

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Supplemental Military Leave Benefits

I.D. No. CVS-05-10-00005-P

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

Proposed Action: This is a consensus rule making to amend sections 21.15 and 28-1.17 of Title 4 NYCRR.

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

Subject: Supplemental military leave benefits.

Purpose: To extend the availability of supplemental military leave benefits for certain New York State employees until December 31, 2010.

Substance of proposed rule: The proposed rule amends sections 21.15 and 28-1.17 of the Attendance Rules for Employees in New York State Departments and Institutions to continue the availability of the single grant of supplemental military leave with pay and further leave at reduced pay through December 31, 2010, and to provide for separate grants of the greater of 22 working days or 30 calendar days of training leave at reduced pay during calendar year 2010. Union represented employees already receive these benefits pursuant to memoranda of understanding (MOUs) negotiated with the Governor's Office of Employee Relations (GOER). The proposed rule merely amends section 21.15 of the Attendance Rules consistent with the current MOUs, and amends section 28-1.17 to extend equivalent benefits to employees serving in positions designated managerial or confidential (m/c).

Under current statute, section 242 of the New York State Military Law provides that public officers and employees who are members of the organized militia or any reserve force or reserve component of the armed

forces of the United States may receive the greater of 22 working days or 30 calendar days of leave with pay to perform ordered military duty in the service of New York State or the United States during each calendar year or any continuous period of absence.

Following the events of September 11, 2001, certain State employees were ordered to extended active military duty, or frequent periods of intermittent active military duty. These employees faced the loss of State salary, with attendant loss of benefits for their dependents, upon exhaustion of the annual grant of Military Law paid leave. Accordingly, supplemental military leave, leave at reduced pay and training leave at reduced pay were made available to such employees pursuant to MOUs negotiated with the employee unions. Corresponding amendments to the Attendance Rules were adopted extending equivalent military leave benefits to employees in m/c designated positions. While these benefits are intended to expire upon a date certain, the benefits described herein have been repeatedly renewed in the wake of the continuing war on terror, including homeland security activities, and the armed conflicts in Afghanistan and Iraq.

With respect to supplemental military leave, eligible State employees federally ordered, or ordered by the Governor, to active military duty (other than for training) in response to the war on terror receive a single, non-renewable grant of the greater of 22 working days or 30 calendar days of supplemental military leave with full pay.

With respect to military leave at reduced pay, upon exhaustion of the military leave benefit conferred by the Military Law, and the single grant of supplemental military leave with pay, and any available accruals (other than sick leave) which an employee elects to use, employees who continue to perform qualifying military duty are eligible to receive military leave at reduced pay. Compensation for such leave is based upon the employee's regular State salary as of his/her last day in full pay status (defined as base pay, plus location pay, plus geographic differential) reduced by military pay (defined as base pay, plus food and housing allowances) received from the United States or New York State for military service, if the former exceeded the latter. While in leave at reduced pay status, employees are eligible to receive leave days due upon his/her personal leave anniversary if such anniversary date falls during a period of military leave at reduced pay, and can accumulate biweekly vacation and sick leave credits for any pay period in which they remain in full pay status for at least seven out of ten days (or a proportionate number of days for employees with work weeks of less than 10 days per bi-weekly pay period.) These leave benefits are available even for employees who do not receive supplemental pay because their military salaries (as defined) exceed their regular State pay.

With respect to training leave at reduced pay, many employees ordered to military duty in response to the war on terror also continue to perform other required military service unrelated to the war on terror. To support employees performing other military duty, including mandatory summer and weekend training and other activation, a new category of leave was established, entitled "training leave at reduced pay." Eligible employees receive the greater of 22 work days or 30 calendar days of training leave at reduced pay following qualifying military duty in response to the war on terror, and after depleting the annual Military Law grant of leave with pay and any leave credits (other than sick leave) that they elect to use. Training leave at reduced pay may then be used for any ordered military duty during the calendar year that is not related to the war on terror. Employees who have already utilized leave at reduced pay receive the same compensation for any periods of training leave at reduced pay. Employees who have not used leave at reduced pay prior to their initial use of training leave at reduced pay are paid according to the employee's regular State salary as of his or her last day in full pay status reduced by military pay received from the United States or New York State for military service, if the former exceeds the latter. Employees on training leave at reduced pay retain the same leave accrual benefits as apply to leave at reduced pay.

The proposed rule extends the availability of supplemental military leave with pay, leave at reduced pay and training leave at reduced pay

through December 31, 2010. Employees must establish eligibility for supplemental military leave (provided they have not already depleted the single grant of such leave), leave at reduced pay and training leave at reduced pay during 2010 by performing qualifying military service.

Employees on leave at reduced pay or training leave at reduced pay on January 1, 2010, have their rate of pay calculated from their base State pay as of January 1, 2010, reduced by the military pay rate applied to their most recent period in either reduced pay category prior to 2010. For employees who have used leave at reduced pay or training leave at reduced pay prior to year 2010, their pay for either type of reduced pay leave at point between January 1, 2010 and December 31, 2010, will be calculated from their base State pay as of their last day in full pay status after January 1, 2010, prior to their initial use of leave of reduced pay or training leave at reduced pay, offset by the rate of military pay from their most recent period of reduced pay leave, prior to 2010. Employees whose initial use of either reduced pay leave category occurs during 2010 will have their pay rate determined by their base State pay on their last day of full pay status, minus military pay. For all employees receiving leave at reduced pay or training leave at reduced pay in 2010, the initial pay calculation will apply to all subsequent periods of reduced pay leave.

The proposed amendment provides that in no event shall supplemental military leave, leave at reduced pay or training leave at reduced pay be granted for military service performed after December 31, 2010, nor shall such leaves be available to employees who have voluntarily separated from State service or who are terminated for cause.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Consensus Rule Making Determination

Section 6(1) of the Civil Service Law authorizes the State Civil Service Commission to prescribe and amend suitable rules and regulations concerning leaves of absence for employees in the Classified Service of the State.

Following September 11, 2001, certain State employees were federally ordered, or ordered by the Governor, to active military duty. The New York State Military Law provides for the greater of 22 working days or 30 calendar days of military leave at full (State) pay for ordered service during each calendar year or continuous period of absence. Employees ordered to prolonged active duty, or repeatedly ordered to intermittent periods of active duty, faced exhaustion of the Military Law leave with pay benefit. Further periods of military service would then subject these employees to economic hardship from the loss of their regular State salaries and deprive their dependents of needed benefits derived from State employment.

To support State employees called to military duty after September 11, 2001, the Governor's Office of Employee Relations (GOER) executed memoranda of understanding (MOUs) with the employee unions to provide for a supplemental grant of military leave with pay and leave at reduced pay. Subsequent MOUs established a new benefit entitled training leave at reduced pay. These military leave benefits have been repeatedly renewed in the wake of the ongoing war on terrorism, including homeland security activities and military actions in Afghanistan and Iraq.

Upon depletion of the Military Law paid leave benefit, employees federally ordered, or ordered by the Governor, to active military duty in response to the war on terror receive a single grant of the greater of 22 work days or 30 calendar days of military leave with pay. Employees who continue to perform active duty in response to the war on terror and have exhausted their paid Military Law leave and supplemental military leave with pay, and any available leave credits (other than sick leave), which they elect to use, become eligible for leave at reduced pay. Leave at reduced pay provides eligible employees with the difference between their regular State salaries (defined as base pay, plus location pay, plus geographic differential) and their pay for military service (defined as base pay plus food and housing allowances), if the former exceeds the latter. Individuals in leave at reduced pay status also retain certain other leave benefits, even if they do not receive additional salary.

Members of the Reserves and National Guard may also continue to perform duty unrelated to the war on terror, including mandatory weekend and summer training or other activation. Following any military service related to the war on terror, and exhaustion of the annual Military Law paid leave benefit, plus any available leave credits (other than sick leave) that an employee elects to use, eligible employees can use up to 22 work days or 30 calendar days of training leave at reduced pay for any ordered military service that is not in response to the war on terror. Salary computa-

tions for training leave at reduced pay are substantially derived from the calculations for leave at reduced pay.

The Governor's Office of Employee Relations has executed new MOUs with the Classified Service employee unions extending the availability of the single grant of supplemental military leave with pay and leave at reduced pay, and training leave at reduced pay through December 31, 2010. The State Civil Service Commission shall amend the Attendance Rules in accordance with the MOUs and extend equivalent benefits to employees serving in m/c designated positions.

No person or entity is likely to object to the rule as written, because it conforms the Attendance Rules to the current, approved MOUs negotiated with the employee unions and provides equivalent benefits to employees serving in m/c positions. Cost estimates are expected to remain consistent with the \$2-5 million per annum cost estimates prepared before prior adoptions of the military leave benefits described herein. These cost projections include both the anticipated full and partial State salary payments for employees on all categories of additional military leave and the cost of any replacement staffing for mission-critical State positions. Most eligible employees are expected to have already utilized the sole grant of supplemental military leave at full pay, so direct leave costs for calendar year 2010 may be slightly lower than projected. Estimates cannot anticipate sudden changes in global conditions or homeland security needs. No new compliance costs or implementation difficulties are associated with the extension of the subject benefits.

The Civil Service Commission received no public comments after publication of the amendments to the Attendance Rules establishing or re-authorizing the benefits now put forward for renewal. Previous re-adoptions of the proposed amendments have been proposed and adopted as consensus rules. As no person is likely to object to the rule as written, the proposed rule is advanced as a consensus rule pursuant to State Administrative Procedure Act (SAPA) § 202(1)(b)(i).

Job Impact Statement

By amending Title 4 of the NYCRR to extend the availability of supplemental military leave, leave at reduced pay and training leave at reduced pay for eligible employees subject to the Attendance Rules for Employees in New York State Departments and Institutions, these rules will positively impact jobs or employment opportunities for eligible employees, as set forth in section 201-a(2)(a) of the State Administrative Procedure Act (SAPA). Therefore, a Job Impact Statement (JIS) is not required by section 201-a of such Act.

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Correction Officer Training

I.D. No. CJS-05-10-00001-P

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

Proposed Action: Addition of Part 6018 to Title 9 NYCRR.

Statutory authority: Executive Law, sections 837-a(9) and 840(2-a)

Subject: Correction officer training.

Purpose: To set forth the process for administering a correction officer basic training program.

Text of proposed rule: 1. A new Part 6018 is added to 9 NYCRR to read as follows:

PART 6018

BASIC COURSE FOR CORRECTION OFFICERS

§ 6018.1. Definitions When used in this Part:

(a) The term council shall mean the Municipal Police Training Council.

(b) The term director shall mean the director of a basic course for correction officers.

(c) The term commissioner shall mean the commissioner of the Division of Criminal Justice Services or his or her designee.

(d) The term basic course/basic course for correction officers shall

mean the course of training prescribed in section 6018.3 of this Part, which has been approved by the commissioner, in writing, as meeting or exceeding the minimum standards prescribed in that section.

(e) The term municipality shall mean any county, city with a population less than one million, town, park commission, village, or police district operating a correctional facility in the State.

(f) The term correction officer shall have the same meaning as set forth in Article 2 of the Criminal Procedure Law.

§ 6018.2 Statement of purpose.

(a) The purpose of this Part is to set forth minimum standards for the basic course for correction officers with regard to subject matter and time allotments and to set forth clear and specific requirements for administration of a basic course to be followed by course directors and to promulgate rules governing attendance/completion of such course.

(b) Satisfactory completion of a basic course as prescribed in section 6018.3 of this Part shall satisfy the minimum training requirements for peace officers as set forth in Article 2 of the Criminal Procedure Law.

§ 6018.3 Minimum standards.

(a) No basic course shall be approved by the commissioner that does not follow a curriculum of at least 196 hours.

(b) Specific curriculum categories, respective titles/topics, and time allotments shall be established by the council and published by the commissioner.

(c) Only instructors certified in accordance with the provisions of Parts 6023 and/or 6024 of this Title may provide instruction in a basic course.

§ 6018.4 Requirements for approval of a basic course.

(a) No later than 45 days prior to commencement of a basic course, the course director shall file a copy of the proposed curriculum with the commissioner. The curriculum must be in a form prescribed by the commissioner and shall include:

- (1) course location and sponsor;
- (2) a chronological listing of topics; including the date, time and number of hours allotted to each topic; and
- (3) The names of instructors and the type of instructor certification held by each instructor.

(b) The commissioner may require any additional information deemed necessary for the purposes of reviewing and approving a curriculum.

(c) The commissioner shall make an individual written certification for each basic course conducted when in his or her judgement the information furnished warrants such action.

(d) A basic course must be certified to be offered.

§ 6018.5 Requirements for conducting a basic course.

(a) Within 10 days after conclusion of a basic course, the director shall forward the course roster to the commissioner, on a form prescribed by the commissioner, listing the names and other information contained in the form and required by the council for all enrollees denoting the performance of respective trainees.

(b) The director shall make written notification, to the commissioner, of any departures from the approved curriculum and shall be responsible for assuring that such changes do not materially change course content.

(c) The director shall ensure that the basic course is conducted in accordance with all applicable standards, policies, and procedures. The director shall establish written directives for the administration of the basic course including, but not limited to, attendance, counseling, remediation, and retesting. The directives shall define the minimum period of time set for remediation and for one or more opportunities for retesting.

(d) The director or sponsoring agency shall be responsible for maintaining accurate records for each basic course. These records must be retained as required by the appropriate schedule for records retention and disposition promulgated by the commissioner of the New York State Education Department. Such records must be avail-

able for inspection by members of the council or the commissioner. They include, but are not be limited to, lesson plans for each topic inclusive of objectives, officer attendance and performance records, a copy of the curriculum approved for use, and a record of any changes in the curriculum after such approval.

§ 6018.6 Requirements for issuance of a certificate of completion.

(a) All basic course requirements, including firearms training, must be completed as a single and cohesive unit.

(b) Attendance is required of each correction officer at all sessions of the basic course except for valid reasons. The director is authorized to determine the validity of and excuse absences of not more than 10 percent of the total hours of instruction as provided for in the curriculum of the course. An absentee from any scheduled class session shall make up such absence as required by the director. However, no correction officer may be issued a certificate of completion without receiving the full program of instruction in firearms, or the defense of justification (use of physical force/deadly physical force).

(c) Each correction officer enrolled in a basic course shall keep a notebook. The notebook shall contain an outline of major points and pertinent information for each topic presented. The director will evaluate notebooks based upon criteria such as, content, organization, regularity of entries, accuracy and legibility.

(d) The taking and passing of written examination(s) is required of each correction officer prior to issuance of a certificate of completion. If a series of examinations is required by the director, the candidate must achieve a total passing average for the series. The director shall assemble examination material, give and supervise examination(s), and grade the examination(s). The director or sponsoring agency shall retain the examination papers as required by the appropriate schedule for records retention and disposition promulgated by the commissioner of the New York State Education Department. Such records must be available for inspection by members of the council or the commissioner.

(e) Upon certification by a director stating that a correction officer has satisfactorily completed all basic course requirements, the commissioner shall issue a certificate of completion to such correction officer.

(f) A certificate of completion issued to a correction officer shall attest to fulfillment of the training requirements for correction officers as set forth in section 837-a(9) of the Executive Law and for peace officers as set forth in Article 2 of the Criminal Procedure Law.

(g) Only a sworn correction officer enrolled in a basic course for correction officers is eligible for the issuance of a certificate of completion upon satisfactory completion of all course requirements. A civilian who attends a basic course for correction officers shall not be awarded a certificate.

§ 6018.7 Time limitations for completion of the basic course for correction officers.

No person appointed as a correction officer shall exercise the powers of a correction officer unless, within 12 months after appointment, such correction officer is certified as having completed a basic course approved by the commissioner. Where an employer has authorized a correction officer to carry or use a weapon during any phase of the officer's official duties, which constitutes on-duty employment, the program shall include the same number of hours of instruction in deadly physical force and the use of firearms and other weapons as is required in the basic course for police officers.

§ 6018.8 Issuance of equivalency certificates.

(a) A person who has been appointed a correction officer by a municipality who was formerly employed as a correction officer by the New York State Department of Correctional Services or a city within the State of New York with a population of more than one million may apply to the commissioner to substitute satisfactory completion of correction officer basic training completed in connection with such employment in satisfaction of all or part of the requirements of section 6018.3 of this Part.

(b) The commissioner shall review and evaluate all such applications and may require the applicant to submit such additional documentation as he or she shall deem necessary. If, upon review and

evaluation of such application, the commissioner determines that a program of correction officer basic training completed by the applicant meets or exceeds all or part of the minimum standards prescribed in section 6018.3 of this Part, the commissioner may authorize such training to be substituted for such requirements of the basic course as he or she shall deem appropriate. The commissioner shall certify, in writing, the extent to which all or part of the curriculum of the basic course may be waived and noted deficiencies must be satisfactorily completed at a basic course approved by the commissioner, within the period of time prescribed in section 6018.7 of this Part.

(c) Applicants for equivalency certificates shall be subject to the same limitations and requirements as prescribed in section 6018.7 of this Part and Article 2 of the Criminal Procedure Law.

§ 6018.9 Annual reporting of peace officer training.

Each employer of correction officers shall annually report to the commissioner, on behalf of the council, the names and addresses of all correction officers employed by it, during the course of the preceding year, satisfactorily completed annual instruction in deadly physical force and the use of firearms and other weapons approved by the council in satisfaction of the annual firearms and weapons training requirement imposed by Article 2 of the Criminal Procedure Law. Since correction officers are peace officers as defined in Article 2 of the Criminal Procedure Law, such report shall be included in the annual validation of peace officer registry data to be completed by the employer and submitted to the commissioner by January 15th of each year.

Text of proposed rule and any required statements and analyses may be obtained from: Mark Bonacquist, Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, (518) 457-8413

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

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

Regulatory Impact Statement

1. Statutory authority: Executive Law section 837-a(9) and 840(2-a).

2. Legislative objectives: The fiscal year 2009-10 State Budget (sections 2, 4, 5, 6 of Part Q of Chapter 56 of the Laws of 2009) transferred the responsibility for correction officer training from the State Commission of Correction (SCOC) to the Division of Criminal Justice Services (DCJS) and Municipal Police Training Council (MPTC). Subdivisions (9) and (9-a) of section 45 of the Correction Law, which previously authorized the SCOC to establish, maintain, and operate a correctional training program for full-time and part-time correction officers, respectively, were repealed. A new subdivision (9) was added to Executive Law section 837-a to authorize the commissioner of DCJS, in consultation with the SCOC and MPTC, to establish, maintain, and operate a correctional training program for correction officers. A new subdivision (2-a) was added to Executive Law section 840 to empower the MPTC, in consultation with SCOC, to promulgate regulations regarding the approval, or revocation thereof, of basic correctional training programs administered by municipalities; minimum courses of study, attendance requirements, and equipment and facilities to be required at approved basic correctional training programs; minimum qualifications for instructors at approved basic correctional training programs; and the requirements of a minimum basic correctional training program required by Executive Law section 837-a(9).

3. Needs and benefits: Pursuant to Executive Law sections 837-a(9) and 840(2-a), DCJS staff consulted with SCOC staff regarding the continued use of the existing SCOC basic correction officer course curriculum. It was agreed to adopt, substantially unchanged, the training curriculum, including the minimum number of hours of instruction required, heretofore required by the SCOC. The SCOC did not have regulations or written guidelines governing the administration of basic correctional training programs. However, DCJS staff also consulted with the MPTC and SCOC staff regarding the use of the existing MPTC requirements for administration of training programs and it was agreed to utilize the existing MPTC administrative requirements. Accordingly, this regulation is modeled on existing

MPTC training regulations pertaining to the basic course for police officers (9 NYCRR Part 6020) and the basic course for peace officers (9 NYCRR Part 6025). Correctional administrators are already familiar with MPTC administrative requirements because correction officers are peace officers pursuant to Criminal Procedure Law section 2.10(25) and are therefore subject to some training oversight by the MPTC and DCJS. In addition, most local correction officers are employed by county sheriffs, who also employ police officers. Using the SCOC curriculum and existing MPTC administrative structure will provide consistency in the correction training process and make the transfer of correctional training from the SCOC to DCJS and the MPTC smoother and less disruptive for correctional administrators.

4. Costs:

a. There are no costs to regulated parties expected for the implementation of and continuing compliance with the rule. The requirements of the regulation are consistent with the requirements for administering a basic correctional training program previously established by the SCOC. The regulation is necessary to account for the transfer of this responsibility from the SCOC to the DCJS and the MPTC.

b. There are no costs to the agency or State and local governments expected for the implementation of and continuing compliance with the rule. The requirements of the regulation are consistent with the basic correctional training program previously established by the SCOC. The regulation is necessary to account for the transfer of this responsibility from the SCOC to the DCJS and the MPTC.

c. The cost analysis is based on the fact that the requirements of the regulation are consistent with the requirements for administering a basic correctional training program previously established by the SCOC.

5. Local government mandates: There are no new mandates. Approval of basic correctional training programs was previously done by the SCOC. As a result of the transfer of this function to the DCJS and the MPTC, correctional facility administrators must now obtain the commissioner of DCJS' approval. The requirements for conducting a basic correctional training program remain essentially the same.

6. Paperwork: The paperwork required to be submitted to the DCJS includes filing a copy of the proposed course curriculum for approval prior to the commencement of the course and filing of a course roster after the conclusion of the course. This paperwork is similar to what was required by the SCOC. The paperwork may be in a slightly different form, but it is substantially the same information that must be provided.

7. Duplication: There are no other federal or State legal requirements that duplicate the proposed rule.

8. Alternatives: The MPTC and DCJS could have developed a new training curriculum and administrative process for the basic correctional training program. This alternative was rejected, however. DCJS determined that using the existing SCOC curriculum and the existing MPTC administrative framework applicable to police and peace officer training will provide consistency in the correction training process, make the transfer of correctional training from the SCOC to DCJS and the MPTC smoother, create less inconvenience for correctional administrators, and help to ensure correctional training continues without disruption.

The proposed rule was discussed with the New York State Sheriffs' Association who expressed no objections or concerns. The proposed rule was also discussed with jail administrators at their annual conference (sponsored by the Sheriffs' Association) who expressed no objections or concerns. In addition, the proposal was discussed with the Eastern State Law Enforcement Trainers Network, the New York State County Correctional Instructors Association - Central Region, and the Law Enforcement Training Directors Association of New York State, none of whom expressed any objections or concerns.

9. Federal standards: There are no federal standards.

10. Compliance schedule: Regulated parties are expected to be able to achieve compliance with the proposed rule immediately.

Regulatory Flexibility Analysis

1. Effect of rule: The rule applies primarily to local correctional facilities operated by counties and the New York City Department of Correction. However, the New York City Department of Correction

had been given an exemption by the State Commission of Correction (SCOC) prior to the transfer of this function to the Division of Criminal Justice Services (DCJS) and the Municipal Police Training Council (MPTC), and the commissioner of the DCJS services intends to continue such exception under the proposed rule. The proposal does not apply to small businesses.

2. Compliance requirements: There are no new mandates. Approval of basic correctional training programs was previously done by the SCOC. As a result of the transfer of this function to the DCJS and the MPTC, correctional facility administrators must now obtain the commissioner of DCJS' approval. The requirements for administering a basic correctional training program remain essentially the same. The paperwork required to be submitted to the DCJS includes filing a copy of the proposed course curriculum for approval prior to the commencement of the course and filing of a course roster after the conclusion of the course. This paperwork is similar to what was required by the SCOC. The paperwork may be in a slightly different form, but it is substantially the same information that must be provided.

3. Professional services: No professional services are expected to be required to comply with the proposed rule.

4. Compliance costs: There are no costs to local governments expected for the implementation of and continuing compliance with the rule. The requirements of the regulation are consistent with the requirements for administering a basic correctional training program previously established by the SCOC. The regulation is necessary to account for the transfer of this responsibility from the SCOC to the DCJS and the MPTC. The proposed rule does not apply to small businesses.

5. Economic and technological feasibility: No economic or technological barriers impeding compliance with the proposed rule have been identified.

6. Minimizing adverse impact: The requirements of the regulation are consistent with the basic correctional training program previously established by the SCOC. The regulation is necessary to account for the transfer of this responsibility from the SCOC to the DCJS and the MPTC. It is therefore expected that there will be no adverse impacts on local governments. The rule does not apply to small businesses.

7. Small business and local government participation: The proposed rule was discussed with the New York State Sheriffs' Association. Sheriffs are responsible for all but two of the local correctional facilities operated by county governments. The Sheriffs' Association expressed no objections or concerns. The proposed rule was also discussed with jail administrators at their annual conference (sponsored by the Sheriffs' Association) who expressed no objections or concerns. In addition, the proposal was discussed with the Eastern State Law Enforcement Trainers Network, the New York State County Correctional Instructors Association - Central Region, and the Law Enforcement Training Directors Association of New York State, none of whom expressed any objections or concerns.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The rule applies primarily to local correctional facilities operated by counties, many of which are located in rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: There are no new mandates required by the proposal. Approval of basic correctional training programs was previously done by the State Commission of Correction (SCOC). As a result of the transfer of this function to the Division of Criminal Justice Services (DCJS) and the Municipal Police Training Council (MPTC), correctional facility administrators must now obtain the commissioner of DCJS' approval. The requirements for administering a basic correctional training program remain essentially the same.

The reporting required by the proposed rule includes filing a copy of the proposed course curriculum for approval prior to the commencement of the course and filing of a course roster after the conclusion of the course. This reporting is similar to what was previously required by the SCOC, but may be required in a slightly different form.

No professional services are expected to be required to comply with the proposed rule.

3. Costs: There are no costs to counties expected for the implementation of and continuing compliance with the rule. The requirements of the regulation are consistent with the requirements of the basic correctional training program previously established by the SCOC. The regulation is necessary to account for the transfer of this responsibility from the SCOC to the DCJS and the MPTC.

4. Minimizing adverse impact: The requirements of the proposed rule are consistent with the requirements for administering a basic correctional training program previously established by the SCOC. The regulation is necessary to account for the transfer of this responsibility from the SCOC to the DCJS and the MPTC. It is therefore expected that there will be no adverse impacts on rural areas.

5. Rural area participation: The proposed rule was discussed with the New York State Sheriffs' Association which represents the State's Sheriffs, who are responsible for all but two of the local correctional facilities operated by county governments, and many of whom serve counties in rural areas. The proposed rule was also discussed with jail administrators, many of whom represent counties in rural areas, at their annual conference (sponsored by the Sheriffs' Association).

Job Impact Statement

The fiscal year 2009-10 State Budget transferred the responsibility for correction officer training from the State Commission of Correction to the Division of Criminal Justice Services and Municipal Police Training Council (MPTC). The MPTC is now empowered pursuant to Executive Law section 840(2-a) to promulgate rules and regulations regarding the approval, the minimum courses of study, the minimum qualification for instructors, and the requirements for basic correctional training programs. The proposed rule sets forth the process for administering correction officer basic training program. It is apparent from the nature and purpose of the proposal that it will have no impact on jobs and employment opportunities.

Education Department

EMERGENCY RULE MAKING

Museum Collections Management Policies

I.D. No. EDU-01-09-00004-E

Filing No. 10

Filing Date: 2010-01-13

Effective Date: 2010-01-13

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

Action taken: Amendment of section 3.27 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 216(not subdivided), 217(not subdivided), 233-aa(1), (2) and (5); and L. 2008, ch. 220

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

- (1) the item or material is not relevant to the mission of the institution;
- (2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;
- (3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or
- (4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a

deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

In the current financial downturn, collections held by museums and historical societies could be threatened by inappropriate deaccessioning by sale, disposal or transfer. Currently, some 37 institutions in New York in 2006 reported deficits of \$100,000 or more. The Department is concerned that, in the absence of an express prohibition in Regents rule section 3.27, museums and historical societies in financial distress will deaccession items or materials for purposes of paying their outstanding debt. Consistent with generally accepted professional and ethical standards within the museum and historical society communities, the proposed amendment would expressly prohibit proceeds from deaccessioning from being used for the payment of outstanding debt or capital expenses. The proposed amendment would also restrict when an institution may deaccession its collections to the instances listed in (1) through (4) above. This specific language was added in response to museums which sought clarity on what constitutes proper and acceptable grounds for deaccessioning.

The proposed amendment was adopted as an emergency rule at the December 2008 Regents meeting, and readopted as an emergency rule at the March, April, June, July and October 2009 Regents meetings. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on January 7, 2009.

The proposed amendment is consistent with generally accepted professional and ethical standards within the museum and historical society communities. Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to protect the public's interest in collections held by a chartered museum or historical society. State Education Department staff have worked with the Legislature and with museum constituents to develop revised standards for museum deaccessioning that have been incorporated into legislation (A.6959-A and S.3078-A) pending in both houses which would be applicable to all museums.

The Notice of Revised Rule Making published in the August 26, 2009 State Register, included proposed revisions to (1) provide a January 15, 2010 sunset date on the prohibition against adding a historic structure to a collection, (2) provide definitions of "Collection Management Policy", "Intrinsic Value", and "Item", (3) require that collection items be appropriate to an institution's corporate purposes, mission statement and collection management policy, and that the acquisition and deaccessioning of collection items is consistent with the institution's corporate purposes, mission statement and collection management policy, and (4) provide ten additional criteria that a museum or historical society with collections must meet in order to deaccession items or materials in their collections.

It is anticipated that the proposed rule will be further revised to restate the original proposed rule published in the January 7, 2009 State Register. While the Department has discussed the above proposed revisions with legislators, institutions and constituents during the Fall of 2009, a consensus has not been reached with respect to these revisions, and the Department believes it is appropriate to proceed with the original proposed rule which has remained in effect as an emergency rule since its initial adoption effective December 19, 2008. The Department will continue to review and evaluate comments received from constituents, and will send representatives to a January 14, 2010, roundtable discussion in New York City organized by the New York State Assembly.

Pursuant to the State Administrative Procedure Act, a revised rule cannot be permanently adopted until after publication of a Notice of Revised Rule Making and expiration of a 30-day public comment period. Because the Board of Regents meets at fixed intervals, the earliest the proposed revised rule could be presented for permanent adoption, after publication of the Notice and expiration of the 30-day public comment period, would be the February 8-9, 2010 Regents meeting. However, the emergency rule adopted at the October Regents meeting is only effective for 60 days and will expire on January 12, 2010. If the rule were to lapse, collections held by museums and historical societies could be threatened by inappropriate deaccessioning by sale, disposal or transfer. To avoid the adverse effects of a lapse in the emergency rule, another emergency action is necessary at the December Regents meeting to readopt the rule, effective January 13, 2010 so that it may remain continuously in effect until it can be adopted and made effective as a permanent rule.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to protect the public's interest in collections held by a museum or historical society by enumerating the specific criteria under which an institution may deaccession an item or material in its collection, remove the option allowing an institution to designate a structure as a collections item but keep intact any such designation made by vote of a board of trustees prior to December 19, 2008, and specify that no proceeds from deaccessioning may be used for capital expenses, except to preserve, protect or care for an historic building previously designated as part of the institution's collection, as above. Emergency action is also necessary to ensure that the emergency rule remains continuously in effect until it can be adopted and made effective as a permanent rule.

It is anticipated that the proposed revised rule will be presented for permanent adoption at a subsequent Regents meeting, after publication of a Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period prescribed for revised rule makings in the State Administrative Procedure Act.

Subject: Museum collections management policies.

Purpose: To clarify restrictions on the deaccessioning of items and materials in collections held by museums and historical societies.

Text of emergency rule: 1. Paragraph (7) of subdivision (a) of section 3.27 of the Rules of the Board of Regents is amended, effective January 13, 2010, to read as follows, provided that such amendment shall expire and be deemed repealed February 13, 2010:

(7) Collection means one or more original tangible objects, artifacts, records or specimens, including art generated by video, computer or similar means of projection and display, that have intrinsic historical, artistic, cultural, scientific, natural history or other value that share like characteristics or a common base of association and are accessioned; for purposes of this section, historic structures owned by an institution shall be considered as part of a collection *only* when so designated by the *board of trustees of the institution by vote conducted on or before December 19, 2008*;

2. Paragraphs (6) and (7) of subdivision (c) of section 3.27 of the Rules of the Board of Regents are amended, effective January 13, 2010, to read as follows, provided that such amendment shall expire and be deemed repealed February 13, 2010:

(6) Collections Care and Management. The institution shall:

(i) own, maintain and/or exhibit original tangible objects, artifacts, records, specimens, buildings, archeological remains, properties, lands and/or other tangible and intrinsically valuable resources that are appropriate to its mission;

(ii) ensure that the acquisition and deaccessioning of its collection is consistent with its corporate purposes and mission statement, *including that deaccessioning of items or material in its collection is limited to the circumstances prescribed in paragraph (7) of this subdivision*;

(iii) have a written collections management policy providing clear standards to guide institutional decisions regarding the collection, that is in regular use, available to the public upon request, filed with the commissioner for inspection by anyone wishing to examine it; and which, at a minimum, satisfactorily addresses the following subject areas:

(a) acquisition. The criteria and processes used for determining what items are added to the collections;

(b) loans. The criteria and processes used for borrowing items owned by other institutions and individuals, and for lending items from the collections;

(c) preservation. A statement of intent to ensure the adequate care and preservation of collections;

(d) access. A statement indicating intent to allow reasonable access to the collections by persons with legitimate reasons to access them; and

(e) deaccession. The criteria and process (including levels of permission) used for determining what items are to be removed from the collections, *which shall be consistent with paragraph (7) of this subdivision*, and a statement limiting the use of any funds derived therefrom in accordance with subparagraph [(vii)] (vi) of this paragraph;

(iv) ensure that collections or any individual part thereof and the proceeds derived therefrom shall not be used as collateral for a loan;

(v) ensure that collections shall not be capitalized; and

(vi) ensure that proceeds derived from the deaccessioning of any property from the institution's collection be restricted in a separate fund to be used only for the acquisition, preservation, protection or care of collections. In no event shall proceeds derived from the deaccessioning of any property from the collection be used for operating expenses, *for the payment of outstanding debt, or for capital expenses other than such expenses incurred to preserve, protect or care for an historic building which has been designated part of its collections in accordance with paragraph (7) of subdivision (a) of this section*, or for any purposes other than the acquisition, preservation, protection or care of collections.

(7) *Deaccessioning of collections. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:*

- (i) *the item or material is not relevant to the mission of the institution;*
- (ii) *the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;*
- (iii) *the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or*
- (iv) *the institution is unable to conserve the item or material in a responsible manner.*

(8) Education and Interpretation. The institution shall offer programmatic accommodation for individuals with disabilities to the extent required by law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-01-09-00004-EP, Issue of January 7, 2009. The emergency rule will expire February 13, 2010.

Text of rule and any required statements and analyses may be obtained from: Chris Moore, Office of Counsel, State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234, (518) 473-4921, email: legal@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents as its head, and authorizes the Board of Regents to appoint the Commissioner of Education as the Chief Administrative Officer of the Department, which is charged with the general management and supervision of all public schools and the educational work of the State.

Education Law section 207 empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Education Law section 215 authorizes the Regents, the Commissioner, or their representatives, to visit, examine and inspect education corporations and other institutions admitted to the University of the State of New York, as defined in Education Law section 214, and to require, as often as desired, duly verified reports giving such information and in such form as they shall prescribe.

Education Law section 216 authorizes the Board of Regents to incorporate educational institutions, including museums and other institutions for the promotion of science, literature, art, history or other department of knowledge, with such powers, privileges and duties, and subject to such limitations and restrictions, as they Regents may prescribe.

Education Law section 217 empowers the Board of Regents to grant a provisional charter to an institution, which shall be replaced by an absolute charter when the conditions for such absolute charter have been fully met.

Education Law section 233-aa, as added by Chapter 220 of the Laws of 2008, enacts provisions governing the ownership and management of properties owned by or lent to museums, requires that the acquisition of property by a museum pursuant to section 233-aa must be consistent with the mission of the museum, and specifies that proceeds derived from the sale of any property title to which was acquired by a museum pursuant to section 233-aa shall be used only for the acquisition of property for the museum's collection or for the preservation, protection, and care of the collection and shall not be used to defray ongoing operating expenses of the museum.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the statutes by clarifying criteria regarding the deaccessioning of items and materials in the collections of chartered museums or historical societies, consistent with generally accepted professional and ethical standards within the museum and historical society communities.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

- (1) the item or material is not relevant to the mission of the institution;
- (2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;

(3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or

(4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

4. COSTS:

- (a) Costs to the State: None.
- (b) Costs to local governments: None.
- (c) Costs to private, regulated parties: None.
- (d) Costs to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any costs on such institutions, the State, local governments or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment applies to museums and historical societies with collections chartered by the Board of Regents, and does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

6. PAPERWORK:

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any additional paperwork requirements on such institutions.

7. DUPLICATION:

The proposed amendment duplicates no existing state or federal requirements.

8. ALTERNATIVES:

There are no significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

There are no applicable federal standards regarding the chartering and registration of museums and historical societies by the Board of Regents.

10. COMPLIANCE SCHEDULE:

The proposed amendment clarifies criteria regarding the deaccessioning of items and materials in the collections of chartered museums or historical societies, consistent with generally accepted professional and ethical standards within the museum and historical society communities. It is anticipated that regulated parties can achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

The proposed amendment applies to museums and historical societies authorized to hold collections chartered by the Board of Regents and does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse financial impact, on small businesses or local governments. Because it is evident from the nature of the rules that it does not affect small businesses or local governments, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to all of the 644 museums and 884 historical societies in New York State (source: New York State Museum chartering database as of November 2008), including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 persons per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS AND PROFESSIONAL SERVICES:

The purpose of the proposed amendment is to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deac-

cessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

- (1) the item or material is not relevant to the mission of the institution;
- (2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;
- (3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or
- (4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

The proposed amendment does not impose any additional professional services requirements.

3. COMPLIANCE COSTS:

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any costs on such institutions, the State, local governments or the State Education Department.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies. The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, consistent with generally accepted professional and ethical standards within the museum and historical society communities, and does not impose any additional compliance requirements or costs on such institutions. Since these requirements must have State-wide application in order to ensure uniform, consistent practices relating to museum and historical society collections management, it is not feasible to impose a lesser standard on, or otherwise exempt, institutions located in rural areas.

5. RURAL AREA PARTICIPATION:

The State Education Department consulted with the Museum Association of New York in the development of the proposed amendment.

In addition, the Department asked its museum and historical society constituents to comment on the proposed amendment through announcements on web sites, and copies sent to listservs and electronic mailing lists. All areas of the state, including rural areas, received the announcements.

Job Impact Statement

The proposed amendment applies to museums and historical societies with collections, chartered by the Board of Regents and will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

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

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Recreational Harvest Limits for Black Sea Bass

I.D. No. ENV-05-10-00003-EP

Filing No. 12

Filing Date: 2010-01-13

Effective Date: 2010-01-13

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

Proposed Action: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105 and 13-0340-f

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

Specific reasons underlying the finding of necessity: Black sea bass are managed under a joint plan by the Atlantic States Marine Fisheries Commission (ASMFC), the Mid-Atlantic Fishery Management Council (MAFMC) and the NOAA Fisheries Service. The recreational fishery for sea bass is managed under measures applied coastwide, as opposed to state-by-state conservation equivalency as is done with summer flounder (fluke). Annually, total allowable landings (TAL) are determined by NOAA Fisheries from which the coastwide recreational harvest limit is derived and set.

For 2009, the coastwide recreational harvest limit was set very low, at 1.14 million pounds. It was set low because, at the time, the stock was considered to be overfished and the deadline for rebuilding the black sea bass stock, the year 2011, was approaching. After the 2009 harvest limit was set, a peer-reviewed black sea bass stock assessment was approved by NOAA Fisheries in January 2009.

This recent stock assessment shows that the black sea bass stock has been rebuilt. However, NOAA Fisheries received a recommendation from the MAFMC Science and Statistical Committee (SSC) that the black sea bass TAL for 2010 should remain the same as 2009 due to considerable uncertainty in the stock assessment. Consequently, NOAA Fisheries will again set the recreational harvest limit at 1.14 million pounds. At the joint meeting of the MAFMC and ASMFC's Black Sea Bass Management Board in December 2009, it was decided to accept the recommendation to severely reduce the recreational season for black sea bass. It was also decided to remand the 2010 TAL recommendation back to the SSC for reconsideration, jointly with the MAFMC's Black Sea Bass Monitoring Committee. Despite reconsideration of the TAL recommendation, ASMFC member states are still required to immediately adopt rules implementing a reduced recreational season for black sea bass.

The rules that ASMFC member states must implement for 2010 are the following: a 12.5-inch minimum size limit, 25-fish daily possession limit, and an open season of June 1-June 30 and September 1-September 30, 2010. New York's current rule provides for an open season of January 1-December 31. Emergency action is needed to implement the season closure in state waters on or about January 1, 2010. Failure to implement these measures will result in New York being out of compliance with the Fishery Management Plan for Black Sea Bass and subject to further black sea bass restrictions later in 2010 or in 2011. In addition, ASMFC may request the Secretary of Commerce to implement a moratorium on fishing for black sea bass in the State of New York should the State be found out of compliance.

Subject: Recreational harvest limits for black sea bass.

Purpose: To reduce the recreational fishing season for black sea bass to only June and September in 2010.

Text of emergency/proposed rule: Existing subdivision 40.1 (f) of 6 NYCRR is amended to read as follows: Species striped bass through scup (porgy) all other anglers remain the same. Species black sea bass is amended to read as follows:

40.1(f) Table A - Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Black sea bass	[All year] June 1 - June 30 and Sept 1 - Sept 30	12.5" TL	25

Species American shad through Prohibited sharks remain the same.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire April 12, 2010.

Text of rule and any required statements and analyses may be obtained from: Stephen W. Heins, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0435, email: swheins@gw.dec.state.ny.us

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

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

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the department.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 11-0303, 13-0105 and 13-0340-f authorize the Department of Environmental Conservation (DEC) to establish by regulation the open season, size limits, catch limits, possession and sale restrictions, and manner of taking for black sea bass.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries in such a way as to protect this natural resource for its intrinsic value to the marine ecosystem and to optimize resource use for commercial and recreational harvesters. The ECL stipulates that management and use of State fish and wildlife resources must be consistent with marine fisheries conservation and management policies, and Interstate Fishery Management Plans (FMP).

3. Needs and benefits:

All member states of the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (MAFMC) must comply with the provisions of FMPs and management measures adopted by ASMFC and MAFMC. These FMPs and management measures are designed to promote the long-term sustainability of quota managed marine species, preserve the States' marine resources, and protect the interests of both commercial and recreational fishermen. All member states must promulgate any regulations necessary to implement the provisions of the FMPs and remain compliant with the FMPs.

At the December MAFMC meeting a motion was passed that established a two month recreational season for black sea bass in 2010, limited to the months of June and September. Currently, the black sea bass recreational season in New York is yearlong and will be open for recreational angling on January 1, 2010. As a member state of both MAFMC and ASMFC, New York State must comply with the management measures and management plans implemented by these agencies. The New York State recreational black sea bass season must be restricted to the months of June and September in 2010.

This rule making is necessary to ensure New York State remains in compliance with the recent management measures set in place by MAFMC and ASMFC and to provide harvest restrictions to prevent New York recreational anglers from exceeding the 2010 recreational harvest limit for black sea bass. Failure to implement these measures will result in New York being out of compliance with the Fishery Management Plan for Black Sea Bass and subject to further black sea bass restrictions later in 2010 or in 2011. In addition, ASMFC may request the Secretary of Commerce to implement a moratorium on fishing for black sea bass in the State of New York should the State be found out of compliance.

4. Costs:

(a) Cost to State government:

There are no new costs to State government resulting from this action.

(b) Cost to local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

There are no new costs to regulated parties resulting from this action.

Certain regulated parties will likely experience some adverse economic effects. Local party and charter boat businesses and bait and tackle shops will lose many of their customers who target black sea bass during the winter, spring and fall. Party and charter boat businesses and bait and tackle shops may rely on the patronage of recreational anglers who target black sea bass for the income it provides and may see a substantial reduction in their earnings.

(d) Costs to the regulating agency for implementation and continued administration of the rule:

The Department of Environmental Conservation will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying recreational harvesters, party and charter boat operators, and bait and tackle shops of the new rules.

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

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

8. Alternatives:

1. No Action Alternative - The Mid-Atlantic Marine Fisheries Council and the Atlantic States Marine Fisheries Council Summer Flounder, Scup and Black Sea Bass Board passed a motion recommending a two month recreational season for black sea bass: June and September 2010. Currently New York State has a yearlong season for recreational black sea bass. If New York State fails to amend 6 NYCRR Part 40 and to implement MAFMC's recommendation, the State will be out of compliance with the management measures put into place by MAFMC and ASMFC and may face further black sea bass restrictions later in 2010 or in 2011. In addition, ASMFC may request the Secretary of Commerce to implement a moratorium on fishing for black sea bass in the State of New York if the State is found to be out of compliance. Consequently, this alternative was rejected.

2. Complete ban on possession of black sea bass - A peer-reviewed black sea bass stock assessment was approved by NOAA Fisheries in January 2009. This recent stock assessment shows that the black sea bass stock has been rebuilt. However, NOAA Fisheries received a recommendation from the MAFMC Science and Statistical Committee (SSC) that the black sea bass Total Allowable Landings for 2010 should remain the same as 2009 due to considerable uncertainty in the stock assessment. Consequently, NOAA Fisheries will again set the recreational harvest limit at 1.14 million pounds. At the joint meeting of the MAFMC and ASMFC's Black Sea Bass Management Board in December 2009, it was decided to accept the recommendation to severely reduce the recreational season for black sea bass. It was also decided to remand the 2010 TAL recommendation back to the SSC for reconsideration, jointly with the MAFMC's Black Sea Bass Monitoring Committee. As a result, ASMFC member states are now required to immediately adopt rules implementing these management measures while the recommendation is being reconsidered. A complete ban on possession of black sea bass was rejected because at this time, as the recommendation is being reconsidered, this alternative would be unwise and impose an unnecessary burden on party and charter boat businesses and bait and tackle shops and would result in a significant loss of fishing opportunities for New York State recreational anglers.

9. Federal standards:

The amendments to Part 40 are in compliance with the ASMFC and Regional Fishery Management Council Fishery Management Plans.

10. Compliance schedule:

Regulated parties will be notified by mail, through appropriate news releases and via DEC's website of the changes to the regulations. The emergency regulations will take effect upon filing with the Department of State.

Regulatory Flexibility Analysis

1. Effect of rule:

The Department of Environmental Conservation (DEC) has proposed a rule that will severely reduce the recreational fishing season for black sea bass. New York State must amend Part 40 of 6 NYCRR to reduce the recreational season for black sea bass from a yearlong fishery to a two month season consisting of the months of June and September in 2010. This amendment is necessary for New York to remain in compliance with the management measures adopted by the Mid-Atlantic Fishery Management Council (MAFMC) and the Atlantic States Marine Fisheries Commission (ASMFC) Summer Flounder, Scup and Black Sea Bass Board. Failure to implement these measures will result in New York being out of compliance with the Fishery Management Plan for Black Sea Bass and subject to further black sea bass restrictions later in 2010 or in 2011. In addition, ASMFC may request the Secretary of Commerce to implement a moratorium on fishing for black sea bass in the State of New York should the State be found out of compliance.

Those most affected by the proposed rule are recreational fishermen, licensed party and charter businesses, and marine bait and tackle shops operating in New York State. Local party and charter boat businesses and bait and tackle shops will lose many customers who target black sea bass during the winter, spring and fall. Party and charter boat businesses and bait and tackle shops may rely on the patronage of recreational anglers who target black sea bass for the income it provides and may see a substantial reduction in their earnings once the regulations are in place. There are no local governments involved in the recreational fish harvest-

ing business, nor do any participate in the sale of marine bait fish or tackle. Therefore, no local governments are affected by these proposed regulations.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The changes required by the proposed regulations may reduce the income of party and charter businesses and marine bait and tackle shops. Recreational anglers who target black sea bass may no longer seek party and charter boat trips for black sea bass and may no longer frequent bait or tackle shops to buy bait and fishing gear for black sea bass fishing.

There is no additional technology required for small businesses, and this action does not apply to local governments.

6. Minimizing adverse impact:

This rule making is necessary to ensure New York State remains in compliance with the recent management measures set in place by the Mid-Atlantic Fishery Management Council (MAFMC) and Atlantic States Marine Fisheries Commission (ASMFC) and to provide harvest restrictions to prevent New York recreational anglers from exceeding the 2010 recreational harvest limit for black sea bass. Since these amendments are consistent with federal and interstate fishery management plans, DEC anticipates that New York will remain in compliance with the FMPs.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment in the fisheries in question, including party and charter boat operations, bait and tackle shops, and other support industries for recreational fisheries. Lastly, failure to comply with the management measures adopted by MAFMC and ASMFC may result in New York being found non-compliant with the Fishery Management Plan for Black Sea Bass and subject to further black sea bass restrictions in 2010 or 2011. In addition, ASMFC may request the Secretary of Commerce to implement a moratorium on fishing for black sea bass in the State of New York should the State be found out of compliance with the Interstate Fishery Management Plans adopted by ASMFC and MAFMC.

7. Small business and local government participation:

The Department of Environmental Conservation will present the actions taken at the December MAFMC meeting that led to the current rule making to the Marine Resources Advisory Council (MRAC). Members of the recreational fishing community will have the opportunity to discuss the ramifications of the rule making at that meeting.

There was no special effort to contact local governments because the proposed rule does not affect them.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The black sea bass recreational fisheries directly affected by the proposed rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the state. Further, the proposed rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

The promulgation of this regulation is necessary for Department of Environmental Conservation (DEC) to maintain compliance with the Fishery Management Plan for Black Sea Bass and to prevent New York anglers from exceeding the annual limit of New York's recreational quota for black sea bass and, hence, provide protection to the black sea bass stock. The proposed rule severely restricts the recreational fishing season for black sea bass. Prior to this rule making recreational anglers were able to take black sea bass all year long. Once this rule is adopted, the recreational season will be split for 2010: June 1 through June 30 and September 1 - September 30. Recreational fishermen, licensed party and charter boat businesses, and bait and tackle shops will be affected by these regulations. Recreational anglers who target black sea bass will only seek party and charter boat trips for black sea bass for two months of the year and will significantly reduce the time they spend frequenting bait or tackle shops to purchase bait and tackle for black sea bass fishing. This rule making will reduce a significant portion of the party and charter boat businesses during the spring, fall and winter. Many New York State party and charter boat businesses rely on year long patronage for fishing of black sea

bass for the income it provides and will likely see a reduction in their earnings once the season restriction is in place.

2. Categories and numbers affected:

In 2008, there were 558 licensed party and charter businesses in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York; however, DEC does not have a record of the actual number. The number of recreational anglers in New York who could be affected by this rule making is unknown by DEC at this time, but the National Marine Fisheries Service has estimated that there were just over 1 million recreational anglers in New York in 2007. However, this Job Impact Statement does not include recreational anglers in this analysis, since fishing is recreational for them and not related to employment.

3. Regions of adverse impact:

The regions most likely to receive any adverse impact are within the marine and coastal district of the State of New York. This area includes all the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the state, including Long Island Sound and the Hudson River up to the Tappan Zee Bridge. The Hudson River is not a usual habitat of black sea bass.

4. Minimizing adverse impact:

The promulgation of this regulation is necessary in order for DEC to maintain compliance with the Fishery Management Plan for Black Sea Bass and to conserve the black sea bass stock. Since these amendments are consistent with federal and interstate fishery management plans (FMP), DEC anticipates that New York will remain in compliance with the FMPs.

In the long-term, the maintenance of sustainable fisheries will have a positive effect on employment for party and charter boat businesses and bait and tackle shops and provide recreational opportunities for New York State anglers. Failure to comply with FMPs and take required actions to protect our natural resources could cause the catastrophic collapse of a stock and have a severe adverse impact on the commercial and recreational fishing industries dependent on that species. Any short-term losses in harvest, sales of bait and tackle, and angler participation will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources. Protection of the black sea bass resource is essential to the long-term benefit of the party and charter boat industry and bait and tackle shops. These regulations are designed to protect the black sea bass stock from overfishing, allow the stock to rebuild and achieve long-term sustainability of the fishery for future use. In addition, ASMFC may request the Secretary of Commerce to implement a moratorium on fishing for black sea bass in the State of New York should the State be found out of compliance.

Department of Health

NOTICE OF ADOPTION

Wastewater Treatment Standards - Residential Onsite Systems

I.D. No. HLT-05-09-00004-A

Filing No. 30

Filing Date: 2010-01-15

Effective Date: 2010-02-03

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

Action taken: Amendment of Appendix 75-A of Title 10 NYCRR.

Statutory authority: Public Health Law, section 201(1)(l)

Subject: Wastewater Treatment Standards - Residential Onsite Systems.

Purpose: To revise current standards for residential onsite wastewater treatment systems.

Substance of final rule: These regulations would:

Add, as an alternative to a conventional septic tank, a new category of onsite wastewater treatment systems called Enhanced Treatment Units (ETUs) that provide enhanced wastewater treatment prior to discharge to soil absorption systems.

Allow National Sanitation Foundation Class I Standard 40 or equivalently tested ETUs to be designed with a 33% absorption trench length reduction and to allow a 33% smaller basal area design for raised systems receiving effluent from an ETU. Due to increased maintenance required for these systems they will be only be considered for design approval in jurisdictions served by a responsible management entity (RME) or where maintenance of the systems is monitored and required by a local sanitary code or watershed rule or regulation.

Recognize that certain gravelless absorption system products provide increased infiltration surface area for wastewater treatment in soil absorption areas and therefore allow a 25% absorption trench length reduction for certain gravelless trench products.

Allow properly manufactured waste tire chips to be used as a replacement for stone aggregate in absorption trenches.

Revise the minimum design flow rate to 110-gallons per day per bedroom as installed fixtures must conform with water conservation standards for plumbing fixtures established in 1994.

Delete Evaporation-Transpiration (ET), Evapo-Transpiration Absorption (ETA) and engineered systems as wastewater treatment technology options.

Rescind the New Product/System Design Interim Approval section as the proposed amendments incorporate new products, revise existing design standards, expand the use of third party product certifications and include a specific waiver provision.

Recognize the use of Section 75.6 in Part 75 of existing Department regulations to address deviations from Appendix 75-A through the issuance of a specific waiver.

Make minor technical revisions to codify long standing technical guidance concerning, and provide flexibility in dosing tank size requirements, allowing for alternative fill material stabilization methods and allowing gravity distribution for small intermittent sand filters.

Note: The absorption trench length reductions for ETUs and gravelless systems do not apply within the New York City Watershed.

Final rule as compared with last published rule: Nonsubstantive changes were made in Appendix 75-A, sections 75-A.1, 75-A.4, 75-A.6, 75-A.8 and 75-A.9.

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

Revised Regulatory Impact Statement

Statutory Authority:

Public Health Law Section 201(1)(l) authorizes the Department of Health (DOH) to regulate residential sewage disposal of less than 1,000 gallons per day. Environmental Conservation Law Section 17-0701 authorizes the Department of Environmental Conservation (DEC) to regulate of sewage disposal of commercial facilities of greater than 1,000 gallons per day. Pursuant to these statutes and memoranda of understanding between DOH and the DEC, regulatory responsibilities for sewage disposal are divided between the two agencies. DOH retains responsibility for onsite sewage disposal from residential dwellings with a design flow of 1,000 gallons per day or less.

Legislative Objectives:

The shared legislative and agency objective is to protect public health and the environment. The purpose of promulgating a regulation incorporating design standards for onsite wastewater treatment systems (OWTS) is to ensure that household wastewater is treated and dispersed in a manner protective of public health and the environment.

Needs and Benefits:

Existing regulations need to be updated to recognize new OWTS technologies that provide acceptable or enhanced treatment of household wastewater, additional options and economic benefits for homeowners, and environmental benefits for communities.

It is estimated that 3,500,000 to 4,000,000 New Yorkers rely upon 1,500,000 existing OWTSs for treating their household wastewater. OWTS are located predominantly in suburban and rural areas not served by municipal sewerage facilities. Due to diminishing funding for new municipal sewer systems, and continuing residential development in areas not served by public sewers, many state residents will continue to rely on OWTSs into the foreseeable future. The United States Environmental Protection Agency (EPA) acknowledges this trend and has renewed an emphasis on the proper design, operation, and management of residential OWTS. The EPA has encouraged the development and testing of innovative OWTS technologies and products.

10 NYCRR Part 75, Appendix 75 A, "Wastewater Treatment Standards - Individual Household Systems" sets minimum standards for design and construction of new OWTS serving residential properties. The State Uniform Fire Prevention and Building Code references Appendix 75-A as the statewide design standard for OWTSs. Although not directly applicable to repair of existing OWTSs, many design professionals and local permitting officials also use these standards to guide the repair or replacement of existing systems.

The current, 1990 version of Appendix 75 A specifies design and installation standards for long proven OWTS technologies that work in soil and groundwater conditions found in New York. Since 1990, technological advances have expanded available OWTS products nationwide. Manufacturers of OWTS products, vendors, government agencies, and

academics have been developing and testing new products that provide improved treatment and dispersal of household wastewater, often at significantly reduced costs. Manufacturers, vendors, homeowners, design professionals, public agencies, and environmental advocates all share an interest in a regulatory climate conducive to their use.

Summary of Proposed Revisions:

The proposed revisions primarily provide for the general use of two new categories of OWTS technology: gravelless absorption systems and enhanced treatment units (ETUs).

Gravelless Systems: Most OWTSs provide primary treatment of household wastewater in a septic tank followed by dispersal of wastewater to a soil absorption area for final, passive biological treatment. The most common absorption area is constructed of perforated pipe installed in gravel or stone filled trenches. The proposed revisions recognize that gravelless absorption technologies can provide increased infiltration surface area for biological treatment of septic tank effluent within an absorption field, and establish criteria for acceptable design and installation of gravelless technologies. Without the masking effects of stone, a significant increase in the soil infiltration surface area is available for biomat formation and therefore some gravelless systems will be allowed a corresponding reduction in trench lengths for absorption fields.

ETUs: The proposed revisions will incorporate ETUs as new alternative system options. Several new technologies fall under this category; all provide advanced wastewater treatment prior to dispersal to an absorption area. However, ETUs typically have additional electrical and mechanical components critical to their proper operation and therefore require more vigilant maintenance than conventional septic tanks. As proposed, effective performance of these units must be documented through independent third party testing and certification by a reputable organization such as the National Sanitation Foundation (NSF).

The enhanced treatment provided by ETUs allows for a corresponding reduction in trench lengths for absorption fields. However, because of the increased need for inspection and maintenance of ETUs, trench length reductions will only be allowed in locations with a regulatory program that ensures proper maintenance. These programs can be implemented by agencies with jurisdiction and enforcement authority over OWTSs (e.g., watershed protection agencies, local health departments, and municipal sewer districts), denoted as responsible management entities (RMEs). EPA encourages the establishment of RMEs as an effective means of OWTS management.

The proposed revisions will allow use of properly manufactured tire derived aggregate (TDA) as a substitute for gravel and stone in absorption area trenches. Research has shown TDA to be a safe and reliable replacement for gravel and stone in OWTS applications. TDA is used in OWTS applications in several other states.

The proposed revisions will eliminate a provision that provides for interim review and approval of OWTS products. This seldom used provision will no longer be needed because proposed provisions provide acceptance for entire classes of new OWTS products and independent third party certifications of OWTS products as well as recognizing specific waivers.

Finally, there are minor technical revisions to codify long standing technical procedures regarding the design of OWTS. These provisions will provide flexibility in dosing tank size requirements, allowing for alternative fill material stabilization methods and allowing gravity distribution to small intermittent sand filters.

COSTS:

Costs to State Government:

There will be no additional costs to the State beyond distributing the revised regulation and providing training and outreach. The most significant effort will be training local health department staff and design professionals on new OWTS technologies addressed by the rule. Training will be provided through inter-agency coordination using existing resources.

Allowing use of tire derived aggregate will result in cost and environmental benefits to the State by encouraging a market for recycling discarded tires, an initiative promoted by the Empire State Development Corporation, and Department of Environmental Conservation. Empire State Development staff projected that using tire derived aggregate in OWTS has the potential to significantly reduce the statewide need for processing and disposing of waste tires.

Costs to Local Government:

The proposed revisions pose no new mandates on local governments. Initially local governments with OWTS regulatory programs will expend staff time training on the revision and the new technologies it addresses. However, the proposed revision shall provide clear standards on technologies and products already being used and may reduce staff time associated with inquiries and review and approval of OWTS applications.

Local governments may incur new costs if they elect to become a responsible maintenance entity (RME). Local governments will not be required to become RMEs, but may voluntarily do so as a means to

improve OWTS oversight. Some county health departments already serve as RMEs by virtue of their own county code. Serving as a RME requires dedicated staff and resources. Such programs are typically funded by local fees and/or rates and become self-sustaining. RME startup costs could range from less than \$1,000 to more than \$20,000. EPA estimated that annual fees or rates to cover these costs can vary from about \$20 to \$300 per household, depending upon RME activities funded and challenges faced.

Allowing use of tire derived aggregate will result in cost benefits to all levels of government by encouraging a market for recycled tires.

Costs to Regulated Parties:

No additional costs to the manufacturers of gravelless products or ETUs have been identified. Appendix 75-A is a reference standard and the proposed revisions will allow for the routine use and recognition of their products.

Costs to Designers:

Beyond initial training, the rule will have minimal or no cost impacts to designers of OWTSs. Designers of OWTS may incur initial costs to become qualified to design and install the new technologies addressed by the proposed revisions. Some manufacturers and vendors of OWTS products provide this training free of charge. Professional and for-profit organizations are also available to provide this training at reasonable costs. Such costs are business investments that will be recouped. The proposed rule does not require such training or even use of the products; this will be driven by market-based incentive.

Costs to End-Users (Homeowners):

The rule will not impose additional costs on end-users (homeowners). Instead, the rule will potentially provide cost savings by allowing greater selection of OWTS technologies and products for site-specific application.

The rule could create cost impacts to residents in jurisdictions that form a responsible maintenance entity (RME). Such programs are typically implemented where non-ordinary wastewater treatment and disposal issues exist (e.g. waterfront lots or sensitive watersheds) and would be funded by user fees. These annual fees can vary from about \$20 to \$300 per household. The rule provides for smaller absorption fields in RMEs, where this occurs, there will be offsetting cost benefits.

Additionally, tire derived aggregate could create savings in areas of the state where gravel prices are at a premium.

Local Government Mandates:

Local agencies with OWTS regulatory oversight will have to become familiar with the new standards, but the proposed revision does not impose new program responsibilities on any county, city, town, village, school district, fire district or special district.

Paperwork:

No new reporting requirements are created by the proposal. Additional recordkeeping by RMEs is implicit in the proposed rule, however, the establishment of RMEs is a local option and not mandatory.

Duplication:

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

Alternatives:

One alternative to the proposed revisions is to take no action and continue using current standards of Appendix 75 A. This approach ignores; (1) significant advances in OWTS technology, (2) nationwide trends in state-level OWTS management, (3) guidance by EPA, and (4) the developing market for improved OWTS products. Additionally, relying on the current standards limits options for environmentally responsible community development.

Another alternative is to maintain the current regulations and encourage county health departments to evaluate and accept new products under existing provisions of Appendix 75-A. This passes the responsibility for product acceptance and design standards to county health departments. This is not practical; few counties have resources for such a program. This would lead to disparity from county to county in specific product use and requirements, and confusion within the regulated community.

The State could opt to perform product assessments and verifications in lieu of requiring independent third-party evaluation, but these are resource intensive and not practical at this time.

Federal Standards:

No federal standards exist.

Compliance Schedule:

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

Revised Regulatory Flexibility Analysis

Effects on Small Business and Local Government:

The proposed revision to 10 NYCRR Appendix 75-A will involve changes in design and construction specifications for onsite wastewater treatment system (OWTS) technologies and products included in the current version of the rule. The revision will also allow for the use of existing technologies and products not readily accommodated under the current rule. The result of the changes will generally mean increased options avail-

able for OWTS designers. Most OWTS designers and installers would be classified as small businesses (for example, engineering, architectural, and general contracting or soil excavating companies having fewer than 100 employees). OWTS designers and installers will need to be updated on the changes; the New York State Department of Health (DOH) will provide notices and information about the changes to individuals and organizations involved with OWTS design, approval, and construction.

No adverse impacts will be created for local government under the proposed rule. The proposed rule recognizes a category of legal entities known as responsible management entities (RMEs) that have the ability and authority to oversee OWTS operations. Under the proposal, certain types of potentially beneficial OWTSs will be allowed for use within RMEs. Local governments may voluntarily become RMEs, thereby increasing OWTS options and corresponding oversight responsibilities within their jurisdiction. Such programs are typically funded by local fees and/or rates and become self-sustaining. The proposed revision does not require RMEs, but recognizes their benefit to OWTS management.

Reporting and Recordkeeping:

No new reporting or record-keeping requirements are created by the proposed rule. The importance of recordkeeping within RMEs is implicit in the proposed rule; however, the establishment of RMEs is a local decision.

Professional Services:

No additional requirement for professional licensing, certification, or registration is required under the proposed revision. Manufacturers and vendors of some OWTS products do require proper training and/or certification for those using and/or installing their products. Many of these also provide the training to interested designers and installers. The proposed rule does not require the use of these products, however; this will be driven by market-based incentive.

Other Compliance Requirements:

The proposed revision will allow for, but not require, modified sizing specifications for components of some OWTS technologies accommodated in the present rule. The proposed revision will allow the use of OWTS products and technologies not accommodated in the present rule, subject to specified design and construction requirements.

Costs:

Potential Costs to Manufacturers of OWTS Products:

No additional costs to the manufacturers of gravelless products or ETUs have been identified. Appendix 75-A is a reference standard and the proposed revisions will allow for the routine use and recognition of their products.

Potential Costs to Designers:

The rule will have minimal or no cost impacts to designers of OWTSs. Some may incur initial training costs in becoming qualified to install different types of systems/products, however some manufacturers and vendors of OWTS products provide free training to interested designers. The proposed rule does not require such training or even use of the products; this will be driven by market-based incentive.

Potential Costs to End-Users (Homeowners):

For end users (homeowners), the rule will not impose additional costs. Instead, the rule will potentially provide cost savings to end-users by allowing a greater selection of OWTS technologies and products for site-specific considerations. Additionally, the use of tire derived aggregate (TDA) could become cost competitive in some areas of the state, resulting in savings to the end-user.

The rule could have cost impacts to individuals who reside in municipalities or jurisdictions that decide to become RMEs. Such programs are typically funded by fees and/or rates and become self-sustaining. Based upon information and case studies recently provided to states by the US EPA (US EPA, 2003), these annual fees or rates can vary from about \$20 to about \$300 per household, depending upon the level of RME activities funded and/or the administrative and technical challenges faced within a given RME.

Potential Costs to Local Government:

There will be no additional costs to local governments. The proposed revision will potentially result in cost savings by providing clear standards to design professionals and permit issuing officials relative to OWTS technologies and products. Allowing use of TDA may also result in an environmental benefit by encouraging a market for the recycling of discarded tires, an initiative promoted by the Governor's Office and the NYS DEC.

Local governments may voluntarily become RMEs, thereby increasing OWTS options and oversight within their jurisdiction. Such programs are typically funded by fees and/or rates and become self-sustaining. As noted above, these annual fees or rates can vary from about \$20 to about \$300 per household, depending upon the level of RME activities funded and/or the technological challenges faced within a given RME. These annual costs may be additional to RME start-up costs that could range from less than \$10,000 to more than \$20,000 (US EPA, 2003). The proposed revision

sion does not require that the local governments establish RMEs, but simply recognizes their benefit to OWTS management where municipalities do establish such.

Economic and Technological Feasibility:

The proposed rule is economically and technologically feasible. It will provide for the general use of technical advances already being used within the OWTS industry.

Minimizing Adverse Economic Impact:

The proposed rule modifies existing standards for household OWTSs in a manner that increases potential options for responsible, environmentally friendly, design. As with the current regulation, the option of specific waivers will be available pursuant to 10 NYCRR Part 75 in rare circumstances that cannot be reasonably accommodated within the provisions of the rule. Site specific OWTS performance with respect to the key objective of treating wastewater in a manner protective of public health and the environment is the primary consideration in these situations.

Small Business and Local Government Participation:

In April of 2003 DOH established the OWTS Advisory Committee. The Advisory Committee was established by DOH to provide technical advice and broader perspective to its OWTS regulatory program, including a potential revision of the Appendix 75-A regulations. The Committee includes representatives from DOH, New York State Conference of Environmental Health Directors, several county health departments (Madison, Suffolk, and Westchester), the Department of Environmental Conservation, the New York City Department of Environmental Protection, the New York Onsite Wastewater Association (an OWTS industry group), the New York Land Improvement and Contractors Association, NYS and Delaware County Soil and Water Conservation Committees, the New York State Society of Professional Engineers, and the Catskill Watershed Corporation. Other participants at the two Advisory Committee meetings included representatives of the Onsite Training Network (OTN), the Governor's Office of Regulatory Reform, Empire State Development, local health departments, the PreCasters Association of New York (septic tank manufacturers), the Lake George Waterkeeper, four OWTS product vendors and one environmental consulting firm.

Committee meeting participants received and discussed three drafts of potential revisions to the text of Appendix 75-A based upon the Committee's input. In this manner, proposed changes that would impact certain entities were developed with input from the potentially affected parties.

Revised Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

In general, household onsite wastewater treatment systems (OWTS) are used in rural areas and suburban areas that do not have municipal sewage collection systems. Based upon information from the 1990 U.S. Census, populations in the upstate central New York/Finger Lakes counties, north-country/Adirondack counties, Catskill region counties, east-of-Hudson counties, and eastern Long Island are more likely to rely on OWTS than other means for wastewater needs. Statewide, 48 of New York's 62 counties have a sizable percentage of population (> 25%) that rely on OWTSs.

Reporting and Recordkeeping:

No new reporting or recordkeeping requirements are created by the proposed rule. The importance of recordkeeping within responsible management entities (RMEs) is implicit in the proposed rule, however, the establishment of RMEs is not mandated by the proposed rule but is rather a local voluntary decision.

Professional Services:

No additional requirement for professional licensing, certification, or registration is required under the proposed revision. Manufacturers and vendors of some OWTS products do require proper training and/or certification for those using and/or installing their products. Many manufactures of these products also provide the training to interested designers and installers. The proposed rule does not require the use of these products; however, this will be driven by market-based incentive.

Other Compliance Requirements:

The proposed revision will allow for, but not require, modified sizing specifications for components of some OWTS technologies accommodated in the present rule. The proposed revision will allow the use of existing OWTS products and technologies not accommodated in the present rule, subject to specified design and construction requirements.

COSTS:

Projected Costs of Compliance:

Potential Costs to Manufacturers of OWTS Products:

No additional costs to the manufacturers of gravelless products or ETUs have been identified. Appendix 75-A is a reference standard and the proposed revisions will allow for the routine use and recognition of their products already being used.

Potential Costs to Designers:

The rule will have minimal or no cost impacts to designers of OWTS other than for initial training. Designers of OWTS may incur initial training costs in becoming qualified to design and install the new technologies

addressed in the proposed rule. Some manufacturers and vendors of OWTS products provide free training to interested designers. A number of training organizations are also available to provide this training at reasonable costs. The proposed rule does not require such training or even use of the products; this will be driven by market-based incentive.

Potential Costs to End-Users (Homeowners):

For end users (homeowners), the rule will not impose additional costs. Instead, the rule will potentially provide cost savings to end-users by allowing a greater selection of OWTS technologies and products for site-specific considerations. The rule could have cost impacts to individuals who reside in municipalities or jurisdictions that form a responsible maintenance entity (RME). Such programs are typically implemented where wastewater treatment and disposal is an environmental or health based concerns such as waterfronts, watersheds or drinking water sources. They would be funded by fees and/or rates and become self-sustaining. These annual fees or rates can vary from about \$20 to about \$300 per household.

Additionally, the use of tire derived aggregate (TDA) could become cost competitive in areas of the state where gravel is at a premium, resulting in savings to the end user.

Potential Costs to Local Government:

There will be no additional mandates on local governments. However, local governments may incur new costs if they voluntarily elect to take on the role of a responsible maintenance entity (RME). Local governments will not be required to become RMEs, but they may opt to do so as a means to increase OWTS options and oversight within their jurisdiction. Some county health departments already act in this capacity by virtue of their own county sanitary code. Serving as a RME requires dedicated staff and resources. Such programs are typically funded by fees and/or rates and become self-sustaining. Based upon information and case studies recently provided to states by the EPA, these annual fees or rates can vary from about \$20 to about \$300 per household, depending upon the level of RME activities funded and/or the administrative and technical challenges faced within a given RME. These annual costs may be additional to RME start-up costs that could range from less than \$1,000 to more than \$20,000. The proposed revision does not require that the local governments establish RMEs, but simply recognizes their benefit to OWTS management where municipalities do establish such.

Initially local government agencies that implement OWTS regulatory programs will need to spend staff time to become trained on the proposed rule and the new technologies it addresses. However, the proposed revision will provide clear standards to design professionals and permit issuing officials and over the longer term, should reduce staff time associated with inquiries and review and approval of OWTS applications.

Allowing use of TDA may also result in cost benefits to all levels of government by encouraging a market for the recycling of discarded tires.

Minimizing Adverse Economic Impact on Rural Areas:

The proposed rule modifies existing standards for household OWTS in a manner that increases potential options for responsible, environmentally friendly, design. As with the current regulation, the option of specific waivers will be available pursuant to 10 NYCRR Part 75 in rare circumstances that cannot be reasonably accommodated within the provisions of the rule. Site specific OWTS performance with respect to the key objective of treating wastewater in a manner protective of public health and the environment is the primary consideration in these situations.

Rural Area Participation:

In April of 2003 the New York State Department of Health (DOH) established the OWTS Advisory Committee. The Advisory Committee was established by DOH to provide technical advice and a broader perspective to its OWTS regulatory program, including a potential revision of the Appendix 75-A regulations. The Committee includes representatives from DOH, New York State Conference of Environmental Health Directors, several county health departments (Madison, Suffolk, and Westchester), the Department of Environmental Conservation, the New York City Department of Environmental Protection, the New York Onsite Wastewater Association (an OWTS industry group), the New York Land Improvement and Contractors Association, NYS and Delaware County Soil and Water Conservation Committees, the New York State Society of Professional Engineers, and the Catskill Watershed Corporation. Other participants at the two Advisory Committee meetings included representatives of the Onsite Training Network (OTN), the Governor's Office of Regulatory Reform, Empire State Development, local health departments, the PreCasters Association of New York (septic tank manufacturers), the Lake George Waterkeeper, four OWTS product vendors and one environmental consulting firm. Several of these organizations represent constituencies that include rural populations, and representatives from four local health departments represent several rural constituencies. The Advisory Committee has met three times to discuss the proposed rule changes. Additionally, DOH has solicited comments and input from its district offices on potential changes to the regulation. In this manner, proposed changes that would impact rural populations were developed with input from the

potentially affected parties. Assessment of the collective input from these parties indicates general conceptual support for provisions in the proposed rule.

Revised Job Impact Statement

The Department of Health has determined that the rule will not have substantial adverse impact on jobs or employment opportunities. The proposed rule allows modification of some design specifications for existing onsite wastewater treatment system (OWTS) technologies and includes provisions for the use of OWTS technologies and products not addressed in the present version of Appendix 75-A. The proposed revisions have the potential to increase use of certain OWTS technologies, products and create a market for tire derived aggregate (TDA). Thus, expanded work and marketing opportunities for those involved in the manufacture, distribution, design, and installation of these technologies, products or TDA processing has the potential to bring new employment opportunities to the state.

Assessment of Public Comment

The Department received written and electronic comments from 32 parties including, but not limited to, the Adirondack Park Agency (APA), Adirondack Council, three watershed protection agencies, practicing engineers, soil scientists, wastewater treatment product manufacturers and some county health departments. The Department considered all input and suggestions on the proposed rule as deemed appropriate.

The following assessment summarizes the comments and briefly describes the revision(s), all nonsubstantial, to the proposed rule or reason for not changing the proposed rule. Several of the comments were not specifically focused on the proposed changes to the regulation but rather were procedural in nature, related to other regulations or were deemed beyond the scope of this regulatory revision. These types of comments are not specifically addressed in this response, however, most of them will be addressed in the planned update of the NYSDOH "Individual Residential Wastewater Treatment Systems Design Handbook" (1996) and through implementation and training efforts.

Comment:

An enhanced treatment unit (ETU) manufacturer and two county health departments suggested modifications to the definition of "Enhanced Treatment" that: included requiring a septic tank before discharge to an ETU, include "chemical" as part of the treatment process, use "biochemical" rather than "biological", and include acceptable BOD, TSS and Fecal Coliform levels.

Response:

Agree to one change. "Biochemical" will replace "biological" because biochemical oxygen demand (BOD) is the generally understood terminology in the regulated community and in no way alters the regulation or its implementation. Other suggested changes were not adopted because; although chemical treatment occurs during the wastewater treatment process it is not necessary to specifying it for the purposes of the definition; and some ETUs do not require a septic tank or have a small primary settling tank as part of the unit and Appendix 75-A references National Sanitation Foundation (NSF) listed units. NSF has established effluent testing limits so it is not necessary to specify those limits in Appendix 75-A.

Comment:

Two county health departments and one water shed protection agency submitted comments expressing concern with the minimum daily design flow of 110gpd/bedroom, because more than 110gpd/bedroom may be used if homeowners replace water saving fixtures, install personal spa tubs and/or multi-head shower systems.

Response:

The daily design flow was adopted from the 1996 version of the DOH Design Handbook and reflects mandatory installation of water saving fixtures manufactured and sold in accordance with the New York State Environmental Conservation Law enacted in 1994. USEPA's water use data confirm 110gpd/bedroom is appropriate for a typical residence and other states also use a similar range of daily design flow rates of 90-120gpd/bedroom. This minimum daily design flow standard has proven to be sufficient for the vast majority of newly constructed residences. Ultimately it is the design professionals' responsibility to determine expected wastewater discharge volumes from specific residences. The many factors and products can influence daily water usage, including multi-head shower systems and spa tubs. This will be discussed further in the Design Handbook update.

Comment:

A few soil scientists asked that the reference to soil scientists in subparagraph 75-A.4(4) not be deleted.

Response:

No change. The Department continues to acknowledge the value of soil characterization by soil scientists or other qualified persons to assist the design professional in preparing design plans. However, this is a recom-

mendation not a design standard or mandate. The recommendation to utilize soil scientists or other qualified person(s) to assist with soil evaluations when necessary will be included in the NYSDOH Design Handbook update.

Comment:

Two county health departments requested that the reference to reduced separation distances being approved upon request, as stated in subparagraph 75-A.4(4), be deleted because health departments have the specific waiver process available to them if necessary and as written does not stipulate the need for a specific waiver from the health department.

Response:

Agree. The last sentence of the paragraph has been deleted. This deletion does not constitute a substantial change since it is redundant because Appendix 75-A.11, Specific Waivers, already authorizes a specific waiver for the purpose of reduced separation distances and other deviations from the standards.

Comment:

Two county health departments requested an increase in the minimum separation distance to water bodies from Non-Waterborne Systems with onsite discharge from the proposed 50-foot to 100-foot.

Response:

No change. The separation distance listed was adopted from the 1996 version of the DOH Design Handbook. Note that Table 2 lists minimum separation distances, site conditions must be acceptable (i.e., enough useable soil depth) and local codes can be more stringent. If information becomes available to justify the change it will be incorporated into the Design Handbook update and a future rulemaking.

Comment:

An engineer asked to modify Note (d) of Table 2 to define "reserve area".

Response:

Agreed. Note (d) has been modified to change "reserve area" to "additional useable area" as currently referenced in section 75-A.4(a)(5). "Reserve area" and "additional useable area" have the same intended meaning, therefore, this change does not alter the meaning or implementation of the regulations.

Comment:

Multiple comments were received asking why systems located in the New York City Watershed are excluded from the absorption area reduction allowances. Some comments received asked if the exclusion could apply to other watersheds or surface water drinking supplies with filtration avoidance. While some other comments objected to the exclusion because some residents could not get the benefits of using such systems and products that is extended to the rest of the State.

Response:

No change. In Section 75-A.2, "Regulation by Other Agencies," recognizes that Water Protection Agencies can establish more stringent standards and this exclusion reflects NYCDEP's policy. In regards to the New York City watershed, it is a surface water resource of special concern and oversight. The watershed includes a vast area which provides drinking water to 8 million New York City residents and 1 million people in counties north of the City. This watershed is unique not only from the perspective that it provides almost half on New York States population with drinking water but it is also an unfiltered drinking water supply. New York City's Catskill/Delaware water supply is the largest drinking water supply in the country receiving a Filtration Avoidance Determination. The unique nature of this watershed was recognized by the signing of the historic 1997 New York City Watershed Memorandum of Agreement. This Agreement, signed by the Governor of New York, the Department of Health, Department of Environmental Conservation, United State Environmental Protection Agency, local communities and environmental groups to protect the watershed. Note however, that many of the technologies and products referenced in Appendix 75-A are used for system replacements and repairs within the watershed.

Comment:

A county health department asked to include NSF standard 245 for ETUs because some areas with sensitive watersheds and waterfront properties may need to remove nutrients such as Nitrogen and Phosphorus. NSF standard 40 does not address nutrient removal.

Response:

No change. NSF Standard 245 units must also pass the NSF Standard 40 testing criteria before it can be listed by NSF, therefore, the NSF Standard 254 units are already acceptable in areas where NSF Standards 40 units can be installed in accordance with the applicable Appendix 75-A standards. Note that the standard is based upon nitrogen removal and does not include phosphorus reduction testing.

Comment:

A comment was received from the University of Buffalo, Center for Integrated Waste Management, requesting to use the term "tire derived aggregate" (TDA) instead of "tire chip aggregate" (TCA) because TDA is the recognized terminology in the industry.

Response:

Agreed. The clarification was made and does not represent any substantial modification in the regulation.

Comment:

A comment was received from a county health department expressing concern over gravelless chamber systems with effluent discharge at the beginning of each trench (point discharge) instead of stone and perforated pipe where there is better distribution along the trench.

Response:

No change. Dispersal at the beginning of a trench (point discharge) occurs in most gravity distribution scenarios. Gravel filled trenches utilizing gravity distribution to a 4-inch perforated pipe distributes effluent only out of the first few perforations. Soil infiltration rate and biomat formation moves wastewater down the length of the trench. Stone acts to keep the trench open and provide void space for aeration, storage and soil infiltration.

Comment:

A comment was received from a county health department raising the concern that chamber systems do not have enough vertical side wall area and the sidewalls get clogged by soils or biomat formation.

Response:

No change. Chambers have a significantly larger open bottom area available for biomat formation and infiltration. The sidewalls primarily allow for sufficient oxygen exchange and are designed to prohibit soil intrusion. Over time it is expected mainly the bottom and maybe some of sidewall will develop a biomat, however, infiltration and oxygen transfer will continue. Many factors can contribute to any system clogging and is rarely caused solely by the product being used. Installation in accordance to the manufacturer's recommendation is important to prevent problems and ensure long-term functioning.

Comment:

A comment was received from another agency suggesting that when gravelless products are used with a trench length reduction that an area should be available where a conventional sized system would also fit.

Response:

No change. Certain gravelless products have proven to provide an environment for wastewater treatment in a slightly smaller footprint than a conventionally sized system. In most cases, the requirement to "set aside" an additional useable area of 50% is a design feature that allows for expanding the system when necessary.

Comment:

A comment was received from another agency expressing concern about the long-term availability of these manufactured gravelless products.

Response:

No change. Roughly 25% of all systems installed nationally are gravelless products and that percentage is expected to grow. Additionally, most of these products are made of recycled materials so there is no reason to expect that they will not be available long-term.

Comment:

Multiple county health departments expressed concern that they would no longer have the authority to review and approve alternative system designs.

Response:

No change. Appendix 75-A is a design standard not procedural requirement. However, based upon concerns expressed by multiple county health departments, the Department is proposing to require the submission of alternative system designs to the jurisdictional health department as part of a future proposed revision to Part 75 "Standards for Individual Water Supply and Individual Sewage Treatment Systems".

Comment:

A county health department requested clarification on how absorption trenches will be designed to distribute wastewater over the smaller basal areas for raised systems receiving ETU effluent.

Response:

Agree: The design criteria for raised systems was reorganized to clarify that basal area calculations and absorption trench length designs for raised systems receiving septic tank effluent will remain being based upon the fill material percolation rate. For raised systems receiving ETU effluent, language was added to clarify the intent is to distribute enhanced treated effluent evenly over the calculated basal using conventional absorption trenches.

Comment:

A comment was received from another agency requesting that six (6) inch lifts be specified for placing fill material.

Response:

No change. It is believed to be generally understood that the meaning of "shallow lifts" is about 6-inches. However, depending on fill material and equipment used, soil could be placed in more or less than 6-inch lifts at a time. The proper selection and placement of fill material will be discussed in more detail in the Design Handbook update.

Comment:

One LHD and one engineer requested to remove the language allowing gravity distribution to intermittent sand filters.

Response:

No change. This Department issued a statewide General Waiver in 1991 and published it in the Design Handbook. There has been little to no reported issues with this design aspect. Also note that the regulation says "may," meaning it is not a requirement but can be considered by the design professional. Construction and design issues for intermittent sand filters will be discussed further in the Design Handbook update.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

HIV Uninsured Care Programs

I.D. No. HLT-05-10-00004-P

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

Proposed Action: Amendment of Subpart 43-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2776(1)(e), 201(1)(h), (p) and 206(3)

Subject: HIV Uninsured Care Programs.

Purpose: Receive and expend funds to provide medications, medical treatment and other supportive services to persons with HIV disease.

Text of proposed rule: Subpart 43-2 is amended to read:

SUBPART 43-2

[AIDS DRUG ASSISTANCE PROGRAM] *HIV UNINSURED CARE PROGRAMS*

Section 43-2.1 is amended to read:

Section 43-2.1 Scope. These regulations govern the application and eligibility determination process for the [AIDS Drug Assistance Program] *HIV Uninsured Care Programs* and establish the rights and responsibilities of applicants, participants, [medical] providers, and [the contractor] *contractors* in that process.

Section 43-2.2(e) and (f) are amended to read:

(e) Period of coverage. Coverage for assistance *for each individual program component* is effective [on the first date a drug is dispensed to an individual who is determined to be eligible for participation in the program] *as specified in the individual's notification of eligibility*. Coverage will terminate under the following circumstances:

- (1) the applicant indicates in writing that he/she no longer needs or desires assistance;
- (2) the department determines that a change in the participant's circumstances or residence has affected his/her eligibility;
- (3) the participant has died or cannot be located; and
- (4) funding for the [AIDS Drug Assistance Program] *HIV Uninsured Care Programs* is exhausted.

(f) Program means the *HIV Uninsured Care Programs, including the following service components:*

- (1) AIDS Drug Assistance Program, which provides coverage of medications;
- (2) *ADAP Plus*, which provides coverage for ambulatory care services;
- (3) *ADAP Plus Insurance Continuation*, which pays for insurance premiums for eligible individuals who have cost effective insurance policies; and
- (4) the *HIV Home Care Program*, which provides coverage for home care services.

Section 43-2.2(i) is amended to read as follows:

(i) [Contractor means any corporation which has entered into a contract with the department to assist in carrying out the provisions of the program] *Available household income means the applicant's household income after deducting the amount paid by the applicant under the Federal Insurance Contributions Act for Social Security and Medicare and the cost of health care coverage paid by the applicant.*

A new Section 43-2.2(j) is added to read:

(j) *Provider means a medical provider, including a pharmacy, hospital, clinic, physician, laboratory or home health care agency.*

Section 43-2.3 is amended to read:

Section 43-2.3 Confidentiality. All information which may identify an applicant which is received by the program will be confidential and can only be used when necessary for supervision, monitoring or administration of the program. Information received by any contractor, his agents,

employees, or by any other person or agency concerning applicants or participants in the program is confidential and may not be disclosed without the written approval of the [AIDS Drug Assistance] *HIV Uninsured Care Program Director*, who shall approve disclosure only in conformance with Article 27-F of the Public Health Law and the federal standards with respect to the privacy and security of individually identifiable health information contained in Part 164 of Title 45 of the Code of Federal Regulations.

Section 43-2.4(a) is amended to read:

43-2.4 Use of the application form. (a) The State-approved application form must be completed:

(1) for each applicant upon initial application and recertification, if required; and

(2) *documentation may be required* when there is a change in status affecting eligibility.

Section 43-2.5(b)(1) is amended to read:

(b) Financial eligibility will be based upon the [total gross income] *available household income* [to the applicant's household].

(1) In order to be eligible, an applicant's *available* household income must be equal to or less than [the income guideline for the applicant's family size as specified below:] *435% of the amount under the annual United States Department of Health and Human Services poverty guidelines for the applicant's family size. Federal poverty guidelines are published annually by the Department of Health and Human Services in the Federal Register.*

[Schedule--Statewide Standard of Need (Annual)

Number of persons in household

ONE	TWO	THREE+
44,000	59,200	74,400]

Section 43-2.5(c) is amended to read:

(c) Liquid resources shall be reviewed to determine their availability in determining eligibility for the program. In order to be eligible, an applicant's liquid resources must be less than \$25,000.

[1)] Liquid resources are cash or those assets which can be readily converted to cash such as bank accounts, lump sum payments, i.e., stocks, bonds and mutual fund shares. [Resources in an Individual Retirement Account (IRA) or other tax deferred compensation plan will be calculated at the rate of 50% for purposes of determining liquid assets.]

Section 43-2.5(d) is amended to read:

(d) Full and proper use shall be made of existing public and private medical and health services and facilities for obtaining therapeutic drugs, *medical services, and related supplies and equipment* for the treatment of *HIV or AIDS*.

Section 43-2.5(e) is amended to read:

(e) An applicant or recipient of assistance may be required as a condition of eligibility or continued eligibility to assign any rights he/she may have for [drug] coverage benefits under any health insurance policy or group health plan to the department.

Section 43-2.5(f) is amended to read as follows:

(f) [The department may employ a contractor to determine eligibility consistent with the requirements and responsibilities of Subpart 43-2 of this Part. Eligibility determinations are subject to department review and adjustment.]

In order to be eligible for ADAP Plus Insurance Continuation, an applicant must have:

(1) *a health insurance policy that is determined to be cost effective by the department, based on the cost of premiums, limitations of coverage (i.e., deductible, caps, co-payments) and estimates of the monetary value of projected utilization and reimbursement under the insurance policy, and*

(2) *a premium cost that is more than 4% of the applicant's available household income, if the applicant's available household income is greater than 200% of the amount under the annual United States Department of Health and Human Services poverty guidelines for the applicant's family size, and*

(3) *an employer contribution of 50% or more of the total cost of the health insurance premium, if the applicant is employed full time and eligible for employer sponsored health insurance.*

Section 43-2.9 is amended to read:

[Issuance of Program eligibility cards. (a) The department or authorized parties shall issue a program eligibility card to each person determined eligible for benefits.

(b) The card shall include the following information:

- (1) participant's full name;
- (2) participant's identification number;

- (3) participant's effective date of coverage;
- (4) category of drugs for which the participant is eligible; and
- (5) the effective date of coverage for each category.]

RESERVED

Section 43-2.10 is amended to read:

43-2.10 Investigation. The department official shall review and verify information received on applications, as required. Documents, personal observation, personal and collateral interviews and contacts, reports, correspondence and conferences are means of verification of information supplied. When information is sought from collateral sources, other than public records or sources designated by the applicant on the application form [because the applicant or participant cannot provide verification], the department will inform the applicant/participant or his/her representative of what information is desired, why it is needed and how it will be used.

Section 43-2.14 is amended to read:

43-2.14 Enrollment of providers. The department will contract with or enter into provider agreements with [pharmacies and health care] providers, including providers of related laboratory and ancillary services, which demonstrate that they are qualified to provide [prescriptions drugs] program services.

Section 43-2.15(a) and (b) are amended to read:

Audit and [claim] review. (a) Providers shall be subject to audit and reviews for quality assurance and proper utilization by the commissioner, his agents or designees. With respect to such audits and reviews, the provider may be required:

(1) to reimburse the department for overpayments discovered by audits; and

(2) to pay restitution for any direct or indirect monetary damage to the program resulting from their improperly or inappropriately furnishing covered drugs, services, supplies or equipment.

(b) The commissioner, his agents or designees may conduct audits and [claim] reviews, and investigate potential fraud or abuse in a provider's conduct.

Section 43-2.15(d) is amended to read:

(d) When audit findings indicate that a provider has provided covered drugs, services, supplies or equipment in a manner which may be inconsistent with regulations governing the program, or with established standards for quality, or in an otherwise unauthorized manner, the commissioner may summarily suspend a provider's participation in the program and/or payment of all claims submitted and of all future claims may be delayed or suspended. When claims are delayed or suspended, a notice of the withholding payment or recoupment shall be sent to the provider by the department. This notice shall inform the provider that within 30 days he/she may request in writing an administrative review of the audit determination before a designee of the commissioner. The review must occur and a decision rendered within a reasonable time after a request for review. If the designee of the commissioner decides withholding or recoupment is warranted, or if no request for review is made by the provider with the 30 days provided, the department shall continue to recoup or withhold funds pursuant to the audit determination.

Section 43-2.16(e) is amended to read:

(e) All claims made under the program shall be subject to audit by the commissioner, his agents or designees, for a period of [three] six years from the date of their filing, or as required by state law, regulation or funding source. [t]This limitation shall not apply to situations in which fraud may be involved or where the provider or an agent thereof prevents or obstructs the performance of an audit pursuant to this Part.

Section 43-2.17 is amended to read:

43-2.17 Recoupment of overpayments. Overpayments determined to have been made pursuant to this section and section 43-2.16 of this Subpart shall be recovered by billing the provider for reimbursement, withholding the provider's current or withholding future payments on claims submitted or a percentage of payments otherwise payable on such claims, or such other remedies as may be available through a court of law.

A new section 43-2.18 is added to read:

Section 43-2.18 Claims submission. (a) Providers shall submit claims for drugs or services within ninety days of the date of service in the manner and form proscribed by the program in order to receive reimbursement.

(b) The department will not be obligated to pay claims submitted more than ninety days after the date of service. Claims submitted later than 90 days with written justification may be considered for payment if funds are available.

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

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

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

Regulatory Impact Statement**Statutory Authority:**

Statutory authority for the AIDS Drug Assistance Program exists under Public Health Law (PHL) Section 2776(1) (e) which authorizes the New York State Department of Health AIDS Institute to promote the availability of supportive services for affected persons. Therapeutic drugs, ambulatory care services, home care services and insurance premium payment assistance are provided through the HIV Uninsured Care Programs. PHL Section 201(1) (p) permits the Department to receive and expend funds available for public health. The Department promotes therapeutic services for communicable diseases affecting public health under the authority of Section 201(1) (h). Section 206(3) permits the Commissioner to enter into contracts to carry out the general intent and purposes of the Public Health Law. HIV Uninsured Care Programs use federal funds allocated under the Ryan White HIV/AIDS Treatment Modernization Act.

Legislative Objectives:

The statutes enable the Commissioner to receive and expend funds for the public health, including funds necessary to provide medications, medical treatment and other supportive services to persons with HIV disease.

Needs and Benefits:

The purpose of the regulation is to promulgate procedures for the HIV Uninsured Care Programs, which include ambulatory and home care services, payment for certain medications and premium payments to assure insurance continuation for eligible participants. The HIV Uninsured Care Programs are funded by federal grants and administered by the New York State Department of Health.

Through the HIV Uninsured Care Programs, the Department of Health offers selected drugs, ambulatory care, home care services and insurance continuation payments at no charge to medically and financially eligible individuals who are residents of New York State. The State determines eligibility for the HIV Uninsured Care Programs and notifies applicants of their eligibility for the program.

The regulations cover a broad scope of services. The definition of "Provider" will allow participation in the program by hospitals, clinics, physicians, laboratories and home health care agencies. The scope of services covered by the program has expanded and now includes ambulatory care, home care and insurance premium payments. Oversight authority permits review of quality of care and utilization to assure compliance with department standards and protocols. Due to the requirements of federal grants which restrict the period of time funds are available, the department will not be obligated to pay claims submitted by providers more than ninety days from the date of service.

Costs:

The proposed amendments will have no impact on the administrative costs of the program to the State. Any additional administrative costs associated with the broader scope of the program are funded through federal grants. Offsets in costs to the state will be achieved by preventing costly hospital inpatient stays and the increased costs associated with opportunistic infections due to debilitated immune system response.

Cost Effectiveness:

A wide range of studies have examined the cost effectiveness of various medical components of HIV care, as well as the delivery of HIV care through AIDS Drug Assistance Programs.

Cost-effectiveness analyses have been successfully used to evaluate most new developments in HIV clinical therapeutics, including HIV screening, opportunistic infection prophylaxis, antiretroviral therapy, and the use of diagnostic tests.

Additional studies have documented significant reductions or offsets in health care costs resulting from use of highly active antiretroviral therapy (HAART).

The cost-effectiveness of NY ADAP was analyzed in a pharmacoeconomic model in 1996 and the results illustrate that the cost of the program is offset by an equal reduction in medical system cost.

Cost-effectiveness analyses have demonstrated that even the most comprehensive ADAPs are a comparatively attractive use of HIV care resources and a good value, and that the cost-effectiveness of combination antiretroviral therapy compares favorably with other HIV patient care interventions and other accepted medical investments in terms of quality-adjusted life-year saved.

Costs to Local Governments:

There is no cost to local governments associated with this proposed rule change.

Costs to Private Regulated Parties:

No additional costs will be incurred by Private Regulated Parties. A single application may be utilized for all components of the programs. The application includes the same data elements previously required for the AIDS Drug Assistance Program (ADAP). Physicians have been and will continue to be required to submit information to verify patient's medical eligibility. Physicians enrolled as providers must submit claim forms comprised of data elements from the standard Medicaid claim format.

Costs to the Department of Health:

No new costs will be incurred by the Department, local governments or small businesses by these proposed regulatory revisions. The additional cost of providing medical benefits to individuals who continue eligibility for the programs due to annual cost of living increments in Federal Poverty Level (FPL) will be paid for using Federal funds allocated to the Programs through the Ryan White HIV/AIDS Treatment Modernization Act. For individuals who have partial insurance (underinsured) the Programs will mitigate potential cost increases by coordinating medical benefit coverage with other insurance plans. To further reduce future program cost and enhance access to comprehensive health care, individuals will be assisted in securing more comprehensive health insurance coverage through the ADAP Plus Insurance Continuation component of the program.

Local Government Mandates:

There is no impact on local government mandates associated with this proposed rule change.

Paperwork:

No new paperwork for referring physicians or pharmacies is necessitated by these changes. Physicians continue to provide information to the State to assess the medical eligibility of the applicant, and pharmacies must continue to submit claims in the manner specified by the Department of Health.

Health care providers must submit claim forms in the manner specified by the Department. The claim forms are comprised of data elements consistent with those maintained by the providers for claiming reimbursement from Medicaid. Home care providers must also submit care plans for pre-approval of services for individuals, in a format analogous to that used for Medicaid.

Duplications:

These regulations do not duplicate any existing state or federal requirements.

Alternatives:

ADAP engaged a focus group of community leaders and people living with HIV who would be most impacted by the regulation changes. The overwhelming consensus of the group was to proceed with the proposed changes. Some group members believed the change in income criteria may not be high enough. Because the programs are grant funded there is no guarantee of continued funding. In order to balance need against available resources the proposed changes would enable individuals to access care while at the same time assuring sufficient resources to continue comprehensive HIV care for uninsured and underinsured New York State residents.

There are no reasonable alternatives to enacting these regulation changes to eligibility and reimbursement procedures.

Federal Standards:

These regulations do not exceed any minimum standard of the federal government.

Compliance Schedule:

Providers will be expected to comply with these requirements as soon as they become effective, upon publication of a notice of adoption in the State Register.

Regulatory Flexibility Analysis**Effect on Small Business:**

Approximately 3,270 pharmacies, 160 Article 28 health facilities, 330 physicians, 200 home care agencies and 61 laboratories are enrolled in this program. Although it has not been determined precisely how many employ 100 or fewer employees, the Department estimates that most of the enrolled pharmacies, physicians and home care agencies, as well as a significant number of enrolled laboratories can be classified as small businesses.

Compliance Requirements:

All enrolled parties would be required to submit documentation and conform to the procedures set forth in these regulations.

Professional Services:

Providers will not be required to adopt a new record keeping procedures to comply with these regulations. However, service information must be submitted to the Department in the prescribed claim format in order to document delivery of service for reimbursement by the program.

Compliance Costs:

No capital costs are required to comply with these regulations. Health Care providers must maintain records of service delivery. Reimbursement to providers will be made using standard Medicaid formats. The cost to each health care provider to submit the information requested on the claim form is dependent on the number of program participants being served and the frequency of services. We estimate that costs to providers to submit claims to the program will entail an average of approximately 15 minutes per month for each consequently reimbursed participant served during the month.

Economic and Technological Feasibility:

To the extent possible all efforts will be made to assure that payments and the claim submission processes are consistent with current industry technology.

Minimizing Adverse Impact:

These proposed amendments to existing regulations pertain to an optional program for Pharmacies, Article 28 facilities, physicians, home care agencies and laboratories. They do not produce an adverse impact on such providers, but rather ensure payment for services rendered to low income underinsured participants.

Opportunity for Small Business Input:

Copies of these proposed regulations will be transmitted to the Greater New York Hospital Association, the Health Care Association of New York, the Community Health Care Association of New York, New York County Medical Society, New York State Home Care Association and several high volume enrolled providers.

Rural Area Flexibility Analysis

Rural Areas Applicability:

The HIV Uninsured Care Programs are available statewide, and the program seeks to enroll adequate numbers of eligible providers from all areas, especially rural areas to ensure convenient access to covered services.

Compliance Requirements:

All enrolled parties would be required to submit documentation and conform to the procedures set forth in these regulations.

Professional Services:

Providers will not be required to adopt new record keeping procedures to comply with these regulations. However, service information must be submitted to the Department in the proscribed claim format in order to document delivery of service for reimbursement by the program. The claim format is consistent with that utilized by the providers for claims submitted to Medicaid.

Capital Costs and Annual Costs of Compliance:

No capital costs are required to comply with these restrictions. Health care providers must maintain records of service delivery. Reimbursement to providers will be made using standard Medicaid formats. The cost to each health care provider to submit the information requested on the claim form to the program is dependent on the number of program participants being served and the frequency of services. We estimate that costs to providers to submit claims to the program will entail an average of approximately 15 minutes per month for each participant served during a month for which reimbursement is being sought. These costs are consequently reimbursed as part of the applicable rate schedule for the provider.

Minimizing Adverse Impact:

These proposed amendments to existing regulations pertain to an optional program for pharmacies, Article 28 facilities, physicians, home care agencies, and laboratories. They do not produce an adverse impact on such providers, but rather ensure payment for services rendered to low income participants.

Opportunity for Small Business Input:

Copies of these proposed regulations have been transmitted to the Health Care Association of New York, the Community Health Care Association of New York, New York State Home Care Association and several enrolled providers serving rural areas.

Job Impact Statement

Nature of Impact:

By providing access to quality health care the HIV Uninsured Care Programs hope to improve health outcomes subsequently resulting in increased employability and access to private rather than publicly funded health care. It is assumed that the impact of the proposed rule changes will be positive.

Categories and Numbers Affected:

The programs serve over 22,000 low income HIV infected New York State residents each year. It is impossible to determine the number or categories of employment opportunities impacted.

Regions of Adverse Impact:

There is no adverse impact expected.

Minimizing Adverse Impact:

No adverse impact expected.

Self Employment Opportunities:

Not Applicable.

Department of Labor

EMERGENCY RULE MAKING

Restrictions on the Consecutive Hours of Work for Nurses As Enacted in Section 167 of the Labor Law

I.D. No. LAB-05-10-00002-E

Filing No. 11

Filing Date: 2010-01-13

Effective Date: 2010-01-13

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

Action taken: Addition of Part 177 to Title 12 NYCRR.

Statutory authority: Labor Law, section 21

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

Specific reasons underlying the finding of necessity: Section 167 of the Labor Law is effective July 1, 2009. However, Section 167 does not provide sufficient details with regard to what is expected of health care providers so as to avoid mandatory overtime for nurses, except in emergency situations. Section 167 was enacted to improve the health care environment for patients and the working environment for nurses.

Subject: Restrictions on the consecutive hours of work for nurses as enacted in Section 167 of the Labor Law.

Purpose: To clarify the emergency circumstances under which an employer may require mandatory overtime for nurses.

Substance of emergency rule: By L.2008, Ch. 493, § 1, the New York State Legislature created Section 167 of the Labor Law with the title "Restrictions on consecutive hours of work for nurses."

The proposed rule creates a new part of regulations designated as 12 NYCRR Part 177 entitled "Restrictions on Consecutive Hours of Work for Nurses."

Subpart 177.1, entitled "Application," sets forth that Part 177 applies to the hours of work for all nurses by health care employers.

Subpart 177.2, entitled "Definitions," sets forth the definitions, for the purposes of Part 177, of the following terms: "emergency," "health care disaster," "health care employer," "nurse," "on call," "overtime," "patient care emergency," and "regularly scheduled work hours."

Subpart 177.3, entitled "Mandatory Overtime Prohibition," provides that a health care employer is prohibited from requiring a nurse to work overtime. Subpart B sets forth the exceptions to that prohibition, which are entitled: "Health Care Disaster," "Government Declaration of Emergency," "Patient Care Emergency," and "Ongoing Medical or Surgical Procedure." Subpart B provides that the Part 177 does not prohibit a nurse from voluntarily working overtime.

Subpart 177.4, entitled "Nurse Coverage Plans," provides that health care employers are required to prepare and implement a "Nurse Coverage Plan" within ninety days of the effective date of this part and also sets forth the requirements for such a plan.

Subpart 177.5, entitled "Report of Violations," provides the Department of Labor shall establish a procedure to file a complaint of a violation of Part 177.

Subpart 177.6, entitled "Conflicts of Law and Regulation; Collective Bargaining Rights Not Diminished," provides that the provisions of Part 177 shall not be construed to diminish or waive the rights of nurses.

Subpart 177.7, entitled "Waiver of Rights Prohibited," provides that a health care employer may not utilize employee waivers as an alternative to compliance with Labor Law Section 167 or Part 177.

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 April 12, 2010.

Text of rule and any required statements and analyses may be obtained from: Thomas McGovern, New York State Department of Labor, Counsel's Office State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: thomas.mcgovern@labor.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Section 21 of the Labor Law provides the Commissioner with authority to issue regulations governing any provision of the Labor Law as she finds necessary and proper. This rule is proposed pursuant to Section 167 of the Labor Law enacted by chapter 493 of the Laws of 2008. The effective date of the law is July 1, 2009.

2. Legislative objectives:

Legislation passed during the last legislative session (Chapter 493 of the Laws of 2008) recognizes the physical and emotional toll that mandatory overtime can take on nurses and on patient care. In response to these concerns, the legislation requires that health care employers take steps to prudently plan for adequate nursing staff coverage in their facilities so as to avoid the need to require mandatory overtime of nurses in most instances.

The rule improves the health care environment for patients and the working environment for nurses by clarifying the emergency circumstances under which an employer may require mandatory overtime. The Legislature's intent in enacting Section 167 was to encourage employers to attract and retain nurses in the profession during this period of shortage.

3. Needs and benefits:

Nurses work in a demanding and stressful environment where sound decision-making is a matter of life and death for patients. Limitations on mandatory overtime avoid successive work shifts which take a physical and mental toll on nurse's performance and can impact the quality of patient care. Labor Law Article 6, section 167 places restrictions on consecutive hours of work for nurses, except in emergency situations, while not prohibiting a nurse from voluntarily working overtime and allows an employer who experiences an unanticipated staffing emergency that does not regularly occur, to require overtime to ensure patient safety.

The enabling legislation does not provide sufficient details with regard to what is expected of health care employers so as to avoid mandatory overtime, except in emergency situations. The rule addresses these statutory gaps by requiring that covered employers develop a Nurse Coverage Plan (the Plan), by setting forth the minimum elements to be addressed in the Plan, and by requiring that the Plan be posted and made available to the Commissioner, to nursing staff and their employee representatives. At the same time, the rule clarifies circumstances under which various types of emergencies will allow health care employers to use mandatory overtime to cover nurse staffing needs.

Finally, the rule will improve overall patient care by allowing patients to be cared for by nurses who can exercise sound decision-making because they have had the proper rest needed to perform their duties. In sum, the reduction of the use of mandatory overtime should help employers attract and retain adequate numbers of nurses to ensure patient safety.

4. Costs:

Employers in both the public and private sectors covered by this rule may have to enter into contracts with nursing staff providers such as nurses' registries, per diem nursing services, and temporary agencies to have a viable source of additional nursing staff to use in lieu of mandating overtime of current staff. The cost for individual health care employers will depend upon the extent to which the Plan relies on these contract workers and the degree of coverage that the health care employer will need. In the current environment of nursing shortages, a major medical center with several special care units requiring specially trained nursing staff may find it more difficult to fill shifts from among their own nursing staff. At the other end of the spectrum, facilities with a very small staff, few resources or in underserved or remote locations may not be able to compete to fill vacancies. At the time this legislation was before the Governor for action, the Division of Budget estimated compliance would cost approximately \$13 million in its first year. However, these costs - attributable to the hiring of

per diem nurses necessary to ensure that sufficient nursing care is available for patients in the absence of the availability of mandatory overtime - will be offset by savings of \$5 million, which otherwise would have been paid for such overtime. Also, it is likely that in the one year period from when Section 167 was enacted into law, employers have been preparing for implementation of the statute and have taken steps to mitigate costs associated with this new law.

Other than staffing needs, costs associated with the rule will be administrative. Health care employers must prepare a Plan which takes into account typical patterns of staff absenteeism due to illness, leave, bereavement and other similar factors as well as the number and types of patients typically served in the health care employer's facility. The Plan must also identify and describe the alternative staffing methods the employer will use to avoid mandatory overtime. It is not anticipated that any health care employer would have to retain outside professional services to prepare the Nurse Coverage Plan. Although there are administrative costs and time associated with developing and maintaining a written Plan and log, these costs may be offset through use of a Plan that may reduce the need for last-minute supplemental staffing.

Legal services may be required to negotiate, draft or review contracts with alternative staffing providers such as per diem agencies. It is anticipated that a vast majority of health care providers in the state already have such agreements in place or have procurement or legal staff who regularly work on such contracts.

Requirements with regard to the posting of such Plan and the logging of efforts to obtain staff coverage in compliance with the Plan will result in minimal or no additional cost.

5. Paperwork:

The employer will be required to develop and post the Nurse Coverage Plan discussed above, along with all necessary paperwork to log the efforts to obtain staff coverage in compliance with the Plan. Additionally, the Nurse Coverage Plan may require the drafting of contracts with alternative staffing providers such as per diem agencies and the posting of a list of nurses seeking voluntary overtime.

6. Local government mandates:

This rule will have an impact on any county, city, town, village, school district, fire district or other special district that employ nurses. The impact will depend on the size of the facility and nursing staff and the degree to which mandatory, unscheduled overtime is currently being used on a routine basis.

7. Duplication:

This rule does not duplicate any state or federal regulations.

8. Alternatives:

One alternative is to draft regulations which allow the employers to have full discretion to make determinations regarding the existence of an emergency on an ad hoc basis. However, such discretion is inconsistent with the letter and spirit of the statute. Clearly, certain levels of absenteeism based upon sick leave, bereavement, leaves of absences, and breaks during shifts will always exist in all employment settings, including health care facilities. A health care employer must plan for these expected staffing issues, based upon patterns that have emerged from operating a facility and must have staffing options that address the need to provide appropriate nursing care. Accordingly, the Commissioner must retain the right to cite an employer whose declaration of an emergency situation is not supported by the facts or is intended to evade the restrictions imposed by the law or limit the protections afforded nurses under the law.

The Department of Labor circulated draft regulations for comment to State Agencies and other employer groups, and to various employee representative groups. In some instances, changes to the regulations were made in response to such concerns. For example, the Department of Corrections (DOCS) requested clarification regarding examples of health care disasters set forth in Section 177.3 of the regulations. Specifically, DOCS requested that the regulations include language that a health care disaster included the occurrence of a riot, disturbance, or other serious event within an institution that increases the level of nursing care needed. The regulations were revised to include such language.

The Department received comments from one employer group, the Healthcare Association of New York State, that the regulations should provide alternatives to healthcare employers regarding the conspicuous posting of the Nurse Coverage Plans. It was suggested that the regulations authorize employers to utilize other means to make the Nurse Coverage Plans available to nursing staff such as the employer's intranet. The Department considered this comment and revised the regulations to allow for the use of other means to make the Nurse Coverage Plan available to nursing staff.

The Department also received a comment from employee representatives about requiring the filing of all Nurse Coverage Plans with the Commissioner of Labor. The Department considered such a filing requirement but decided it was unnecessary since the Commissioner will request such Plans once a complaint has been received about an employer. Moreover, since employees or their representatives are entitled to receive the Plan on request or otherwise have access to the plan, they can take immediate steps to ensure that the Plan has been prepared and notify the Commissioner if it has not.

Finally, the Department heard from representatives of public sector nurses that the definition of regularly scheduled work hours should include a reference to regulations governing such typical work hours. The language in relevant sections of the rule has been changed in response to this request.

In other instances, the Department has not made changes in response to comments received, so that comments from other regulated parties, nurses, and their representatives could be obtained during the rulemaking process and considered along with some comments before final action is taken.

9. Federal standards:

There are no federal standards with like requirements.

10. Compliance schedule:

The rule would be effective on the same date as the statute: July 1, 2009. However, the Nurse Coverage Plans required by Section 177.4 of the regulations are to be prepared within ninety days of the effective date of the regulations. This gives employers ample time to develop and implement these Nurse Coverage Plans.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule will apply to all health care employers which include any individual, partnership, association, corporation, limited liability company or any person or group of persons acting directly or indirectly on behalf of or in the interest of the employer, which provides health care services in a facility licensed or operated pursuant to Article 28 of the Public Health Law, including any facility operated by the State, a political subdivision or a public corporation as defined by Section 66 of the General Construction Law or in a facility operated by the State, a political subdivision or a public corporation as defined by Section 66 of the General Construction Law, operated or licensed pursuant to the Mental Hygiene Law, the Education Law, or the Correction Law. Accordingly, small businesses and local governments may be impacted if they provide health care services in a facility noted above. The Department's Division of Research and Statistics estimates that there are 4,175 health care facilities in the State with fewer than 100 employees. Of these 4,175 employers, 4,143 are private employers and 32 are public employers.

2. Compliance requirements:

The record and reporting requirements contained in the proposed rule are minimal. Healthcare employers must prepare a Nurse Coverage Plan which takes into account typical patterns of staff absenteeism due to illness, leave, bereavement and other similar factors as well as the number and types of patients typically served in the health care employer's facility. The Plan must also identify and describe the alternative staffing methods the employer will use to avoid mandatory overtime. Additionally, the health care must make the Nurse Coverage Plan available to: nursing staff by posting the Plan or making it available to nursing staff by the intranet, employee representatives and to the Commissioner upon request. The health care employer must also maintain a log of efforts to obtain staff coverage in compliance with the Plan.

3. Professional services:

Legal services may be required to negotiate, draft and review contracts with alternative staffing providers such as per diem agencies. It is anticipated that a vast majority of health care providers in the state already have such agreements in place or have procurement or legal staff who regularly work on such contracts.

The rule will require health care employers to seek alternative sources to obtain the services of nurses other than forcing their current nursing staff to work mandatory overtime shifts. In this respect, the health care employers will be seeking professional nursing services which would have otherwise been performed by their current nursing staff on a mandatory basis.

4. Compliance costs:

Employers in both the public and private sectors covered by this rule may have to enter into contracts with nursing staff providers such as nurses' registries, per diem nursing services, and temporary agencies to have a viable source of nursing staff to use in lieu of mandatory overtime. The cost for individual health care employers will depend upon the extent to which the nurse staffing plan relies on these contract workers and the degree of coverage that the health care facility will need. For example, a major medical center with several special care units requiring specially trained nursing staff may find it more difficult to fill shifts from among their own nursing staff because of the need to fill such vacancies with nurses having the same specialized training. At the other end of the spectrum, facilities with very a small staff may find it equally difficult to fill vacancies without having to utilize outside staffing service providers. At the time this legislation was before the Governor for action, the Division of Budget estimated compliance would cost approximately \$13 million in its first year. However, these costs - attributable to the hiring of per diem nurses necessary to ensure that sufficient nursing care is available for patients in the absence of the availability of mandatory overtime - will be offset by savings of \$5 million, which otherwise would have been paid for such overtime. Also, it is likely that in the one year period from when Section 167 was enacted into law, employers have been preparing for implementation of the statute and have taken steps to mitigate costs associated with this new law.

Other than staffing needs, costs associated with the rule will be administrative. Health care employers must prepare a Nurse Coverage Plan which takes into account typical patterns of staff absenteeism due to illness, leave, bereavement and other similar factors as well as the number and types of patients typically served in the health care employer's facility. The Plan must also identify and describe the alternative staffing methods the employer will use to avoid mandatory overtime. It is not anticipated that any health care employer would have to retain outside professional services to prepare the Nurse Coverage Plan. Although there are administrative costs and time associated with developing and maintaining a written Plan and log, these costs may be offset through the use of a Plan that may reduce the need for last-minute supplemental staffing.

Legal services may be required to negotiate, draft or review contracts with alternative staffing providers such as per diem agencies. It is anticipated that a vast majority of health care providers in the state already have such agreements in place or have procurement or legal staff who regularly work on such contracts.

Requirements with regard to the posting of such Plan and the logging of efforts to obtain staff coverage in compliance with the Plan will result in minimal or no additional cost.

5. Economic and technological feasibility:

The proposed rule does not impose any new technological requirements. Economic feasibility is addressed above under compliance costs.

6. Minimizing adverse impact:

This rule is necessary to implement Labor Law, Section 167, as enacted by chapter 493 of the Laws of 2008. Although this enabling legislation does not require the promulgation of regulations, it does not provide sufficient details with regard to what is expected of health care employers so as to avoid, to the greatest extent possible, unnecessary mandatory overtime. The rule addresses these statutory gaps by

requiring that covered employers develop a staffing plan, by setting forth the minimum elements to be addressed in this plan, and by requiring that the plan be made available to the Commissioner and to nursing staff and their representatives. At the same time, the rule clarifies circumstances under which various types of emergencies will exempt health care employers from the prohibition against mandatory overtime to cover nursing staffing needs that would otherwise apply.

This rule fulfills the legislative objective of chapter 493 by improving the health care environment for patients and the working environments for nurses and their families, while at the same time minimizes the potential impact on the health care employers by allowing them to develop a Nurse Coverage Plan which addresses their specific needs and takes into account all of their specific circumstances.

7. Small business and local government participation:

The Department solicited input on these regulations from various employer representatives. These employer representatives have members from small businesses and local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

Any rural area where nurses are employed will be affected. The type of affect will depend on the degree to which those areas are currently relying on unscheduled, mandatory overtime to fill staffing requirements.

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

The reporting, recordkeeping and compliance requirements contained in the proposed rule are minimal. The employer will be required to develop a Nurse Coverage Plan which identifies and describes as many alternative staffing methods as are available to the health care employer to ensure adequate staffing through means other than use of overtime, including, but not limited to, contracts with per diem nurses, contracts with nurse registries and employment agencies for nursing services, arrangements for assignment of nursing floats, requesting an additional day of work from off-duty employees, and development and posting of a list of nurses seeking voluntary overtime. The healthcare employer must log all good faith attempts to seek alternative staffing through the methods identified in the health care employers' Nurse Coverage Plan. The Plan must be in writing, and be provided to the nursing staff, to any collective bargaining representative representing nurses at the health care facility and to the Commissioner of Labor upon request.

The rule will also require health care employers to seek alternative sources to obtain the services of nurses other than forcing their current nursing staff to work mandatory overtime shifts. In this respect, the health care employers will be seeking professional nursing services which would have otherwise been performed by their current nursing staff on a mandatory basis. This may necessitate the drafting of contracts with alternative staffing providers such as per diem agencies.

3. Costs:

Employers in both the public and private sectors covered by this rule may have to enter into contracts with nursing staff providers such as nurses' registries, per diem nursing services, and temporary agencies to have a viable source of additional nursing staff to use in lieu of mandating overtime of current staff. The cost for individual health care employers will depend upon the extent to which the Plan relies on these contract workers and the degree of coverage that the health care employer will need. In the current environment of nursing shortages, a major medical center with several special care units requiring specially trained nursing staff may find it more difficult to fill shifts from among their own nursing staff. At the other end of the spectrum, facilities with a very small staff, few resources or in underserved or remote locations may not be able to compete to fill vacancies. At the time this legislation was before the Governor for action, the Division of Budget estimated compliance would cost approximately \$13 million in its first year. However, these costs - attributable to the hiring of per diem nurses necessary to ensure that sufficient nursing care is available for patients in the absence of the availability of mandatory overtime - will be offset by savings of \$5 million, which otherwise would have been paid for such overtime. Also, it is likely that in the

one year period from when Section 167 was enacted into law, employers have been preparing for implementation of the statute and have taken steps to mitigate costs associated with this new law.

Other than staffing needs, costs associated with the rule will be administrative. Health care employers must prepare a Plan which takes into account typical patterns of staff absenteeism due to illness, leave, bereavement and other similar factors as well as the number and types of patients typically served in the health care employer's facility. The Plan must also identify and describe the alternative staffing methods the employer will use to avoid mandatory overtime. It is not anticipated that any health care employer would have to retain outside professional services to prepare the Nurse Coverage Plan. Although there are administrative costs and time associated with developing and maintaining a written Plan and log, these costs may be offset through the use of a Plan in place that may reduce the need for last-minute supplemental staffing.

Legal services may be required to negotiate, draft or review contracts with alternative staffing providers such as per diem agencies. It is anticipated that a vast majority of health care providers in the state already have such agreements in place or have procurement or legal staff who regularly work on such contracts.

Requirements with regard to the posting of such Plan and the logging of efforts to obtain staff coverage in compliance with the Plan will result in minimal or no additional cost.

4. Minimizing adverse impact:

This rule is necessary to implement Labor Law, Section 167, as enacted by chapter 493 of the Laws of 2008. Although this enabling legislation does not require the promulgation of regulations, it does not provide sufficient details with regard to what is expected of health care employers so as to avoid, to the greatest extent possible, unnecessary mandatory overtime. The rule addresses these statutory gaps by requiring that covered employers develop a staffing plan, by setting forth the minimum elements to be addressed in this plan, and by requiring that the plan be made available to the Commissioner and to nursing staff and their representatives. At the same time, the rule clarifies circumstances under which various types of emergencies will exempt health care employers from the prohibition against mandatory overtime to cover nursing staffing needs that would otherwise apply.

This rule fulfills the legislative objective of chapter 493 by improving the health care environment for patients and the working environments for nurses and their families, while at the same time minimizes the potential impact on the health care employers by allowing them to develop a Nurse Coverage Plan which addresses their specific needs and takes into account all of their specific circumstances.

5. Rural area participation:

The Department sought input on these regulations from various employee representative groups which represent rural area employees. Additionally, the Department received input from various employer representative groups which also represent rural area employees.

Job Impact Statement

Health care employers covered by this rule may have to enter into contracts with nursing staff providers such as nurses' registries, per diem nursing services and temporary agencies to have a viable source of nursing staff to use in lieu of mandatory overtime. At the time Section 167 of the Labor Law (the statutory authority for this rule) was before the Governor for signature, the Division of the Budget estimated compliance would cost approximately \$13 million in its first year, which was attributable to the hiring of per diem nurses to ensure that sufficient nursing care is available for patients in the absence of the availability of mandatory overtime. Accordingly, this rule would not have a substantial adverse impact on jobs; in fact it will create more jobs.

Division of the Lottery

EMERGENCY RULE MAKING

Operation of the LOTTO Game and the New York Lottery Subscription Program

I.D. No. LTR-05-10-00006-E

Filing No. 34

Filing Date: 2010-01-14

Effective Date: 2010-01-14

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

Action taken: Repeal of sections 2804.14 and 2804.15, and Part 2817; and addition of new sections 2804.14 and 2804.15, and Part 2817 to Title 21 NYCRR.

Statutory authority: Tax Law, sections 1601, 1604 and 1612

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

Specific reasons underlying the finding of necessity: Emergency adoption of the new LOTTO regulations is necessary to counteract the budgetary crisis currently facing the State of New York. Governor Paterson discussed the severity of this crisis in his January 7, 2009 State of the State address:

New York faces an historic economic challenge, the gravest in nearly a century. For several months, events have shaken us to the core. Bank closures, job losses and stock market meltdowns have destabilized the foundations of our economy. Since January 2008, two million Americans have lost their jobs. During this recession, an estimated 225,000 New Yorkers will be laid off. Many others have lost their homes. The pillars of Wall Street have crumbled. The global economy is reeling. Trillions of dollars of wealth have vanished.

We still do not know the extent of the economic chaos that awaits us. We do know that this may be the worst economic contraction since the Great Depression. New York entered recession in August. Wall Street was hit the hardest. At least 60,000 jobs will be lost in the financial services sector, which is devastating to our state budget. Financial services provide 20% of state government revenues, so this year's budget will be exceptionally difficult.

Let me be clear – our state faces historic challenges. Our economy is damaged, our confidence is shaken, and the economic obstacles we face seem overwhelming. . . These problems may last for many more months or even years.

Since his State of the State address, the Governor has continued to underscore the importance of reversing New York State's ominous fiscal situation.

The New York Lottery (the "Lottery") has the unique ability to generate revenue for the State quickly and at a critical time when additional revenue is essential. By offering a new version of the LOTTO game, the Lottery will reverse a downward trend in LOTTO sales and increase revenue earned for education in New York State.

The new regulations allow the Lottery to address the continuing decline in LOTTO sales. Over the course of State Fiscal Years 2004-05 through 2007-08, LOTTO sales decreased by an average of 10.4% annually. LOTTO sales declined to only \$208,400,000 in the fiscal year ending on March 31, 2008 compared to earlier levels of over \$356,000,000 a year. If the 10.4% annual decline in LOTTO sales continues through the fiscal year ending March 31, 2012, sales for that year will total only \$134,420,000. The aid to education from this game will also drop from an estimated \$109,858,000 in FY 2007-08 to only \$70,860,000 in FY 2011-12, which is a difference of almost forty million dollars that will need to be subsidized from the General Fund. LOTTO sales even further declined in FY 2008-09 at a rate of 14.6% compared to the previous fiscal year. If this amplified downward trend continues, the consequential decline in aid to education will be even more significant than what is currently projected.

The declining sales of the LOTTO game must be addressed immediately to not only maintain current revenue earned for education, but to generate additional money for the State. The new game rules are intended to re-ignite interest in the game by providing for a more attractive prize structure with better odds of winning top prizes. Marketing research and consumer surveys indicate that interest in the new LOTTO game is high, which suggests that the State is likely to realize indispensable budgetary relief in the form of increased revenue for education earned through improved LOTTO sales.

In an effort to make the LOTTO game more attractive, the Lottery has further revised the LOTTO game rules to permit multiple variations of the game and to allow flexibility for the Lottery to adjust the game or games based on market trends. The ability to respond to the player market will also provide the Lottery with the opportunity to increase ticket sales for the LOTTO game or games and ultimately generate more revenue to the State for aid to education.

Due to the unprecedented need for revenue at this time, the Lottery and the State cannot afford to delay relaunch of the LOTTO game until completion of a normal rulemaking process under the State Administrative Procedure Act. Therefore, the new LOTTO regulations must first be implemented through Emergency Adoption.

Subject: Operation of the LOTTO game and the New York Lottery subscription program.

Purpose: To revise the rules of the LOTTO game and related subscription provisions.

Substance of emergency rule: The amendments revise the regulations for the operation of the LOTTO game. Due to the prolonged decline in popularity of the Lottery's former flagship game, the Lottery is relaunching LOTTO to make it more appealing to consumers, which should ultimately generate more revenue to the State for aid to education.

The revised game rules provide for a more attractive prize structure for players and are intended to re-ignite interest in the game. The first prize for the game shall be \$1,000,000 paid as a lump sum. There will be approximately three times as many top prizes as under the existing LOTTO game. The first prize will not be a shared prize unless a certain maximum number of game panels match the applicable numbers for a particular drawing. The revised regulations also address the second prize category through the fourth prize category.

Definitions are revised to accommodate the new design while also providing that certain specific game rules shall be publicly announced by the Lottery. The definition of the LOTTO game was revised to permit the Lottery to change the name of the game or to offer two or more versions of the LOTTO game with different fields of numbers and prize structures.

The LOTTO regulations are amended to permit minor changes in the game structure if marketing evidence suggests that alteration may result in greater interest in the game and increased revenue for the State. Game details not specified in the regulations will be communicated to players via the Lottery's official website, on which the Lottery will designate the odds of winning, the prize structure, including fixed prize amounts, and details about any additional version of the LOTTO game. The Lottery will also announce details regarding LOTTO in advertisements, news releases, play slips, brochures located at retailers, or in any other form that the Director may prescribe. Therefore, slight modifications to the game will not necessarily require amendment of the regulations. This ensures that the Lottery will be able to offer the best possible game, which will appeal to more customers and maximize revenue for aid to education in New York State.

The regulations relating to subscriptions are also amended to comply with revisions to the LOTTO game. The revised subscription regulations generally describe subscription costs and subscription application requirements. In addition to LOTTO, these regulations apply to any other game that the Lottery has or may have available under the subscription program.

Technical amendments are also made throughout the proposed regulations.

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 April 13, 2010.

Text of rule and any required statements and analyses may be obtained from: Kent D. VanderWal, Senior Attorney, New York Lottery, One Broadway Center, P.O. Box 7500 Schenectady, New York 12301, (518) 388-3408, email: nylrules@lottery.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The new regulations for the New York Lottery's subscription program and the LOTTO game are proposed pursuant to Tax Law, Sections 1601, 1604 and 1612.

Tax Law § 1601 describes the purpose of the New York State Lottery for Education Law (Tax Law Article 34) as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively for aid to education. Tax Law § 1604 authorizes the Division of the Lottery (the Lottery) "to promulgate rules and regulations governing the establishment and operation thereof." Tax Law § 1612(a)(4) specifies the percentages for disposition of LOTTO sales revenues and describes the game as, "Lotto", offered no more than once daily, a discrete game in which all participants select a specific subset of numbers to match a specific subset of numbers, as prescribed by rules and regulations promulgated and adopted by the division, from a larger specific field of numbers, as also prescribed by such rules and regulations."

2. Legislative objectives: The purpose of operating Lottery games is to generate earnings for the support of education in the State. Repeal and replacement of these regulations will improve the Lottery's ability to generate earnings for education by increasing consumer interest in LOTTO games.

3. Needs and benefits: The LOTTO game has sustained competitive pressure from large jackpot lottery games, which has produced a decline in LOTTO revenues and a loss of player interest. A comparison of LOTTO revenues for 2004-05 to revenues for 2008-09 shows an annual decline of 12.9%. For the fiscal year ending on March 31, 2009, revenues declined to only \$178,100,000 from earlier levels of over \$356,000,000 a year. If the 12.9% annual decline in revenues continues through the fiscal year ending March 31, 2012, revenues for that year will total only \$117,900,000. The aid to education from this game will also drop from an estimated \$93,900,000 in FY 2008-09 to only \$62,200,000 in the fiscal year ending on March 31, 2012.

Repeal and replacement of the LOTTO regulations will allow the Lottery to reverse this trend and 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 play lottery games. The new regulations allow the Lottery to offer additional versions of the LOTTO game. Pursuant to the new regulations, including an emergency regulation adopted on July 31, 2009, the Lottery has, as of September 15, 2009, introduced a variation of the LOTTO game called Sweet Million with more attractive odds of winning intended to generate renewed interest in LOTTO games. Because the new variation of the LOTTO game has more favorable odds of winning a first prize, revenues are expected to increase.

Marketing research and consumer surveys indicate that interest in the new variation of the LOTTO game is high. Players are motivated by "better odds," and many think the new game is a great value. Research reveals that players find the improved odds of winning when compared to the current LOTTO game to be the single most exciting aspect of the new game. Survey participants also responded favorably to first prize being paid as a lump sum. Of those surveyed, 86% prefer jackpot winnings to be paid all at once in cash as opposed to installments. This evidence suggests that New Yorkers are intrigued by the new game, and the State is likely to realize a tangible benefit in the form of increased earnings for education.

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; since current funds reserved for administrative expenses of operating lottery games are expected to be sufficient to support the new variation of the LOTTO game, including advertising expenses, point of sale material production costs, and the cost of printing play slips for the new game. The new variation of the LOTTO game will generate more earnings for aid to education, which will far exceed the minimal expenses necessary to operate the new game. More aid to education from the Lottery will have a positive effect on the State because less funds will then be required from other General Fund resources to aid education. Furthermore, if less funds are required from other General Fund resources to aid education, local governments will benefit because increased funding for local schools from Lottery earnings will ease local tax burdens. Local retailers will earn higher commissions as ticket sales increase, which may result in more employment opportunities.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the Lottery's experience in operating State Lottery games for more than 40 years.

5. Local government mandates: None. No local government is authorized or required to do any act, apply any effort, expend any funds, or use any other resources in connection with the operation of the LOTTO game or LOTTO game variations. All necessary actions will be carried out by the Lottery or licensed Lottery retailers who will be completely responsible for all aspects of game operations at the local retail level. The Lottery has no authority and no need to impose any mandate on any local government. Consequently, no provision of the rule imposes any burden on any local government in the State.

6. Paperwork: There are no changes in paperwork requirements. Game information will be issued by the New York Lottery for public convenience on the Lottery's website and through point of sale advertising materials at retailer locations.

7. Duplication: None.

8. Alternatives: The revised LOTTO regulations permit minor changes in the structure of any variation of the LOTTO game if marketing evidence suggests that alteration may result in greater interest in that game and increased revenue for the State. Specific game details not specified in the regulations will be communicated to players via the Lottery's official website, on which the Lottery will designate the odds of winning, the prize structure, including fixed prize amounts, and details about any additional

version of the LOTTO game. The Lottery will also announce details of LOTTO games in mass media advertisements, news releases, play slips, point of sale materials located at retailers, or in any other form that the Director may prescribe. Therefore, slight modifications to any variation of the LOTTO game will not require amendment of the regulations. This will ensure that the Lottery will be able to offer the best possible game or games, which will appeal to more customers and result in maximum sales and revenue for aid to education in New York State.

The alternative to amending the LOTTO regulations is to not address the declining revenues for the existing LOTTO game and forfeit the investment already made by the Lottery in the game. The annual LOTTO sales decline of 12.9% will likely continue, and the State will lose millions of dollars in revenue. The failure to proceed will also result in lost aid to education that is anticipated to be earned following introduction of a new variation of the LOTTO game.

9. Federal standards: None.

10. Compliance schedule: None.

Regulatory Flexibility Analysis and Rural Area Flexibility Analysis

This rulemaking does not require a Regulatory Flexibility Analysis or a Rural Area Flexibility Analysis. There will be no adverse impact on rural areas, small business or local governments.

The proposed amendments to the LOTTO game and subscription regulations will not impose any adverse economic or reporting, recordkeeping or other compliance requirements on small businesses or local governments. Small businesses will not have any additional recordkeeping requirements as a result of the amendments. Additionally, the proposed amendments are anticipated to have a positive effect on the revenue of small businesses that sell lottery tickets as more players will be interested in the game, which will increase sales commissions paid to retailers. Local governments are not regulated by the New York Lottery or its subscription regulations, nor are any economic or recordkeeping requirements imposed on local governments as a result of the amendments.

Job Impact Statement

The proposed repeal and replacement of 21 NYCRR sections 2804.14 and 2804.15 and Part 2817 does not require a Job Impact Statement because there will be no adverse impact on jobs and employment opportunities in New York State. The repeal and replacement of the regulations is sought merely to relaunch the New York Lottery's LOTTO game to generate more revenue for the State in aid to education.

The proposed revision to the LOTTO and Subscription regulations will not have any adverse effect on jobs or employment opportunities.

The proposed revision may have a positive effect on jobs or employment opportunities as a result of an increase in LOTTO ticket sales, which would increase sales commissions paid to Lottery retailers.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-05-10-00007-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by LC White Plains Recreation, LLC to submeter electricity at 6 City Place, White Plains, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of LC White Plains Recreation, LLC to submeter electricity at 6 City Place, White Plains, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by LC White Plains Recreation, LLC to submeter electricity at 6 City Place, White Plains, New York located in the territory of Consolidated Edison Company of New York, Inc.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany,

New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(09-E-0767SP1)

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

Petition for the Submetering of Electricity

I.D. No. PSC-05-10-00008-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 grant, deny or modify, in whole or part, the petition filed by University Residences – Rochester, LLC to submeter electricity at 220 John Street, Henrietta, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of University Residences – Rochester, LLC to submeter electricity at 220 John Street, Henrietta, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by University Residences – Rochester, LLC to submeter electricity at 220 John Street, Henrietta, New York located in the territory of Rochester Gas and Electric Corporation.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(09-E-0770SP1)

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

Petition for the Submetering of Electricity

I.D. No. PSC-05-10-00009-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 3462 Third Avenue Owner Realty LLC to submeter electricity at La Casa De La Luna/Estrella, 3462 and 3480 Third Avenue, Bronx, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 3462 Third Avenue Owner Realty LLC to submeter electricity at 3462 and 3480 Third Avenue, Bronx, NY.

Substance of proposed rule: The Public Service Commission is consider-

ing whether to grant, deny or modify, in whole or part, the petition filed by 3462 Third Avenue Owner Realty LLC to submeter electricity at La Casa De La Luna/Estrella, 3462 and 3480 Third Avenue, Bronx, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(09-E-0868SP1)

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

Petition for the Submetering of Electricity

I.D. No. PSC-05-10-00010-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 424 Bedford Plaza LLC to submeter electricity at 424 Bedford Avenue, Brooklyn, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 424 Bedford Plaza LLC to submeter electricity at 424 Bedford Avenue, Brooklyn, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 424 Bedford Plaza LLC to submeter electricity at 424 Bedford Avenue, Brooklyn, New York located in the territory of Consolidated Edison Company of New York, Inc.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(09-E-0668SP1)

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

Possible Modifications to Targets, Procurement Rules, Budgets and Collections

I.D. No. PSC-05-10-00011-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, as part of a planned

2009 comprehensive review, whether to adopt modifications to its Renewable Portfolio Standard (RPS) program.

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

Subject: Possible modifications to targets, procurement rules, budgets and collections.

Purpose: To encourage electric energy generation in the State from renewable resources.

Substance of proposed rule: The New York State Public Service Commission is considering, as part of a planned 2009 comprehensive review, whether to adopt modifications to its Renewable Portfolio Standard (RPS) program established in Case 03-E-0188. The RPS program has been the State's primary policy initiative to promote the development of new renewable energy resources. It is an integral part of an effort to achieve an overall goal of increasing the percentage of electricity consumed by retail customers in the state that is generated by renewable resources to 30 percent by 2015. The RPS program is designed to achieve the share of that goal attributable to retail customers under the jurisdiction of the Commission; it excludes shares attributable to the voluntary market and to retail customers served by the New York Power Authority and the Long Island Power Authority, two entities not under the jurisdiction of the Commission. To date, the Commission has authorized the collection from ratepayers of approximately \$741.5 million through 2013 to fund the RPS program through 2013 based upon cost projections made in 2003. These collections were authorized with the expectation that additional collections would be necessary after 2013 to pay the continued cost of RPS contracts beyond 2013 until they expire. The collection amounts did not include funding for maintenance contracts, administration and evaluation expenses, or amounts incurred as a New York State Cost Recovery Fee.

The New York State Energy Research and Development Authority (NYSERDA) is the designated administrator of the RPS program. Resources for the RPS program are procured by NYSEDA in two "tiers". The first or "Main Tier" consists primarily of medium to large-scale electric generation facilities that deliver their electrical output into the wholesale power market administered by the New York Independent System Operator and are generally awarded performance-based incentive payment contracts on a competitive basis. The second or "Customer-Sited Tier" consists of smaller, "behind-the-meter" resources that produce electricity for use on site and upon application to NYSEDA receive a one-time incentive payment or a combination of a one-time payment and performance-based incentives. The RPS program also currently provides financial incentives within the structure of the Main Tier to maintain the operation of certain existing facilities considered "Maintenance Resources". Maintenance contracts are only awarded on a case-by-case basis after rigorous Commission review and approval.

The Commission has required a comprehensive review of the RPS program in 2009. As part of that review, Staff of the Department of Public Service (Staff) prepared an RPS Mid-Course Report. The Mid-Course Report builds on the comments by stakeholders and NYSEDA and, in light of current facts and circumstances, addresses funding and a number of additional issues that affect the long-term viability of the RPS program. The Commission has also received two evaluation reports prepared by third-party contractors and a draft report filed by NYSEDA.

Attached is a list of questions that are expected to be considered as part of the 2009 comprehensive review. Parties wishing to address these questions in comments or raise other issues for the Commission's consideration should also review the contents of the reports described above.

ISSUES RELATED TO THE RPS PROGRAM IN GENERAL

1. What is the value of continued renewable investments producing economies of scale and encouraging technological improvements that in turn will drive the costs of these resources further down toward the point where their price will converge with that of conventional generation technologies?

2. To what extent can and should the Commission encourage utilities and energy services companies (ESCOs) subject to its jurisdiction to enter into financial "hedging" contracts related to the sale of energy into the New York spot market by Main Tier participants and other renewable resource generators?

ISSUES RELATED TO THE MAIN TIER

3. How should the Main Tier procurement of small-scale hy-

dropower and biogas resources be handled, including consideration of whether this should be done through an ongoing Standard Offer Contract approach? If so, should there be a resource size cap and/or funding cap above which the offer would not be available?

4. What changes, if any, should be made to the "vintage" requirement? Is it appropriate to offer RPS financial support to renewable energy generation facilities that have already obtained financing and been constructed?

5. Main Tier contracts currently provide a fixed premium over ten years for every MWh produced. That is, all bidders are ranked on an equivalent basis using their fixed price bids. Should other bidding options, such as but not limited to, contracts for differences, price caps and price floors be considered? If so, how should they be employed in a competitive procurement process and how should the collection schedule be modified to automatically match variations in costs?

6. Is it appropriate for Main Tier contracts to have a mandatory term of 10 years? Should there be any exceptions for fuel-based resources?

7. Should Main Tier contracts allow for the sale of the underlying energy outside of the NYISO-administered spot market?

8. Should Main Tier contracts allow for incentive payments at times when the new renewable resource generation is displacing pre-existing renewable resource produced generation?

MAINTENANCE ISSUES

9. Should support for Maintenance Resources under the Main Tier be continued and if so, should only shorter-term contracts be awarded?

ISSUES RELATED TO THE CUSTOMER SITED TIER

10. Should geographic equity be considered in future procurements to offset a geographic imbalance of the current procurement practices for the Main Tier production?

11. Is it reasonable for the Customer-Sited Tier to continue to fund small "behind-the-meter" solar photovoltaic installations? If so, what are reasonable size limitations? What NYSEDA actions are necessary if demand for solar photovoltaic installations increases significantly above the amount of funding budgeted?

12. Should the Customer-Sited Tier fund larger solar photovoltaic installations? What would be the parameters for these projects?

13. Should the Customer-Sited Tier continue to fund "behind-the-meter" anaerobic digester installations until virtually all the New York facilities having significant sources of manure and sewage effluent have been tapped for their energy potential? Should anaerobic digester installations at New York facilities having significant sources of food waste be funded?

14. Should the Customer-Sited Tier continue to fund small "behind-the-meter" mature (non-experimental) fuel cell installations? Is the current \$1 million per unit cap on funding for supported fuel cells sufficient or should it be increased? Is it reasonable for fuel cells to receive RPS funding support if the feedstock powering the fuel cell is a fossil-fuel?

15. Should the Customer-Sited Tier continue to fund small "behind-the-meter" wind installations? Should the small wind program allow larger turbines up to 600 kW in capacity or some other size?

16. What changes are appropriate for the Customer-Sited Tier, including whether any new technologies (such as solar thermal) should be included in that tier?

17. How should the program accommodate the introduction of new/emerging renewable energy Customer-Sited Tier technologies within the 2015 timeframe?

POTENTIAL FOR UTILITY-SITED TIER

18. Should a new "Utility-Sited Tier" be established to promote small, utility solar photovoltaic facilities that integrate renewable energy generation into the distribution system at strategic locations? If so, what parameters would be used to define "strategic location"?

PROGRAM DESIGN AND IMPLEMENTATION ISSUES

19. Should a new schedule of RPS collections be set through calendar year 2024 based upon a forecast of all future RPS costs? Should additional collections be authorized at this time to fully fund the RPS program?

20. Is it reasonable to reflect the SBC/RPS charges on utility bills as a single Clean Energy Initiative (CEI) charge? How might this objective be accomplished?

ISSUES RELATED TO THE VOLUNTARY MARKET

21. To what extent should the current efforts to develop a more automatic and certificate-based tracking system in New York State which might accommodate some certificate trading be continued?

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.state.ny.us

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

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

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

(03-E-0188SP24)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-05-10-00012-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 grant, deny or modify, in whole or part, the petition filed by West 147th Street Associates, LLC to submeter electricity at 220 West 148th Street, New York, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of West 147th Street Associates, LLC to submeter electricity at 220 West 148th Street, New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by West 147th Street Associates, LLC to submeter electricity at 220 West 148th Street, New York, New York located in the territory of Consolidated Edison Company of New York, Inc.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(09-E-0694SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-05-10-00013-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Westbeth Corp. HDFC, Inc. to submeter electricity at 463 West Street, New York, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Westbeth Corp. HDFC, Inc. to submeter electricity at 463 West Street, New York, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Westbeth Corp. HDFC, Inc. to submeter electricity at 463 West Street, New York, New York located in the territory of Consolidated Edison Company of New York, Inc.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(09-E-0728SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Possible Modifications to Renewable Portfolio Standard (RPS) Program Eligibility Rules, Budgets and Collections

I.D. No. PSC-05-10-00014-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 a petition by the New York Solar Energy Industries Association dated January 8, 2010 seeking the inclusion of solar thermal systems as eligible technologies in the Customer-Sited Tier of the Renewable Portfolio Standard (RPS).

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

Subject: Possible modifications to Renewable Portfolio Standard (RPS) program eligibility rules, budgets and collections.

Purpose: To encourage the use of solar thermal energy instead of electricity in the State.

Substance of proposed rule: The New York State Public Service Commission is considering whether to adopt, modify, or reject, in whole or in part, the proposals set forth by the New York Solar Energy Industries Association in a petition dated January 8, 2010, seeking the inclusion of solar thermal systems as eligible technologies in the Customer-Sited Tier of the Renewable Portfolio Standard (RPS) program established in Case 03-E-0188.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.state.ny.us

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

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

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

(03-E-0188SP23)

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

Petition for the Submetering of Electricity**I.D. No.** PSC-05-10-00015-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 grant, deny or modify, in whole or part, the petition filed by 243 West End Avenue Owners Corp. to submeter electricity at 243 West End Avenue, New York, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 243 West End Avenue Owners Corp. to submeter electricity at 243 West End Avenue, New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 243 West End Avenue Owners Corp. to submeter electricity at 243 West End Avenue, New York, New York located in the territory of Consolidated Edison Company of New York, Inc.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(09-E-0738SP1)

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

Petition for the Submetering of Electricity**I.D. No.** PSC-05-10-00016-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 grant, deny or modify, in whole or part, the petition filed by 230 Livingston Street Owner LLC to submeter electricity at 236 Livingston Street, Brooklyn, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 230 Livingston Street Owner LLC to submeter electricity at 236 Livingston Street, Brooklyn, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 230 Livingston Street Owner LLC to submeter electricity at 236 Livingston Street, Brooklyn, New York located in the territory of Consolidated Edison Company of New York, Inc.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(09-E-0730SP1)

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

Petition for the Submetering of Electricity**I.D. No.** PSC-05-10-00017-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 grant, deny or modify, in whole or part, the petition filed by 110 Green Street Development LLC to submeter electricity at 130 Green Street, Brooklyn, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 110 Green Street Development LLC to submeter electricity at 130 Green Street, Brooklyn, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 110 Green Street Development LLC to submeter electricity at 130 Green Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(09-E-0779SP1)

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

Authorization to Terminate Natural Gas Transportation Service**I.D. No.** PSC-05-10-00018-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, reject, or modify, in whole or in part, the request by St. Lawrence Gas Company, Inc. to terminate natural gas transportation service to AG—Energy, L.P.

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

Subject: Authorization to terminate natural gas transportation service.

Purpose: To decide whether to authorize St. Lawrence Gas Company, Inc. to terminate natural gas service to AG Energy, L.P.

Substance of proposed rule: By petition dated December 30, 2009, St. Lawrence Gas Company, Inc. is seeking authorization to terminate natural gas transportation service to AG—Energy, L.P. The Commission is considering whether to approve, reject, or modify, in whole or in part, the request by St. Lawrence Gas Company, Inc. to terminate service.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany,

New York 12223-1350, (518) 486-2655, email:
leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(09-G-0872SP1)