analyzer 1000 (nonmobile only).

(ii) Alco-Analyzer 2000 (nonmobile only).

(13) National Draeger, Inc., Durango, CO:

(i) Alcotest 7010.

(ii) Alcotest 7110.

(iii) Alcotest 7110 MKIII.

(iv) Alcotest 7110 MKIII-C.

- (v) Alcotest 7410.
- (vi) Alcotest 7410 Plus.
- (vii) Breathalyzer 900.
- (viii) Breathalyzer 900A.
- (ix) Breathalyzer 900BG.
- (x) Breathalyzer 7410.
- (xi) Breathalyzer 7410-II.

(14) National Patent Analytical Systems, Inc., Mansfield, OH:

- (i) BAC DataMaster (with or without the Delta-1 accessory).
- (ii) BAC Verifier *Datamaster* [DataMaster] (with or without the

Delta-1 accessory).

- (iii) DataMaster cdm (with or without the Delta-1 accessory).

- (iv) *DataMaster DMT*.

\* \* \*

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire July 15, 2007.

**Text of emergency rule and any required statements and analyses may be obtained from:** William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqa@health.state.ny.us

**Regulatory Impact Statement**

Statutory Authority:

The New York State Vehicle and Traffic Law, Section 1194(4)(c), and Department of Environmental Conservation Law, Section 11-1205(6), authorize the Commissioner of Health to adopt regulations concerning methods of testing breath for alcohol content.

Legislative Objectives:

This amendment allows law enforcement/police agencies to use state-of-the-art equipment for breath alcohol testing, as approved by the Commissioner of Health. This action fulfills the legislative objective of ensuring effective enforcement of the law against driving while intoxicated.

Needs and Benefits:

In 1986, the Commissioner of Health adopted the Conforming Products List of Evidential Breath Measurement Devices, as established by the National Highway Traffic Safety Administration, under 10 NYCRR Sections 59.1(c) and 59.4(b). The Traffic Safety Administration’s list is periodically revised to include additional approved testing devices. Affected parties are law enforcement agencies that train police organizations in the use of breath testing devices and the organizations/agencies whose staff conduct testing, including the New York State Police; the State Division of Criminal Justice Services’ Office of Public Safety; and the Police Departments of Nassau County, Suffolk County, and the City of New York.

A new Conforming Products List was published in the *Federal Register* on June 29, 2006, adding a state-of-the-art evidential breath test instrument: the DataMaster DMT. Under a Division of Criminal Justice Services project fully funded through the Governor’s Traffic Safety Committee, the DataMaster DMT will replace 475 breath test instruments currently used by more than 420 police agencies Statewide. The Division of Criminal Justice Services has informed the Department of its expectation to begin distribution of the first lot of approximately 40 DataMaster DMT instruments on or about April 30, 2007.

Prosecutors and defense attorneys Statewide rely on the provisions of Part 59 daily in adjudicating alcohol-related offenses. By including in Section 59.4 all devices that appear on the latest federal Conforming Products List, this proposed amendment, once adopted, will make these devices available for use by law enforcement agencies without risk of evidentiary challenge to prosecution, and will ensure effective enforcement of the laws against driving while intoxicated.

Costs:

Costs to Private Regulated Parties:

The requirements of this regulation are not applicable to any private parties regulated by the Department.

Costs to State Government:

Adoption of additions and revisions to the Conforming Products List does not necessitate purchase of new devices or discontinuance of devices currently in use. Therefore, this proposed amendment does not require affected parties to incur new costs. The Division of Criminal Justice Services has requested timely amendment of Part 59 because the manufacturer of the DataMaster breath analysis device currently in use has begun phasing out production due, in part, to the fact that parts to manufacture

and repair these instruments are becoming increasingly unavailable. Moreover, the Division of Criminal Justice Services expects the newer model instrument, which utilizes improved diagnostics, an enhanced operating system and an outboard printer, to generate cost savings from fewer instrument malfunctions, resulting in less downtime. Thus, this amendment’s authorizing use of an updated model, the DataMaster DMT, will result in decreased costs to law enforcement agencies.

Costs to Local Government:

Adoption of additions and revisions to the Conforming Products List does not require purchase of new devices or discontinuance of devices currently in use. Therefore, this proposed amendment does not impose any additional costs to police departments operated by local governments, including the City of New York Police Department. Police departments operated by local governments may experience cost savings for the same reasons described under Costs to State Government.

Costs to the Department of Health:

Adoption of additions and revisions to the Conforming Products List does not impose any costs on the Department.

Local Government Mandates:

This regulation does not impose any new mandate on any county, city, town, village, school district, fire district or other special district.

Paperwork:

No new reporting requirements or forms are imposed as a result of the proposed amendment.

Duplication:

This regulation is consistent with, but does not duplicate, other State and federal statutes concerning approved breath alcohol measurement devices.

Alternative Approaches:

At the present time, there are no acceptable alternatives. Failure to update the list will result in confusion as to the DataMaster DMT’s instrument approval for use in New York State, resulting in defense challenges to the admissibility of results obtained with the device. Such failure will obviously impede law enforcement efforts to combat drunk driving, particularly as more and more of the older DataMaster models become unusable, thereby adversely affecting public safety.

Federal Standards:

The proposed rule does not exceed any minimum standards of the federal government; it merely adds new federally approved devices to the Conforming Products List, to be consistent with federal standards.

Compliance Schedule:

Regulated parties should be able to comply with these regulations effective upon filing a Notice of Emergency Adoption with the Secretary of State.

**Regulatory Flexibility Analysis**

No Regulatory Flexibility Analysis is required pursuant to Section 202-b (3)(b) of the State Administrative Procedure Act. The proposed amendment does not impose any adverse economic impact on small businesses or local governments, and does not impose reporting, recordkeeping or other compliance requirements on small businesses or local governments. The amendment harmonizes state and federal lists of approved breath measurement devices, making the entire range of devices available for use by law enforcement agencies in New York without risk of evidentiary challenge to prosecution for alcohol-related offenses.

**Rural Area Flexibility Analysis**

No Rural Area Flexibility Analysis is required pursuant to Section 202-bb (4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose any adverse impact on facilities in rural areas, and does not impose any reporting, recordkeeping or other compliance requirements on regulated parties in rural areas. The amendment harmonizes state and federal lists of approved breath measurement devices, making the entire range of devices available for use by law enforcement agencies in New York without risk of evidentiary challenge to prosecution for alcohol-related offenses.

**Job Impact Statement**

A Job Impact Statement is not required because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs and employment opportunities. The amendment harmonizes state and federal lists of approved breath measurement devices, making the entire range of devices available for use by law enforcement agencies in New York without risk of evidentiary challenge to prosecution for alcohol-related offenses.

## Insurance Department

### EMERGENCY RULE MAKING

#### Homeowners Insurance Disclosure Information and Other Notices

**I.D. No.** INS-18-07-00002-E

**Filing No.** 387

**Filing date:** April 17, 2007

**Effective date:** April 17, 2007

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

**Action taken:** Amendment of Part 74 (Regulation 159) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 3425, 3445 and 5403

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

**Specific reasons underlying the finding of necessity:** Chapter 162 of the Laws of 2006, which went into effect on November 23, 2006, amended Section 3425(e) of the Insurance Law to require notices of cancellation, nonrenewal, and conditional renewal to include certain minimum notification requirements with respect to certain homeowners policies as defined in Section 2351(a) of the Insurance Law where the property is located in an area served by a market assistance program established by the Superintendent for the purpose of facilitating placement of homeowners insurance. These notices shall advise a policyholder of possible eligibility for coverage through a market assistance program or through the New York Property Insurance Underwriting Association (NYPIUA) when the policyholder receives a notice of cancellation, nonrenewal or conditional renewal for a homeowners insurance. Chapter 162 also added a new Section 5403(d), which directs NYPIUA to notify policyholders that may be eligible of the availability of coverage in the market assistance program.

Chapter 162 required the Superintendent to promulgate a regulation that established the minimum standards for the notices required by Section 3425(e). Insurers and NYPIUA were required to comply with the standards in the regulation as of the effective date of the new law, November 23, 2006. Given the short period of time between the enactment of the legislation on July 26, 2006, and the effective date, and in order to afford insurers and NYPIUA sufficient time to incorporate these notices, the regulation was promulgated on an emergency basis on October 20, 2006. Until the Department receives permission to take final regulatory action, this regulation must be kept effective on an emergency basis.

For the reasons cited above, this regulation is being promulgated on an emergency basis for the preservation of the general welfare.

**Subject:** Homeowners insurance disclosure information and other notices.

**Purpose:** To set forth the minimum notification requirements pertaining to the notices required by sections 3425(e) and 5403(d).

**Text of emergency rule:** The Title of Part 74 is hereby amended as follows:

[HOMEOWNER'S] HOMEOWNERS INSURANCE DISCLOSURE INFORMATION AND OTHER NOTICES

Section 74.0 is amended to read as follows:

Section 74.0 Introduction and purpose.

(a)(1) Chapter 44 of the Laws of 1998 enacted a new section 3445 of the Insurance Law, requiring the Superintendent to establish by regulation disclosure requirements with respect to the operation of any deductible in a [homeowner's] homeowners insurance policy or dwelling fire personal lines policy [which] that applies as the result of a windstorm. Further, section 3445 requires such regulation to prescribe the form of a notice to be provided by an insurer to an insured and provides that the notice shall explain in clear and plain language the amount of the deductible, the circumstances under which the deductible applies and any other matters which the Superintendent, in his or her discretion, shall deem necessary or appropriate.

(b)(2) [The purpose of this] This Part [is to set] sets standards for the uniform display of windstorm deductibles, which consist of hurricane and non-hurricane deductibles, in the policy declarations; and [to provide]

provides the minimum provisions to be contained in the policyholder disclosure notice, which will explain the purpose and operation of the hurricane deductible, and must accompany new and renewal policies containing such deductibles.

(b)(1) Chapter 162 of the Laws of 2006 amended section 3425(e) of the Insurance Law to direct the Superintendent to establish by regulation standards for notices of cancellation, nonrenewal, and conditional renewal for certain homeowners policies as defined in section 2351(a) of the Insurance Law where the property is located in an area served by a market assistance program established by the Superintendent for the purpose of facilitating placement of homeowners insurance. Chapter 162 also added a new section 5403(d), which directs the New York Property Insurance Underwriting Association (NYPIUA) to notify policyholders that may be eligible for coverage in the market assistance program of the availability of coverage.

(2) This Part establishes the minimum requirements pertaining to the notices required by Chapter 162.

New Sections 74.2 and 74.3 are added to read as follows:

Section 74.2 Insurer cancellation, nonrenewal and conditional renewal notices.

Every notice of cancellation, nonrenewal or conditional renewal issued on or after November 23, 2006 for a homeowners insurance policy as defined in section 2351(a) of the Insurance Law insuring property that may be eligible for participation in a market assistance program established by the Superintendent for the purpose of facilitating placement of homeowners insurance shall advise the insured of the availability of the market assistance program and the availability of coverage through NYPIUA for insurance. The notice shall be conspicuous and provide sufficient information on how to apply to the market assistance program and to NYPIUA, including the name, address, telephone number and Web site address of the administrator of the market assistance program and of NYPIUA.

Section 74.3 NYPIUA notices.

On and after November 23, 2006, with respect to a NYPIUA policyholder whose insured property is located in an area served by a market assistance program established by the Superintendent for the purposes of facilitating placement of homeowners insurance, upon issuance or renewal of the policy, NYPIUA shall provide the notice required by section 5403(d) of the Insurance Law and this section. The notice shall be conspicuous and provide sufficient information on how to apply to the market assistance program including the name, address, telephone number and Web site address of the administrator of the market assistance program.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire July 15, 2007.

**Text of emergency rule and any required statements and analyses may be obtained from:** Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

#### Regulatory Impact Statement

1. Statutory authority: Sections 201, 301, 3425, 3445, and 5403 of the Insurance Law.

Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law and to prescribe forms or otherwise make regulations.

Section 3425 governs cancellation and renewal provisions of certain property/casualty insurance policies.

Section 3445 authorizes the Superintendent to prescribe regulations regarding disclosure requirements for windstorm insurance.

Section 5403 provides the procedures for the New York Property Insurance Underwriting Association (NYPIUA).

2. Legislative objectives: The Legislature, in enacting Chapter 162 of the Laws of 2006, intended to improve public awareness of market assistance programs, such as the Coastal Market Assistance Program (CMAP), that may be available to homeowners in New York, and of NYPIUA. Chapter 162 requires that when a policyholder receives a notice of cancellation, nonrenewal or conditional renewal for a homeowners insurance policy as specified in Section 3425(e) of the Insurance Law, on property located in an area served by a market assistance program established by the Superintendent for the purpose of facilitating placement of homeowners insurance, that the policyholder is also notified by the insurer of possible eligibility for coverage through the market assistance program or through NYPIUA. In addition, Chapter 162 requires NYPIUA to notify its policyholders whose properties are located in an area served by a market assistance program to be notified of their possible eligibility for coverage

through the market assistance program. In the Senate bill memorandum in support of Chapter 162, it was stated that many consumers who were eligible for CMAP were unaware of its existence. By ensuring that consumers who may be eligible for CMAP or other market assistance programs that may be established are made aware of the availability of the program, CMAP or other programs would be used to their fullest potential and more insureds would have access to more complete coverage than that offered by NYPIUA. In order to implement Chapter 162, the Legislature required the Superintendent to promulgate regulations governing the notices required by Chapter 162.

3. Needs and benefits: The rule, which is required by Chapter 162, is necessary to set forth certain minimum notification requirements to assure that policyholders that may be eligible for a market assistance program or NYPIUA are notified of this including information necessary to apply for coverage. This notification would make information on how to apply for an insurance policy from a market assistance program or from NYPIUA more readily available to the policyholders.

4. Costs: This rule imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Insurance Department. The rule requires specific information to be included in notices of cancellation, nonrenewal or conditional renewal issued for a homeowners insurance policy as defined in Section 2351 of the Insurance Law. There will be costs associated with the insurers adding the specific information onto the homeowners notices specified in Section 3425(e) of the Insurance Law. However, the notice requirement is mandated by Section 3425 and not by this regulation, which implements the statutory requirement. These costs should be minimal as the insurers are already issuing the cancellation, nonrenewal or conditional renewal notices and the rule only requires that the insurance companies add the specific information to the notices. Insurers are not required to, nor should they need to, hire new personnel to comply with the new notification requirements.

In addition, NYPIUA is required to notify policyholders who may be eligible, of the availability of coverage in a market assistance program. There will be costs associated with NYPIUA issuing these new notices. However, the notice is required by Section 5403(d) and not by this regulation, which implements the statutory requirement.

5. Local government mandates: None.

6. Paperwork: Insurers will incur additional paperwork associated with adding the specific information required by the rule to the cancellation, nonrenewal, and conditional renewal notices specified in Section 3425(e) of the Insurance Law. However, the paperwork should be minimal as the insurers are adding the required language to notices already being issued by the company. Moreover, this notice is required by Section 3425 and not by this regulation.

NYPIUA will incur additional paperwork in notifying policyholders that may be eligible of the availability of coverage in a market assistance program. However, this notice is required by Section 5403(d) and not by this regulation.

7. Duplication: None.

8. Alternatives: The Department considered requiring the names and contact information of the insurers participating in market assistance programs to be included in the notice. However, because a market assistance program is voluntary, there could be additional market assistance programs established, and the list of participating insurers could change frequently, it was determined that this requirement should not be included in the rule.

The Department did outreach with various trade organizations. One of the trade organizations expressed concern that insurers may have problems complying with the November 23, 2006 effective date. The Department has no discretion in setting the date as it was set forth by Chapter 162 of the Laws of 2006. In addition, as long as the information required by the rule is part of the cancellation, nonrenewal, or conditional renewal notice and the information is conspicuous, the information required by the rule may be on a separate page of the notice.

The trade organization requested that the Department consider exempting, from the market assistance plan notice requirement, cancellation notices issued for non payment of premium or issued at the request of the insured. Chapter 162 does not provide exceptions to the notice requirements.

9. Federal standards: None.

10. Compliance schedule: The effective date of the enabling legislation, Chapter 162 of the Laws of 2006, was November 23, 2006. The rule provided that every notice of cancellation, nonrenewal or conditional renewal issued on or after November 23, 2006 for a homeowners policy as specified in Section 3425(e) of the Insurance Law to be in compliance. On

or after November 23, 2006, NYPIUA was required to provide the notice required by Section 5403(d) of the Insurance Law upon issuance or renewal of a policy.

**Regulatory Flexibility Analysis**

The Insurance Department finds that this rule would not impose reporting, recordkeeping or other requirements on small businesses. The rule is directed at property/casualty insurers. The Insurance Department has reviewed/or monitored Reports on Examination and Annual Statements of property/casualty insurers and believes that none of them fall within the definition of "small business" contained in section 102(8) of the State Administrative Procedure Act, because there are none which are independently owned and have under 100 employees.

The Insurance Department finds that this rule will not impose reporting, recordkeeping or other compliance requirements on local governments. The basis for this finding is that this rule is directed at insurance companies, none of which are local governments.

**Rural Area Flexibility Analysis**

The Insurance Department finds that this rule does not impose any additional burden on persons located in rural areas, and the Insurance Department finds that it will not have an adverse impact on rural areas. The rule applies uniformly to parties that do business in both rural and nonrural areas of New York State.

**Job Impact Statement**

This rule should not have any adverse impact on jobs and employment opportunities in this state since the rule merely sets forth minimum notification requirements pertaining to the notices required by Insurance Law Sections 3425(e) and 5403(d). Insurers are not required to, nor should they need to, hire new personnel to comply with the new notification requirements.

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## Division of the Lottery

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### EMERGENCY RULE MAKING

**Lucky Sum Promotional Game Feature**

**I.D. No.** LTR-18-07-00005-E

**Filing No.** 390

**Filing date:** April 17, 2007

**Effective date:** April 17, 2007

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

**Action taken:** Amendment of Parts 2828 and 2832 of Title 21 NYCRR.

**Statutory authority:** Tax Law, section 1604(a)

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

**Specific reasons underlying the finding of necessity:** The New York Lottery will be conducting Lucky Sum as a feature to existing games available to New York's Numbers and Win 4 players. Game sales commenced on Jan. 29, 2007. This game is necessary to assist the Lottery in reaching its projected revenue target for this fiscal year. A Notice of Proposed Rule Making for this rule is expected to be filed shortly; however to continue operation of this game feature, this emergency adoption is necessary. This feature is intended to improve somewhat slow revenues and will provide needed aid to education in this fiscal year.

**Subject:** Lucky Sum promotional game feature.

**Purpose:** To add the Lucky Sum promotional game feature to current Lottery regulations.

**Text of emergency rule:** Section 1. Section 2828.3 is amended by adding a new subdivision (h) to read as follows:

(h) *Lucky Sum is a feature of New York's Numbers game. Lucky Sum shall determine winners from bet tickets by correctly matching the sum of the player's number selection against the sum of the winning numbers drawn by the Lottery for that drawing.*

(1) *To place a bet, a purchaser must communicate*

(i) *the desired game bet data to an agent pursuant to subdivision (e) of this section; and*

(ii) communicate to the agent that such purchaser's desire to add a Lucky Sum wager to the normal wager, who will issue a bet ticket. Such bet ticket will reflect the sum of the numbers played by the purchaser on that wager as the additional Lucky Sum wager.

(2) Lucky Sum wagers shall not be placed with pairs wagers.

(3) Up to fifty percent of the sales from each drawing will be allocated to a prize pool for that drawing.

(4) Prize structure and odds for this feature.

Sum of Number Picked	Number of Ways to Match a Number	Expected Odds	Prize
0	1	1,000	\$500.00
1	3	333	\$166.00
2	6	167	\$83.00
3	10	100	\$50.00
4	15	67	\$33.00
5	21	48	\$23.50
6	28	36	\$17.50
7	36	28	\$13.50
8	45	22	\$11.00
9	55	18	\$9.00
10	63	16	\$7.50
11	69	14	\$7.00
12	73	14	\$6.50
13	75	13	\$6.50
14	75	13	\$6.50
15	73	14	\$6.50
16	69	14	\$7.00
17	63	16	\$7.50
18	55	18	\$9.00
19	45	22	\$11.00
20	36	28	\$13.50
21	28	36	\$17.50
22	21	48	\$23.50
23	15	67	\$33.00
24	10	100	\$50.00
25	6	167	\$83.00
26	3	333	\$166.00
27	1	1,000	\$500.00

(5) Lucky Sum bets may be purchased for a minimum of \$1.00 per wager.

§ 2. Section 2832.3 is amended by adding a new subdivision (g) to read as follows:

(g) Lucky Sum is a feature of Win-4 game. Lucky Sum shall determine winners from bet tickets by correctly matching the sum of the player's number selection against the sum of the winning numbers drawn by the Lottery for that drawing.

(1) Lucky Sum wagers shall not be placed with pairs wagers.

(2) To place a bet, a purchaser must communicate:

(i) the desired game bet data to an agent pursuant to subdivision (e) of this section; and

(ii) communicate to the agent that such purchaser's desire to add a Lucky Sum wager to the normal wager, who will issue a bet ticket. Such bet ticket will reflect the sum of the numbers played by the purchaser on that wager as the additional Lucky Sum wager.

(3) Up to fifty percent of the sales from each drawing will be allocated to a prize pool for that drawing.

(4) Prize structure and odds for this feature.

Sum of Number Picked	Number of Ways to Match a Number	Expected Odds	Prize
0	1	10,000	\$5,000.00
1	4	2,500	\$1,250.00
2	10	1,000	\$500.00
3	20	500	\$250.00
4	35	286	\$142.00
5	56	179	\$89.00
6	84	119	\$60.00
7	120	83	\$42.00
8	165	61	\$30.00
9	220	45	\$22.50
10	282	35	\$17.50
11	348	29	\$14.00
12	415	24	\$12.00

13	480	21	\$10.00
14	540	19	\$9.00
15	592	17	\$8.00
16	633	16	\$7.50
17	660	15	\$7.50
18	670	15	\$7.50
19	660	15	\$7.50
20	633	16	\$7.50
21	592	17	\$8.00
22	540	19	\$9.00
23	480	21	\$10.00
24	415	24	\$12.00
25	348	29	\$14.00
26	282	35	\$17.50
27	220	45	\$22.50
28	165	61	\$30.00
29	120	83	\$42.00
30	84	119	\$60.00
31	56	179	\$89.00
32	35	286	\$142.00
33	20	500	\$250.00
34	10	1,000	\$500.00
35	4	2,500	\$1,250.00
36	1	10,000	\$5,000.00

(5) Lucky Sum bets may be purchased for a minimum of \$1.00 per wager.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire July 15, 2007.

**Text of emergency rule and any required statements and analyses may be obtained from:** Julie B. Silverstein Barker, Acting General Counsel, New York Lottery, One Broadway Center, PO Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: jrbarker@lottery.state.ny.us

**Regulatory Impact Statement**

1. Statutory authority: Pursuant to the authority conferred in New York State Tax Law, Section 1604[a] and the Official Compilation of Codes, Rules and Regulations of the State of New York, Title 21, Chapter XLIV, Section 2828 and 2832, the following official game rules shall take effect and shall remain in full force and effect throughout the New York Lottery's Lucky Sum as a new feature to existing games.

2. Legislative objectives: The purpose of operating Lottery games is to generate revenue for the support of education in the State. Amendment of these regulations forwards the mission of the New York State Lottery to generate revenue for education.

3. Needs and benefits: The New York Lottery has sustained competitive pressure from large jackpot lottery games in adjoining states. New Yorkers routinely travel outside the state to participate in those games. The New York Lottery's Lucky Sum, as an existing game feature, allows the New York Lottery to continue its effort to keep and enlarge its market share of players (from within New York State and those visiting New York State from other states) who participate in large jackpot lottery games. The New York Lottery's Lucky Sum as a new feature to existing games is anticipated on a full annual basis, to bring in more than \$53.9 million in revenue to benefit education in the State.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: None.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the existing lottery games are expected to be sufficient to support this new game.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the New York State Lottery's experience in operating State Lottery games for more than 30 years.

5. Local government mandates: None.

6. Paperwork: There are no changes in paperwork requirements. Game feature brochures will be issued by the New York State Lottery for public convenience at retailer locations free of charge.

7. Duplication: None.

8. Alternatives: The alternative to adding New York Lottery's Lucky Sum as an existing game feature is not to proceed and forfeit the investment already made by the New York State Lottery for the game feature.

The failure to proceed will also result in lost revenue to education that is anticipated to be earned.

9. Federal standards: None.

10. Compliance schedule: None.

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

The proposal does not require a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement. There will be no adverse impact on jobs, rural areas, small business or local governments.

**NOTICE OF ADOPTION**

**Video Lottery Gaming**

**I.D. No.** LTR-50-06-00004-A

**Filing No.** 393

**Filing date:** April 17, 2007

**Effective date:** May 2, 2007

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

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

**Statutory authority:** Tax Law, section 1617-a

**Subject:** Video lottery gaming.

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

**Substance of final rule:** Chapter 383 of the Laws of 2001, as amended by Chapter 85 of the Laws of 2002, as amended further by Chapters 62 and 63 of the Laws of 2003, and as amended further by Chapter 61 of the Laws of 2005, codified as §§ 1612 and 1617-a of the New York State Tax Law, authorized the Division of the Lottery to license the operation of video lottery gaming at eligible racetracks in New York State. That legislation directed the Division to promulgate rules and regulations for the licensing and operation of those games.

In April, 2005, Chapter 61 of the Laws of 2005 amended § 1612 of the Tax Law to provide an increase to the vendor fee to be paid to each video lottery terminal operator and also permits a marketing allowance for each such facility. These changes have necessitated a revision to the Emergency Regulations. Regulations were initially adopted on an Emergency basis in 2003. Since that date, the regulations have been renewed every 90 days. The regulations begin by setting forth the general provisions, construction, and application of the rules. This section contains the definitions for key terms that are used throughout the body of the document.

Many of the regulations set forth the licensing procedures for the various participants needed to bring video lottery gaming into operation. Licensees include the racetracks that are eligible under the enabling legislation to operate video lottery gaming, and their employees, as well as gaming and non-gaming vendors that will supply goods and services to both the Division and the racetracks. Licensing procedures include financial disclosure and, in some instances, background investigations for principles and key employees. Non-gaming vendors supplying goods and services below a certain threshold will not be required to undergo the licensing process, but will have to register as suppliers.

The racetracks, referred to in the regulations as video lottery gaming agents, will be required to submit business plans for approval by the Division prior to licensing, and to establish a set of internal control procedures pursuant to guidelines provided by the Division. The agents will be required to submit periodic financial reports and undertake other financial controls. Annually, the agents will be required to submit a marketing plan for approval by the Division. The marketing plan will identify those marketing or promotion costs which may be reimbursed from the marketing allowance permitted by §§ 1612 of the Tax Law. The regulations set forth the continuing obligations of video lottery gaming agents following licensure, and identify penalties that may be imposed on licensees for violation of the regulations. Since issuing the Emergency Regulations in September, 2005, the Division has met and discussed the marketing procedures with each of the existing and pending vendors and operators. Formal comments have been submitted by those facilities. The regulations establish rules for the conduct and operation of video lottery gaming. Movement of the terminals is closely regulated, and surveillance and security systems are established at each facility.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 2836-1.2, 2836-3.6, 2836-3.17(d), 2836-4.2(c), 2836-5.2, 2836-6.1, 2836-6.3(a)(3), 2836-6.5(c), 2836-7.4, 2836-10.1(c)(1), (7), 2836-11.1(d), 2836-12.2(b), 2836-15.1(d), 2836-17.9(a)(2), 2836-18.2(c)(2), (d), (f), 2836-18.3(f), 2836-18.4(a), (h)(2), 2836-

18.5(a)(6), (8), (9), 2836-18.6(a)(3)(vii), 2836-18.9(b), 2836-21.2(b) and 2836-23.6(a).

**Text of rule and any required statements and analyses may be obtained from:** Julie B. Silverstein Barker, Acting General Counsel, Division of Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: jrbarker@lottery.state.ny.us

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

The RIS, RFA, RAFA and JIS submitted with the Notice of Proposed Rulemaking for the Video Lottery Gaming ("VLG") rule do not require revision due to the changes in the text of the VLG rule submitted for adoption.

**Assessment of Public Comment**

The Division of the Lottery (the "Lottery") received comments (the "Comments") on the Notice of Proposed Rulemaking published in the State Register on December 13, 2006 (the "Rule") under ID# LTR-50-06-00004-P. Comments were submitted by Video Lottery Gaming ("VLG") licensed Agents (the "Agents") who are licensed to operate the VLG facilities in the State by the Lottery pursuant to Tax Law § 1617-a. No other entities or individuals, except for the Agents, submitted Comments during the Comment Period for the Rule which ended on February 12, 2007.

The Division of the Lottery (the "Division") reviewed all such comments received and made certain revisions to the text of the Rule accordingly. The non-substantive revisions made to the Rule clarified certain of its provisions, corrected typographical errors, and removed antiquated references and requirements.

**Summary**

Comments submitted by the Agents suggested revisions to provisions of the regulations to clarify or update VLG terminology, VLG facility management and operations, and VLG facility marketing.

**Analysis**

As the operating and licensing authority for VLG in the State, the Lottery prescribes criteria in the Rule for licensing; VLG facility management and operation; and the collection, distribution and authorized use of the marketing allowance. The Comments dealt with all such areas.

Some Comments may be addressed by guidance from the Lottery which may be issued from time to time. In certain instances, revisions to the Rule suggested by Comments were not made because the Rule provides that written request may be made to the Lottery to ask for approval of alternative arrangements or waivers from requirements. Therefore, incorporation of such Comments into the Rule was not necessary.

**VLG Definitions**

VLG terminology as defined in the Rule was further reviewed as a result of the Comments. Revisions were made to definitions to clarify their meaning and to remove antiquated or outdated references that have shown to not be applicable to or impractical for VLG facilities. Additionally, it was found that two definitions of the term "books and records" appeared in the Rule and a revision was made to merge the two definitions into one definition.

Pursuant to a Comment received, the term "jackpot payment slip" was deleted as an outdated reference and not used in the Lottery central determine VLG system. Comments received requesting revisions to the definitions of "restricted areas" and its associated definition of "premises" did not result in revisions to the Rule because of the sensitive nature of such areas. Restricted Areas are those not open to the public and require only licensed personnel entry. The Lottery maintains that such controlled access is required to prevent unauthorized access. As requested by a Comment, the definition for "material debt transaction" was expounded to better reflect the varying number of machines at each VLG facility. As suggested by a Comment, the definition of "VLG Agent check" was revised to eliminate the inclusion of an endorsement on such a check to indicate that it was issued in payment of a VLG voucher as an unnecessary and inapplicable step because within the Lottery's VLG system, the only method to create such a check is to first redeem a voucher.

**Licensing**

The Lottery maintains the integrity of its VLG operations by controlling the licensing of Agents, employees and non-gaming employees and vendors. Certain Comments regarding licensing provisions of the Rule were not incorporated because the suggested revisions would have a detrimental impact on the Lottery's control of the licensing process as directed by Tax Law § 1617-a.

One Comment suggested a revision to permit indemnification by the Lottery of the Agent in certain acts. The Lottery is a State Agency and as such is subject to constitutional limitations on state debt and therefore, cannot agree to indemnify the Agent as proposed by such Comment.

At the request of the Agents, Comments were incorporated to clarify licensing requirements. Such Comments were incorporated to provide guidance to the VLG facilities and still provide adequate control to the Lottery to regulate the licensure of VLG employees, non-gaming entities and vendors. Comments which requested the Lottery to relax its licensing provisions were not incorporated. The Lottery is directed to operate and license VLG facilities. The Lottery's licensing controls as provided in the Rule are necessary to maintain the integrity and orderly operation of its VLG facilities. Furthermore, an applicant may petition the Lottery for reconsideration of his or her VLG license application if denied, suspended or revoked.

#### VLG Operations

Several Comments reviewed by the Lottery requesting revisions to VLG facility operations were not incorporated into the Rule because such revisions would have diluted the Lottery's ability to protect the State's significant investment in VLG and the continued revenue stream for education.

A reference to VLG room was revised to "video lottery gaming in more than one room of the VLG facility" for clarification purposes because VLG room is not a defined term nor does it accurately describe any room within a VLG facility.

Several Comments requesting variations or alternatives to requirements (i.e.: the short sleeve garment required during the money counting process) did not necessitate revisions to the Rule because such variations or alternatives, as stated in the Rule, may be submitted to the Lottery for prior approval.

#### Marketing Allowance

Certain Comments received regarding marketing allowance plan and expenses were incorporated accordingly to clarify marketing allowance requirements and prohibitions. Agents requested guidance with regard to certain aspects and items within marketing plans. Guidance will be issued by the Lottery from time to time.

A revision was made to the marketing and promotion plan reimbursement frequency in response to a Comment to increase the frequency of reimbursements to the Agents from the marketing allowance account to no more than twice in any calendar month. A Comment indicated that reimbursement once a month was not sufficient.

A provision providing for the approval by the Lottery of any marketing expenses not specifically included as permissible was revised to clarify and remind Agents that such an approval is subject to the audit of the Lottery.

Comments requesting clarification and further revision of the term "complimentary item" were not incorporated because such issues would best be addressed by Lottery guidance and each VLG facility's internal controls as approved by the Lottery.

At the request of Agents via their comments, provisions regulating Player Rewards Club programs were revised to include purchases made, in addition to the credits played, at a VLG facility. Such revisions were incorporated because of the positive effect such revisions are projected to have on educational revenue.

A Comment from an Agent stated that Players Rewards Club data should not be disclosed to the public. No revision of the Rule was necessary as the Rule does not provide that such data be disclosed to the public. The Rule provides that the Lottery shall have access to such data; however it would not be released to the public under the Personal Privacy Protection Law.

#### Self-Excluded Persons

A Comment made requesting a revision to the Self-Exclusion provision to incorporate language waiving any Agent liability should the excluded person return to the VLG facility was not necessary to incorporate into the Rule. Language limiting the Agent's liability may be included in the Self-Exclusion forms provided by each of the VLG facility.

#### Typographical Errors

Typographical or grammatical errors were corrected where found in the Rule.

## Office of Mental Retardation and Developmental Disabilities

### NOTICE OF ADOPTION

#### Rate/Fee Setting

**I.D. No.** MRD-08-07-00002-A

**Filing No.** 392

**Filing date:** April 17, 2007

**Effective date:** May 2, 2007

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

**Action taken:** Amendment of sections 81.10, 635-10.5, 671.7, 680.12 and 681.14 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.07, 13.09(b) and 43.02

**Subject:** Rate/fee setting in voluntary agency operated integrated residential community (IRC) programs; individualized residential alternative (IRA) facilities and home and community-based (HCBS) waiver services; HCBS waiver community residential habilitation services; speciality hospitals; and intermediate care facilities for persons with developmental disabilities.

**Purpose:** To revise the methodologies used to calculate rates/fees of the referenced facilities or programs. More specifically, the amendments are concerned with establishing trend factors to be applied within the context of the referenced reimbursement methodologies, effective Feb. 1, 2007.

**Text or summary was published** in the notice of emergency/proposed rule making, I.D. No. MRD-08-07-00002-EP, Issue of February 21, 2007.

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

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

**Additional matter required by statute:** Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

#### Assessment of Public Comment

The agency received no public comment.

## Public Service Commission

### ERRATUM

A Notice of Proposed Rule Making, I.D. No. PSC-15-07-00011-P, published in the April 11, 2007 issue of the *State Register* contained an incorrect re and subject. The correct re and subject is "Utility Tariffs and Requirements for Natural Gas Pipeline Capacity Intended to Serve the Customers of Marketers and Energy Service Companies." The Action Pending has been updated to reflect this change.

## NOTICE OF ADOPTION

**Debt Service Surcharge to a Capital Improvement Surcharge by Cambridge Water Works Company****I.D. No.** PSC-42-05-00007-A**Filing date:** April 17, 2007**Effective date:** April 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 March 21, 2007, adopted and order approving the petition of Cambridge Water Works Company (Cambridge) to restructure its debt service surcharge.

**Statutory authority:** Public Service Law, sections 89-c(10)(b), (e) and 89-f

**Subject:** Debt service surcharge.

**Purpose:** To allow Cambridge to restructure debt service surcharge.

**Substance of final rule:** The Commission adopted an order authorizing Cambridge Water Works Company to restructure its current debt service surcharge in order to collect interest and repayment of loan principal of \$295,221 by continuing to file quarterly escrow surcharge statements, and to record a \$249,382 credit to its Contributions in Aid of Construction Account needed to reflect the reduction of its plant investment resulting from Environmental Facilities Corporation loan repayment, subject to the terms and conditions set forth in 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-W-1211SA1)

**PROPOSED RULE MAKING HEARING(S) SCHEDULED****Disposition of Benefits by Orange and Rockland Utilities, Inc.****I.D. No.** PSC-18-07-00007-P

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

**Proposed action:** By petition in Case 06-E-1547, Orange and Rockland Utilities, Inc. ("O&R") proposes a sharing arrangement between gas and/or electric ratepayers and shareholders of the benefits received from settlement of litigation over property taxes between O&R and the Towns of Haverstraw and Orangetown. The commission will consider O&R's proposal in conjunction with O&R's pending electric rate Case 06-E-1433. The commission may accept, reject or modify O&R's proposal.

**Statutory authority:** Public Service Law, section 113

**Subject:** Disposition of benefits from settlement of property tax litigation.

**Purpose:** To determine disposition of benefits from settlement of property tax litigation.

**Public hearing(s) will be held at:** 10:30 a.m., May 21, 2007 (continuing daily as necessary) at Public Service Commission, Three Empire State Plaza, Albany, NY\*

\*There could be requests to reschedule the hearing. Notification of any subsequent scheduling changes will be available at the DPS Web site ([www.dps.state.ny.us](http://www.dps.state.ny.us)) under Case 06-E-1433.

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Interpreter Service:** Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Substance of proposed rule:** By petition in Case 06-E-1547, Orange and Rockland Utilities, Inc. ("O&R") proposes a sharing arrangement between gas and/or electric ratepayers and shareholders of the benefits received from settlement of litigation over property taxes between O&R and the

Towns of Haverstraw and Orangetown. The Commission will consider O&R's proposal in conjunction with O&R's pending electric rate case, 06-E-1433. The Commission may accept, reject or modify O&R's proposal.

**Text of proposed rule may be obtained from:** Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 486-2660

**Data, views or argument may be submitted to:** Jaclyn A. Brillig, 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.

(06-E-1547SA1)

**PROPOSED RULE MAKING NO HEARING(S) SCHEDULED****New York State Reliability Council****I.D. No.** PSC-18-07-00006-P

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

**Proposed action:** The Public Service Commission is considering whether to adopt in whole or in part proposed changes to the rules and measurements of the New York State Reliability Council involving the New York Control Area installed reserve margin requirement, provision of current outage and generator availability data to the New York Independent System Operator (NYISO), change in the minimum operating reserve, reporting of fault duty, a requirement that transmission owners (TOs) report the amount of load that can be shed manually and automatically in each zone, and a requirement that the TOs and the NYISO coordinate restoration plans, training, and simulations.

**Statutory authority:** Public Service Law, sections 4(1), 5(2), 65(1), 66(1) and (2)

**Subject:** New York State Reliability Council.

**Purpose:** To consider adopting in whole or in part proposed changes to various rules and measurements of the New York State Reliability Council.

**Substance of proposed rule:** By Order issued February 9, 2006, the New York Public Service Commission adopted the current reliability rules of the New York State Reliability Council (NYSRC). The Commission is considering adopting, in whole or in part, proposed changes to the rules and measurements of the New York Reliability Council involving the New York Control Area installed reserve margin requirement, provision of current outage and generator availability data to the New York Independent System Operator (NYISO), change in the minimum operating reserve, reporting of fault duty, requirement that Transmission Owners (TOs) report the amount of load that can be shed manually and automatically in each zone, and a requirement that the TOs and the NYISO coordinate restoration plans, training, and simulations.

The Commission may accept, reject, or modify any proposals relating to these 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. Brillig, 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-E-1180SA5)

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

**Underground Line Extension Rates and Trenching Credits by Central Hudson Gas & Electric Corporation**

**I.D. No.** PSC-18-07-00008-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposed filing by Central Hudson Gas & Electric Corporation (Central Hudson) to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 15, to become effective July 1, 2007.

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

**Subject:** Underground line extension rates and trenching credits.

**Purpose:** To allow Central Hudson's updated underground line extension rates and trenching credits to become effective.

**Substance of proposed rule:** The Commission is considering Central Hudson Gas & Electric Corporation's (Central Hudson) request to update their underground residential line extension rates used in determining contributions required from applicants for underground line extension in new residential subdivisions and credit applicable to trenching underground distribution and services in residential subdivisions. Central Hudson's filing has a proposed effective date of July 1, 2007. The Commission may approve, reject or modify, in whole or in part, Central Hudson'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-E-0382SA1)

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

**Submetering of Electricity by 360 Brooklyn Investors, LLC**

**I.D. No.** PSC-18-07-00009-P

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

**Proposed action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by 360 Brooklyn Investors, LLC, to submeter electricity at 360 Furman St., Brooklyn, NY.

**Statutory authority:** Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

**Subject:** Submetering of electricity.

**Purpose:** To submeter electricity at 360 Furman St., Brooklyn, NY.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by 360 Brooklyn Investors, LLC, to submeter electricity at 360 Furman Street, Brooklyn, New York.

**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-E-0407SA1)

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

**Existing Electric Generating Stations by Independent Power Producers of New York, Inc.**

**I.D. No.** PSC-18-07-00010-P

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

**Proposed action:** The Public Service Commission is considering a petition from the Independent Power Producers of New York, Inc. alleging that the plans of Energy East Corporation to repower and upgrade existing electric generating stations owned by Rochester Gas and Electric Corporation (RG&E) undermine the competitive wholesale electric markets that have benefited ratepayers.

**Statutory authority:** Public Service Law, sections 2(13), 5(1)(b), 65(1) and (3), 66(1), (2), (3), (5), (8), (9), (10), (11), and (12), 107, 110, and 115

**Subject:** Effect of proposals to repower and upgrade existing electric generating stations owned by RG&E.

**Purpose:** To consider remedies for the effect of proposals to repower and upgrade existing electric generating stations owned by RG&E.

**Substance of proposed rule:** The Public Service Commission is considering a petition from the Independent Power Producers of New York, Inc. alleging that the plans of Energy East Corporation to repower and upgrade existing electric generating stations owned by Rochester Gas and Electric Corporation (RG&E) undermine the competitive wholesale electric markets that have benefited ratepayers. The Commission may adopt, reject or modify, in whole or in part, the allegations made and implement any necessary remedies.

**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-E-0435SA1)

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

**Expansion of the Photovoltaic Net Metering Load by New York Solar Energy Industries Association**

**I.D. No.** PSC-18-07-00011-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by New York Solar Energy Industries Association and Sustainable Hudson Valley to expand the ceiling on the photovoltaic net metering load for Central Hudson Gas and Electric Corporation from 1.2 MW to 3.0 MW

**Statutory authority:** Public Service Law, sections 66(12) and 66-j

**Subject:** Expansion of the photovoltaic net metering load.

**Purpose:** To expand the ceiling on the photovoltaic net metering load from 1.2 MW to 3.0 MW.

**Substance of proposed rule:** The Commission is considering a request by New York Solar Energy Industries Association and Sustainable Hudson Valley to expand the ceiling on the photovoltaic net metering load for Central Hudson Gas and Electric Corporation from 1.2 MW to 3.0 MW. The Commission may approve, reject or modify, in whole or in part, the 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. Brillig, 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-E-0437SA1)

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

**Rider 1—Experimental Rate Program for Multiple Dwellings**

**I.D. No.** PSC-18-07-00012-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 9—Electricity, to become effective July 1, 2007.

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

**Subject:** Rider 1—Experimental Rate Program for Multiple Dwellings.

**Purpose:** To add a new Rider—Experimental Rate Program for Multiple Dwellings.

**Substance of proposed rule:** The Commission is considering Consolidated Edison Company of New York, Inc.'s (Con Edison) request to add a new Rider 1 - Experimental Rate Program for Multiple Dwellings. Con Edison is proposing to accept under Rider 1 up to 35 full-service and retail access customers who are served under Rate of Service Classification No. 8 - Multiple Dwellings Redistribution and who participate in the New York State Energy Research and Development Authority's Multi-Family Pilots for Time Sensitive Prices, Demand Response and Loan Management program. The proposed filing has an effective date of July 1, 2007. The Commission may approve, reject or modify, in whole or in part, Con Edison'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. Brillig, 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-E-0455SA1)

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

**Issuance of Common Stock by Corning Natural Gas Corporation**

**I.D. No.** PSC-18-07-00013-P

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

**Proposed action:** The commission is considering whether to accept or reject the request sought in a petition filed by Corning Natural Gas Corporation (Corning, the company) to issue and sell up to 760,754 shares of \$5 par value common stock to support a rights offering of 506,918 investment units at a price of \$16 per unit, each such unit consisting of one share of \$5 par value common stock and one warrant to purchase one share of common stock within four years for an exercise price of \$20 per share.

**Statutory authority:** Public Service Law, section 69

**Subject:** Issuance of common stock.

**Purpose:** To allow Corning to issue and sell up to 760,754 shares of common stock to support a rights offering.

**Substance of proposed rule:** Corning Natural Gas Corporation (Corning, the Company) requires funding to support major investment in improvements to the Company's system for providing service to its customers and for refunding of debt. Toward that end, and to encourage investment in the Company, Corning proposes a rights offering of 506,918 investment units. Each unit will consist of one share of \$5.00 par value common stock and one warrant to purchase one share of common stock within four years at a price of \$20.00 per share. Each investment unit will be sold for \$16.00. The Company seeks authority to issue 760,754 shares, rather than 1,013,836 shares (or twice the number of investment units) because the Company currently has authorization to issue 252,082 shares for this purpose from Case 02-G-1106. In addition to the basic subscription price privilege entitling the holder to purchase one investment unit, each unit carries with it an over-subscription privilege whereby subscribing shareholders will have the opportunity to subscribe for additional investment units not purchased by other eligible shareholders.

**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. Brillig, 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-0445SA1)

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

**Utility Plan Pertaining to Advanced Metering by National Fuel Gas Distribution Corporation**

**I.D. No.** PSC-18-07-00014-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, the advanced metering plan filed by National Fuel Gas Distribution Corporation in response to the order relating to electric and gas metering services, issued on Aug. 1, 2006.

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

**Subject:** Utility plan pertaining to advanced metering.

**Purpose:** To consider the advanced metering plan filed by National Fuel Gas Distribution Corporation.

**Substance of proposed rule:** The Public Service Commission (the Commission) is considering whether to approve, modify or reject, in whole or in part, an advanced metering plan filed on February 1, 2007 by National Fuel Gas Distribution Corporation (NFG) in connection with three on-

going proceedings, Cases 02-M-0514, 00-E-0165 and 94-E-0952. In an order issued on August 1, 2006 in these cases, the Commission directed electric utilities to file comprehensive plans for development and deployment, to the extent feasible and cost effective, of advanced metering systems for the benefit of all customers. Gas utilities were directed to assess the feasibility of developing, offering, and installing advanced metering systems for large volume gas customers.

NFG states in its plan that most of the company's large and daily balancing customers currently have remote data collection devices installed on their meters. NFG asserts there is no need to expand mandatory advanced metering below the current annual usage threshold of 55,000 MCF.

**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.

(02-M-0514SA3)

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

**Utility Plan Pertaining to Advanced Metering by New York State Electric & Gas Corporation**

**I.D. No.** PSC-18-07-00015-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, the advanced metering plan filed by New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation in response to the order relating to electric and gas metering services, issued on Aug. 1, 2006.

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

**Subject:** Utility plan pertaining to advanced metering.

**Purpose:** To consider the advanced metering plan filed by New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation.

**Substance of proposed rule:** The Public Service Commission (the Commission) is considering whether to approve, modify or reject, in whole or in part, an advanced metering plan filed on February 1, 2007 by New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation (NYSEG/RG&E) in connection with three on-going proceedings, Cases 02-M-0514, 00-E-0165 and 94-E-0952. In an order issued on August 1, 2006 in these cases, the Commission directed electric utilities to file comprehensive plans for development and deployment, to the extent feasible and cost effective, of advanced metering systems for the benefit of all customers. Gas utilities were directed to assess the feasibility of developing, offering, and installing advanced metering systems for large volume gas customers.

NYSEG/RG&E propose a system wide approach that would affect all (approximately 1.8 million) gas and electric meters on their respective systems. Actual implementation would occur between 2008 and 2012. Cost recovery would be accomplished through a delivery surcharge, but could be moved into base rates in a subsequent rate case. Total Advanced Metering Infrastructure (AMI) system costs are \$127 million or \$185/meter for RG&E, and \$243 million or \$216/meter for NYSEG (2007 Dollars). The 20-year net present value of operational savings and other direct utility benefits is expected to be \$210 million for NYSEG and \$101 million for RG&E.

**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.

(02-M-0514SA4)

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

**Utility Plan Pertaining to Advanced Metering by National Grid**

**I.D. No.** PSC-18-07-00016-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, the advanced metering plan filed by National Grid in response to the order relating to electric and gas metering services, issued on Aug. 1, 2006.

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

**Subject:** Utility plan pertaining to advanced metering.

**Purpose:** To consider the advanced metering plan filed by National Grid.

**Substance of proposed rule:** The Public Service Commission (the Commission) is considering whether to approve, modify or reject, in whole or in part, an advanced metering plan filed on February 1, 2007 by National Grid in connection with three on-going proceedings, Cases 02-M-0514, 00-E-0165 and 94-E-0952. In an order issued on August 1, 2006 in these cases, the Commission directed electric utilities to file comprehensive plans for development and deployment, to the extent feasible and cost effective, of advanced metering systems for the benefit of all customers. Gas utilities were directed to assess the feasibility of developing, offering, and installing advanced metering systems for large volume gas customers.

National Grid proposes to continue to deploy advanced meters for large commercial and industrial electric customers as mandatory hourly pricing is progressively expanded, and to other customers requiring interval data recording meters. It would continue to offer virtually all customers the option of advanced metering via the company's tariffed offerings, and assess the viability of new time-differential, retail access, commodity-based pricing for small customers through customer focus group market research, and perhaps pilot programs.

**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.

(02-M-0514SA5)

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

**Utility Plan Pertaining to Advanced Metering by Central Hudson Gas & Electric Corporation**

**I.D. No.** PSC-18-07-00017-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, the advanced metering plan filed by Central Hudson Gas & Electric Corporation in response to the order relating to electric and gas metering services, issued on Aug. 1, 2006.

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

**Subject:** Utility plan pertaining to advanced metering.

**Purpose:** To consider the advanced metering plan filed by Central Hudson Gas & Electric Corporation.

**Substance of proposed rule:** The Public Service Commission (the Commission) is considering whether to approve, modify or reject, in whole or in part, an advanced metering plan filed on February 1, 2007 by Central Hudson Gas & Electric Corporation (Central Hudson) in connection with three on-going proceedings, Cases 02-M-0514, 00-E-0165 and 94-E-0952. In an order issued on August 1, 2006 in these cases, the Commission directed electric utilities to file comprehensive plans for development and deployment, to the extent feasible and cost effective, of advanced metering systems for the benefit of all customers. Gas utilities were directed to assess the feasibility of developing, offering, and installing advanced metering systems for large volume gas customers.

Central Hudson suggests that the Commission consider conducting additional proceedings to help utilities further refine cost issues. Central Hudson further states that the Commission must decide on a rate structure before it can do a full assessment of the cost and benefits of an advanced metering system. The company urges the Commission to approve the advanced meter reading pilot proposal it previously submitted on December 28, 2006. It proposes to submit an updated advanced metering plan at the earlier of either the company's filing in its next rate case or June 30, 2009.

**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. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(02-M-0514SA6)

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

**Utility Plan Pertaining to Advance Metering by KeySpan Energy Delivery (New York)**

**I.D. No.** PSC-18-07-00018-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, modify or reject, in whole or in part, the advance metering plan filed by KeySpan Energy Delivery (New York) in response to the order relating to electric and gas metering services, issued on Aug. 1, 2006.

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

**Subject:** Utility plan pertaining to advanced metering.

**Purpose:** To consider the advanced metering plan filed by KeySpan Energy Delivery (New York).

**Substance of proposed rule:** The Public Service Commission (the Commission) is considering whether to approve, modify or reject, in whole or in part, an advanced metering plan filed on February 1, 2007 by KeySpan Energy Delivery (New York) (KeySpan) in connection with three on-going proceedings, Cases 02-M-0514, 00-E-0165 and 94-E-0952. In an order issued on August 1, 2006 in these cases, the Commission directed electric utilities to file comprehensive plans for development and deployment, to the extent feasible and cost effective, of advanced metering systems for the benefit of all customers. Gas utilities were directed to assess the feasibility of developing, offering, and installing advanced metering systems for large volume gas customers.

KeySpan states that all of its interruptible service customers already have metering systems which allow daily balancing, and it is in the process of installing metering upgrades for all of these customers. The company indicates that there are no additional benefits and no additional needs for advanced metering systems for its large volume customers.

**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. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(02-M-0514SA7)

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

**Utility Plan Pertaining to Advanced Metering by Consolidated Edison Company of New York, Inc. and Orange & Rockland Utilities**

**I.D. No.** PSC-18-07-00019-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, modify or reject, in whole or in part, the advanced metering plan filed by Consolidated Edison Company of New York, Inc. and Orange & Rockland Utilities in response to the order relating to electric and gas metering services, issued on Aug. 1, 2006.

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

**Subject:** Utility plan pertaining to advanced metering.

**Purpose:** To consider the advanced metering plan filed by Consolidated Edison Company of New York, Inc. and Orange & Rockland Utilities.

**Substance of proposed rule:** The Public Service Commission (the Commission) is considering whether to approve, modify or reject, in whole or in part, an advanced metering plan filed on March 29, 2007 by Consolidated Edison/Orange & Rockland Utilities (Con Ed/O&R) in connection with three on going proceedings, Cases 02-M-0514, 00-E-0165 and 94-E-0952. In an order issued on August 1, 2006 in these cases, the Commission directed electric utilities to file comprehensive plans for development and deployment, to the extent feasible and cost effective, of advanced metering systems for the benefit of all customers. Gas utilities were directed to assess the feasibility of developing, offering, and installing advanced metering systems for large volume gas customers.

Con Edison/O&R propose to install advanced metering throughout their service territories for both electric and gas service. The companies have about 3.6 million electric meters and nearly 1.2 million gas meters. All locations served by these meters would have advanced meter functionality by 2014. The companies identify \$730 million in total plan costs, and \$500 million in direct operational savings, assuming a system life of 15 years; however, Con Edison/O&R assert the proposal is cost-effective if the Commission considers both the companies' direct utility benefits and other benefits to the companies, their customers, the market, and society generally.

**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. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(02-M-0514SA8)

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

**Transfer of Ownership of Steam, Water and Electric Plant by Continental Industrial Capital, LLC and Coby Housing Corporation**

**I.D. No.** PSC-18-07-00020-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 petitions from Continental Industrial Capital, LLC and Coby Housing Corporation requesting approval of the transfer of ownership interests in water and steam plant located at the Rochester Technology Park in Monroe County, NY, and, in the alternative, approval of the transfer of and lightened regulation of electric plant at the same location.

**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, 83, 89-h, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

**Subject:** Transfer of ownership of steam, water, and electric plant, and lightened regulation of electric plant, at the Rochester Technology Park.

**Purpose:** To consider approval of the transfer of steam, water, and electric plant, and lightened regulation of electric plant, at the Rochester Technology Park.

**Substance of proposed rule:** The Public Service Commission is considering petitions from Continental Industrial Capital, LLC and Coby Housing Corporation requesting approval of the transfer of ownership interests in water and steam plant located at the Rochester Technology Park in Monroe County, New York, and, in the alternative, approval of the transfer of and lightened regulation of electric plant at the same location. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

**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-M-0363SA1)

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

**Deferral of Property Tax and Interest Rate Reconciliations by Aquarion Water Company of Sea Cliff**

**I.D. No.** PSC-18-07-00021-P

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

**Proposed action:** The commission is considering the petition of Aquarion Water Company of Sea Cliff, Aquarion (the company) pursuant to commission order in Case 02-W-1564 issued Oct. 22, 2003. The proposed filing reconciles both property taxes and interest rates for the company's most recent rate years. The company seeks approval to defer the amounts on its balance sheet.

**Statutory authority:** Public Service Law, section 89-c

**Subject:** Deferral of property tax and interest rate reconciliations.

**Purpose:** To determine the proper amount of deferred property tax and interest rate expense.

**Substance of proposed rule:** The Commission is considering whether to approve, reject or modify the petition of Aquarion Water Company of Sea Cliff (the company) regarding the disposition of certain amounts of property tax and interest rate reconciliations made during the company's most recent rate year periods. According to an Order of the Commission in Case 02-W-1564, issued October 22, 2003, the company must reconcile both property taxes and interest rates, and report the amounts to the Commission. The company proposes to defer the amounts identified in the petition for future disposition.

**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.

(02-W-1564SA4)