

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.

Office of Alcoholism and Substance Abuse Services

NOTICE OF ADOPTION

Repeal of an Obsolete Rule Pertaining to Family Care Homes

I.D. No. ASA-48-10-00006-A
Filing No. 107
Filing Date: 2011-01-25
Effective Date: 2011-02-09

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

Action taken: Repeal of Part 87 of Title 14 NYCRR.
Statutory authority: Mental Hygiene Law, sections 13.09(b) and 16.00
Subject: Repeal of an obsolete rule pertaining to family care homes.
Purpose: To repeal 14 NYCRR Part 87.
Text or summary was published in the December 1, 2010 issue of the Register, I.D. No. ASA-48-10-00006-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Sara Osborne, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: SaraOsborne@oasas.state.ny.us
Assessment of Public Comment
The agency received no public comment.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-33-10-00015-A
Filing No. 91
Filing Date: 2011-01-20
Effective Date: 2011-02-09

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the non-competitive class.
Text or summary was published in the August 18, 2010 issue of the Register, I.D. No. CVS-33-10-00015-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-42-10-00013-A
Filing No. 90
Filing Date: 2011-01-20
Effective Date: 2011-02-09

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete a subheading and positions from and classify positions in the exempt class.
Text or summary was published in the October 20, 2010 issue of the Register, I.D. No. CVS-42-10-00013-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-42-10-00014-A**Filing No.** 94**Filing Date:** 2011-01-20**Effective Date:** 2011-02-09

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text or summary was published in the October 20, 2010 issue of the Register, I.D. No. CVS-42-10-00014-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-42-10-00015-A**Filing No.** 92**Filing Date:** 2011-01-20**Effective Date:** 2011-02-09

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

Action taken: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: Substitute a subheading in the exempt and non-competitive classes; classify and delete positions in the non-competitive class.

Text or summary was published in the October 20, 2010 issue of the Register, I.D. No. CVS-42-10-00015-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-42-10-00016-A**Filing No.** 95**Filing Date:** 2011-01-20**Effective Date:** 2011-02-09

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text or summary was published in the October 20, 2010 issue of the Register, I.D. No. CVS-42-10-00016-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-42-10-00017-A**Filing No.** 93**Filing Date:** 2011-01-20**Effective Date:** 2011-02-09

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 20, 2010 issue of the Register, I.D. No. CVS-42-10-00017-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-42-10-00019-A**Filing No.** 96**Filing Date:** 2011-01-20**Effective Date:** 2011-02-09

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text or summary was published in the October 20, 2010 issue of the Register, I.D. No. CVS-42-10-00019-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-42-10-00020-A**Filing No.** 98**Filing Date:** 2011-01-20**Effective Date:** 2011-02-09

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

Action taken: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt and non-competitive classes.

Text or summary was published in the October 20, 2010 issue of the Register, I.D. No. CVS-42-10-00020-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-42-10-00021-A**Filing No.** 97**Filing Date:** 2011-01-20**Effective Date:** 2011-02-09

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

Action taken: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: Delete a subheading, delete positions and classify positions in the exempt and non-competitive classes.

Text or summary was published in the October 20, 2010 issue of the Register, I.D. No. CVS-42-10-00021-P.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Supplemental Military Leave Benefits**I.D. No.** CVS-06-11-00004-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, 2011.

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, 2011, 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 2011. 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, 2011. 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 2011 by performing qualifying military service.

Employees on leave at reduced pay or training leave at reduced pay on January 1, 2011, have their rate of pay calculated from their base State pay as of January 1, 2011, reduced by the military pay rate applied to their most recent period in either reduced pay category prior to 2011. For employees who have used leave at reduced pay or training leave at reduced pay prior to year 2011, their pay for either type of reduced pay leave at point between January 1, 2011 and December 31, 2011, will be calculated from their base State pay as of their last day in full pay status after January 1, 2011, 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 2011. Employees whose initial use of either reduced pay leave category occurs during 2011 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 2011, 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, 2011, 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 computations 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, 2011. 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 2011 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.

State Commission of Correction

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Lock and Securing Device Inspections

I.D. No. CMC-06-11-00001-P

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

Proposed Action: Amendment of section 7003.10 of Title 9 NYCRR.

Statutory authority: Correction Law, section 45(6) and (15)

Subject: Lock and securing device inspections.

Purpose: To extend the intervals within which locks and securing devices must be inspected.

Text of proposed rule: Section 7003.10 of Title 9 is amended to read as follows:

§ 7003.10 Locks and other securing devices

The chief administrative officer shall ensure that all locks and other securing devices including, but not limited to, bars, security windows, fences and screens are inspected at [least weekly] *intervals not to exceed thirty (30) days* to ensure that such locks and other securing devices are in proper working order. Written records of such inspections shall be maintained and shall include:

- (1) the name of the facility staff member performing the inspection;
- (2) the date of inspection;
- (3) the condition of the locks and other securing devices; and
- (4) any action taken to correct deficiencies in the locks and other securing devices.

Text of proposed rule and any required statements and analyses may be obtained from: Brian M. Callahan, Associate Attorney, New York State Commission of Correction, 80 Wolf Road, 4th Floor, Albany, New York 12205, (518) 485-2346, email: Brian.Callahan@scoc.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority:

Subdivision (6) of section 45 of the Correction Law authorizes the Commission of Correction to promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all persons confined in correctional facilities in New York State. Subdivision (15) of section 45 of the Correction Law allows the Commission to adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of its functions, powers and duties.

2. Legislative objectives:

By vesting the Commission with this rulemaking authority, the Legislature intended the Commission to set minimum standards regarding various aspects of security in local correctional facilities, including the necessary maintenance and inspection of locks and other securing devices.

3. Needs and benefits:

In response to Governor David A. Paterson's Executive Order No. 17, Commission of Correction Chairman Thomas A. Beilein convened a workgroup to undertake a regulatory review of the Commission's

Rules, Regulations and Minimum Standards for the Management of County Jails and Penitentiaries. Participants included sheriffs, jail administrators, and representatives of the New York State Division of the Budget, New York State Sheriffs' Association and the New York State Association of Counties. Of the various issues discussed, a consensus did agree that the regulations relative to the inspection of locks and other securing devices within a local correctional facility could be safely relaxed.

Presently, the Commission's regulations require a weekly inspection of all locks and other securing devices of a local correctional facility, including bars, security windows, fences and screens, to ensure that such devices are in working order. Such a task is especially onerous in larger jurisdictions such as the New York City Department of Corrections, whose facilities alone have tens of thousands of locks. Similarly, facilities in large jurisdictions such as Nassau, Suffolk, Erie and Monroe counties each have over a thousand locks to inspect and maintain. Since the regulation's inception in 1977, the Commission finds that the sophistication and design of correctional facility securing devices, particularly locks, has greatly improved, rendering inspections thereof less necessary and more time consuming. Consequently, the Commission finds it entirely reasonable to extend the intervals within which mandatory inspections must be conducted to thirty (30) days.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: None. The regulation extends the intervals within which locks and other securing devices must be inspected, thus reducing the number of inspections that local correctional facilities must perform annually from 52 to 12. This amendment is expected to immediately generate savings of staff resources, especially in larger jurisdictions where, as mentioned above, the number of locks requiring inspection and maintenance can be in the thousands.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The regulation does not apply to state agencies or governmental bodies. As set forth above in subdivision (a), there will be no additional costs to local governments.

c. This statement detailing the projected costs of the rule is based upon the Commission's oversight and experience relative to the operation and function of a local correctional facility.

5. Local government mandates:

None.

6. Paperwork:

This rule does not require any additional paperwork on regulated parties.

7. Duplication:

This rule does not duplicate any existing State or Federal requirement.

8. Alternatives:

The alternative, maintaining the current regulations relative to the inspection of locks and other securing devices, was explored by the Commission. This alternative was rejected upon the Commission's finding, as set forth above, that the improved sophistication and design of correctional facility securing devices, particularly locks, has rendered inspections thereof less necessary and more time consuming, allowing the Commission to safely extend the intervals within which mandatory inspections must be conducted to thirty (30) days.

9. Federal standards:

There are no applicable minimum standards of the federal government.

10. Compliance schedule:

Each local correctional facility is expected to be able to achieve compliance with the proposed rule immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required pursuant to subdivision three of section 202-b of the State Administrative Procedure Act because the rule does not impose an adverse economic impact on small businesses

or local governments. The proposed rule seeks only to extend the intervals within which locks and securing devices must be inspected in county correctional facilities. Accordingly, it will not have an adverse impact on small businesses or local governments, nor impose any additional reporting, record keeping, or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required pursuant to subdivision four of section 202-bb of the State Administrative Procedure Act because the rule does not impose an adverse impact on rural areas. The proposed rule seeks only to extend the intervals within which locks and securing devices must be inspected in county correctional facilities. Accordingly, it will not impose an adverse economic impact on rural areas, nor impose any additional record keeping, reporting, or other compliance requirements on private or public entities in rural areas.

Job Impact Statement

A job impact statement is not required pursuant to subdivision two of section 201-a of the State Administrative Procedure Act because the rule will not have a substantial adverse impact on jobs and employment opportunities, as apparent from its nature and purpose. The proposed rule seeks only to extend the intervals within which locks and securing devices must be inspected in county correctional facilities. As such, there will be no impact on jobs and employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Maintenance of Chemical Agents

I.D. No. CMC-06-11-00002-P

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

Proposed Action: Amendment of section 7063.6 of Title 9 NYCRR.

Statutory authority: Correction Law, section 45(6) and (15)

Subject: Maintenance of chemical agents.

Purpose: To extend the intervals within which certain chemical agents must be inspected.

Text of proposed rule: Section 7063.6 of Title 9 is amended to read as follows:

§ 7063.6 Storage and maintenance of chemical agents

(a) All chemical agent equipment, munitions or devices stored within a facility shall be maintained in a safe and secure manner. Such storage shall ensure that only persons trained in the use of such articles have access to them.

(b) *Equipment, munitions and devices which exclusively contain or administer oleoresin capsicum (OC) shall be inspected at intervals not to exceed six (6) months.* [Quarterly i]Inspections of all *other* such equipment, munitions or devices shall be conducted *at intervals not to exceed three (3) months.*

(c) A written record of all such inspections shall be maintained which shall include, but need not be limited to:

- (1) the name of the person(s) inspecting the articles;
- (2) the date of inspection;
- (3) the type and quantity of articles stored and inspected; and
- (4) a description of their condition.

(d) Munitions and devices which have passed their predetermined expiration date shall be stored separately from the useful stock.

(e) Such munitions and devices shall be disposed of in compliance with accepted practices or used for training purposes only.

Text of proposed rule and any required statements and analyses may be obtained from: Brian M. Callahan, Associate Attorney, New York State Commission of Correction, 80 Wolf Road, 4th Floor, Albany, New York 12205, (518) 485-2346, email: Brian.Callahan@scoc.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority:

Subdivision (6) of section 45 of the Correction Law authorizes the

Commission of Correction to promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all persons confined in correctional facilities in New York State. Subdivision (15) of section 45 of the Correction Law allows the Commission to adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of its functions, powers and duties.

2. Legislative objectives:

By vesting the Commission with this rulemaking authority, the Legislature intended the Commission to set minimum standards regarding various aspects of security in local correctional facilities, including the necessary maintenance and inspection of chemical agents.

3. Needs and benefits:

In response to Governor David A. Paterson's Executive Order No. 17, Commission of Correction Chairman Thomas A. Beilein convened a workgroup to undertake a regulatory review of the Commission's Rules, Regulations and Minimum Standards for the Management of County Jails and Penitentiaries. Participants included sheriffs, jail administrators, and representatives of the New York State Division of the Budget, New York State Sheriffs' Association and the New York State Association of Counties. Of the various issues discussed, a consensus did agree that the regulations relative to the inspection of chemical agents stored within a county correctional facility could be safely relaxed.

Current Commission regulations allow only for the storage and use of oleoresin capsicum (OC), chloroacetophenone (CN) and orthochlorobenzalmalonitrile (CS) in a county correctional facility. While OC, commonly referred to as "pepper spray", is a non-toxic product, both CS and CN are toxic substances that can cause serious injury or death with significant exposure. Presently, the Commission's regulations require a quarterly inspection of all chemical agent equipment, munitions and devices to ensure proper working order and the absence of leaks. Given the generally harmless characteristics of OC, the agent exclusively used by the vast majority of county correctional facilities within the state (approximately 90% of jurisdictions statewide), the Commission finds it entirely reasonable to extend the intervals within which mandatory inspections must be conducted to six months.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: None. The regulation extends the intervals within which certain chemical agents must be inspected, thus reducing the number of inspections that the vast majority of county correctional facilities must perform annually from four (4) to two (2).

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The regulation does not apply to state agencies or governmental bodies. As set forth above in subdivision (a), there will be no additional costs to local governments.

c. This statement detailing the projected costs of the rule is based upon the Commission's oversight and experience relative to the operation and function of a county correctional facility.

5. Local government mandates:

None.

6. Paperwork:

This rule does not require any additional paperwork on regulated parties.

7. Duplication:

This rule does not duplicate any existing State or Federal requirement.

8. Alternatives:

The alternative, maintaining the current regulations relative to the inspection of chemical agents, was explored by the Commission. This alternative was rejected upon the Commission's finding, as set forth above, that the generally harmless characteristics of OC, the agent used by the majority of county correctional facilities within the state, allowed the Commission to safely extend the intervals within which mandatory inspections must be conducted to six months.

9. Federal standards:

There are no applicable minimum standards of the federal government.

10. Compliance schedule:

Each county correctional facility is expected to be able to achieve compliance with the proposed rule immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required pursuant to subdivision three of section 202-b of the State Administrative Procedure Act because the rule does not impose an adverse economic impact on small businesses or local governments. The proposed rule seeks only to extend the intervals within which certain chemical agents must be inspected in county correctional facilities. Accordingly, it will not have an adverse impact on small businesses or local governments, nor impose any additional reporting, record keeping, or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required pursuant to subdivision four of section 202-bb of the State Administrative Procedure Act because the rule does not impose an adverse impact on rural areas. The proposed rule seeks only to extend the intervals within which certain chemical agents must be inspected in county correctional facilities. Accordingly, it will not impose an adverse economic impact on rural areas, nor impose any additional record keeping, reporting, or other compliance requirements on private or public entities in rural areas.

Job Impact Statement

A job impact statement is not required pursuant to subdivision two of section 201-a of the State Administrative Procedure Act because the rule will not have a substantial adverse impact on jobs and employment opportunities, as apparent from its nature and purpose. The proposed rule seeks only to extend the intervals within which certain chemical agents must be inspected in county correctional facilities. As such, there will be no impact on jobs and employment opportunities.

Deferred Compensation Board

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Conduct of an Annual Audit of Financial Statements or an Administrative Report

I.D. No. DCB-06-11-00003-P

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

Proposed Action: Amendment of section 9005.1 of Title 9 NYCRR.

Statutory authority: State Finance Law, section 5

Subject: Conduct of an annual audit of financial statements or an administrative report.

Purpose: To provide an alternative to smaller deferred compensation plans to meet the annual audit requirement.

Public hearing(s) will be held at: 10:00 a.m., March 25, 2011 at Rm. 124, Empire State Plaza Concourse North, Albany, NY.

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

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

Text of proposed rule: Section 9005.1 is repealed and a new Section 9005.1 is added to read as follows:

Section 9005.1 Financial Statements, Auditing and Administrative Procedures Reports. The board, with respect to the State plan, and the deferred compensation committee, with respect to any other plan, shall be responsible for causing such plan to be in compliance with this Section 9005 for each plan year.

(a) Subject to paragraph (c) of this Section 9005.1, a plan shall be subject to this paragraph (a) for a plan year if the plan has fewer than 100

participants as of the last day of the plan year. If a plan is subject to this paragraph (a) for a plan year, the deferred compensation committee shall:

(1) prepare, or cause to be prepared, for the plan year an unaudited financial statement of the net assets available for benefits and the related statements of changes in net assets available for benefits for the plan year-end; and

(2) engage, or cause to be engaged, in accordance with the requirements of Part 9003 of this Subtitle, a certified public accountant to conduct a review of the plan's activities during the plan year and to produce an administrative procedures report as of the plan year-end, which report shall specify the procedures and methods used and the conclusions reached by such firm of certified public accountants in the examination of each of the following items (and any other additional items as may be required by the deferred compensation committee for the plan):

(i) whether participant account balances, by investment option and in the aggregate as of the plan-year end, as reported by the administrative service agency for the plan, agree to the value of the assets held by the trustee of the plan by investment option and in the aggregate as of plan-year end;

(ii) whether participant deferrals reported by the plan sponsor, by individual participant and in the aggregate, for the plan year agree with the deferrals received by the trustee of the plan for the plan year;

(iii) whether participant deferrals for the plan year were properly authorized and accurately remitted to the trustee of the plan in accordance with the timing and other requirements of the plan document (or industry practice if no direction is provided in the plan document);

(iv) whether the plan properly and separately accounted for pre-tax and, if applicable, designated Roth contributions deferred or contributed for the plan year;

(v) whether maximum contribution limitations and minimum required distribution requirements were properly implemented for the plan year;

(vi) whether participant requests for lump sum and installment benefit distributions for the plan year were properly authorized and processed in accordance with the plan document and contractual provisions (or industry practice, if no direction is provided in the plan document or applicable contracts);

(vii) whether participant requests for unforeseeable emergency withdrawals during the plan year were processed according to written procedures, properly authorized and properly documented;

(viii) whether participant requests for plan loans during the plan year were processed according to written procedures and were properly authorized and documented;

(ix) whether participant requests for deferral amount changes and asset allocation changes for the plan year were processed accurately and in a timely manner in accordance with the plan document and applicable contract provisions (or industry practice, if no direction is provided in the plan document or applicable contracts);

(x) whether all plan-level and participant-level fees for the plan year were disclosed to participants, were allocated in accordance with written procedures and on a uniform basis and were assessed solely to support operations of the plan; and

(xi) whether, for the plan year, employees who were eligible during that plan year to elect to participate in the plan were provided with written notification of the plan and enrollment opportunities.

(3) The specific procedures and methods applied to each item covered by paragraph (a)(2) of this Section 9005.1 shall be determined in the professional judgment of the certified public accountant in accordance with generally accepted industry standards and shall be reviewed with the deferred compensation committee for the plan prior to the firm's examination of the plan.

(b) A plan shall be subject to this paragraph (b) for a plan year if it is the State plan or, subject to paragraph (c) of this Section 9005.1, if the plan has 100 or more participants as of the last day of the plan year. If a plan is subject to this paragraph (b) for a plan year, the board or deferred compensation committee, as applicable, shall:

(1) prepare, or cause to be prepared, a financial statement of the net assets available for benefits and the related statements of changes in net assets available for benefits for the plan year-end, which statements shall be prepared in accordance with Governmental Accounting Standards Board Statement 32, "Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans", or any successor statement thereto; and

(2) engage, or cause to be engaged, in accordance with the requirements of Part 9003 of this Subtitle, a certified public accountant to conduct an audit of the financial statements described in paragraph (b)(1) of this Section 9005.1 in accordance with auditing standards generally accepted in the United States of America.

(c) The following rules shall apply to plans that would otherwise become subject to paragraph (a) or (b) of this Section 9005.1 (or cease to

be subject to paragraph (a) or (b) of this Section 9005.1) from one plan year to the next succeeding plan year as a result of an increase or decrease in the number of participants in the plan.

(1) A plan that (i) was subject to paragraph (a) of this Section 9005.1 for a prior plan year and that has complied with the requirements set forth in paragraph (a) above for that plan year and (ii) becomes subject to paragraph (b) of this Section 9005.1 for the current plan year by virtue of having 100 or more participants as of the last day of the current year, may elect to comply with the provisions of paragraph (a) of this Section 9005.1 for such current plan year, and, if such election is made, shall not be subject to the requirements of paragraph (b) of this Section 9005.1 for the current year.

(2) A plan that (i) was subject to paragraph (b) of this Section 9005.1 for a prior plan year and (ii) would be subject, but for the operation of this paragraph (c)(2), to paragraph (a) of this Section 9005.1 for the current plan year by virtue of having fewer than 100 participants as of the last day of the current plan year, shall be required to continue to comply with the provisions of paragraph (b) of this Section 9005.1 for such current plan year and shall not become eligible to utilize the procedures in paragraph (a) of this Section 9005.1 unless.

(3) Example: Plan X has 90 participants as of the last day of Plan Year 1, and accordingly, the deferred compensation committee of Plan X causes the plan to comply with the financial statement and administrative procedures requirements described in paragraph (a) of this Section 9005.1 with respect to Plan Year 1. On the last day of Plan Year 2, Plan X has 110 participants. Plan X may elect to continue to comply with the provisions of paragraph (a) of this Section 9005.1 and will not be subject to the audit requirements of paragraph (b) for Plan Year 2.

(4) Example: Plan Y has 110 participants as of the last day of Plan Year 1, and accordingly, the deferred compensation committee of Plan Y causes the plan to comply with the financial statement and audit requirements described in paragraph (b) of this Section 9005.1 with respect to Plan Year 1. On the last day of Plan Year 2, Plan Y has 90 participants. Plan Y must continue to comply with the provisions of paragraph (b) of this Section 9005.1 and will not be permitted to rely on the administrative procedures provisions of paragraph (a) of this Section 9005.1 for Plan Year 2.

(d) The deferred compensation committee for a plan subject to paragraph (a) of this Section 9005.1 for a given plan year may elect to comply with the requirements of paragraph (b) of this Section 9005.1 for such plan year.

(e) For purposes of this Section 9005.1, "participant" means any person who, as of the last day of a plan year, has an account balance under the plan that is greater than zero.

(f) The administrative procedures requirement described in paragraph (a)(2) of this Section 9005.1 and the audit requirement described in paragraph (b)(2) of this Section 9005.1 shall be completed by no later than 6 months following the end of the plan year to which such administrative procedures or audit relates. Provided, however, for a plan year that ended on or after December 31, 2010 and before December 31, 2011, the administrative procedures or audit relating to such plan year shall be completed by no later than 12 months following the end of such plan year.

(g) The board or deferred compensation committee, as applicable, for a plan shall adopt and communicate to plan participants written procedures whereby a plan participant may request in writing or electronically to receive the financial statements and administrative procedures report described in paragraph (a)(2) of this Section 9005.1 and the audited financial statements and accompanying auditors report described in paragraph (b)(2) of this Section 9005.1 at no cost to the participant other than a reasonable charge for copying and postage. The board or deferred compensation committee, as applicable, will be deemed to have satisfied the requirements of this paragraph (g) if participants (i) are able to obtain the applicable reports and financial statements for the plan or (ii) are directed to a web site associated with the plan or the State or local employer sponsor of the plan that contains such information in a readily readable and downloadable format.

(h) The board or deferred compensation committee, as applicable, shall file with the president a complete and accurate copy of the financial statements and administrative procedures report described in paragraph (a)(2) of this Section 9005.1 or the audited financial statements and accompanying auditors report described in paragraph (b)(2) of this Section 9005.1 promptly following delivery of such statements and reports to the board or deferred compensation committee, as applicable.

(i) The provisions of this Section 9005.1 shall be in effect for each plan year of a plan ending on or after December 31, 2010.

Text of proposed rule and any required statements and analyses may be obtained from: Edward J. Lilly, Deferred Compensation Board, PO Box 2103 Empire State Plaza Station, Albany, NY 12220, (518) 473-6619, email: elilly@nysdcp.com

Data, views or arguments may be submitted to: Edward J. Lilly, Deferred

Compensation Board, PO Box 2103 Empire State Plaza Station, Albany, NY 12220, (518) 473-6619, email: elilly@nysdep.com

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority: State Finance Law, Section 5, authorizes the New York State Deferred Compensation Board to adopt rules and regulations regarding the standards and requirements of all deferred compensation plans established pursuant to Section 5.

2. Legislative objectives: Current Section 9005.1 requires deferred compensation plans to "cause all amounts held under a plan to be audited by a firm of certified public accountants" annually. This requirement is to assure that the salary that is deferred by public employees is properly invested and accounted within the plan. The proposal is designed to more accurately define the type of audit to be conducted.

3. Needs and benefits: It is a generally accepted principle that retirement savings plans be audited. Local governments have expressed to the Board that the costs associated with the preparation of an audit of financial statements can be expensive in relation to the number of participants in the plan. This proposal maintains the principle of conducting an annual examination of plan procedures and recordkeeping but in a more cost effective manner.

4. Costs: The proposed rule permits deferred compensation plans with fewer than 100 participants to prepare an unaudited financial statement of assets and the change in the amount of assets from the prior year and to employ a certified public accountant to conduct a series of administrative procedures to assure that salary deferrals by employees are properly invested and accounted. The proposed report of administrative procedures is a less costly alternative to an audit of plan financial statements that the rule currently requires.

5. Local government mandates: This proposed rule will reduce a current mandate.

6. Paperwork: This proposal does not increase any paperwork or reporting requirements.

7. Duplication: This rule will not duplicate, overlap or conflict with any other rule.

8. Alternatives: The Board examined procedures related to audits and administrative procedure reports. It was determined that there were no other alternatives to achieving the goal of maintaining the principle of conducting an audit but in a more cost effective manner.

9. Federal standards: There are no federal requirements or standards related to audits to be conducted by public employers who sponsor deferred compensation plans pursuant to Section 457 of the Internal Revenue Code.

10. Compliance schedule: The proposed effective date is for plan years ending on or after December 31, 2010. The proposal provides that the administrative procedures or audit must be completed within six months following the end of the plan year. For plan years ending on and after December 31, 2010 and before December 31, 2011, the administrative procedures or audit must be completed within 12 months following the closed of that specific plan year. This should provide sufficient time to employ a certified public accountant to conduct the administrative procedures report.

Regulatory Flexibility Analysis

1. Effect of rule: There are approximately 225 local governments in New York State that sponsor a deferred compensation plan. The New York State Deferred Compensation Board estimates that more than 150 of those plans have fewer than 100 participants.

2. Compliance requirement: This proposed rule will provide local governments that sponsor deferred compensation plans and have fewer than 100 participants with the option to conduct a series of administrative procedures related to the administration of the plan rather than an audit of the financial statements of the plan. This is a less costly procedure while maintaining the principle of conducting an annual examination of plan procedures and recordkeeping.

3. Professional services: The current rule requires that the audit of a plan's financial statements be conducted by a certified public accountant. The proper conduct of an administrative procedure will also require the hiring of a certified public accountant.

4. Compliance costs: The proposed rule permits a deferred compensation plan with fewer than 100 participants to prepare an unaudited financial statement of assets and the change in the amount of assets from the prior year and to employ a certified public accountant to conduct a series of administrative procedures to assure that salary deferrals by employees are properly invested and accounted. The proposed report of administrative procedures is a less costly alternative to an audit of financial statements that the rule currently requires.

5. Economic and technological feasibility: The conduct of an audit or administrative procedures report is feasible.

6. Minimizing adverse impact: This proposal achieves the goal of

maintaining the principle of conducting an annual examination of plan procedures and recordkeeping in a more cost effective manner. Thus, it is minimizing the adverse impact of an existing rule.

7. Small business and local government participation: Local governments that sponsored smaller deferred compensation plans expressed to the Board that conducting an audit of financial statements could be expensive in relation to the number of plan participants. The Board examined procedures related to audits and administrative procedures reports to determine a feasible alternative to the requirement that an audit of the financial statements be conducted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: There are approximately 225 local governments in New York State that sponsor a deferred compensation plan. The New York State Deferred Compensation Board estimates that more than 150 of those plans have fewer than 100 participants. A number of these will be in rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: This proposed rule will provide local governments that sponsor deferred compensation plans and have fewer than 100 participants with the option to conduct a series of administrative procedures related to the administration of the plan rather than an audit of the financial statements of the plan. This is a less costly procedure while maintaining the principle of conducting an annual examination of plan procedures and recordkeeping. The current rule requires that the audit of a plan's financial statements be conducted by a certified public accountant. The proper conduct of an administrative procedure will also require the hiring of a certified public accountant.

3. Costs: The proposed rule permits a deferred compensation plan with fewer than 100 participants to prepare an unaudited financial statement of assets and the change in the amount of assets from the prior year and to employ a certified public accountant to conduct a series of administrative procedures to assure that salary deferrals by employees are properly invested and accounted. The proposed report of administrative procedures is a less costly alternative to an audit of financial statements that the rule currently requires.

4. Minimizing adverse impact: This proposal achieves the goal of maintaining the principle of conducting an annual examination of plan procedures and recordkeeping in a more cost effective manner. Thus, it is minimizing the adverse impact of an existing rule.

5. Rural area participation: Local governments that sponsored smaller deferred compensation plans expressed to the Board that conducting an audit of financial statements could be expensive in relation to the number of plan participants. The Board examined procedures related to audits and administrative procedures reports to determine a feasible alternative to the requirement that an audit of the financial statements be conducted.

Job Impact Statement

1. Nature of impact: This rule change does not have an identifiable impact on jobs or employment opportunities.

2. Categories and numbers affected: None.

3. Regions of adverse impact: None.

4. Minimizing adverse impact: Not applicable.

5. (IF APPLICABLE) Self-employment opportunities: None.

Education Department

EMERGENCY RULE MAKING

Qualified School Construction Bonds (QSCB) and Qualified Zone Academy Bonds (QZAB)

I.D. No. EDU-35-10-00019-E

Filing No. 101

Filing Date: 2011-01-21

Effective Date: 2011-01-23

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

Action taken: Amendment of section 155.22 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 305(1) and (2); and 26 USC, sections 54E and 54F

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

Specific reasons underlying the finding of necessity: Internal Revenue

Code section 54F (26 USC section 54F), as added by section 1521(a) of Part III of Subtitle F of Title 1 of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. 111-5, 123 Stat. 115, 355 provides for the issuance of Qualified School Construction Bonds for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue, by a State or local government within the jurisdiction of which such school is located. There is a national qualified school construction bond limitation of \$11 billion for each of the 2009 and 2010 calendar years. Within such national bond limitation amounts, the Secretary of the U.S. Treasury will allocate state limitation amounts to each state for the state's allocation to bond issuers within the state.

New York State is home to three city school districts, New York City, Buffalo and Rochester, that are large enough to qualify as part of the 100 largest nationwide school districts, and as such, these districts will receive direct federal Qualified School Construction Bond Allocations from the U.S. Treasury Secretary. Additionally, New York State received \$192 Million in the 2009 and \$178 Million in the 2010 calendar years to allocate to other districts in the State that did not receive a direct federal allocation.

The 2009 allocation was retained by the State to fund State expenditures for local district capital projects. The purpose of the proposed amendment to section 155.22 of the Commissioner's Regulations is to prescribe the procedures for New York State to allocate its \$174,782,000 2010 state limitation amount to those school district bond issuers not receiving a direct federal allocation.

In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E.

The proposed amendment was adopted as an emergency action at the September 2010 Regents meeting. A Notice of Proposed Rule Making was published in the State Register on September 1, 2010. The proposed amendment was substantially revised and adopted as a second emergency action at the November 2010 Regents meeting, effective November 23, 2010. A Notice of Revised Rule Making was published in the State Register on November 17, 2010.

The proposed rule has been further revised in response to public comment to delete a requirement that limited the QSCB charter school allocation for a given calendar year to \$500,000 per charter school. Pursuant to the State Administrative Procedure Act (SAPA) section 202(4-a), the revised rule cannot be adopted by regular (non-emergency) action until at least 30 days after publication of the revised rule in the State Register. Since the Board of Regents only meets at fixed intervals, the earliest the proposed amendment could be adopted by regular action would be at the March 7-8, 2011 Regents meeting. Since the November emergency adoption will expire on January 22, 2011, 60 days after its filing with the Department of State on November 23, 2010, there would be a lapse in the rule's effectiveness if adopted by regular action, which will, in turn, disrupt implementation of the QSCB program in New York State. A third emergency adoption is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the November 2010 Regents meeting, as revised, remains continuously in effect until the effective date of its adoption as a permanent rule.

It is anticipated that the emergency rule will be presented for adoption as a permanent rule at the March 7-8, 2011 Regents meeting, after publication of a new Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period prescribed in the State Administrative Procedure Act.

Subject: Qualified School Construction Bonds (QSCB) and Qualified Zone Academy Bonds (QZAB).

Purpose: To establish QSCB and update QZAB provisions.

Substance of emergency rule: The Board of Regents has amended section 155.22 of the Commissioner's Regulations as an emergency action, effective January 23, 2011, relating to Qualified School Construction Bonds issued pursuant to 26 USC section 54F and Qualified Zone Academy Bonds issued pursuant to 26 USC sections 1397E and 54E. The following is a summary of the emergency rule.

Section 155.22 is revised to organize the regulation into subdivision (a), relating to Qualified Zone Academy Bonds, and subdivision (b), relating to Qualified School Construction Bonds. The provisions relating to Qualified Zone Academy Bonds (QZAB) are revised to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E.

Provisions relating to Qualified School Construction Bonds (QSCB) are established in section 155.22(b).

Section 155.22(b)(1) sets forth the purpose of the subdivision, to establish procedures for the allocation and issuance of QSCB as authorized by 26 USC section 54F.

Section 155.22(b)(2) sets forth definitions for terms used in the subdivision.

Section 155.22(b)(3) establishes procedures for allocating respective amounts of the QSCB State limitation amount to local educational agencies LEAs), including provisions for allocating to the large city school districts, charter schools, and all other LEAs.

Section 155.22(b)(4) establishes procedures for making adjustments for unused allocations.

Section 155.22(b)(5) requires QSCB to be used within three years after issuance.

Section 155.22(b)(6) requires that capital construction projects to be financed through the issuance of QSCB must be submitted for review to the Office of Facilities Planning in the State Education Department.

Section 155.22(b)(7) provides that capital construction projects funded in whole or in part with QSCB and involving the repair, renovation or alternation of public school facilities that are approved by the Commissioner, shall be eligible to receive building aid pursuant to the provisions of Education Law section 3602(6).

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-35-10-00019-P, Issue of September 1, 2010. The emergency rule will expire March 21, 2011.

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Regulatory Impact Statement

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 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 305(1) provides that the Commissioner of Education is the chief executive officer of the State system of education and of the Board of Regents, and charged with the enforcement of all general and special laws relating to the educational system of the State and the execution of all educational policies determined by the Board of Regents. Section 305(2) provides that the Commissioner shall have general supervision over all schools and institutions subject to the Education Law or any statute relating to education.

26 USC section 54E, as added by section 313(a) of Title III of Division C of the Emergency Economic Stabilization Act of 2008, Pub.L. 110-343, 122 Stat. 3765, 3869, establishes a federal tax credit to holders of qualified zone academy bonds issued for qualified purposes under the statute, establishes a national zone academy bond limitation for such credit, and provides for the allocation of such limitation amount to state education agencies for allocation to qualified zone academies within each respective state.

26 USC section 54F, as added by section 1521(a) of Part III of Subtitle F of Title 1 of Div. B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. 111-5, provides for the issuance of Qualified School Construction Bonds for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue, by a State or local government within the jurisdiction of which such school is located; establishes a national qualified school construction bond limitation, and provides for the allocation of such limitation amount to state education agencies for allocation to bond issuers within each respective state.

LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above statutes and is necessary for the implementation of the provisions of 26 USC section 54F in that it will establish criteria for the allocation of the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and update the Qualified Zone Academy provisions in Commissioner's Regulation section 155.22 to include Qualified Zone Academy Bonds issued under 26 USC 54E.

NEEDS AND BENEFITS:

Internal Revenue Code section 54F (26 USC section 54F), as added by

section 1521(a) of Title 1 of Part III of Subtitle F of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. 111-5, provides for the issuance of Qualified School Construction Bonds for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue, by a State or local government within the jurisdiction of which such school is located. The statute establishes a national qualified school construction bond limitation for each of the 2009 and 2010 calendar years. Within such national bond limitation amount, the Secretary of the U.S. Treasury will allocate state limitation amounts to each state for the state's allocation to bond issuers within the state.

New York State is home to three city school districts, New York City, Buffalo and Rochester, that are large enough to qualify as part of the 100 largest nationwide school districts, and as such, these districts will receive direct federal Qualified School Construction Bond Allocations from the U.S. Treasury Secretary. Additionally, New York State received \$192 Million in the 2009 and \$178 Million in the 2010 calendar years to allocate to other districts in the State that did not receive a direct federal allocation.

The 2009 allocation was retained by the State to fund State expenditures for local district capital projects. The purpose of the proposed amendment to section 155.22 of the Commissioner's Regulations is to prescribe the procedures for New York State to allocate its \$174,782,000 2010 state limitation amount to those school district bond issuers not receiving a direct federal allocation.

In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E.

COSTS:

(a) Costs to State government: None. The proposed rule does not impose any additional costs on the State beyond those inherent in the authorizing statutes, 26 USC sections 54E and 54F. Although school districts participating in the QSCB and QZAB programs will be entitled to building aid for capital construction projects as they are under existing law, it is anticipated that there will be a reduced cost to the State as there is no interest on the bonds and the State will not be obligated to pay its share of interest on the borrowing.

(b) Costs to local government: The proposed rule does not impose any costs on local government. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and updates the Qualified Zone Academy provisions in Commissioner's Regulation section 155.22 to include Qualified Zone Academy Bonds (QZAB) issued under 26 USC 54E. Participation in both the QSCB and QZAB programs is voluntary.

(c) Costs to private, regulated parties: None. The proposed rule does not impact private parties in any way.

(d) Cost to the regulating agency for implementation and continued administration of this rule: None. The proposed rule does not impose any additional costs on the State Education Department beyond those imposed by the authorizing statutes, 26 USC sections 54E and 54F. It merely amends Commissioner's Regulation section 155.22 to establish procedures for allocation of the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and amends the Qualified Zone Academy Bond (QZAB) provisions to provide for a separate Charter school allocation from the QZAB State limitation amount, and to update the QZAB provisions to include Qualified Zone Academy Bonds (QZABs) issued under 26 USC 54E. Participation in both the QSCB and QZAB programs is voluntary.

LOCAL GOVERNMENT MANDATES:

The proposed rule will not impose any program, service, duty or responsibility on local governments. It merely amends Commissioner's Regulation section 155.22 to establish procedures for allocation of the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and amends the Qualified Zone Academy Bond (QZAB) provisions to provide for a separate Charter school allocation from the QZAB State limitation amount, and to update the QZAB provisions to include Qualified Zone Academy Bonds (QZABs) issued under 26 USC 54E. Participation in both the QSCB and QZAB programs is voluntary.

PAPERWORK:

Local educational agencies, other than those located in cities having a

population of more than one hundred twenty-five thousand inhabitants, may apply in a form prescribed and by a date established by the commissioner for approval to receive an allocation from the State limitation amount allocation. Such application shall include, but is not limited to:

(1) a certification by the local educational agency that the bonds to be issued meet the requirements for a qualified school construction bond pursuant to 26 USC section 54F(a);

(2) a description of the capital construction project(s) to be financed through the issuance of qualified school construction bonds; and

(3) the written approval of the superintendent of schools and the Board of Education for such bond issuance.

DUPLICATION:

The proposed amendment does not duplicate existing State or Federal regulations.

ALTERNATIVES:

There are no significant alternatives and none were considered. The proposed rule is necessary to establish the procedures for New York State to allocate its state limitation amount to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and to update the Qualified Zone Academy provisions to include Qualified Zone Academy Bonds (QZAB) issued under 26 USC 54E.

FEDERAL STANDARDS:

The proposed rule does not exceed any minimum standards of the Federal government for the same or similar subject areas. The proposed rule is consistent with the authority provided under 26 USC section 54F to establish a process for the allocation of the State's Qualified School Construction Bond state limitation amount to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and to update provisions in the Commissioner's Regulation regarding Qualified Zone Academy provisions to include Qualified Zone Academy Bonds (QZAB) issued under 26 USC 54E.

COMPLIANCE SCHEDULE:

The proposed amendment does not place any compliance requirements on school districts. It merely amends Commissioner's Regulation section 155.22 to establish procedures for allocation of the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and amends the Qualified Zone Academy Bond (QZAB) provisions to provide for a separate Charter school allocation from the QZAB State limitation amount, and to update the QZAB provisions to include Qualified Zone Academy Bonds (QZABs) issued under 26 USC 54E. Participation in both the QSCB and QZAB programs is voluntary.

Regulatory Flexibility Analysis

Small Businesses:

The proposed rule relates to the process by which local educational agencies gain access to a program entitled Qualified School Construction Bonds (QSCB), established in 26 USC section 54F, for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such bond issue. The purchaser of the bonds receives a Federal tax credit in lieu of interest payments on the bonds. The proposed rule merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of QSCB pursuant to 26 USC section 54F, and updates the Qualified Zone Academy provisions in Commissioner's Regulation section 155.22 to include Qualified Zone Academy Bonds (QZAB) issued under 26 USC 54E. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. Because it is evident from the nature of the proposed rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed rule applies to all public school districts and boards of cooperative educational services in the State.

COMPLIANCE REQUIREMENTS:

The proposed rule will not impose any compliance requirements on local governments. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pur-

suant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

Local educational agencies, other than those located in cities having a population of more than one hundred twenty-five thousand inhabitants, may apply in a form prescribed and by a date established by the commissioner for approval to receive an allocation from the State limitation amount allocation. Such application shall include, but is not limited to:

(1) a certification by the local educational agency that the bonds to be issued meet the requirements for a qualified school construction bond pursuant to 26 USC section 54F(a);

(2) a description of the capital construction project(s) to be financed through the issuance of qualified school construction bonds; and

(3) the written approval of the superintendent of schools and the Board of Education for such bond issuance.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed rule does not impose any costs on local government. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule does not impose any new economic or technological requirements on local governments.

MINIMIZING ADVERSE IMPACT:

The proposed rule does not impose any compliance requirements or compliance costs on local governments. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all school districts and boards of cooperative educational services in the State, including 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.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed rule will not impose any compliance requirements on local governments. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

Local educational agencies, other than those located in cities having a population of more than one hundred twenty-five thousand inhabitants, may apply in a form prescribed and by a date established by the commissioner for approval to receive an allocation from the State limitation amount allocation. Such application shall include, but is not limited to:

(1) a certification by the local educational agency that the bonds to be issued meet the requirements for a qualified school construction bond pursuant to 26 USC section 54F(a);

(2) a description of the capital construction project(s) to be financed through the issuance of qualified school construction bonds; and

(3) the written approval of the superintendent of schools and the Board of Education for such bond issuance.

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

COMPLIANCE COSTS:

The proposed rule does not impose any costs on rural areas. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

MINIMIZING ADVERSE IMPACT:

The proposed rule does not impose any compliance requirements or compliance costs on rural areas. The proposed rule does not impose any compliance requirements or compliance costs on local governments. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

RURAL AREA PARTICIPATION:

Copies of the proposed amendment have been distributed to members of the Department's Rural Advisory Committee, which includes representatives of school districts in rural areas.

Job Impact Statement

The proposed amendment relates to the process by which local educational agencies gain access to a program entitled Qualified School Construction Bonds (QSCB), established in 26 USC section 54F, for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such bond issue. The purchaser of the bonds receives a Federal tax credit in lieu of interest payments on the bonds. The proposed amendment merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF WITHDRAWAL

Expedited Teacher Certification Pathway for Science or Mathematics in Grades 5-9 and 7-12

I.D. No. EDU-49-10-00007-W

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

Action taken: Notice of proposed rule making, I.D. No. EDU-49-10-00007-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on December 8, 2010.

Subject: Expedited teacher certification pathway for science or mathematics in grades 5-9 and 7-12.

Reason(s) for withdrawal of the proposed rule: A substantially different rule will be proposed in February 2011.

Department of Environmental Conservation

NOTICE OF ADOPTION

Hemlock-Canadice State Forest

I.D. No. ENV-47-10-00009-A

Filing No. 99

Filing Date: 2011-01-20

Effective Date: 2011-02-09

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

Action taken: Addition of section 190.26 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(1), (3)(b), 3-0301(1), (b), (2)(m), (v), 9-0105(1) and (3)

Subject: Hemlock-Canadice State Forest.

Purpose: To control public use to protect watershed values, natural resources and public safety.

Text or summary was published in the November 24, 2010 issue of the Register, I.D. No. ENV-47-10-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Robert Messenger, Chief, Bureau of State Land Management, NYS DEC, 625 Broadway, Albany, NY 12233-4255, (518) 402-9428, email: rwmessex@gw.dec.state.ny.us

Additional matter required by statute: A Negative Declaration was prepared in compliance with Article 8 of the Environmental Conservation Law.

Assessment of Public Comment

One e-mail in support of this regulation was received by the Department, therefore there are no public comments to be addressed.

Department of Labor

NOTICE OF ADOPTION

Apprenticeship Training Programs

I.D. No. LAB-47-10-00016-A

Filing No. 106

Filing Date: 2011-01-25

Effective Date: 2011-02-09

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

Action taken: Amendment of Parts 600 and 601 of Title 12 NYCRR.

Statutory authority: Labor Law, section 811(1)(j)

Subject: Apprenticeship Training Programs.

Purpose: To revise Apprenticeship Training Program regulations to ensure consistency and conformity with Federal regulations applicable to State Apprenticeship Agencies.

Text or summary was published in the November 24, 2010 issue of the Register, I.D. No. LAB-47-10-00016-P.

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

Text of rule and any required statements and analyses may be obtained from: Kevin E. Jones, Esq., New York State Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: usakej@labor.state.ny.us

Assessment of Public Comment

In addition to the publication of the Proposed Rule in the State Register on November 24, 2010, the text of the Proposed Rule and all rulemaking

documents were also posted on the Department's website, and a copy was provided to all registered Apprenticeship Program sponsors. The Department has received no comments in response to the publication of its Notice of Proposed Rule Making.

Division of the Lottery

NOTICE OF ADOPTION

Application and Employment After Denial or Revocation of License, Permissible Lottery Players and Placement of ATMs

I.D. No. LTR-49-10-00006-A

Filing No. 102

Filing Date: 2011-01-24

Effective Date: 2011-02-09

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

Action taken: Amendment of sections 2836-3.15, 2836-3.16, 2836-20.1(f) and 2836-23.3(a) of Title 21 NYCRR.

Statutory authority: Tax Law, sections 1601, 1604, 1612 and 1617-a

Subject: Application and employment after denial or revocation of license, permissible lottery players and placement of ATMs.

Purpose: To clarify video gaming regulations and to comply with accepted industry standards.

Text or summary was published in the December 8, 2010 issue of the Register, I.D. No. LTR-49-10-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Julie B. Silverstein Barker, New York Division of Lottery, One Broadway Center, PO Box 7500, Schenectady, NY 12301, (518) 388-3408, email: nylrules@lottery.ny.gov

Assessment of Public Comment

The agency received no public comment.

Office of Mental Health

NOTICE OF ADOPTION

Standards for Family Care Homes

I.D. No. OMH-48-10-00008-A

Filing No. 109

Filing Date: 2011-01-25

Effective Date: 2011-02-09

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

Action taken: Repeal of Part 87; and addition of Part 585 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.03 and 31.04

Subject: Standards for Family Care Homes.

Purpose: Establish a new 14 NYCRR Part 585 to update and clarify standards for Family Care Homes. Repeal substantively obsolete Part 87.

Text or summary was published in the December 1, 2010 issue of the Register, I.D. No. OMH-48-10-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: cocbjdd@omh.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Motor Vehicles

NOTICE OF ADOPTION

Stop Arms on School Buses

I.D. No. MTV-48-10-00005-A

Filing No. 85

Filing Date: 2011-01-19

Effective Date: 2011-02-09

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

Action taken: Amendment of Part 46 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 220

Subject: Stop arms on school buses.

Purpose: Permits equipping a school bus with a right side stop arm and convex mirror assembly.

Text or summary was published in the December 1, 2010 issue of the Register, I.D. No. MTV-48-10-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Ida L. Traschen, DMV, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Revised Job Impact Statement

A JIS is not submitted because this rule will have no adverse impact on job creation or job development in New York State.

Assessment of Public Comment

The agency received no public comment.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Repeal of an Obsolete Rule Pertaining to Family Care Homes

I.D. No. PDD-48-10-00007-A

Filing No. 108

Filing Date: 2011-01-25

Effective Date: 2011-02-09

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

Action taken: Repeal of Part 87; and amendment of section 687.1 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b) and 16.00

Subject: Repeal of an obsolete rule pertaining to family care homes.

Purpose: To repeal 14 NYCRR Part 87 and references to that Part.

Text or summary was published in the December 1, 2010 issue of the Register, I.D. No. PDD-48-10-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, OPWDD, 44 Holland Ave., Albany, NY 12229, (518) 474-1830, email: barbara.brundage@opwdd.ny.gov

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OMRDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Lease Agreement for Transmission Tower Space

I.D. No. PSC-33-08-00009-A

Filing Date: 2011-01-24

Effective Date: 2011-01-24

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

Action taken: On 1/20/11, the PSC adopted an order authorizing Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. to enter into a lease agreement for transmission tower space.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), 66(1) and 70

Subject: Lease agreement for transmission tower space.

Purpose: To authorize a lease agreement for transmission tower space.

Substance of final rule: The Commission, on January 20, 2011, adopted an order authorizing Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. to enter into a lease agreement for transmission tower space, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(08-M-0772SA1)

NOTICE OF ADOPTION

Modifications to the Rider U - Distribution Load Relief Program Data Access

I.D. No. PSC-34-09-00015-A

Filing Date: 2011-01-20

Effective Date: 2011-01-20

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

Action taken: On 1/20/11, the PSC adopted an order directing Consolidated Edison Company of New York, Inc.'s to update and resubmit the plan for providing Rider U participant's access to meter data.

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

Subject: Modifications to the Rider U - Distribution Load Relief Program data access.

Purpose: To approve modifications to the Rider U - Distribution Load Relief Program data access.

Substance of final rule: The Commission, on January 20, 2011, adopted an order directing Consolidated Edison Company of New York, Inc.'s to update and resubmit the plan for providing Rider U participant's access to meter data, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(08-E-1463SA2)

NOTICE OF ADOPTION

O&R's Residential Electric Energy Efficiency Program**I.D. No.** PSC-17-10-00011-A**Filing Date:** 2011-01-25**Effective Date:** 2011-01-25

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

Action taken: On 1/20/11, the PSC adopted an order approving, with modifications Orange and Rockland Utilities Inc.'s (O&R) residential electric energy efficiency program.

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

Subject: O&R's residential electric energy efficiency program.

Purpose: To approve, with modifications, O&R's residential electric energy efficiency program.

Substance of final rule: The Commission, on January 20, 2011 adopted an order approving, with modifications Orange and Rockland Utilities Inc.'s (O&R) residential electric energy efficiency program, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(08-E-1128SA1)

NOTICE OF ADOPTION

Approval of Financing and a Lightened Regulatory Regime for the Construction of a 1,040 MW Electric Facility**I.D. No.** PSC-28-10-00012-A**Filing Date:** 2011-01-25**Effective Date:** 2011-01-25

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

Action taken: On 1/20/11, the PSC adopted an order approving NRG Astoria Power LLC's petition for a lightened regulatory regime and financing for the construction of a 1,040 MW electric facility.

Statutory authority: Public Service Law, sections 2(13), (22), 5(1)(b), 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Approval of financing and a lightened regulatory regime for the construction of a 1,040 MW electric facility.

Purpose: To approve financing and a lightened regulatory regime for the construction of a 1,040 MW electric facility.

Substance of final rule: The Commission, on January 20, 2011, adopted an order approving NRG Astoria Power LLC's petition for a lightened regulatory regime, and financing for the construction of a 1,040 MW electric generating facility to replace an existing 600 MW facility located at an industrial site in Long Island City, New York, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-E-0197SA1)

NOTICE OF ADOPTION

Energy Efficiency Programs for Residential Utility Customers**I.D. No.** PSC-30-10-00005-A**Filing Date:** 2011-01-25**Effective Date:** 2011-01-25

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

Action taken: On 1/20/11, the PSC adopted an order approving, with modifications two new residential Energy Efficiency Portfolio Standard programs to be administered by New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation.

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

Subject: Energy efficiency programs for residential utility customers.

Purpose: To approve, with modifications, the appliance bounty program and an energy report behavioral modification program.

Substance of final rule: The Commission, on January 20, 2010 adopted an order approving, with modifications, the Refrigerator and Freezer Recycling Programs and the Home Energy Reports Demonstration Programs to be administered by New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation for residential utility customers, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(07-M-0548SA24)

NOTICE OF ADOPTION

Major Electric Rate Filing**I.D. No.** PSC-33-10-00008-A**Filing Date:** 2011-01-24**Effective Date:** 2011-01-24

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

Action taken: On 1/20/11, the PSC adopted an order establishing rates for electric service for Niagara Mohawk Power Corporation d/b/a National Grid.

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

Subject: Major electric rate filing.

Purpose: To approve an increase of annual electric revenues.

Substance of final rule: The Commission, on January 20, 2011, adopted an order establishing rates for electric service for Niagara Mohawk Power Corporation d/b/a National Grid, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-E-0050SA1)

NOTICE OF ADOPTION

Second Stage Gas Rate Increase by Corning Natural Gas Corporation**I.D. No.** PSC-37-10-00009-A**Filing Date:** 2011-01-25**Effective Date:** 2011-01-25

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

Action taken: On 1/20/11, the PSC adopted an order approving, with modifications, Corning Natural Gas Corporation's second stage rate adjustment.

Statutory authority: Public Service Law, sections 65 and 66(12)

Subject: Second stage gas rate increase by Corning Natural Gas Corporation.

Purpose: To approve with modifications, Corning Natural Gas Corporation's second stage rate adjustment.

Substance of final rule: The Commission, on January 20, 2011 adopted an order approving, with modifications, Corning Natural Gas Corporation's second stage rate adjustment, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(08-G-1137SA3)

NOTICE OF ADOPTION

Waiver That Required the Company to Hire 30 Additional Employees**I.D. No.** PSC-39-10-00013-A**Filing Date:** 2011-01-21**Effective Date:** 2011-01-21

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

Action taken: On 1/20/11, the PSC adopted an order granting Niagara Mohawk Power Corporation d/b/a National Grid's (company) petition for a waiver that required the company hire 30 additional employees in its Distribution Line Department.

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

Subject: Waiver that required the company to hire 30 additional employees.

Purpose: To approve the petition for a waiver that required the company to hire 30 additional employees.

Substance of final rule: The Commission, on January 20, 2011 adopted an order granting Niagara Mohawk Power Corporation d/b/a National Grid's (company) petition for a waiver that required the company to hire 30 additional employees in its Distribution Line Department, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(06-M-0878SA5)

NOTICE OF ADOPTION

Demand Response Programs: Rider S - Commercial System Relief Program and Rider T - Critical Peak Rebate Program**I.D. No.** PSC-41-10-00009-A**Filing Date:** 2011-01-20**Effective Date:** 2011-01-20

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

Action taken: On 1/20/11, the PSC adopted an order approving, with conditions, Consolidated Edison Company of New York, Inc.'s petition to modify the Demand Response Programs, Rider S - Commercial System Relief Program and Rider T - Critical Peak Rebate Program.

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

Subject: Demand Response Programs: Rider S - Commercial System Relief Program and Rider T - Critical Peak Rebate Program.

Purpose: To approve modifications to Rider S - Commercial System Relief Program and Rider T - Critical Peak Rebate Program.

Substance of final rule: The Commission, on January 20, 2011, adopted an order approving, with conditions, Consolidated Edison Company of New York, Inc.'s (company) petition to modify the Demand Response Programs, Rider S - Commercial System Relief Program and Rider T - Critical Peak Rebate program to provide load relief when events are called by the company, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(09-E-0115SA8)

NOTICE OF ADOPTION

Demand Response Programs: Rider S - Commercial System Relief Program and Rider T - Critical Peak Rebate Program**I.D. No.** PSC-41-10-00010-A**Filing Date:** 2011-01-20**Effective Date:** 2011-01-20

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

Action taken: On 1/20/11, the PSC adopted an order approving, with conditions, Consolidated Edison Company of New York, Inc.'s amendments to PSC 9 — Electricity, PASNY No. 4 and EDSS No. 2, effective December 22, 2010 and postponed to January 22, 2011.

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

Subject: Demand Response Programs: Rider S - Commercial System Relief Program and Rider T - Critical Peak Rebate Program.

Purpose: To approve the Monthly Adjustment Clause in PSC No. 9 and Charge for Demand Management Programs in PASNY No. 4 and EDSS No. 2.

Substance of final rule: The Commission, on January 20, 2011, adopted an order approving, with conditions, Consolidated Edison Company of New York, Inc.'s amendments to PSC 9 — Electricity, PASNY No. 4 and EDSS No. 2, effective December 22, 2010 and postponed to January 22, 2011 for changes to the Monthly Adjustment Clause and Demand Management Programs, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(09-E-0115SA7)

NOTICE OF ADOPTION

Cash Out Provisions for its Gas Transportation Service

I.D. No. PSC-41-10-00021-A

Filing Date: 2011-01-21

Effective Date: 2011-01-21

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

Action taken: On 1/20/11, the PSC adopted an order approving National Fuel Gas Distribution Corporation's amendments to PSC 8 — Gas, effective 2/1/11, to revise the cash out provisions for its gas transportation service.

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

Subject: Cash out provisions for its gas transportation service.

Purpose: To approve revisions to the cash out provisions for its gas transportation service.

Substance of final rule: The Commission, on January 20, 2011 adopted an order approving National Fuel Gas Distribution Corporation's amendments to PSC 8 — Gas, effective February 1, 2011, to revise the cash out provisions for its gas transportation service, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-G-0474SA1)

NOTICE OF ADOPTION

Water Rates, Charges and Regulations

I.D. No. PSC-44-10-00004-A

Filing Date: 2011-01-21

Effective Date: 2011-01-21

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

Action taken: On 1/20/11, the PSC adopted an order authorizing Birch Hill Water Company, Inc. to file Revision 1 to Leaf 12 in its electronic tariff schedule, to go into effect on February 1, 2011.

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

Subject: Water rates, charges and regulations.

Purpose: To authorize Revision 1 to Leaf 12 in its electronic tariff schedule, to go into effect on February 1, 2011.

Substance of final rule: The Commission, on January 20, 2011 adopted an order authorizing Birch Hill Water Company, Inc. to file Revision 1 to Leaf 12 in its electronic tariff schedule, to go into effect on February 1, 2011, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(09-W-0402SA2)

NOTICE OF ADOPTION

Use of Monies Realized from the Dissolution of the Rural Telephone Bank

I.D. No. PSC-45-10-00015-A

Filing Date: 2011-01-20

Effective Date: 2011-01-20

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

Action taken: On 1/20/11, the PSC adopted an order approving Hancock Telephone Company petition for reimbursement from its deferred intrastate Rural Telephone Bank (RTB) monies of \$21,082 for the purchase of central office equipment.

Statutory authority: Public Service Law, section 94(2)

Subject: Use of monies realized from the dissolution of the Rural Telephone Bank.

Purpose: To approve reimbursement from its deferred intrastate Rural Telephone Bank monies.

Substance of final rule: The Commission, on January 20, 2011 adopted an order approving Hancock Telephone Company's petition for reimbursement from its deferred intrastate Rural Telephone Bank (RTB) monies of \$21,082 for the purchase of central office equipment, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-C-0434SA1)

NOTICE OF ADOPTION

Demand Response Programs: Rider U - Distribution Load Relief Program

I.D. No. PSC-45-10-00017-A

Filing Date: 2011-01-20

Effective Date: 2011-01-20

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

Action taken: On 1/20/11, the PSC adopted an order approving, with conditions, Consolidated Edison Company of New York, Inc.'s amendments to PSC 9—Electricity, effective, January 24, 2011 for revision to Rider U - Distribution Load Relief Program.

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

Subject: Demand Response Programs: Rider U - Distribution Load Relief Program.

Purpose: To approve revisions to Rider U - Distribution Load Relief Program.

Substance of final rule: The Commission, on January 20, 2011, adopted an order approving, with conditions, Consolidated Edison Company of New York, Inc.'s amendments to PSC 9—Electricity, effective January 24, 2011, to revise Rider U - Distribution Load Relief Program (DLRP) to enhance participants' understanding of DLRP options, ease participation, streamline implementation and better align DLRP with other demand response programs, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-E-0530SA1)

NOTICE OF ADOPTION**Increase of Previously Approved Financing Limit in Connection with a Proposed Generator****I.D. No.** PSC-45-10-00018-A**Filing Date:** 2011-01-20**Effective Date:** 2011-01-20

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

Action taken: On 1/20/11, the PSC adopted an order approving Connecticut Municipal Electric Energy Cooperative's petition for an amendment to financing for the proposed construction and operation of a 2.5 MW generator on Fishers Island, up to \$35 million.

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

Subject: Increase of previously approved financing limit in connection with a proposed generator.

Purpose: To approve Connecticut Municipal Electric Energy Cooperative's petition for an amendment to financing.

Substance of final rule: The Commission, on January 20, 2011 adopted an order approving Connecticut Municipal Electric Energy Cooperative's petition for an amendment to financing for the proposed construction and operation of a 2.5 MW generator on a leased parcel on Fishers Island, up to \$35 million, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-E-0529SA1)

NOTICE OF ADOPTION**Winter Bundled Sales Service Option****I.D. No.** PSC-46-10-00012-A**Filing Date:** 2011-01-21**Effective Date:** 2011-01-21

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

Action taken: On 1/20/11, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's request to revise its tariff for the commodity price points and weightings used to price Winter Bundled Sales Service.

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

Subject: Winter Bundled Sales service option.

Purpose: To approve the revision of commodity price points and weightings used to price Winter Bundled Sales Service.

Substance of final rule: The Commission, on January 20, 2011 adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC 12—Gas, effective February 1, 2011, to revise the commodity price points and weightings used to price Winter Bundled Sales (WBS) Service provided under the Company's Retail Access Program.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-G-0541SA1)

Department of State**NOTICE OF ADOPTION****Regulation of Crematories Subject to Not-For-Profit Corporation Law Article 15****I.D. No.** DOS-47-10-00010-A**Filing No.** 104**Filing Date:** 2011-01-24**Effective Date:** 60 days after filing

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

Action taken: Repeal of Part 203; and addition of new Part 203 to Title 19 NYCRR.

Statutory authority: Not-For-Profit Corporation Law, sections 1501 and 1504(c)

Subject: Regulation of crematories subject to Not-For-Profit Corporation Law Article 15.

Purpose: To clarify procedures and record requirements for crematories and to enhance consumer protection.

Text or summary was published in the November 24, 2010 issue of the Register, I.D. No. DOS-47-10-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Antonio Milillo, Dept. of State, Office of General Counsel, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6740, email: antonio.milillo@dos.state.ny.us

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on November 24, 2010, the Department of State received the following comments.

COMMENT: One commenter suggested that the proposed regulation refer to Public Health Law section 4203 regarding a method of disposition of unclaimed cremated remains of a veteran.

RESPONSE: Public Health Law section 4203 provides funeral directors who are in the possession of unclaimed remains of a veteran with a method of disposing of such remains. Because the proposed regulation only deals with the disposition of remains by a crematory, there is no need to refer to this statute which only affects funeral directors.

COMMENT: One commenter suggested that the regulation specifically "grandfather" previously executed pre-need cremation authorization forms so that a new form will not have to be executed where one already exists and suggested that the regulation permit individuals to execute their own cremation authorization form going forward.

RESPONSE: By statute, a cremation authorization form must be signed by the next of kin or authorizing agent of the decedent and must certify that the remains to be cremated do not contain a battery, battery pack, power cell, radioactive implant, or radioactive device and that any such materials have been removed prior to the cremation process. By statute then, the cremation authorization form must by necessity be executed after the person's death. The proposed regulation would conflict with statute if it permitted a person to execute his or her own cremation authorization form.

Urban Development Corporation

EMERGENCY RULE MAKING

Downstate Revitalization Fund Program

I.D. No. UDC-06-11-00005-E

Filing No. 103

Filing Date: 2011-01-24

Effective Date: 2011-01-24

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

Action taken: Addition of Part 4249 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); L. 2008, ch. 57, part QQ, section 16-r; and L. 1968, ch. 174

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

Specific reasons underlying the finding of necessity: Effective provision of economic development assistance in accordance with the enabling legislation requires the creation of the Rule. Program assistance will address the dangers to public health, safety and welfare by providing financial, project development, or other assistance for the purposes of supporting investment in distressed communities in the downstate region, and in support of such projects that focus on: encouraging business, community and technology-based development and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

Subject: Downstate Revitalization Fund Program.

Purpose: Provide the basis for administration of Downstate Revitalization Fund including evaluation criteria and application process.

Text of emergency rule: DOWNSTATE REVITALIZATION FUND PROGRAM

Section 4249.1 General

These regulations set forth the types of available assistance, evaluation criteria, application and project process and related matters for the Downstate Revitalization Fund (the "Program"). The Program was created pursuant to § 16-r of the New York State Urban Development Corporation Act, as added by Chapter 57 of the Laws of 2008 (the "Act") for the purposes of supporting investment in distressed communities in the downstate region and in support of projects that focus on encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

Section 4249.2 Definitions

For purposes of these regulations, the terms below will have the following meanings:

(a) "Corporation" shall mean the New York State Urban Development Corporation doing business as Empire State Development Corporation.

(b) "Distressed communities" shall mean areas as determined by the Corporation meeting criteria indicative of economic distress, including land value, employment rate; rate of employment change; private investment; economic activity, percentages and numbers of low income persons; per capita income and per capita real property wealth; and such other indicators of distress as the Corporation shall determine.

(c) "Downstate" shall mean the geographical area defined by the Corporation. The defined geographical area will be disseminated to eligible parties by the Corporation.

Section 4249.3 Types of Assistance

The Program offers assistance in the form loans and/or grants to for-profit businesses, not-for-profit corporations, public benefit corporations, municipalities, and research and academic institutions, for activities including, but not limited to, the following:

(a) support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including, but not limited, to smart growth and energy efficiency initiative; intellectual capital capacity building;

(b) support for the attraction or expansion of a business including, but not limited to, those primarily engaged in activities identified as a strategic industry and minority-owned and women-owned business enterprises

as defined by subdivisions (c) and (g) of section nine hundred fifty-seven of the general municipal law;

(c) support for land acquisition and/or the construction, acquisition or expansion of buildings, machinery and equipment associated with a project; and

(d) support for projects located in an investment zone as defined by paragraph (i) of subdivision (d) of section 957 of the General Municipal Law.

4249.4 Eligibility

(a) Eligible applicants shall include, but not be limited to, business improvement districts, local development corporations, economic development organizations, for profit businesses, not-for-profit corporations, public benefit corporations, municipalities, counties, research and academic institutions, incubators, technology parks, private firms, regional planning councils, tourist attractions and community facilities.

(b) The Corporation shall be eligible for assistance in the form of loans, grants, or monies contributing to projects for which the Corporation or a subsidiary act as developer.

(1) The Corporation may act as developer in the acquisition, renovation, construction, leasing or sale of development projects authorized pursuant to this Program in order to stimulate private sector investment within the affected community.

(2) In acting as a developer, the Corporation may borrow for purposes of this subdivision for approved projects in which the lender's recourse is solely to the assets of the project, an may make such arrangements and agreements with community-based organizations and local development corporations as may be required to carry out the purposes of this section.

(3) Prior to developing and such project, the Corporation shall secure a firm commitment from entities, independent of the Corporation, for the purchase or lease of such project. Such firm commitment shall be evidenced by a memorandum of understanding or other document describing the intent of the parties.

(4) Projects authorized under this subdivision whether developed by the Corporation or a private developer, must be located in distressed communities, for which there is demonstrated demand within the particular community.

(c) No full-time employee of the state or full-time employee of any agency, department, authority or public benefit corporation (or any subsidiary of a public benefit corporation) of the state shall be eligible to receive assistance under this initiative, nor shall any business, the majority ownership interest of which is beneficially controlled by any such employee, be eligible for assistance under this initiative.

Section 4249.5 Evaluation criteria

(a) The Corporation shall give priority in granting assistance to those projects:

(1) with significant private financing or matching funds through other public entities;

(2) likely to produce a high return on public investment;

(3) with existence of significant support from the local business community, local government, community organizations, academic institutions and other regional parties;

(4) deemed likely to increase the community's economic and social viability;

(5) with cost benefit analysis that demonstrates increased economic activity, sustainable job creation and investments;

(6) located in distressed communities;

(7) whose application is submitted by multiple entities, both public and private; or

(8) such other requirements as determined by the Corporation as are necessary to implement the provisions of the Program.

Section 4249.6 Application and Approval Process

(a) The Corporation may, at its discretion and within available appropriations, issue requests for proposals and may at other times accept direct applications for program assistance.

(b) Promptly after receipt of the application, the Corporation shall review the application for eligibility, completeness, and conformance with the applicable requirements of the Act and this Rule. Applications shall be processed in full compliance with the applicable provisions of the Act's 16-r.

(c) If the proposal satisfies the applicable requirements and initiative funding is available, the proposal may be presented to the Corporation's directors for adoption consideration in accordance with applicable law and regulations. The directors normally meet once a month. If the project is approved for funding and if it involves the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of any property, the Corporation will schedule a public hearing in accordance with the Act and will take such further action as may be required by the Act and applicable law and regulations. After approval by the Corporation and a public hearing the project may then be reviewed by the State Public

Authorities Control Board ("PACB"), which also generally meets once a month, in accordance with PACB requirements and policies. Following directors' approval, and PACB approval, if required, documentation will be prepared by the Corporation. Notwithstanding the foregoing, no initiative project shall be funded if sufficient initiative monies are not received by the Corporation for such project.

Section 4249.7 Confidentiality

(1) To the extent permitted by law, all information regarding the financial condition, marketing plans, manufacturing processes, production costs, customer lists, or other trade secrets and proprietary information of a person or entity requesting assistance from the Corporation, which is submitted by such person or entity to the Corporation in connection with an application for assistance, shall be confidential and exempt from public disclosures.

Section 4249.8 Expenses

(a) An application fee of \$250 must be paid to the Corporation for projects that involve acquisition, construction, reconstruction, rehabilitation alteration or improvement of real property, the financing of machinery and equipment and working capital loans and loan guarantees before final review of an application can be completed. This fee will be refunded in the event the application is withdrawn or rejected.

(b) The Corporation will assess a commitment fee of up to two percent of the amount of any Program loan involving projects for acquisition, construction, reconstruction, rehabilitation, alteration or improvement of real property, the financing of machinery and equipment and working capital payable upon acceptance of commitment with up to 1 percent rebated at closing. No portion of the commitment fee will be repaid if the commitment lapses and the project does not close. The Corporation will assess a fee of up to 1 percent, payable at closing, of the amount of any Program grant involving the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of real property or the financing of machinery and equipment or any loan guarantee.

(c) The applicant will be obligated to pay for expenses incurred by the Corporation in connection with the project, including, but not limited to, expenses related to attorney, appraisals, surveys, title insurance, credit searches, filing fees, public hearing expenses and other requirements deemed appropriate by the Corporation.

Section 4249.9 Affirmative action and non-discrimination

Program applications shall be reviewed by the Corporation's affirmative action department, which shall, in consultation with the applicant and/or proposed recipient of the program assistance and any other relevant involved parties, develop appropriate goals, in compliance with applicable law (including section 2879 of the public authorities law, article fifteen-A of the executive law and section 6254(11) of the unconsolidated laws) and the Corporation's policy, for participation in the proposed project by minority group members and women. Compliance with laws and the Corporation's policy prohibiting discrimination in employment on the basis of age, race, creed, color, national origin, gender, sexual preference, disability or marital status shall be required.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires April 23, 2011.

Text of rule and any required statements and analyses may be obtained from: Antovk Pidedjian, New York State Urban Development Corporation, 633 Third Avenue, 37th Floor, New York, NY 10017, (212) 803-3792, email: apidedjian@empire.state.ny.us

Regulatory Impact Statement

1. Statutory Authority: Section 9-c of the New York State Urban Development Corporation Act Chapter 174 of the Laws of 1968, as amended (the "Act"), provides, in part, that the corporation shall, assisted by the commissioner of economic development and in consultation with the department of economic development, promulgate rules and regulations in accordance with the state administrative procedure act.

Section 12 of the Act provides that the corporation shall have the right to exercise and perform its powers and functions through one or more subsidiary corporations.

Section 16-r of the Act provides for the creation of the downstate revitalization fund. The corporation is authorized, within available appropriations, to provide financial, project development, or other assistance from such fund to eligible entities as set forth in this subdivision for the purposes of supporting investment in distressed communities in the downstate region, and in support of such projects that focus on: encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

2. Legislative Objectives: Section 16-r of the Act sets forth the legislative intent of the Downstate Revitalization Fund to provide financial assistance to eligible entities in New York with particular emphasis on: supporting investment in distressed communities in the downstate region, and in support of projects that focus on encouraging business, community, and

technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation, and small business growth.

It further states such activities include but are not limited to: support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including, but not limited to, smart growth and energy efficiency initiatives, intellectual capital capacity building; support for the attraction or expansion of a business including, but not limited to, those primarily engaged in activities identified as a strategic industry and minority-owned and women-owned business enterprises as defined by subdivisions (c) and (g) of section nine hundred fifty-seven of the general municipal law; support for land acquisition and/or the construction, acquisition or expansion of buildings, machinery, and equipment associated with a project; and support for projects located in an investment zone as defined by paragraph (i) of subdivision (d) of section 957 of the general municipal law.

The Legislative intent of Section 16-r of the Act is to assist business in downstate New York in a time of need and to promote the retention and creation of jobs and investment in the region.

The adoption of 21 NYCRR Part 4249 will further these goals by setting forth the types of available assistance, evaluation criteria, application and project process and related matters for the Downstate Revitalization Fund.

3. Needs and Benefits: Chapter 53 of the Laws of 2008, page 884, lines 5 thru 15 allocated \$35 million to support investment in projects that would promote the revitalization of distressed areas in the downstate region. As envisioned, the program would focus new investments on business, community and technology-based development. While the downstate region has experienced relatively strong growth in recent years, there still remain a significant number of areas that demonstrate high levels of economic distress. As measured by the poverty rate, the Bronx, at over 30%, ranks as the poorest urban county in the U.S. Brooklyn (Kings County) continues to rank among the top ten counties with the highest poverty rates in the country (22.6%). Overall, the poverty rate in New York City is just over 20%. The Community Service Society study, Poverty in New York City, 2004: Recovery?, concluded that if the number of New York City residents who live in poverty resided in their own municipality, they would constitute the 5th largest city in the U.S. Beyond the New York metro area in the Hudson Valley, the poverty rate exceeds 9%. Disproportionate levels of unemployment, population and job loss have left significant areas of the downstate region with shrinking revenue bases and opportunities for economic revitalization.

If it is assumed that at least half of the \$35 million allocation to the Fund is used for new capital investment, this would support approximately 160 construction-related jobs, generating an additional \$10 million in personal income in downstate distressed areas. The Corporation used the Implan® regional economic analysis system to model employment and personal income multipliers for construction spending to estimate the direct, indirect and induced jobs related to the Fund amounts assumed to be devoted to capital spending on infrastructure and construction-related activity.

New York State may collect approximately \$0.66 million in personal income tax and sales tax on income spending. To estimate the personal income tax revenues generated by this spending, the Corporation assumed the tax calculation for single or married filing separately on taxable income over \$20,000, using the standard deduction and 6.85% on income over \$20,000. Sales tax was estimated on taxable disposable income earned by wage earners. The Corporation assumed that 75% of gross income is disposable income and 40% of that is taxable.

This level of capital spending (assumed to be primarily on site development, infrastructure, building rehabilitation and new construction) will provide the basis for further investment in a broad range of economic activity.

4. Costs: The Fund as identified in Chapter 53 of the Laws of 2008, page 884, lines 17 thru 27 will be funded through the issuance of Personal Income Tax bonds. In addition to the interest costs, it is expected that fees and costs associated with issuing bonds, including the Corporation's fee, underwriting, banking and legal fees, will be approximately 1.6%.

The costs to municipalities and other regulated parties involved would depend on the extent to which they participate in and support the proposed projects. For municipalities, this may involve matching funds or the commitment of other public resources for project development. Participation is voluntary and would be considered on a case-by-case basis depending on the location of the municipality involved.

5. Paperwork / Reporting: There are no additional reporting or paperwork requirements as a result of this rule on regulated parties. Standard applications used for most other Corporation assistance will be employed keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients. The rule provides that the Corporation may, however, require applicants to submit materials prior to

submission of a formal application to determine if a proposal meets eligible criteria for Fund assistance.

6. **Local Government Mandates:** The Fund imposes no mandates - program, service, duty, or responsibility - upon any city, county, town, village, school district or other special district. To the contrary, the Fund offers local governments potentially enhanced resources, either directly or indirectly, to encourage economic and employment opportunities for their citizens. Participation in the program is optional; local governments who do not wish to be considered for funding do not need to apply.

7. **Duplication:** The regulations do not duplicate any existing state or federal rule.

8. **Alternatives:** The Fund proposed regulations provide for a variety of potential program outcomes, by type of assistance, eligible applicants, and eligible uses.

These program criteria were informed through an extensive strategic planning process managed for Downstate ESDC by the management consultant A. T. Kearney. Their report, *Delivering on the Promise of New York State*, developed a strategy for the State to capitalize on its rich and diverse assets to encourage the growth of the Innovation Economy.

The following are three examples of alternatives that were provided during the outreach portion of the rulemaking process. All of the suggestions offered were from members of the small business community and local governments who responded to the Corporations request for input. All of the suggestions were included in the rules and regulations submitted with this Regulatory Impact Statement.

1. Regulations should be drafted to give priority to projects in developed areas that use smart growth principles, and that promote energy efficiency and conservation.

Section 4249.3, Part (a) provides for "support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including but not limited to, smart growth and energy efficiency initiatives."

2. Regulations should clearly define "distressed communities" using specific, objective criteria.

Section 4249.2, Part (a) defines "Distressed Communities"

3. A streamlined application and reporting process is important to encourage small business participation.

ESDC uses one standard application for this, and many other economic development programs. The information required under Section 4249.6 "Application and approval process" from all applicants is needed for the corporation to make sound investment decisions. Private financing institutions request similar, if not more robust information from their applicants.

9. **Federal Standards:** There are no minimum federal standards related to this regulation. The regulation is not inconsistent with any federal standards or requirements.

10. **Compliance Schedule:** The regulation shall take effect immediately upon adoption.

Regulatory Flexibility Analysis

1. **Effects of Rule:** "Small business" is defined by the State Economic Development law to be an enterprise with 100 or fewer employees. The vast majority - roughly 98 percent - of New York State businesses are small businesses.

We applied this criterion to ESD's models of the Downstate economy to determine how many small businesses could benefit from the Downstate Revitalization Fund. We limited the analysis to industries that are likely to have eligible businesses: manufacturing, transportation and warehousing, information, finance and insurance, professional and technical services, management of companies and enterprises, and arts, entertainment and recreation.

Across these 7 broad sectors our analysis indicates that approximately 115,000 small businesses will be eligible for funding under the Downstate Revitalization Fund.

In addition approximately 2,000 municipalities and local economic development-oriented organizations will be eligible for funding.

2. **Compliance Requirements:** There are no compliance requirements for small businesses and local governments in these regulations.

3. **Professional Services:** Applicants do not need to obtain professional services to comply with these regulations.

4. **Compliance Costs:** To the extent that there are existing capabilities at the local level to administer projects involving Downstate Revitalization Fund investments, there should be relatively little, if any additional administration costs.

5. **Economic and Technological Feasibility:** Compliance with these regulations should be economically and technologically feasible for small businesses and local governments.

6. **Minimizing Adverse Impact:** This rule has no adverse impacts on small businesses or local governments because it is designed to provide financing for joint discretionary and competitive economic development projects for distressed communities. In addition the rule specifies that project evaluation criteria include significant support from the local busi-

ness community, local government, community organizations, academic institutions, and other regional parties. Because this program is open to for-profit businesses confidentiality features are included in the application process.

7. **Small Business and Local Government Participation:** The National Federation of Independent Business, New York Farm Bureau, and the New York Conference of Mayors were consulted during this rulemaking and comments requested. In addition, 17 rural organizations, cooperatives, and agricultural groups and 10 local government associations were also notified.

ESDC received 10 responses to its outreach to interested parties on the proposed regulations. Much of the responses received consisted of general supporting statements for the programs or critique of the enabling legislation.

Listed are several comments received on the proposed rules related to the Downstate Revitalization Fund and our response to the comment.

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ESDC uses one standard application for this, and many other economic development programs. The information required under Section 4249.6 "Application and approval process" from all applicants is needed for the corporation to make sound investment decisions. Private financing institutions request similar, if not more robust information from their applicants.

4. Regulations should allow for municipal comments when the applicant is not a municipality.

Section 4249.5, Part 3 gives preference to projects with the "existence of significant support from the local business community, local government, community organizations, academic institutions and other regional parties."

Rural Area Flexibility Analysis

1. **Types and Estimated Numbers of Rural Areas:** The ESD Downstate region is almost non-rural character. Of the 44 counties defined as rural by the Executive Law § 481(7), none are in the Downstate region Of the 9 counties that have certain townships with population densities of 150 persons or less per square mile, only two counties - Dutchess and Orange - are in the Downstate region.

2. **Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:** The rule will not impose any new or additional reporting or recordkeeping requirements; no affirmative acts will be needed to comply; and, it is not anticipated that applicants will have to secure any professional services in order to comply with this rule.

3. **Costs:** The costs to municipalities and other regulated parties involved would depend on the extent to which they participate in and support the proposed projects. For municipalities, this may involve matching funds or the commitment of other public resources for project development.

4. **Minimizing Adverse Impact:** The purpose of the Downstate Revitalization Fund Program is to maximize the economic benefit of new capital investment in distressed areas of the downstate region. The statute stipulates that projects must be located in distressed communities for which there is a demonstrated demand. This suggests that cooperation among state, local, and private development entities will seek to maximize the Program's effectiveness and minimize any negative impacts.

5. **Rural Area Participation:** This rule maximizes geographic participation by not limiting applicants to those only in urban areas or only in rural areas, except for the requirement that applicants must be in downstate counties and be in distressed communities. The extent of local government support for a project is a significant criteria for project acceptance. A public hearing may also be required under the NYS Urban Development Corporation Act. The National Federation of Independent Business, New York Farm Bureau, and the New York Conference of Mayors were consulted during this rulemaking and comments requested. In addition, 17 rural organizations, cooperatives, and agricultural groups and 10 local government associations were also asked for their review and comment.

Job Impact Statement

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of Downstate New York through strategic investments to support investments in distressed communities in Downstate regions and to support projects that focus on encouraging responsible development.

There will be no adverse impact on job opportunities in the state.

Workers' Compensation Board

NOTICE OF ADOPTION

Chiropractic Fee Schedule

I.D. No. WCB-49-10-00018-A

Filing No. 105

Filing Date: 2011-01-25

Effective Date: 2011-02-09

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

Action taken: Amendment of section 348.1 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 13(a), 13-l and 117(a)

Subject: Chiropractic Fee Schedule.

Purpose: To conform section 348.1 to the amendment of section 348.2 for the adoption of a new Chiropractic Fee Schedule effective December 1, 2010.

Text or summary was published in the December 8, 2010 issue of the Register, I.D. No. WCB-49-10-00018-P.

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

Text of rule and any required statements and analyses may be obtained from: Cheryl M Wood, Workers' Compensation Board, 20 Park Street, Room 400, Albany, New York 12207, (518) 408-0469, email: regulations@wcb.state.ny.us

Assessment of Public Comment

The agency received no public comment.