

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Standards and Testing Procedures for Gasoline and Kerosene

I.D. No. AAM-45-04-00008-A
Filing No. 260
Filing date: March 14, 2005
Effective date: March 30, 2005

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

Action taken: Amendment of sections 224.2, 224.3 and 224.9 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18, 179 and 192-a

Subject: Standards and testing procedures for gasoline and kerosene.

Purpose: To update requirements relating to standards that gasoline and kerosene must meet and testing procedures that must be used to determine whether gasoline complies with such revised standards.

Text or summary was published in the notice of proposed rule making, I.D. No. AAM-45-04-00008-P, Issue of November 10, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Ross Andersen, Department of Agriculture and Markets,

Bureau of Weights and Measures, 10B Airline Dr., Albany, NY 12235, (518) 457-3146

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-13-05-00002-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Department of Correctional Services.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Correctional Services, by adding thereto the positions of Board Member (DOCS Independent Advisory Board) (6).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-13-05-00003-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Law, by increasing the number of positions of Assistant Attorney General from 508 to 594, Confidential Assistant from 4 to 5, Investigator from 121 to 156 and Secretary from 28 to 30.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

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

Jurisdictional Classification

I.D. No. CVS-13-05-00004-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State University of New York under the subheading "SUNY at Albany," by increasing the number of positions of Secretary 2 from 6 to 7.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

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

Jurisdictional Classification

I.D. No. CVS-13-05-00005-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class in the Executive Department under the subheading "Office of General Services," by adding thereto the position of Statewide Travel Coordinator (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

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

Jurisdictional Classification

I.D. No. CVS-13-05-00006-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "State Emergency Management Office," by adding thereto the positions of Communications Technician (4).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

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

Jurisdictional Classification

I.D. No. CVS-13-05-00007-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Technology," by deleting therefrom the positions of Coordinator of Technology Assistance for the Disabled (1) and Technology Enterprise Accounts Manager (1) and by adding thereto the position of Technology Enterprise Accounts Manager (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

New York State Energy Research and Development Authority

NOTICE OF ADOPTION

Minimum Energy Efficiency Standards

I.D. No. ERD-35-04-00011-A

Filing No. 255

Filing date: March 11, 2005

Effective date: March 30, 2005

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

Action taken: Repeal of section 506.6 and addition of new sections 506.6 and 506.4(f)-(m) to Title 21 NYCRR.

Statutory authority: Energy Law, section 5-108-a; and Public Authorities Law, section 1855(4)

Subject: Minimum energy efficiency standards for energy using products purchased by or for the State and State agencies.

Purpose: To establish minimum energy efficiency standards for appliances and energy using products purchased by or for the State or agency thereof.

Text or summary was published in the notice of proposed rule making, I.D. No. ERD-35-04-00011-P, Issue of September 1, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Mitchell Khosrova, Energy Research and Development Authority, 17 Columbia Circle, Albany, NY 12203, (518) 862-1090, ext. 3380, e-mail: mk2@nysesda.org

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Acid Deposition Reduction Budget Trading Programs for NO_x and SO₂

I.D. No. ENV-35-04-00024-E

Filing No. 256

Filing date: March 15, 2005

Effective date: March 15, 2005

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

Action taken: Addition of Parts 237 and 238; and amendment of section 200.9 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305 and 19-0311

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

Specific reasons underlying the finding of necessity: During February 2002, the department proposed to establish the Acid Deposition Reduction Program (ADRP) by promulgating 6 NYCRR Part 237, Acid Deposition Reduction NO_x Budget Trading Program, and 6 NYCRR Part 238, Acid Deposition Reduction SO₂ Budget Trading Program, and to revise 6 NYCRR Part 200, General Provisions. The goal of the ADRP was to require fossil fuel-fired electric generators in New York to reduce emissions to protect sensitive areas, such as the Adirondacks and the Catskills, from the devastation of acid deposition. Specifically, electric generators

would have to reduce sulfur dioxide (SO₂) emissions to 50 percent below the levels allowed by Phase 2 of the federal acid rain program (the Title IV Program). The Title IV program is established under sections 401-416 of the federal Clean Air Act (CAA), 42 U.S.C. sections 7651 - 7651o. As ultimately adopted, the ADRP directed that these SO₂ reductions be phased in beginning Jan. 1, 2005 through 2007 (Phase 1) and Jan. 1, 2008 (Phase 2). In addition, the ozone season reductions in nitrogen oxides (NO_x) emissions starting in the 2003 ozone season (under 6 NYCRR Part 204) were to be extended to the non-ozone season and thus be in place year-round beginning on Oct. 1, 2004. Such reductions will be achieved through an allowance based cap and trade program. The department adopted the ADRP regulations on April 15, 2003.

The ADRP regulations were subject to legal challenge and were invalidated on May 26, 2004 by the Supreme Court, Albany County in the joint decision in *Multiple Intervenors, et al. v. NYSDEC*, and *NRG Energy v. Crotty*.

By the present emergency rule making, the department is again promulgating the ADRP regulations but with very minor revisions. Although the department disagrees with the Court's decision and is currently appealing it, the department believes that the current rule making addresses the deficiencies of the initial rule making that were expressed by the Supreme Court.

In order to forestall the loss of the public health and environmental benefits that were to be realized during the first year of implementation of the ADRP as originally scheduled, the department is promulgating these emergency regulations. The control periods (the yearly regulatory compliance periods) are scheduled to commence on Oct. 1, 2004 and Jan. 1, 2005, under the Acid Deposition Reduction NO_x Budget Trading Program, 6 NYCRR Part 237, and the Acid Deposition Reduction SO₂ Budget Trading Program, 6 NYCRR Part 238, respectively. Had the department undertaken only a conventional notice-and-comment rule making pursuant to SAPA section 202.1 in order to reinstate the ADRP, the public health and environmental benefits that would have occurred for the first control periods under the regulations would certainly be lost because the rule making process would not conclude until well after the control periods were scheduled to commence. Because of concerns about the need for the ADRP regulations to be consistent and compatible with, among other things, the operation of the ozone season NO_x Budget Trading Program established at 6 NYCRR Part 204 and emissions monitoring protocols, any failure to implement the ADRP programs by the aforementioned dates would delay implementation of the programs for at least one full year.

Based on data showing 2002 emissions from affected sources, the department has estimated that an additional 35,000 tons per year of SO₂ (from 2005 through 2007 and 100,000 tons per year beginning 2008) and 6,000 tons per year of NO_x will be released into the atmosphere in the absence of the timely implementation of the regulatory caps of the respective programs. The NO_x emissions reductions are equivalent to removing over 300,000 cars from New York State's roads. The SO₂ emissions reductions are equivalent to eliminating all of the SO₂ emissions from households heated primarily with oil in New York State (2.33 million). These emissions of SO₂ and NO_x contribute to an array of environmental and public health harms in New York.

The study of the harms from air pollution is continually evolving. In accordance with the CAA sections 108 and 109, which govern the establishment, review, and revision of National Ambient Air Quality Standards (NAAQS), EPA is to list pollutants that may reasonably be anticipated to endanger public health or welfare and to issue air quality criteria for them. The air quality criteria are to reflect the latest scientific information useful in indicating the kind and extent of all exposure-related effects on both public health and welfare expected from the presence of the pollutant in ambient air. EPA is obligated to periodically revise the NAAQS based on these criteria to protect against adverse health effects that may be suffered by sensitive population groups, with an adequate margin of safety, and to protect the public welfare.

In April 1996, EPA released the Air Quality Criteria for Particulate Matter (PM), which in turn resulted in the revision to the NAAQS and establishment of thresholds for PM_{2.5}. The PM_{2.5} NAAQS and the criteria document described the health impacts associated with emissions of PM. During June 2004, EPA identified which individual counties in New York State that EPA intends to designate as nonattainment for the PM_{2.5} NAAQS. More than 12.4 million New Yorkers, 65% of the entire State population, reside within the counties that EPA proposes to designate as nonattainment with the health based PM_{2.5} NAAQS.

PM is derived either from combustion material that has volatilized and then condenses to form primary PM or precursor gases reacting in the

atmosphere to form secondary PM. SO₂ and NO_x react in the atmosphere to create sulfates and nitrates, a secondary form of PM. Fossil fuel-fired electric generators, affected sources under the ADRP, are significant emitters of SO₂ and NO_x. Implementation of the ADRP will have immediate positive impacts on public health due to the reduction in the formation of the secondary PM, including most importantly PM_{2.5}. It should be noted that PM_{2.5} has been identified as a non-threshold pollutant. See *Whitman v. American Trucking Associations*, 531 U.S. 457, 475 (2001). In other words, health effects are possible from exposure to PM_{2.5} at levels below the standard established by EPA. The department notes that it would be detrimental to public health and welfare to proceed solely through the rule making process of SAPA section 202.1 and lose one or more control periods.

Health risks associated with the inhalation of PM are influenced by both the penetration and deposition of PM in the various regions of the respiratory tract and the biological responses to these deposited materials. Smaller PM is known to deposit furthest in the respiratory tract. The most significant monetized benefits of reducing ambient concentrations of PM are attributable to reductions in health risks associated with air pollution. These health related benefits are calculated by changes in occurrences of PM-related health effects and the monetary values associated with reductions in: mortality rates from both short and long term exposure, chronic bronchitis, pneumonia, cardiovascular illnesses, occurrences of asthma, and asthma related emergency room visits. In addition, studies also look at illnesses that do not require hospitalization but result in decreased activity or productivity such as: acute bronchitis, upper and lower respiratory symptoms, restricted activity days, work loss days, and asthma attacks. EPA continues to assess the impacts of PM_{2.5} and this new information continues to highlight the impacts that PM_{2.5} has on public health. To protect the public health of all New York residents, the department has factored this new information into its decision to adopt these regulations on an immediate basis.

On Dec. 29, 2003, the department issued Commissioner's Policy 33, *Assessing and Mitigating Impacts of Fine Particulate Matter Emissions* (the PM_{2.5} Policy). The PM_{2.5} Policy provides guidance on the project-specific assessment of the PM_{2.5} impacts of the siting of new stationary sources of air pollution and details when mitigation of such impacts may be necessary. The department established the PM_{2.5} Policy for purposes of guiding the review of an application for a permit or major permit modification under the State Environmental Quality Review Act, ECL sections 8-0101 – 8-0117. The ADRP will serve to complement the PM_{2.5} Policy in that the ADRP will reduce PM_{2.5} emissions from existing power plants - emissions that previously have gone unaddressed.

During the initial development of the ADRP, the department had anticipated that EPA would soon promulgate, pursuant to CAA section 112, 42 USC section 7412, a maximum achievable control technology standard for the control of mercury emissions from the fossil fuel-fired electricity generation sector. Unfortunately, EPA's most recent proposals would not mandate mercury emissions reductions at a level and within a time frame to adequately protect the State's vulnerable water bodies. In light of this circumstance, the department believes that the mercury reduction co-benefit of the ADRP has taken on much greater importance.

Mercury emissions from coal fired electricity generators in New York represent about 33 percent of the mercury emissions from stationary sources in the State. Mercury emissions from electricity generation are released from coal that is burned to generate power. When mercury is released into the air, it is transported and eventually deposited back onto the earth. The distance of this transport and eventual deposition depends on the chemical and physical form of the mercury emitted. In aquatic ecosystems, inorganic mercury is transformed into an extremely toxic organic form of mercury, methylmercury.

Methylmercury bioaccumulates in the food chain as humans and other mammals consume mercury-contaminated organisms, particularly fish. Methylmercury in fish poses a real risk for fish-eating mammals and birds such as otters, mink, bald eagles, kingfishers, ospreys and the common loon. Mercury residues in some of these species have been close to, and in some instances greater than, concentrations associated with observed toxic effects. Humans are most likely to be exposed to methylmercury through fish consumption. Young children and developing fetuses are particularly sensitive to methylmercury exposure, as demonstrated in both animal studies and accidental human poisonings. In the Minamata, Japan episode, human fatalities and devastating neurological damage were associated with the daily consumption of fish contaminated with high levels of methylmercury. Children of women exposed to relatively high levels of methylmercury during pregnancy have exhibited a variety of abnormali-

ties, including delayed onset of walking and talking, cerebral palsy and reduced neurological test scores. Children exposed to far lower levels of methylmercury in the womb have exhibited delays and deficits in learning ability. In addition, children exposed after birth potentially are more sensitive to the toxic effects of methylmercury than adults, because their nervous systems are still developing. The National Research Council recently concluded the population at highest risk is the offspring of women of child-bearing age who consume large amounts of fish and seafood during their pregnancy. Because of the bioaccumulation of methylmercury in freshwater fish, thousands of water bodies nationwide, including all of the Great Lakes and their connecting waters, have fish consumption advisories. In New York State, numerous bodies of freshwater across the State have advisories or bans on consuming fish.

Since 2002, the department has added to the "Section 303(d) list" 23 water body segments as impaired by mercury from atmospheric deposition. In addition, and subsequent to the amendments to the Section 303(d) list, the New York State Department of Health issued new health advisories concerning the consumption of fish from 13 Adirondack lakes and ponds, 3 New York City reservoirs located in the Catskills and one Otsego County lake based on elevated levels of mercury found in fish in those water bodies. These additional health advisories brings to 51 the total number of water bodies that are the subject of fish consumption advisories for mercury. In addition, the Health Department issues a general fish advisory alerting the public not to eat more than one meal (one-half pound) per week of fish taken from New York's fresh waters and some marine waters at the mouth of the Hudson River. This list of restricted water bodies and fish species continues to grow each year. Many of the lakes sampled are in remote rural and mountainous areas of the State that do not have any known mercury inputs other than atmospheric deposition.

As a result of the controls implemented to comply with this regulation, mercury emissions from electricity generators will be reduced. The vast majority of the coal burned in the State is bituminous coal and the amount of mercury captured by a given control technology is better for bituminous coal. In addition to existing particulate controls, several coal burning facilities in the State are likely to install flue gas desulfurization equipment and post-combustion NO_x controls to comply with the ADRP. The range of mercury reductions from coal-fired units with flue gas desulfurization combined with either or both particulate and post-combustion NO_x controls ranges from 48 to 98 percent. To protect the health of New York's residents and to reduce the number of impaired water bodies, the department is implementing these regulations on an emergency basis to maintain the mercury co-benefit that will be gained from the combinations of control equipment needed by affected sources to reduce SO₂ and NO_x emissions.

Acid deposition does not only affect public health and the State's water ways, it also impacts public welfare and quality of life. It has been identified as a contributing cause of forest degradation, especially among high-elevation spruce throughout the Appalachian Mountains. The same forest areas directly impacted by the effects of acid deposition are also some of the nation's most pristine wilderness areas (such as the Adirondack Park) and national parks. These wilderness areas, visited by hundreds of thousands of people each year for their scenic vistas and natural beauty, are impacted by sulfates and nitrates in the atmosphere. Under certain conditions sulfate and nitrate particles in the atmosphere reduce visibility. This visibility phenomenon, also known as "haze" has been marring public enjoyment of national parks such as Shenandoah, the Great Smoky Mountains, and the Grand Canyon. New York State sources are thought to contribute to a reduction in visibility in Class I areas, such as the Lye Brook Wilderness area in southwest Vermont and the White Mountains in New Hampshire.

One of the areas most affected by acid deposition is New York's Adirondack Park. This park consists of over 6 million acres of forests, lakes, streams and mountains, and represents the largest wilderness area east of the Mississippi River. The thin calcium-poor soils and igneous rocks of the Adirondacks make this area particularly sensitive to acid deposition. In addition, many of the Adirondack's lakes have an acid neutralizing capacity of less than zero, which means that they are no longer able to neutralize any acid entering the lake. Some of these lakes have been found to suffer from chronic acidity (constant levels of low pH). In some cases, the acidification has completely eliminated certain fish species and extreme levels of acidification have rendered the water ways lifeless. This problem is amplified when brief periods of low pH from snowmelt and/or heavy downpours (episodic acidification) are factored into the equation. These events, sometimes short in duration, have been known to cause large scale fish kills because of the high levels of acidity and the rapid rate at

which the water way reaches peak acidity. Approximately 26% of the lakes surveyed in the Adirondacks have completely lost their ability to neutralize acid entering the lakes and over 70 percent of the sensitive lakes in the Adirondacks are at risk of episodic acidification.

Acid deposition also impairs tree growth in several ways. Acidic cloud water in higher elevations may increase the susceptibility of the red spruce to winter injury, while acid deposition has been stripping forest soils of vital nutrients necessary for forest productivity. Inputs to soils of sulfates from SO₂ and nitrates from NO_x cause a depletion of base cations such as calcium, magnesium, potassium and sodium that naturally exist in soils. These metals are components of soil which originate from rocks and minerals and are essential for healthy growing forests. The depletion of base cations from soils has been linked to increased mortality and reduced growth of red spruce. Acid deposition, in combination with natural stress factors has resulted in reduced growth and viability of red spruce across the high-elevation part of its range.

Deposition of NO_x to surface waters contributes directly to the widespread accelerated eutrophication of coastal waters and estuaries. Nitrogen is the nutrient that determines the amount of algae growth. The deposition of NO_x results in accelerated algae and aquatic plant growth causing adverse ecological effects and economic impacts that range from nuisance alga blooms to oxygen depletion and fish kills. This is true for Long Island Sound which experiences hypoxia (low dissolved oxygen levels) in bottom waters during late summer (July - Sept.). This results in use impairments, including a decrease in bathing area quality, an increase in unhealthy areas for aquatic marine life, an increase in mortality of sensitive organisms, poor water clarity for scuba divers, a reduction in commercial and sport fishing values, a reduction in wildlife habitat value, degradation of sea grass beds, impacts on tourism and real estate, and poorer aesthetics. Atmospheric deposition represents over 16 percent of the in-basin nitrogen loading and nearly 11 percent of the total nitrogen loading to Long Island Sound. Part 237 will reduce nitrogen loading to surface waters. This will aid in mitigating the eutrophication of coastal waters and estuaries, including Long Island Sound which has recently experienced alga blooms and increased hypoxia conditions.

National treasures, including the Washington Monument, have been impacted by acid deposition. Wet and dry deposited particles contribute to the corrosion of metals, stone and paint on buildings, statues and cars. Structural and automotive corrosion has not only resulted in increased maintenance (cleaning) and material costs (acid resistant paints) but also in significant losses in terms of what value society places on the fine details of a statue that are lost forever due to acid rain. It is the continued degradation to these recreation areas, national forests, scenic views, and the continued damage to and corrosion of historic structures and buildings that call for the immediate adoption of these regulations. As noted above, each control season that is lost results in the loading of an additional 35,000 tons of SO₂ and 6,000 tons of NO_x into the atmosphere that further harms the State's natural and historic landmarks.

In addition, while a few affected sources challenged the original promulgation of Part 237, Part 238, and Part 200, the great majority did not. All affected sources had previously had reason to expect that the ADRP programs would begin on Oct. 1, 2004 (Part 237) and Jan. 1, 2005 (Part 238). All affected sources had received their allocations under the programs and have already submitted applications for required permit modifications under both programs. Some affected sources submitted applications for the distribution of early reduction allowances under Part 237. For the majority of affected sources that had planned for the timely implementation of the ADRP, the loss of one or more control periods will disrupt compliance plans including the installation of emissions control devices. Installation of emissions control devices results in the generation of excess allowances that may be sold to then recoup some of the costs of installation. Early emissions reductions may qualify a source for the award of early reduction allowances. With the loss of one or more of the initial control periods, sources that had been making good faith efforts to comply by restricting emissions will be unfairly penalized by not being able to recover some of the capital investment for control equipment. These complying sources are also placed at an economic disadvantage in relation to those affected sources that have opposed the regulations and done nothing to comply.

As noted above, any delay in implementation of the ADRP would continue to negatively impact public health and the general welfare in New York. Failure to obtain the reductions from the first control periods under the ADRP (Oct. 1, 2004 for NO_x and Jan. 1, 2005 for SO₂) will have negative impacts on public health from the secondary formation of PM_{2.5} and, will result in the continued degradation of the State's water bodies as a

result of mercury, nitrate, and sulfate deposition. The emissions that result from the loss of the first control periods will continue to negatively impact regional haze, high elevation forests, as well as coastal waters and estuaries. In addition, the mercury reduction co-benefits mentioned above would be lost. For these reasons, emergency adoption is necessary for the preservation of the public health, safety and general public welfare and that compliance with the normal regulatory process would be contrary to public interest.

¹ Air Quality Criteria for Particulate Matter, Volumes I, II and III, EPA/600/P-95/001aF, U.S. Environmental Protection Agency, April 1996.

² PM_{2.5} refers to any particulate matter with a mass median diameter of less than 2.5 microns.

³ The Particulate-Related Health Benefits of Reducing Power Plant Emissions, Abt Associates Inc., October 2000.

⁴ New York State Department of Environmental Conservation. 2003. Mercury Emissions Inventory for 2002. Division of Air Resources. Bureau of Air Quality Analysis and Research.

⁵ Tsubaki, T., and Irukayama, K. (eds.) Minamata Disease. Kodansha Ltd. Tokyo: Elsevier Scientific Pub. Co., Amsterdam. 1977.

⁶ Regulatory Finding on the Emissions of Hazardous Air Pollutants from Electric Utility Steam Generating Units. U. S. Environmental Protection Agency. Federal Register, Vol. 65, No. 245, pp. 79825-79831. December 20, 2000.

⁷ Toxicological Effects of Methylmercury, National Research Council, National Academy Press, Washington, DC, Copyright 2000.

⁸ The Federal Clean Water Act, 33 USC sections 1251-1387, requires state officials to periodically assess and report on the quality of waters in their state. Section 303(d) of the Act, 33 USC section 1313(d), also require state officials to identify impaired waters, where specific designated uses are not fully supported. For these impaired waters, state officials must consider the development of a Total Maximum Daily Load or other strategy to reduce the input of the specific pollutant(s) that restrict water body uses, in order to restore and protect such uses.

⁹ New York State Department of Health. Chemicals in Sportfish and Game 2004-2005.

¹⁰ Technical Memorandum. Control of Mercury Emissions from Coal-fired Electric Utility Boilers, James D. Kilgroe, Ravi K. Srivastava, Charles B. Sedman, and Susan A. Throneloe, U. S. Environmental Protection Agency, October 25, 2000.

¹¹ National Acid Precipitation Assessment Program Biennial Report to Congress: An Integrated Assessment, 1998.

¹² Nitrogen Oxides: Impacts on Public Health and the Environment, U. S. Environmental Protection Agency, August 1997.

¹³ A Total Maximum Daily Load Analysis to Achieve Water Quality Standards for Dissolved Oxygen in Long Island Sound, New York State Department of Environmental Conservation and Connecticut Department of Environmental Protection, December 2000.

Subject: New York State acid deposition reduction budget trading programs for NO_x and SO₂.

Purpose: To reduce emissions of NO_x and SO₂ from fossil fuel-fired electric generating sources statewide to protect the sensitive ecosystems in the Northeast from the damaging effects of acid deposition.

Substance of emergency rule: Part 237 establishes the Acid Deposition Reduction (ADR) NO_x Budget Trading Program and Part 238 establishes the ADR SO₂ Budget Trading Program. These programs are designed to reduce acid deposition in New York State by limiting emissions of NO_x during the non-ozone season and SO₂ year-round from fossil-fuel fired electricity generating units.

Parts 237 and 238 establish emission budgets for NO_x and SO₂, respectively. Parts 237 and 238 establish trading programs by creating and allocating allowances that are limited authorizations to emit up to one ton of NO_x or SO₂ in the respective control periods or any control period thereafter. Affected units are required to hold for compliance deduction, at the respective allowance transfer deadlines, the tonnage equivalent to the emissions at the unit for the control period immediately preceding such deadline.

For Part 237, the first control period commences on October 1, 2004 and concludes on April 30, 2005. Subsequent control periods begin on October 1 and conclude on April 30 the next calendar year. Part 237 applies to units that serve an electrical generator with a nameplate capacity equal to or greater than 25 megawatts of electrical output and sells any amount of electricity. The control period for Part 238 runs from January 1 to December 31 starting in 2005. Part 238 applies to units that are defined

as affected units under the SO₂ portion of Title IV of the Clean Air Act, the federal acid rain program.

Part 237 includes limited exemption provisions that allow units otherwise affected by the regulation to be exempt from nearly all of the reporting, permitting and allowance compliance requirements. All units at a single source may apply for a limited exemption of Part 237 if they accept an emission limitation restricting NO_x emissions from the source during a control period to 25 tons or less. A limited exemption is also available to units that restrict the supply of the unit's electrical output to the grid during a control period to less than 10 percent of the gross generation of the unit. Units that shutdown will no longer be considered NO_x or SO₂ budget units and shall no longer be subject to Parts 237 and 238.

Part 237 requires each NO_x budget unit to have a NO_x authorized account representative (AAR) who shall be responsible for, among other things, complying with the NO_x budget permit requirements, the monitoring requirements, the allowance provisions, and the recordkeeping and reporting requirements. Similarly for Part 238, each SO₂ budget unit needs to have an SO₂ AAR designated to perform these duties. The owner and/or operator of the unit may also designate an alternate NO_x or SO₂ AAR to perform the above duties.

The NO_x AAR shall submit a complete NO_x budget permit application to the Department by the later of October 1, 2004 or 12 months before the date on which the NO_x budget unit commences operation. The NO_x AAR shall submit to the Department a compliance certification report for each control period by September 30 immediately following the relevant control period. The SO₂ AAR shall submit a complete SO₂ budget application by the later of October 1, 2004 or 12 months before the date on which the SO₂ budget unit commences operation and a compliance certification report for each control period by March 1 immediately following the relevant control period.

The Statewide ADR NO_x Trading Program Budget is 39,908 tons for each control period. By September 1, 2004, the Department will make the NO_x allowance allocations for the 2004-05, 2005-06, 2006-07 and 2007-08 control periods. By September 1 of each subsequent year, the Department will make the NO_x allowance allocations for the control period that commences in the year three years after the deadline for submission.

The Department will determine the number of NO_x allowances to be allocated to each NO_x budget unit by: (1) multiplying the greatest heat input experienced by the unit for any single control period among the three most recent control periods, for which data is available by 0.15 pounds per million Btu (first round calculation); (2) determining the allocation factor by dividing 92 percent of the Statewide NO_x budget by the sum of all the above first round calculations (second round calculation); (3) multiplying the allocation factor by each unit's first round calculation result (third round calculation); and, (4) allocating the lesser of the unit's control period potential to emit or the third round calculation plus the unit's proportional share of any additional allowances remaining in the 92 percent portion of the Statewide NO_x budget.

The Statewide SO₂ trading program budget is 197,046 tons for the 2005 through 2007 control periods and 131,364 tons for each control period starting in 2008. By October 1, 2004, the Department will make the SO₂ allowance allocations for the 2005, 2006 and 2007 control periods. By January 1 of each year thereafter, the Department will make the SO₂ allowances for the control period in the year that is three years after the year of submission.

The Department will determine the number of SO₂ allowances to be allocated to each SO₂ budget unit in 2005, 2006, and 2007 by: (1) multiplying the greatest heat input experienced by the unit for any single control period among the three preceding control periods by the lesser of either 0.9 pounds per million Btu for coal units or 0.45 pounds per million Btu for non-coal units and the highest actual annual average emission rate from 1998 to 2001 (first round calculation); (2) determining the allocation factor by dividing 94 percent of the Statewide SO₂ budget by the sum of all the above first round calculations (second round calculation); (3) multiplying the allocation factor by each unit's first round calculation result (third round calculation); and, (4) allocating the lesser of the unit's control period potential to emit or the third round calculation plus the unit's proportional share of any additional allowances remaining in the 94 percent portion of the Statewide SO₂ budget. For the 2008 and beyond control periods, SO₂ allocations will be made in the same manner as above except the first round calculation will be made using 0.6 pounds per million Btu for coal and 0.3 pounds per million Btu for fuels other than coal.

For both Parts 237 and 238, new units will be allocated from set-aside accounts which consist of five percent of the Statewide NO_x budget and three percent of Statewide SO₂ budget. The NO_x AAR and SO₂ AAR of

the new unit may submit a written request to the Department to reserve for the new unit allowances in an amount no greater than the unit's control period potential to emit. For Part 237, the request must be made prior to October 1 of the control period for which the request is being made or prior to the date the unit commences operation, whichever is later. For Part 238, the request must be made prior to January 1 of the control period for which the request is being made or prior to the date the unit commences operation, whichever is later. For both Parts 237 and 238, the unit must have all of its required permits for the Department to consider these requests.

The Department will set-aside three percent of both the Statewide NO_x and SO₂ budgets for energy efficiency and renewable energy projects. The Department will award allowances to projects that reduce Statewide NO_x and SO₂ emissions through end-use efficiency measures, renewable energy generation, in-plant efficiency measures or that generate electricity more efficiently than the average heat rate in the State. End-use efficiency and renewable energy projects have priority in reserving award of these allowances.

For both the new unit and energy efficiency and renewable energy set-asides, if more than one project requests allowances from the set-aside and the number requested exceeds the number in the set-aside account, the Department will reserve allowances in the order in which approvable requests were submitted. Requests will be considered to be simultaneous if received in the same calendar quarter. Should approvable requests in excess of the set-aside be submitted in the same quarter, the Department will reserve allowances to each project in an amount proportional to the allowances requested. Unused set-aside allowances will flowback to the NO_x and SO₂ budget units in proportion to their original allocation.

The Department may award supplemental allowances to specific NO_x or SO₂ budget units for NO_x or SO₂ reductions achieved at an upwind source. The NO_x budget unit has until December 31 each year to submit its application for the immediately prior control period. The SO₂ budget unit has until July 1 each year to submit its application for the immediately prior control period. The upwind source must be located in a State that the Administrator has approved revisions to that State's implementation plan (SIP) mandated by the EPA NO_x SIP Call. The Department will award one supplemental allowance for every three tons of emission reductions at the upwind unit. The number of supplemental allowances that may be awarded for each control period is limited to a set percentage of either the Statewide NO_x or SO₂ budgets. The percentage starts at 10 percent for the first control period, then decreases to 8 percent for the second control period, 6 percent for the third control period, 5 percent for the fourth control period and 4 percent for each subsequent control period. Supplemental allowances will be awarded in the order in which complete and approvable applications are submitted. Supplemental allowances must be used for compliance within two control periods after award.

The Department will award early reduction allowances to NO_x and SO₂ budget units that achieve reductions beyond a specified emission rate (0.15 pounds NO_x per million Btu, 0.9 pounds SO₂ per million for coal units and 0.45 pounds SO₂ per million Btu for non-coal units), permitted allowable emissions and the actual average emission rate for the 1999-2000 and 2000-01 control periods for NO_x and the 2000 and 2001 control periods for SO₂. NO_x budget units may apply for early reduction allowances for reductions achieved during the 2001-02, 2002-03 and 2003-04 control periods. SO₂ budget units may apply for early reduction allowances for reductions achieved during the 2002, 2003 and 2004 control periods. NO_x budget units must apply for early reductions allowances by September 1, 2004 and SO₂ budget units must apply by May 1, 2005. Early reduction allowances may only be used for the first two control periods for both the NO_x and SO₂ ADR Programs.

The Department will establish one NO_x and one SO₂ compliance account for each NO_x and SO₂ budget unit and one NO_x and one SO₂ overdraft account for each source with two or more NO_x or SO₂ budget units. Allocations will be made into compliance accounts and deductions of allowances for compliance purposes will be made from compliance account and overdraft accounts. Allowances may be held without discount until deducted for compliance, except those created as supplemental or early reduction allowances. The NO_x or SO₂ AAR may specify the allowances by serial number to be deducted for compliance purposes in the compliance certification report or utilize the first in, first out protocols in the regulation. In order to meet the unit's budget emissions limitation for the control period immediately preceding, NO_x allowances must be submitted for recordation in a unit's compliance account or the source's overdraft account by midnight of September 30 and SO₂ allowances must be submitted for recordation by midnight of March 1. After making the deductions for compliance, if a unit has excess emissions the Department

will deduct from the unit's compliance account or the source's overdraft account, allocated for a subsequent control period, allowances equal to three times the unit's excess emissions.

In the case of electric grid reliability emergency, NO_x or SO₂ budget units may use for compliance purposes allowances allocated for future control periods. The Department must receive by the allowance transfer deadline a certification from the New York State Department of Public Service that the unit is located in an area that experienced one or more electric system reliability emergencies during the control period stating the starting and ending times of each emergency. The Department must receive from the NO_x or the SO₂ AAR a statement of intent to use future control period allowances and a report detailing the number of NO_x or SO₂ tons emitted during each electric grid reliability emergency. The number of future year allowances is limited to the number of tons emitted during certified emergencies. The Department will deduct allowances pursuant to the first in, first out protocols in the regulations.

Parts 237 and 238 both rely on the provisions of Part 75 for emissions monitoring and reporting. Units that are in compliance with Title IV of the Clean Air Act and 6 NYCRR Part 204 provisions for emissions monitoring and reporting should be in compliance with Parts 237 and 238.

Units that are not NO_x budget units may qualify to become a NO_x budget opt-in unit. A unit may become a NO_x budget opt-in unit if it conforms to all of the permitting, monitoring, recordkeeping and reporting requirements of a NO_x budget unit. Opt-in units receive NO_x allowance allocations by May 31 for each control period based on the lesser of its baseline heat input or heat input for the previous control period multiplied by the lesser of its baseline NO_x emission rate or the most stringent applicable NO_x emission limitation. Opt-in units may withdraw from the program.

Part 200 cites the portions of federal statute and regulations that are incorporated by reference into Parts 237 and 238.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. ENV-35-04-00024-P, Issue of September 1, 2004. The emergency rule will expire May 13, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Michael P. Sheehan, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8396, e-mail: mpsheeha@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to art. 8 of the (State Environmental Quality Review Act), a short environmental assessment form, a negative declaration and a coastal assessment form has been prepared and are on file.

Summary of Regulatory Impact Statement

STATUTORY AUTHORITY

On October 14, 1999, Governor Pataki announced that fossil fuel-fired electric generators in New York would be required to reduce emissions to protect sensitive areas, such as the Adirondacks and the Catskills, from the devastation of acid rain. Specifically, electric generators would have to reduce sulfur dioxide (SO₂) emissions to 50 percent below the levels allowed by Phase 2 of the federal acid rain program (the Title IV program). The Title IV program is established under §§ 401-416 of the federal Clean Air Act (CAA), 42 U.S.C. §§ 7651 - 7651o. These reductions will be phased in between 2005 and 2008. In addition, the summertime reductions in nitrogen oxides (NO_x) emissions starting in the 2003 ozone season would apply year round beginning on October 1, 2004. Such reductions will be achieved through an allowance based cap and trade program.

In order to comply with the Governor's announcement, the Department of Environmental Conservation (the Department) is proposing to establish the Acid Deposition Reduction Program (ADRP) by promulgating 6 NYCRR Part 237, Acid Deposition Reduction NO_x Budget Trading Program, and 6 NYCRR Part 238, Acid Deposition Reduction SO₂ Budget Trading Program, and to revise 6 NYCRR Part 200, General Provisions.

The promulgation of Parts 237 and 238 and attendant revisions to Part 200 are authorized by the following provisions of State law: Environmental Conservation Law (ECL) §§ 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, Energy Laws §§ 3-101 and 3-103. The legislative objectives underlying the above statutory authority are essentially directed toward protecting the environment and public health while assuring a safe, dependable and economical supply of energy to the people of the State.

The main chemical contaminants in the air pollution that contribute to the formation of acid rain are SO₂ and NO_x. Acid rain usually forms in clouds where SO₂ and NO_x chemically react with water, oxygen and

oxidants to form a mild solution of sulfuric and nitric acid. These forms of acid rain are sometimes collectively referred to as wet deposition. Half of acidity in the atmosphere falls to the earth's surface as dry deposition (gases and dry particles). These acidic particles and gases are carried by the prevailing winds and deposited onto cars, buildings, homes, trees and the earth's surface (sometimes hundreds of miles from the source and across state and national borders). The combination of dry and wet deposited acid is called acid deposition.

Acid deposition causes acidification of lakes and streams and has resulted in damage to plant species at high elevations (for example, red spruce trees above 2,000 feet in elevation). Prior to falling to earth as dry or wet deposition, SO₂ and NO_x gases, as well as their particulate forms, sulfates and nitrates, contribute to visibility degradation and impact public health.

One of the areas most affected by acid deposition is New York's Adirondack Park. Many of the Adirondack's lakes have an acid neutralizing capacity of less than zero, which means that they are no longer able to neutralize any acid entering the lake. Some of these lakes have been found to suffer from chronic acidity (constant levels of low pH). Approximately 26% of the lakes surveyed in the Adirondacks have completely lost their ability to neutralize acid entering the lakes and over 70 percent of the sensitive lakes in the Adirondacks are at risk of episodic acidification. However, because of the loss of soil buffering capacity and the lack of a cap on annual national NO_x emissions, pH levels in the most acid lakes have not changed. Scientists have predicted that without further reductions in SO₂ and NO_x the number of acidic waters in sensitive ecosystems will remain high or dramatically worsen.

Studies done by the federal government to date show that even with the emission reductions called for in the Title IV program, sensitive areas in the Adirondacks will continue to degrade. The 1998 National Acidic Deposition Assessment Program (NAPAP) report - 'Biennial Report to Congress: An Integrated Assessment' found that 24 percent of Adirondack lakes are seriously acidic and nearly 50 percent are sensitive to acidic deposition. In October 1995, EPA issued the - 'Acid Deposition Standard Feasibility Study: Report to Congress'. Both the October 1995 EPA report and NAPAP report concluded that, to realize the protection of sensitive ecosystems, additional reductions of SO₂ and NO_x emissions in the range of 40-50 percent or more were needed.

The Hubbard Brook Research Foundation, a leading authority on acid rain and forest ecosystems, has concluded that sensitive areas in the Adirondacks need an 80 percent reduction in SO₂ emissions to have biological recovery within the next fifty years. The Department believes, in order to effectuate recovery in the Adirondacks, these additional reductions are required on the national level. The Department has been, and will continue to, advocate for and participate in the development of federal programs that are needed to achieve these reductions. At this time, however, the Department is implementing reductions that it believes are technically and economically feasible in the near term across the State.

In accordance with the Clean Air Act (CAA) sections 108 and 109, which govern the establishment, review, and revision of National Ambient Air Quality Standards (NAAQS), EPA is to list pollutants that may reasonably be anticipated to endanger public health or welfare and to issue air quality criteria for them. The air quality criteria are to reflect the latest scientific information useful in indicating the kind and extent of all exposure-related effects on both public health and welfare expected from the presence of the pollutant in ambient air. In April 1996, EPA released the Air Quality Criteria for Particulate Matter (PM), which in turn resulted in the revision to the NAAQS and establishment of thresholds for PM_{2.5}. During June 2004, EPA identified individual counties in New York State that EPA intends to designate as nonattainment for the PM_{2.5} NAAQS. More than 12.4 million New Yorkers, 65% of the entire State population, reside within the counties that EPA proposes to designate as nonattainment with the health based PM_{2.5} NAAQS.

PM is derived either from combustion material that has volatilized and then condenses to form primary PM or precursor gases reacting in the atmosphere to form secondary PM. SO₂ and NO_x react in the atmosphere to create sulfates and nitrates, a secondary form of PM. Fossil fuel-fired electric generators, affected sources under the ADRP, are significant emitters of SO₂ and NO_x. Implementation of the ADRP will have immediate positive impacts on public health due to the reduction in the formation of the secondary PM including, most importantly, PM_{2.5}. In an analysis of epidemiology studies completed to date, evidence exists that shows a statistically significant association between outdoor concentrations of sulfate aerosols, PM_{2.5}, or both and the following human health effects: premature mortality, chronic respiratory disease, hospital admissions, ag-

gravation of asthma symptoms, restricted activity days, and acute respiratory symptoms.

Deposition of NO_x to surface waters contributes directly to the widespread accelerated eutrophication of coastal waters and estuaries. This is true for Long Island Sound which experiences hypoxia (low dissolved oxygen levels) in bottom waters during late summer (July - September). Atmospheric deposition represents over 16 percent of the in-basin nitrogen loading and nearly 11 percent of the total nitrogen loading to Long Island Sound.

Mercury emissions from coal fired electricity generators in New York represent about 33 percent of the mercury emissions from stationary sources in the State. In aquatic ecosystems, inorganic mercury is transformed into an extremely toxic organic form of mercury, methylmercury. Methylmercury bioaccumulates in the food chain as humans and other mammals consume mercury-contaminated organisms, particularly fish. Methylmercury in fish poses a real risk for fish-eating mammals and birds such as otters, mink, bald eagles, kingfishers, ospreys and the common loon. Because of the bioaccumulation of methylmercury in freshwater fish, thousands of water bodies nationwide, including all of the Great Lakes and their connecting waters, have fish consumption advisories. Since 2002, the Department has added to the "Section 303(d) list" 23 water body segments as impaired by mercury from atmospheric deposition. In addition, and subsequent to the amendments to the Section 303(d) list, the New York State Department of Health issued new health advisories concerning the consumption of fish from 13 Adirondack lakes and ponds, 3 New York City reservoirs located in the Catskills and one Otsego County lake based on elevated levels of mercury found in fish in those water bodies. These additional health advisories brings to 51 the total number of water bodies that are subject of fish consumption advisories for mercury.

The Department sought input from NYSERDA and the New York Department of Public Service (DPS) with respect to the costs associated with compliance of the ADRP and any impacts to the reliability of New York's energy supply. DPS mailed questionnaires to eight electricity generators that the agencies believed would be most directly impacted by the ADRP. DPS tabulated the information submitted and provided it to NYSERDA which analyzed the information pursuant to the mathematical model - MAPS. The total capital expenditures, as recorded in the facilities' responses, indicated that facilities in New York will require capital investments of approximately \$430 million to comply with the regulations. It is expected that plant owners who install emissions controls would increase their bid prices to recoup the added capital cost of controls.

The MAPS model for the 2008 compliance case (full implementation of the program) predicts that wholesale electricity prices will increase from 1 percent in the Capital District to 9 percent in the Rochester area and 16 percent on Long Island. The Statewide average increase in wholesale electricity prices is 5.4 percent. The percentage increase in retail electricity prices due to the ADRP would be substantially less than the percentage in wholesale prices.

The Department anticipates a small impact on the State's rail freight industry due to a possible decrease in coal shipments to the State because of the modeled reduction in coal-fired generation.

The MAPS model predicts an estimated increase of \$370 million for the wholesale price of electricity as a result of the ADRP. It must be noted that the \$370 million increase is a worst case estimate and is based on the compliance assumptions of the individual companies without regard to the allowance trading program that will implement the reductions in NO_x and SO₂ emissions of the ADRP and the fact that the MAPS model predicted significant over-compliance with the emissions reduction goals of the program.

The Department recognizes that the above referenced MAPS modeling was done when more new generation was predicted to come on-line than is currently anticipated. As a result, the Department, with assistance from NYSERDA, has analyzed the MAPS modeling that was developed in the context of the 2002 State Energy Plan. Based on the projected SO₂ emissions reductions of 184,000 tons in 2008 in the ADRP compliance case compared to the ADRP base case, it could be inferred that SO₂ compliance under the "No Additional Construction" scenario might result in a 17 percent increase in the number of tons of SO₂ reduction needed (32,000/184,000). With respect to NO_x emissions, in the "No Additional Construction" scenario, annual NO_x emissions in 2008 are projected to be 72,200 tons, exceeding the proposed ADRP NO_x cap of 70,000 tons by 2,200 tons, or about 3 percent. This result suggests that the impacts on NO_x compliance costs, while not negligible, are not expected to be substantial.

While the delay of new capacity additions may increase compliance costs, it would also be likely to result in additional running time for

existing units. It is important to recognize that while the "No Additional Construction" scenario is useful for analytical purposes, system reliability requirements would not be achieved under these circumstances, so this should not be considered to be a viable operational scenario. Since the completion of the MAPS modeling in October 2001, new generation has been built and is now operational, new generation has been permitted and is now under construction, new generation has been permitted that is not yet under construction, and permit applications are currently under review. Although the Department has analyzed a "No Additional Construction" scenario to address concerns that the new construction figure used in the MAPS modeling was unrealistic, it is evident from the permitting, construction and operational figures above, that the prediction of new generation by DPS and NYSERDA was reasonable.

There will be costs associated with the administration of the ADRP. The Department estimates that between 3 to 4 person years will be required to implement these programs at cost of \$100,000 per person year or \$400,000 annually. The Department will also need to reimburse its agent for its costs in administering the emission and allowance tracking and reporting system. Based on contractor estimates, the capital start up costs for designing and implementing a system for tracking allowance transactions is approximately \$400,000. The Department's contractor estimates the annual operating costs for administering an emission and allowance tracking and reporting system to be between \$150,000 and \$180,000.

The owners and operators of each source subject to the ADRP and each unit at the source shall keep each of the following documents for a period of five years from the date the document is created: (i) the account certificate of representation form; (ii) all emissions monitoring information, unless a three year period is specified; (iii) copies of all reports, compliance certifications, and other submissions and all records made or required under the ADRP; and (iv) copies of all documents used to complete a permit application and any other submission under the ADRP or to demonstrate compliance with the ADRP.

For each control period in which one or more units at a source are subject to the ADRP emission limitation, the ADRP authorized account representative of the source shall submit to the Department, a compliance certification report for each source covering all such units. This must be submitted by the September 30 following the relevant control for the units subject to Part 237 and by the March 1 following the relevant control period for the units subject to Part 238.

The Department examined two alternatives, these were emission rate based programs and a sulfur-in-fuel limitation. The Department has concluded that these alternatives are less cost-effective than the proposed ADRP and implementation of them would be more difficult for sources. The Department determined such reductions, therefore, would be no more protective of the public health and the environment.

The Department also considered a number of variations of the emissions cap-and-trade construct that could result in programs that share many or most of the features of the ADRP as proposed. These alternatives included: (1) programs that contain features that cause sources to be treated differently depending on their proximity to sensitive receptor areas in the State; (2) a regional trading program; (3) a fuel neutral allowance allocation approach for Part 238 that does not limit total allocation to maximum permitted levels; (4) an electrical output-based allocation methodology; (5) an allowance auction; (6) a larger cap on the creation of supplemental allowances; (7) no discounting of emission reductions from upwind areas when creating supplemental allowances; (8) no commensurate surrender of federal SO₂ allowances; (9) allowing the use of federal SO₂ allowances for compliance; (10) allowing use of NO_x allowances allocated under Part 204 for compliance with the requirements of Part 237 and; (11) applicability of smaller sources.

In carrying out its statutory obligation to assess all relevant technical and scientific factors in developing an appropriate control program that is most cost-effective, the Department determined that emissions cap-and-trade programs that are characterized by unencumbered trading of allowances are the most appropriate programs for the control SO₂ and NO_x emissions from the subject sources.

¹ 'Acid Rain Revisited: Advances in Scientific Understanding Since the Passage of the 1970 and 1990 Clean Air Act Amendments'. Hubbard Brook Research Foundation. Science Links Publication. Vol. 1 No. 1. 2001.

² 'Air Quality Criteria for Particulate Matter, Volumes I, II and III', EPA/600/P-95/001aF, U.S. Environmental Protection Agency, April 1996.

³ PM_{2.5} refers to any particulate matter with a mass median diameter of less than 2.5 microns.

⁴ 'Human Health Benefits From Sulfate Reductions Under Title IV of the Clean Air Act Amendments', U.S. Environmental Protection Agency, Office of Air and Radiation, November 1995. See also: 'Power Plant Emission: Particulate Matter-Related Health Damages and the Benefits of Alternative Emission Reduction Scenarios', Abt Associates Inc., June 2004; 'Estimating the Mortality Impacts of Particulate Matter: What Can be Learned From Between-Study Variability?', Levy, *et al.* 2000, Environmental Health Perspectives 108(2): 109-117; 'Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution', Journal of the American Medical Association, C. Arden Pope III, Vol. 287 No. 9, March 6, 2002.

⁵ 'A Total Maximum Daily Load Analysis to Achieve Water Quality Standards for Dissolved Oxygen in Long Island Sound', New York State Department of Environmental Conservation and Connecticut Department of Environmental Protection, December 2000.

⁶ New York State Department of Environmental Conservation. 2003. Mercury Emissions Inventory for 2002. Division of Air Resources. Bureau of Air Quality Analysis and Research.

⁷ The federal Clean Water Act, 33 USC sections 1251-1387, requires state officials to periodically assess and report on the quality of waters in their state. Section 303(d) of the Act, 33 USC section 1313(d), also requires state officials to identify impaired waters, where specific designated uses are not fully supported. For these impaired waters, state officials must consider the development of a Total Maximum Daily Load or other strategy to reduce the input of the specific pollutant(s) that restrict water body uses, in order to restore and protect such uses.

⁸ New York State Department of Health. 'Chemicals in Sportfish and Game' 2004-2005.

Regulatory Flexibility Analysis

The Department of Environmental Conservation (Department) proposes to adopt the Acid Deposition Reduction Program (ADRP) by promulgating 6 NYCRR Parts 237, Acid Deposition Reduction NO_x Budget Trading Program, and 6 NYCRR Part 238, Acid Deposition Reduction SO₂ Budget Trading Program and to revise 6 NYCRR Part 200, General Provisions.

In order to protect the natural resources of New York, including the Adirondacks and Catskills from the damaging effects of acid rain, the Department proposes the ADRP in order to reduce emissions from fossil fuel fired electric generators. Specifically, electric generators would have to reduce sulfur dioxide (SO₂) emissions to 50 percent below the levels allowed by Phase 2 of the federal acid rain program (the Title IV Program). The Title IV program is established under §§ 401-416 of the federal Clean Air Act (CAA), 42 U.S.C. §§ 7651-7651o. These reductions will be phased in between 2005 and 2008. In addition, the summertime reductions in nitrogen oxides (NO_x) emissions starting in the 2003 ozone season would apply year round beginning on October 1, 2004. Such reductions will be achieved through an allowance based cap and trade program. Part 200 is being revised to incorporate by reference the relevant federal Clean Air Act sections and the federal monitoring regulations applicable to the programs (40 CFR Part 75).

1. Effects on Small Businesses and Local Governments.

No small businesses will be directly affected by the adoption of new Parts 237 and 238 and the amendments to Part 200.

One local government is affected by the programs. The Jamestown Board of Public Utilities (JBPU), a municipally owned utility, owns and operates the S. A. Carlson Generating Station (SACGS). The emissions monitoring at SACGS currently meets the monitoring provisions of the ADRP, 40 CFR Part 75. Therefore, no additional monitoring costs will be incurred as a result of implementation of the ADRP. The costs associated with the ADRP will be dictated by how JBPU decides to comply with the provisions of the regulation.

2. Compliance Requirements. The JBPU, as owner and operator of the SACGS, will need to comply with the provisions of the ADRP, as described below.

Part 238 will require affected sources and units to comply with the emission limitation of the program beginning with the 2005 control period. In order to meet the necessary permit requirements, the authorized account representative of each SO₂ subject unit shall submit to the Department a complete SO₂ Budget permit application, by October, 2004 or 12 months before the date the unit commences operation.

Each year, the owners and operators of each source subject to Part 238 and each unit at the source shall hold a number of SO₂ allowances available for compliance deductions, as of the SO₂ allowance transfer deadline (Midnight of March 1 or, if March 1 is not a business day, midnight of the first business day thereafter), in the unit's compliance account and the

source's overall overdraft account that is not less than the total tons of SO₂ emissions for the control period. A unit is subject to this requirement starting on the later of January 1, 2005 or date the unit commences operation.

For each control period in which one or more units at a source are subject to Part 238, the authorized account representative of the source must submit to the Department by the March 1 following the relevant control period, a compliance certification report for each source covering all such units.

Part 237 will require affected sources and units to comply with the emission limitation of the program beginning with the 2004 - 2005 control period. In order to meet the necessary permit requirements, the authorized account representative of each NO_x trading program unit shall submit to the Department a complete NO_x Budget permit application by October 1, 2004 or 12 months before the unit commences operation.

The owners and operators and, to the extent applicable, the authorized account representative of each source subject to Part 237 and each unit at the source shall comply with the monitoring and reporting requirements of the regulation.

Each year, the owners and operators of each source and unit at the source shall hold a number of NO_x allowances available for compliance deductions, as of the NO_x allowance transfer deadline (midnight of September 30, or if September 30 is not a business day, midnight of the first business day thereafter), in the unit's compliance account and the source's overall overdraft account that is not less than the total tons of NO_x emissions for the control period. A unit is subject to this requirement starting on the later of October 1, 2004 or date the unit commences operation.

For each control period in which one or more units at a source are subject to Part 237, the authorized account representative of the source must submit to the Department by the June 30 following the relevant control period, a compliance certification report for each source covering all such units.

3. Professional Services. The one local government affected by the ADRP, the JBPU, may need to hire outside professional consultants to comply with new Parts 237 and 238 and the amendments to Part 200. This work would likely be associated with any analyses needed to determine the optimal manner in which to comply with the regulations. If it is determined that capital investments are needed to comply, design and construction management services will likely need to be procured.

4. Compliance Costs. The JBPU will need to either limit emissions at the SACGS to no more than its allowance allocations under Parts 237 and 238 or purchase allowances equal to the number of tons emitted in excess of the number of allowances initially allocated to it. Given the highly variable nature of control equipment cost, the Department limited the analysis of control costs to the purchase of allowances to comply with the program and assumed that costs of allowances will be \$500 per ton for SO₂ and \$2000 per ton for NO_x. The Department estimated allocations for SACGS and subtracted those allocations from 2000 facility emissions. The estimated cost for purchasing allowances was determined to be approximately \$1.5 million annually. However, these costs are based on the facility as it existed in 2000 and not on the facility as it exists today.

In 2001, a new natural gas-fired turbine was added to SACGS. This new unit emits significantly less SO₂ and NO_x than the older coal units and its utilization offers JBPU a significant amount of flexibility to comply with this regulation. The operation of the new unit could allow the facility to meet its SO₂ and NO_x obligations either without or with significantly fewer controls at any of the coal units. To operate within the estimated 2005 and 2008 allocations the new natural gas-fired turbine would need to operate at 40 and 50 percent capacity, respectively. By operating this unit at these levels, SACGS will be below its estimated NO_x allocations. There are additional costs associated with the operation of the natural gas-fired turbine. The JBPU will experience additional fuel costs as a result of the price difference between natural gas and coal. It is expected that these costs will be somewhat lower than the costs of purchasing allowances and even permit the JBPU to sell excess allowances. The JBPU has a range of compliance options open to it and can use the operational flexibility it has at the SACGS and the flexibility inherent under a cap and trade program to comply with the regulations.

Increased operation of the natural gas-fired turbine would also provide a short term option to SACGS as a means for lowering SO₂ emissions at the facility. While this might provide a short term alternative to controlling SO₂ emissions from the coal units, any benefits gained would eventually diminish because the allocation methodology in Part 238 (i.e., oil and gas are allocated at 0.3 lbs/mmbtu compared to coal at 0.6 lbs/mmbtu in 2008). The shift in heat input from coal to gas will eventually lead to reduced

allocations. Depending on the difference between allocations and actual emissions from the facility once this allocation change occurs, JBPU might have to purchase allowances or control emissions to comply.

JBPU also has the ability to change the physical characteristics of its older coal boilers pursuant to section 237-1.5, "Shutdown or change in physical characteristics of a NO_x budget unit," and no longer be subject to the requirements of Part 237. This would eliminate the need for the new unit to offset NO_x emissions from the coal units and allow JBPU to sell all its excess NO_x allowances on the market. JBPU has worked with the Department's permitting staff and has completed changes to its coal units and the generators associated with them to reduce the nameplate capacity of the units below the 25 MW applicability threshold in Part 237.

5. Minimizing Adverse Impact. The promulgation of new Parts 237 and 238 and the amendments to Part 200 do not directly affect small businesses. One local government is affected by the ADRP - the JBPU. The ADRP constitutes an emissions allowance based cap and trade program. Cap and trade systems are the most cost effective means for implementing emission reductions from large stationary sources. By implementing the ADRP in such a manner, the Department has attempted to minimize the adverse economic impacts of the program on the JBPU.

The Department considered establishing differing compliance or reporting requirements or timetables that take into account the resources available to small businesses and local governments. The Department determined that the provisions included in the regulations provide sufficient flexibility for compliance to the JBPU, as well as the other sources affected by the program. The Department chose not to use different allocation methodologies for the JBPU. The Department also considered the specifics in the situation of the JBPU in determining not to use separate allocation methodologies. The allocation formulae in Part 238 provide allowances to coal units at twice the rate applicable to non-coal units. This allocation procedure (albeit not designed to minimize impacts to JBPU specifically) mitigates the impacts the program will have on the SACGS.

The Department also considered exempting the SACGS from the rule, but did not because of the amount of emissions generated at the facility and the contribution of these emissions to acid deposition in New York State. In 2001, SACGS emitted 3,223 tons of SO₂. This was the 12th highest total of SO₂ emissions out of the approximately 38 facilities in New York State that will be SO₂ budget sources under Part 238. SACGS emitted SO₂ at a rate of 2.65 pounds per million Btu. This is the 5th highest SO₂ emission rate and nearly 3.5 times the average of the approximately 38 affected New York State facilities (0.76 pounds/mmBtu). NO_x emissions at SACGS were 507 tons in 2001. This was the 23rd highest total of NO_x emissions out of approximately 69 facilities in New York State that will be NO_x Budget sources under Part 237. SACGS emitted NO_x at a rate of 0.42 pounds per million Btu. This is the 4th highest NO_x emission rate and nearly twice the average of the approximately 69 affected New York State facilities (0.23 pounds/mmBtu).

In considering whether to exempt JBPU from these regulations, the Department evaluated the impact this exemption would have on the other sources included in the program. Reducing SO₂ emissions at SACGS to the level of allocation ("expected SO₂ reductions" = actual emissions - 0.9 pounds per million Btu x greatest heat input in the past 3 years) represents a reduction of about 2,200 tons or about 1.75 percent of the total SO₂ reductions expected from the program. The 2,200 tons of "expected SO₂ reductions" represent about 4 percent of the emissions and 13.5 percent of the "expected SO₂ reductions" from the largest SO₂ source in the State. Therefore, exempting SACGS from the ADRP would result in a significant burden to the other affected sources in the State by forcing them to make up this amount of SO₂ emission reductions.

The Department also considered the impact on the most sensitive areas in the State. While the combined contribution of all sources in New York State represents about 20 percent of the total sulfate deposition in New York State, emission reductions from within New York State are crucial to meeting either the 40 to 50 percent reduction in sulfur and nitrogen deposition needed to return the condition in the Adirondack lakes to the levels observed in the mid-1980's or the 80 percent reduction needed for significant improvements in chemical conditions to change watersheds similar to the Hubbard Brook Experimental Forest from acidic to non-acidic in 20 to 25 years in order to support biological recovery in 50 years. In other words, the Department deems the emission reductions from the SACGS important to the ability to adequately address the acid deposition problem in New York State.

Under 6 NYCRR Part 204, NO_x Budget Trading Program, the SACGS was given a specific allocation for each year as opposed to being included in the formulaic allocation procedures. This is different than how SACGS

will be allocated under the ADRP. To determine the allocation procedures for Part 204, the Department convened a series of allocation workshops which resulted in an agreed upon allowance allocation procedure with all of the affected parties. This agreed upon procedure treated SACGS differently than the remainder of the sources through the allocation of a specific number of allowances prior to the remaining sources being allocated through the formulae. The Department felt it was proper to allocate SACGS differently because the allocation was based on a broad consensus among the affected parties. In this rule making, the Department did not convene such an allocation process because the intervening deregulation of the electricity generating industry put sources into a more competitive position and the prospect for an agreed upon allocation procedure was deemed to be remote. Instead, the Department devised an allocation procedure that it deemed fair and equitable to all affected sources. This procedure did not include a separate allocation mechanism for any one particular source. In other words, all affected electric generators were treated the same.

Due to the widely different emission profiles between coal burning and non-coal burning units, the Department did not adopt a fuel neutral allowance allocation procedure under Part 238. Adoption of a fuel neutral methodology would have resulted in a pronounced bias against coal burning units. Coal burning units remain vital to the reliability of the State's electric grid and enhance fuel diversity. Having a fuel diverse electric generating system provides the State with a more competitive electricity generation market that is less susceptible to variations in the price of a particular fuel. Although SACGS has a natural gas fired unit that offers it flexibility in complying with the regulation, it also has several coal burning units that are allocated under the coal specific allowance allocation formulae in the SO₂ portion of the ADRP.

6. Small Business and Local Government Participation. The JBPU actively participated in the public forums established by the Department to discuss the ADRP with interested parties and provided input in the development of the allocation methodologies contained in new Parts 237 and 238 and the amendments to Part 200.

7. Economic and Technological Feasibility. The JBPU has the option to do any combination of the following to comply with the ADRP: Control NO_x and SO₂ emissions from the facility, increase operation of the low emitting new natural gas-fired turbine, or purchase allowances. There are NO_x and SO₂ control technology options available to the SACGS. It has never been demonstrated that any or all of these options are technologically or economically infeasible to apply to SACGS.

¹ 'The Sulfur Deposition Control Program', New York State Department of Environmental Conservation, June 1985.

² 'Acid Deposition Feasibility Study: Report to Congress', U.S. EPA, EPA 430-R-95-001a, October 1995.

³ 'Acid Rain Revisited: advances in scientific understanding since the passage of the 1970 and 1990 Clean Air Act Amendments'. Hubbard Brook Research Foundation. Science Links Publication. Vol. 1 No. 1. 2001.

Summary of Rural Area Flexibility Analysis

The Department of Environmental Conservation (Department) proposes to adopt the Acid Deposition Reduction Program (ADRP) by promulgating 6 NYCRR Parts 237, Acid Deposition Reduction NO_x Budget Trading Program, and 6 NYCRR Part 238, Acid Deposition Reduction SO₂ Budget Trading Program and to revise 6 NYCRR Part 200, General Provisions.

In order to protect the natural resources of New York, including the Adirondacks and Catskills from the damaging effects of acid rain, the Department proposes the ADRP in order to reduce emissions from fossil fuel fired electric generators. Specifically, electric generators would have to reduce sulfur dioxide (SO₂) emissions to 50 percent below the levels allowed by Phase 2 of the federal acid rain program (the Title IV Program). The Title IV program is established under §§ 401-416 of the federal Clean Air Act (CAA), 42 U.S.C. §§ 7651-7651o. These reductions will be phased in between 2005 and 2008. In addition, the summertime reductions in nitrogen oxides (NO_x) emissions starting in the 2003 ozone season would apply year round beginning on October 1, 2004. Such reductions will be achieved through an allowance based cap and trade program. Part 200 is being revised to incorporate by reference the relevant CAA sections and the federal monitoring regulations applicable to the Program (40 CFR Part 75).

TYPES AND ESTIMATED NUMBER OF RURAL AREAS AFFECTED

The promulgation of a new Parts 237 and 238 and the amendments to Part 200, apply to affected sources statewide. All public and private businesses subject to the regulations regardless of location, including those in rural areas, will be affected.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

The promulgation of a new Parts 237 and 238 and the amendments to Part 200, apply to affected sources statewide. All public and private businesses subject to the regulations, that are located in rural areas, will be subject to the reporting, record keeping and compliance requirements detailed below.

Part 237 will require affected sources and units to comply with the emission limitation of the program beginning with the 2004 - 2005 control period. In order to meet the necessary permit requirements, the authorized account representative of each NO_x trading program unit shall submit to the Department a complete NO_x Budget permit application by October 1, 2004 or 12 months before the unit commences operation.

The owners and operators and, to the extent applicable, the authorized account representative of each source subject to Part 237 and each unit at the source shall comply with the monitoring and reporting requirements of the regulation.

Each year, the owners and operators of each source and unit at the source shall hold a number of NO_x allowances available for compliance deductions, as of the NO_x allowance transfer deadline (midnight of September 30, or if September 30 is not a business day, midnight of the first business day thereafter), in the unit's compliance account and the source's overall overdraft account that is not less than the total tons of NO_x emissions for the control period. A unit is subject to this requirement starting on the later of October 1, 2004 or date the unit commences operation.

For each control period in which one or more units at a source are subject to Part 237, the authorized account representative of the source must submit to the Department by the June 30 following the relevant control period, a compliance certification report for each source covering all such units.

Part 238 will require affected sources and units to comply with the emission limitation of the program beginning with the 2005 control period. In order to meet the necessary permit requirements, the authorized account representative of each SO₂ subject unit shall submit to the Department a complete SO₂ Budget permit application, by October 1, 2004 or 12 months before the date the unit commences operation.

Each year, the owners and operators of each source subject to Part 238 and each unit at the source shall hold a number of SO₂ allowances available for compliance deductions, as of the SO₂ allowance transfer deadline (Midnight of March 1 or, if March 1 is not a business day, midnight of the first business day thereafter), in the unit's compliance account and the source's overall overdraft account that is not less than the total tons of SO₂ emissions for the control period. A unit is subject to this requirement starting on the later of January 1, 2005 or date the unit commences operation.

For each control period in which one or more units at a source are subject to Part 238, the authorized account representative of the source must submit to the Department by the March 1 following the relevant control period, a compliance certification report for each source covering all such units.

COSTS

In the past, with a regulated electric utility industry, the capital cost of the emission control equipment required by the new regulation would have been added to the utility's rate base and recovered through increased electricity rates. In a competitive electricity market as exists now in New York State, there is no guaranteed recoupment of such expenditures.

The Department sought input from NYSERDA and the New York Department of Public Service (DPS) with respect to the costs associated with compliance of the ADRP and any impacts to the reliability of New York's energy supply. DPS mailed questionnaires to eight electricity generators that the agencies believed would be most directly impacted by the ADRP. DPS tabulated the information submitted and provided it to NYSERDA which analyzed the information pursuant to the mathematical model - MAPS. The total capital expenditures, as recorded in the facilities' responses, indicated that facilities in New York will require capital investments of approximately \$430 million to comply with the regulations. In a competitive electricity market as exists now in New York State, there is no guaranteed recoupment of such expenditures. The MAPS model considers only fuel and variable operation and maintenance costs in determining bid prices, which in turn determines the order of system dispatch. Fixed capital costs are not considered in the model. It is expected that plant owners who

install emissions controls would increase their bid prices to recoup the added capital cost of controls.

The MAPS model for the 2008 compliance case (full implementation of the program) predicts that wholesale electricity prices will increase from 1 percent in the Capital District to 9 percent in the Rochester area and 16 percent on Long Island. The Statewide average increase in wholesale electricity prices is 5.4 percent. It is important to recognize that wholesale electricity prices comprise only a portion of the retail electricity prices, and that there is not an instantaneous and direct relationship between the wholesale and retail price. As a result, the percentage increase in retail electricity prices due to the ADRP would be substantially less than the percentage in wholesale prices.

The Department anticipates a small impact on the State's rail freight industry due to a possible decrease in coal shipments to the State because of the modeled reduction in coal-fired generation. New York's rail system provides a valuable service to businesses throughout the state. The Department does not anticipate significant losses in coal transportation services in New York as a result of this proposal. The modeled percentage reduction in coal generation is within the range of annual fluctuations caused by other factors and is not anticipated to have a major impact on the freight system. The use of unit trains further protects the system from these fluctuations because other products are not coupled with coal.

The MAPS model predicts an estimated increase of \$370 million for the wholesale price of electricity as a result of the ADRP. It must be noted that the \$370 million increase is a worst case estimate and is based on the compliance assumptions of the individual companies without regard to the allowance trading program that will implement the reductions in NO_x and SO₂ emissions of the ADRP and the fact that the MAPS model predicted significant over-compliance with the emissions reduction goals of the program.

The Department recognizes that the above referenced MAPS modeling was done when more new generation was predicted to come on-line than is currently anticipated. As a result, the Department, with assistance from NYSERDA, has analyzed the MAPS modeling that was developed in the context of the 2002 State Energy Plan (SEP). Based on the projected SO₂ emissions reductions of 184,000 tons in 2008 in the ADRP compliance case compared to the ADRP base case, it could be inferred that SO₂ compliance under the "No Additional Construction" scenario might result in a 17 percent increase in the number of tons of SO₂ reduction needed (32,000/184,000). With respect to NO_x emissions, in the "No Additional Construction" scenario, annual NO_x emissions in 2008 are projected to be 72,200 tons, exceeding the proposed ADRP NO_x cap of 70,000 tons by 2,200 tons, or about 3 percent. This result suggests that the impacts on NO_x compliance costs, while not negligible, are not expected to be substantial.

While the delay of new capacity additions may increase compliance costs, it would also be likely to result in additional running time for existing units. It is important to recognize that while the "No Additional Construction" scenario is useful for analytical purposes, system reliability requirements would not be achieved under these circumstances, so this should not be considered to be a viable operational scenario. Since the completion of the MAPS modeling in October 2001, 2,030.2 MW of new generation have been built and are now operational in the State. An additional 2,439.9 MW of new generation have been permitted and are under construction, 4,881.6 MW of new generation have been permitted but are not yet under construction, and permit applications for another 2744.6 MW are currently under review. Although the Department has analyzed a "No Additional Construction" scenario to address concerns that the new construction figure used in the MAPS modeling was unrealistic, it is evident from the permitting, construction and operational figures above, that the prediction of new generation by DPS and NYSERDA was reasonable.

MINIMIZING ADVERSE IMPACT

The promulgation of a new Parts 237 and 238 and the amendments to Part 200, apply to affected sources statewide, including those located in rural areas. Since the regulations apply equally to affected facilities statewide, rural areas are not impacted any differently than other areas in the State. In actuality, since one of the goals of the program is to reduce the impacts of acid rain on the Adirondacks, some of the most rural areas in the State will receive an environmental benefit from the further reduction in acid rain precursors associated with these regulations. The Department is implementing the ADRP through a cap and trade program. Allowance based cap and trade systems are the most cost effective means for implementing emission reductions from large stationary sources, therefore the Department has attempted to minimize the adverse economic impacts of the program to all sources on a statewide basis.

RURAL AREA PARTICIPATION

Since the announcement of the ADRP in October of 1999, Department staff held numerous stakeholder meetings with affected parties and various representative coalitions and consultants to the electric industry. Copies of the draft regulations were forwarded to all affected parties prior to initiating the promulgation of the regulations and interested parties afforded informal opportunities for public comment.

Summary of Job Impact Statement

1. Nature of Impact: The Department of Environmental Conservation (Department) proposes to adopt the Acid Deposition Reduction Program (ADRP) by promulgating 6 NYCRR Parts 237, Acid Deposition Reduction NO_x Budget Trading Program, and 6 NYCRR Part 238, Acid Deposition Reduction SO₂ Budget Trading Program and to revise 6 NYCRR Part 200, General Provisions.

In order to protect the natural resources of New York, including the Adirondacks and Catskills from the damaging effects of acid rain, the Department proposes the ADRP in order to reduce emissions from fossil fuel fired electric generators. Specifically, electric generators would have to reduce sulfur dioxide (SO₂) emissions to 50 percent below the levels allowed by Phase 2 of the federal acid rain program (the Title IV Program). The Title IV program is established under 401-416 of the federal Clean Air Act (CAA), 42 U.S.C. 7651-7651o. These reductions will be phased in between 2005 and 2008. In addition, the summertime reductions in nitrogen oxides (NO_x) emissions starting in the 2003 ozone season would apply year round beginning on October 1, 2004. Such reductions will be achieved through an allowance based cap and trade program. Part 200 is being revised to incorporate by reference the relevant federal Clean Air Act sections and the federal monitoring regulations applicable to the programs (40 CFR Part 75).

The ADRP will have both adverse and beneficial impacts on job and employment opportunities. Electricity generators will incur costs related to the emissions controls needed to comply with the regulations and, based on the modeling used by the Department, this will translate into increased electricity prices. Based on the modeling used by the Department, the ADRP may have a corresponding negative impact on employment. There are also positive impacts related to the implementation of the ADRP, including jobs created through the construction of control devices and appurtenances needed to comply with the regulations and the additional electricity generation needed to meet increased demand. It is also expected that the travel and tourism industry will benefit from reductions in acid deposition and commensurate improvements in visibility.

2. Categories and Numbers Affected:

The Department sought input from NYSEERDA and the New York Department of Public Service (DPS) with respect to the costs associated with compliance of the ADRP and any impacts to the reliability of New York's energy supply. DPS mailed questionnaires to eight electricity generators that the agencies believed would be most directly impacted by the ADRP. DPS tabulated the information submitted and provided it to NYSEERDA which analyzed the information pursuant to the mathematical model - MAPS. The total capital expenditures, as recorded in the facilities' responses, indicated that facilities in New York will require capital investments of approximately \$430 million to comply with the regulations. In a competitive electricity market as exists now in New York State, there is no guaranteed recoupment of such expenditures. The MAPS model considers only fuel and variable operation and maintenance costs in determining bid prices, which in turn determines the order of system dispatch. Fixed capital costs are not considered in the model. It is expected that plant owners who install emissions controls would increase their bid prices to recoup the added capital cost of controls.

The MAPS model for the 2008 compliance case (full implementation of the program) predicts that wholesale electricity prices will increase from 1 percent in the Capital District to 9 percent in the Rochester area and 16 percent on Long Island. The Statewide average increase in wholesale electricity prices is 5.4 percent. It is important to recognize that wholesale electricity prices comprise only a portion of the retail electricity prices, and that there is not an instantaneous and direct relationship between the wholesale and retail price. As a result, the percentage increase in retail electricity prices due to the ADRP would be substantially less than the percentage in wholesale prices.

The Department anticipates a small impact on the State's rail freight industry due to a possible decrease in coal shipments to the State because of the modeled reduction in coal-fired generation. New York's rail system provides a valuable service to businesses throughout the state. The Department does not anticipate significant losses in coal transportation services in New York as a result of this proposal. The modeled percentage reduction

in coal generation is within the range of annual fluctuations caused by other factors and is not anticipated to have a major impact on the freight system. The use of unit trains further protects the system from these fluctuations because other products are not coupled with coal.

The MAPS model predicts an estimated increase of \$370 million for the wholesale price of electricity as a result of the ADRP. It must be noted that the \$370 million increase is a worst case estimate and is based on the compliance assumptions of the individual companies without regard to the allowance trading program that will implement the reductions in NO_x and SO₂ emissions of the ADRP and the fact that the MAPS model predicted significant over-compliance with the emissions reduction goals of the program.

The Department recognizes that the above referenced MAPS modeling was done when more new generation was predicted to come on-line than is currently anticipated. As a result, the Department, with assistance from NYSEERDA, has analyzed the MAPS modeling that was developed in the context of the 2002 State Energy Plan (SEP). Based on the projected SO₂ emissions reductions of 184,000 tons in 2008 in the ADRP compliance case compared to the ADRP base case, it could be inferred that SO₂ compliance under the "No Additional Construction" scenario might result in a 17 percent increase in the number of tons of SO₂ reduction needed (32,000/184,000). With respect to NO_x emissions, in the "No Additional Construction" scenario, annual NO_x emissions in 2008 are projected to be 72,200 tons, exceeding the proposed ADRP NO_x cap of 70,000 tons by 2,200 tons, or about 3 percent. This result suggests that the impacts on NO_x compliance costs, while not negligible, are not expected to be substantial.

While the delay of new capacity additions may increase compliance costs, it would also be likely to result in additional running time for existing units. It is important to recognize that while the "No Additional Construction" scenario is useful for analytical purposes, system reliability requirements would not be achieved under these circumstances, so this should not be considered to be a viable operational scenario. Since the completion of the MAPS modeling in October 2001, 2,030.2 MW of new generation have been built and are now operational in the State. An additional 2,439.9 MW of new generation have been permitted and are under construction, 4,881.6 MW of new generation have been permitted but are not yet under construction, and permit applications for another 2744.6 MW are currently under review. Although the Department has analyzed a "No Additional Construction" scenario to address concerns that the new construction figure used in the MAPS modeling was unrealistic, it is evident from the permitting, construction and operational figures above, that the prediction of new generation by DPS and NYSEERDA was reasonable.

Regulatory flexibility provisions built into the ADRP could not be analyzed as this is beyond the scope of the MAPS model. Specifically, these provisions are allowance banking, early reduction allowances and out-of-state source reductions. Each of these allows sources additional flexibility which lead to lower compliance costs. The allowance banking provisions permit sources to retain unused allowances for compliance obligations that will arise in the future. This flexibility permits sources to deal with the natural variations in generation between control periods and, in the case of a phased program (Part 238), allows full credit for reductions in the first phase to carry over to the second more stringent phase. Early reduction allowances are created when a source reduces emissions prior to the start of the programs. The Department has included provisions to allow for the creation of early reduction allowances at a 50 percent discount for those reductions that are greater than the target collective emission rate of the program but are below an historic baseline or rate. Full credit will be given for all reductions below the collective target emission rate of the program before the first year of implementation. This gives a generator with a source that is inexpensive to control the ability to create additional allowances which either may be expended for compliance purposes in the future or may be sold in the allowance market. The program also provides that demonstrated emissions reductions from sources located in 10 upwind States can be used as the basis for awarding up to 10 percent of the annual NO_x and SO₂ budgets in the first year of the programs (declining to 8 percent in the second year, 6 percent in the third, 5 percent in the fourth and to 4 percent in the fifth year and beyond). The upwind reductions provisions act as a mechanism which allows any generator subject to the program to pursue less expensive emission reductions in upwind states to create additional allowances which will result in some decrease in allowance prices generally. The Department is not able to quantify the relative impact of the above flexibility provisions except to say that they are expected to reduce the overall cost of compliance with the regulation.

The ADRP will have some positive impact on employment. Generator companies will need to purchase control equipment and construct the facilities to house this equipment. The total capital expenditures as provided by the generators indicated capital investments of approximately \$430 million were necessary to comply with the regulations. While the above discussion clearly demonstrates that the Department believes that these costs are over-estimated, for discussion purposes these costs are cited to assess the relative impact on employment. Total capital expenditures include the costs for emissions control equipment, construction materials, labor and design. Each of these activities should have positive impacts on employment in New York. However, because of the lack of detailed information provided to the Department regarding these costs it is impossible to estimate the actual number of jobs that will be created by this capital expenditure. Still, based on United States Department of Commerce Bureau of Economic Analysis statistics for New York State in 1999, the Department calculated 11.7 jobs (14.3 construction jobs) are created for every \$1 million spent (Total non-farm jobs/Total non-farm gross state product). If half of the capital investments made to comply with the regulations could be applied to the New York Gross State Product, then these expenditures would be expected to result in an estimated 2,515 jobs.

The MAPS modeling predicts increased generation from firing natural gas. This increase will likely necessitate increased operation of existing natural gas transmission capacity and the construction of new natural gas transmission capacity. While the quantification of the additional capacity is beyond the scope of the analysis performed for this effort, the additional natural gas transmission can be expected to increase employment opportunities in both the construction and operation facets.

The ADRP will also have a positive impact on the travel and tourism industry. Mitigation of the devastating effects of acid rain will aid in keeping New York State as a preferred vacation destination. In addition to reducing acid deposition, these regulations will also assist in the reduction of primary and secondary formation of fine particulate matter that plays a prominent role in regional haze. Because of regional haze, rural and urban vistas of New York are often obscured which reduces the desirability of travel in and around the State. While it is not possible to quantify the economic or the employment impact of these regulations, it is clear that their implementation will make New York State an even more attractive vacation destination.

3. Regions of Adverse Impact: The MAPS modeling predicts that the statewide average increase in wholesale electricity prices will be 5.4 percent. The greatest impacts will be in Buffalo, Rochester and Long Island with increases of 6, 9 and 16 percent, respectively. It can be expected that if any negative employment impacts result from this program, these areas will experience it. It is important to recognize the wholesale electricity prices comprise only a portion of the retail electricity prices, and that there is not an instantaneous and direct relationship between the wholesale and retail price. The proportion of retail price comprised by the wholesale price is highly variable and cannot be precisely known, but might be expected to be in the range of one-third to one-half. As a result the percentage increase in retail electricity prices due to the ADRP would be substantially less than the percentage of wholesale prices. The increase in wholesale electricity price and the commensurate increase in retail price assumes that the generators will react to the program as indicated in their responses to the DPS and install controls and otherwise over-control emissions as predicted by the MAPS model. Over-compliance to the extent predicted by the MAPS model is based on the generators' responses and is an unlikely scenario because of the economics of controlling beyond the levels called for in the ADRP.

4. Minimizing Adverse Impact: The Department is implementing the ADRP through a cap and trade program. Allowance based cap and trade systems are the most cost effective means for implementing emission reductions from large stationary sources. By implementing the ADRP through an allowance based cap and trade system, the Department has attempted to minimize the adverse economic impacts including the adverse employment impacts of the program.

5. Self-Employment Opportunities: Not applicable.

Office of Mental Health

EMERGENCY RULE MAKING

Criminal History Record Checks

I.D. No. OMH-13-05-00008-E

Filing No. 254

Filing date: March 11, 2005

Effective date: March 11, 2005

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

Action taken: Addition of Part 550 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 31.35; and Executive Law, section 845-b(h)(12)

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

Specific reasons underlying the finding of necessity: This regulation is needed to implement OMH's statutory duty to facilitate requests for criminal background record checks, which are required by law as of April 1, 2005. This law is intended to protect mental health clients from risk of abuse or being victims of criminal activity. The regulations are necessary to implement the law as of its effective date so that we can fulfill our statutory imposed duty of ensuring the health, safety, and welfare of clients are not unreasonably placed at risk.

Subject: Criminal history record review of certain prospective employees and volunteers of providers of mental health services, and natural operators of such providers, licensed or otherwise approved by OMH.

Purpose: To require prospective employees and volunteers of providers of mental health services who will have regular and substantial unrestricted or unsupervised physical contact with clients, and natural person operators of providers of services to undergo criminal history record checks.

Substance of emergency rule: Chapter 643 of the Laws of 2003, as amended by Chapter 575 of the Laws of 2004, imposed the requirement of criminal history record checks on each prospective operator, employee, or volunteer of certain mental health treatment providers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such providers. The purpose of this legislation was to enable providers of services for persons with mental illness to secure appropriate and properly trained individuals to staff their facilities and programs, by verifying criminal history information received from individuals seeking employment or volunteering their services.

The legislation requires the Office of Mental Health to promulgate regulations that establish standards and procedures for the criminal history record checks contemplated in the statute. Accordingly, these regulations would establish provisions governing the procedures by which fingerprints will be obtained, and outlining the requirements and responsibilities on both the part of the Office and providers of services with regard to this process.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire June 8, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Julie Anne Rodak, Director, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 474-1331, e-mail: colejar@omh.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 31.35 of the Mental Hygiene Law provides that each provider of mental health services subject to its requirements must request, through the Office of Mental Health, a criminal history background check for each prospective operator, employee, or volunteer of such provider of services.

Paragraph (12) of subdivision (h) of Section 845-b of the Executive Law requires the Office of Mental Health to promulgate rules and regulations necessary to implement criminal history information requests.

2. Legislative objectives:

Chapter 575 of the Laws of 2004 requires the Office of Mental Health to promulgate any rules or regulations necessary to implement the provisions of Section 31.35 of the Mental Hygiene Law. These regulations are intended to fulfill this requirement.

3. Needs and benefits:

New York State has the responsibility to ensure the safety of its most vulnerable citizens who may be unable to protect and defend themselves from abuse or mistreatment at the hands of the very persons charged with providing care to them. While the majority of employees and volunteers in mental health programs are dedicated, compassionate workers who provide quality care, there are cases where criminal activity and patient abuse take place at the very programs that are intended to help persons with mental illness seek recovery. While this proposal will not eliminate all instances of abuse in mental health programs it will eliminate many of the opportunities for individuals with a criminal record to be alone with those most at risk.

Pursuant to Chapter 575 of the Laws of 2004, this proposal requires providers of mental health services, including those that are licensed, who contract with, or who are otherwise approved by the Office of Mental Health, to request the Office to obtain criminal history information from the Division of Criminal Justice Services concerning each prospective employee or volunteer who will have regular and substantial unsupervised or unrestricted contact with the providers' clients. Prospective licensed operators of mental health services will be required to have a criminal background check through this process as well.

Each provider subject to these requirements must designate one or more "authorized persons" who will be empowered to request, receive, and review this information. Before a prospective employee or volunteer who will have regular, unsupervised client contact can be permanently hired or retained, he or she must consent to having his/her fingerprints taken and a criminal history check performed. The fingerprints will be taken by an Office of Mental Health-designated fingerprinting entity and sent to the Office, who will then submit them to the Division of Criminal Justice Services. The Division will provide criminal history information for each person back to the Office. Prospective licensed operators of mental health services must follow the same process.

The Office of Mental Health will then review the information and will advise the provider whether or not the applicant has a criminal history, and, if so, whether the criminal history is of such a nature that the person cannot be hired or retained, (e.g., the person has a felony conviction for a sex offense or a violent felony). In some cases, a person may have a criminal background that does not rise to the level where the Office will require employment of the person to be terminated. The proposed regulations allow the provider to obtain sufficient information to enable it to make its own determination as to whether or not to employ or retain such person. There will also be instances in which the criminal history information reveals an arrest or felony charges without a final disposition. In those cases, the Office will, in accordance with Chapter 575, hold the application in abeyance until the charge is resolved.

Before the Office can advise a provider that it intends to require that the employee or volunteer be terminated or not hired/retained, the proposal carries forth the statutory requirement of affording the individual an opportunity to explain, in writing, why his or her application should not be denied. If the Office nonetheless maintains its determination to advise the provider to terminate the employee or volunteer, the provider must notify the person that this criminal history information is the basis for the denial of employment or service.

The proposed regulation establishes certain responsibilities of providers in implementing the criminal record review required by Chapter 575. For example, a provider must notify the Office when an individual for whom a criminal history has been sought is no longer subject to such check. Providers must also ensure that prospective employees or volunteers who will be subject to the criminal background check are notified of the provider's right to request his/her criminal history information, and that he or she has the right to obtain, review, and seek correction of such information in accordance with regulations of the Division of Criminal Justice Services.

4. Costs:

The proposed regulations implement a system that will require providers of services licensed, funded, or approved by the Office of Mental Health to obtain all information from a prospective employee or volunteer necessary for the purpose of initiating a criminal history record check. While the statute does not require all new employees to be fingerprinted, for purposes of systems design, the Office has estimated that the average

annual "turnover" rate for full time employees at 30%. In all catchment areas, the total estimate of annual hires is 10,514 full time equivalent employees, and 2,390 full time equivalent volunteers. The Office has created a Local Provider Applicant Registration system, which is a web-based system designed to enter applicant information and track the status of the fingerprinting process. Because only a minimum amount of data elements must be input into the system, it intended to reduce the administrative burden related to implementation of Chapter 575 of the Laws of 2004. There is also a statutory fee of \$75 to obtain a criminal history record check from the Division of Criminal Justice Services; however, this amount will be fully borne by the Office of Mental Health.

5. Local government mandates:

The required criminal history record check is a statutory requirement, which does not impose any new or additional duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork:

In order to assist providers in fulfilling their responsibilities in implementing Chapter 575 of the Laws of 2004, the Office has created a Local Provider Applicant Registration system, which is a web-based system designed to enter applicant information and track the status of the fingerprinting process. Because only a minimum amount of data elements must be input into the system, and the system is designed to generate the two forms mandated in the statute (an informed consent form and a request form), it intended to reduce the administrative burden related to implementation of Chapter 575 of the Laws of 2004. Aside from record retention requirements necessary for monitoring compliance, the regulatory amendment will not require providers of service to furnish additional information, reports, records, or data.

7. Duplication:

The regulatory amendment does not duplicate existing State or federal requirements.

8. Alternatives:

The only alternative to the regulatory amendments which was considered was inaction, which is not advisable as the Office of Mental Health is required by Chapter 575 of the Laws of 2004 to promulgate implementing regulations.

9. Federal standards:

The regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule:

The regulation will be effective immediately upon final adoption.

Regulatory Flexibility Analysis

1. Effect of Rule: A total of roughly 720 agencies operate mental health programs that are licensed or funded by the Office of Mental Health (OMH) in New York State would be subject to this regulation, some of which would be considered "small businesses." In addition, local governments that operate mental health service providers subject to approval or authorization of OMH will be required to comply with the statute and these regulations. While Chapter 575 of the Laws of 2004 does not require all new employees to be fingerprinted (only those prospective employees or volunteers who will have "regular and substantial unsupervised or unrestricted contact with clients"), for purposes of systems design, the Office has estimated that the average annual "turnover" rate for full time employees at 30%. In all catchment areas, the total estimate of annual hires is 10,514 full time equivalent employees, and 2,390 full time equivalent volunteers, statewide.

2. Compliance Requirements: Providers of service that are subject to these requirements must, by statute, request criminal history information concerning prospective employees or volunteers who will have regular and substantial unsupervised or unrestricted contact with clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record information must be obtained through the Office of Mental Health, which will pay the \$75 fee to the Division of Criminal Justice Services for each history requested. Providers of service must inform prospective employees and volunteers of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State. Although prospective employees/volunteers cannot be hired before a determination is received from the Office of Mental Health about whether or not the application must be denied, providers can give temporary approval to prospective employees and permit them to work so long as they do not have unsupervised contact with clients.

3. Professional Services: No additional professional services will be required by small businesses or local governments to comply with this rule.

4. Compliance Costs: The direct cost of \$75 per criminal history record check request will be absorbed by the Office of Mental Health.

5. Economic and Technological Feasibility: The Office has created a Local Provider Applicant Registration system, which is a web-based system designed to enter applicant information and track the status of the fingerprinting process. Because only a minimum amount of data elements must be input into the system, it intended to reduce the administrative burden related to implementation of Chapter 575 of the Laws of 2004. This technology will be accessible through existing computer networks. There may be a very small number of providers that do not have any computer from which they can access this technology; OMH will work with those providers either to identify a way to obtain such access or identify another alternative.

6. Minimizing Adverse Impact: Because most of the requirements in this proposal are statutorily required, compliance with them is mandatory. However, OMH has developed its compliance plan with the goal of minimizing adverse impact of compliance to the greatest extent possible. The Local Provider Applicant Registration system is one example of a strategy intended to reduce the administrative burden related to implementation of Chapter 575 of the Laws of 2004. Furthermore, OMH has endeavored to maximize its capability to have fingerprints taken electronically, through a system called LIVE SCAN. LIVE SCAN is a technology that captures fingerprints electronically and would transmit the fingerprints directly to the Division of Criminal Justice Services to obtain criminal history information. It has many advantages to the traditional "ink and roll" process.

Under the "ink and roll" method, a trained individual rolls a person's fingers in ink and then manually places the fingers on a card to leave an ink print. The card would then need to be mailed to the Division of Criminal Justice Services by OMH. However, before OMH could submit the card, demographic information would need to be filled in on the card (such as the person's name, address, etc.) into OMH databases. Additional time delays may be encountered if it is determined that the fingerprint has been smudged and must be taken again, or when the handwriting on the fingerprint card is difficult to read.

With LIVE SCAN, a scanner and laptop computer are used rather than an ink pad and a paper card. Rather than rolling his fingers in ink, a person would lay his hand on top of a scanner screen. A real-time fingerprint preview is provided, so the person taking the print would know the quality of the print is acceptable before it can be sent to the Division of Criminal Justice Services. The information would then be automatically transmitted to the Division, eliminating the need to mail cards anywhere. Thus, the turnaround time for processing criminal history information is significantly less than under the "ink and roll" method.

While OMH's implementation plans will accommodate the ability to accept some fingerprints through the "ink and roll" method, our strategy is designed to utilize the LIVE SCAN technology to the greatest extent possible as of April 1, 2005.

7. Small Business and Local Government Participation: The Office of Mental Health (OMH) reached out to affected parties by posting information about Chapter 575 of the Laws of 2004 on its website in January and February, coupled with informational letters to the field. The draft regulations were widely shared (via posting on our website) and comments solicited from all affected parties. Informational briefings were provided regionally to trade groups. Per statute, the regulations will be reviewed by members of the Mental Health Services Council.

Rural Area Flexibility Analysis

1. Effect of rule: A total of roughly 720 agencies operate mental health programs that are licensed or funded by the Office of Mental Health (OMH) in New York State would be subject to this regulation, some of which are located in rural areas. While Chapter 575 of the Laws of 2004 does not require all new employees to be fingerprinted (only those prospective employees or volunteers who will have "regular and substantial unsupervised or unrestricted contact with clients"), for purposes of systems design, the Office has estimated that the average annual "turnover" rate for full time employees at 30%. In all catchment areas, the total estimate of annual hires is 10,514 full time equivalent employees, and 2,390 full time equivalent volunteers, statewide.

2. Reporting, recordkeeping, and other compliance requirements: Providers of service that are subject to these requirements, including those in rural areas, must, by statute, request criminal history information concern-

ing prospective employees or volunteers who will have regular and substantial unsupervised or unrestricted contact with clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record information must be obtained through the Office of Mental Health, which will pay the \$75 fee to the Division of Criminal Justice Services for each history requested. Providers of service must inform prospective employees and volunteers of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State. Although prospective employees/volunteers cannot be hired before a determination is received from the Office of Mental Health about whether or not the application must be denied, providers can give temporary approval to prospective employees and permit them to work so long as they do not have unsupervised contact with clients.

3. Costs: The direct cost of \$75 per criminal history record check request will be absorbed by the Office of Mental Health.

4. Minimizing adverse impact: Because most of the requirements in this proposal are statutorily required, compliance with them is mandatory. However, OMH has developed its compliance plan with the goal of minimizing adverse impact of compliance to the greatest extent possible. The Local Provider Applicant Registration system is one example of a strategy intended to reduce the administrative burden related to implementation of Chapter 575 of the Laws of 2004. Furthermore, OMH has endeavored to maximize its capability to have fingerprints taken electronically, through a system called LIVE SCAN. LIVE SCAN is a technology that captures fingerprints electronically and would transmit the fingerprints directly to the Division of Criminal Justice Services to obtain criminal history information. It has many advantages to the traditional "ink and roll" process.

Under the "ink and roll" method, a trained individual rolls a person's fingers in ink and then manually places the fingers on a card to leave an ink print. The card would then need to be mailed to the Division of Criminal Justice Services by OMH. However, before OMH could submit the card, demographic information would need to be filled in on the card (such as the person's name, address, etc.) into OMH databases. Additional time delays may be encountered if it is determined that the fingerprint has been smudged and must be taken again, or when the handwriting on the fingerprint card is difficult to read.

With LIVE SCAN, a scanner and laptop computer are used rather than an ink pad and a paper card. Rather than rolling his fingers in ink, a person would lay his hand on top of a scanner screen. A real-time fingerprint preview is provided, so the person taking the print would know the quality of the print is acceptable before it can be sent to the Division of Criminal Justice Services. The information would then be automatically transmitted to the Division, eliminating the need to mail cards anywhere. Thus, the turnaround time for processing criminal history information is significantly less than under the "ink and roll" method.

While OMH's implementation plans will accommodate the ability to accept some fingerprints through the "ink and roll" method, particularly in rural areas where access to State-operated LIVE SCAN machines may be more difficult, our strategy is designed to utilize the LIVE SCAN technology to the greatest extent possible as of April 1, 2005.

5. Rural area participation: The Office of Mental Health (OMH) reached out to affected parties by posting information about Chapter 575 of the Laws of 2004 on its website in January and February, coupled with informational letters that were mailed to affected parties in the field. The draft regulations were widely shared (via posting on our website) and comments solicited from all affected parties. Informational briefings were provided regionally to trade groups. Per statute, the regulations will be reviewed by members of the Mental Health Services Council.

Job Impact Statement

A Job Impact statement is not necessary for this filing. Proposed 14 NYCRR Part 550 should not have any adverse impact on the existing employees and volunteers of providers of mental health services as it applies only to future prospective employees and volunteers. It is anticipated that the number of all future prospective employees/volunteers of mental health providers of services who have regular and substantial unsupervised or unrestricted physical contact with clients will be reduced to the degree that the criminal history record check reveals a criminal record barring employment.

Office of Mental Retardation and Developmental Disabilities

NOTICE OF ADOPTION

Rate/Fee Setting

I.D. No. MRD-03-05-00008-A

Filing No. 257

Filing date: March 15, 2005

Effective date: March 30, 2005

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

Action taken: Amendment of sections 635-10.5, 671.7, 680.12, 681.14 and 690.7 of Title 14 NYCRR.

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

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

Purpose: To revise the methodologies used to calculate rates/fees of the referenced facilities or programs and establish trend factors to be applied within the context of the referenced reimbursement methodologies, effective Jan. 1, 2005.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. MRD-03-05-00008-EP, Issue of January 19, 2005.

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

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

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

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Service Quality Assurance Program by Niagara Mohawk Power Corporation

I.D. No. PSC-43-04-00018-A

Filing date: March 11, 2004

Effective date: March 11, 2004

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

Action taken: The commission, on Feb. 9, 2005, adopted an order in Case 01-M-0075 approving Niagara Mohawk Power Corporation's (Niagara Mohawk) revised proposal to modify its Service Quality Assurance Program (SQAP).

Statutory authority: Public Service Law, section 66

Subject: Service Quality Assurance Program.

Purpose: To allow Niagara Mohawk to modify certain performance indicators and targets contained in its SQAP.

Substance of final rule: The Commission approved Niagara Mohawk Power Corporation's revised proposal to modify service quality measures, customer satisfaction survey and reporting requirements contained in its Service Quality Assurance Program.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(01-M-0075SA24)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Direct Load Control Program by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-13-05-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition of Consolidated Edison Company of New York, Inc. (Con Edison) seeking continuation and expansion of its direct load control programs for residential and small business customers, recovery of net program costs, including lost revenue recovery through its monthly adjustment clause, and other related items.

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

Subject: Direct Load Control Program.

Purpose: To continue and expand the program.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to approve or reject, in whole or in part, the petition of Consolidated Edison Company of New York, Inc. (Con Edison) seeking continuation and expansion of its Direct Load Control Program for residential and small business customers, recovery of net program costs, including lost revenue recovery through its Monthly Adjustment Clause, and other related items. Among the issues that the Commission may consider are the relationship of the Direct Load Control Program to programs funded by the System Benefits Charge, the reasonableness of the costs of the program, and the appropriateness of recovery of those costs through the Monthly Adjustment Clause.

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

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

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

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

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

(00-E-2054SA32)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rule 11-Service Lines by Niagara Mohawk Power Corporation

I.D. No. PSC-13-05-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges,

rules and regulations contained in its schedule for gas service—P.S.C. No. 219.

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

Subject: Rule 11-service lines.

Purpose: To add a new Rule No. 11.7 which would allow the company's customers to construct that portion of the service line which exceeds the portion that is constructed by the company at no charge.

Substance of proposed rule: Niagara Mohawk Power Corporation proposed to revise Rule No. 11-Service Lines to allow the company's customers to construct that portion of the service line which exceeds the portion that is constructed by the company at no charge. The new rule No. 11.7 specifies the conditions under which the customer would be allowed to construct the excess service lateral.

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

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

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

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

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

(05-G-0292SA1)

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

Fixed Price Option by Central Hudson Gas & Electric Corporation

I.D. No. PSC-13-05-00012-P

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

Proposed action: The commission is considering a petition from the Small Customer Marketer Coalition in which it requests that the commission direct Central Hudson Gas & Electric Corporation to terminate and cease offering a fixed price option for gas service to customers with annual consumption requirements greater than 500 Ccf operating under Service Classifications 1 and 2. The commission may approve, modify or reject, in whole or in part the relief requested and other related matters.

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

Subject: A fixed price option for gas service.

Purpose: To terminate the option.

Substance of proposed rule: The Commission is considering a petition from the Small Customer Marketer Coalition in which it requests that the Commission direct Central Hudson Gas & Electric Corporation to terminate and cease offering a fixed price option for gas service to customers with annual consumption requirements greater than 500 Ccf operating under Service Classifications 1 and 2. The Commission may approve, modify or reject, in whole or in part the relief requested and other related matters.

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

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

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

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

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

(05-G-0311SA1)

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

Issuance of Securities by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-13-05-00013-P

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

Proposed action: The commission is considering whether to approve or reject, in whole or in part, a petition of Consolidated Edison Company of New York, Inc. (Con Edison) to issue and sell securities.

Statutory authority: Public Service Law, section 69

Subject: Issuance of securities.

Purpose: To permit Con Edison to issue and sell securities.

Substance of proposed rule: The Commission is considering whether to approve, reject or modify the petition of Consolidated Edison Company of New York, Inc. to issue and sell (i) not to exceed \$1.5 billion aggregate principal amount at any time outstanding of unsecured debt obligations having a maturity of more than one year pursuant to one or more revolving credit agreements to be entered into by the Company, such issuance and sale to be for purposes of reimbursement of the Company's treasury for moneys expended for capital purposes through December 31, 2004; (ii) not to exceed \$4.4 billion aggregate principal amount of unsecured debt obligations of the Company having a maturity of more than one year, for purposes of reimbursement of the Company's treasury for moneys expended for capital purposes through December 31, 2004; (iii) unsecured debt obligations having a maturity of more than one year and preferred stock for the purposes of refunding in advance of maturity outstanding securities of the Company.

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

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

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

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

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

(05-M-0037SA1)

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

Transfer of Certain Facilities between National Fuel Gas Distribution Corporation and HealthNow New York, Inc.

I.D. No. PSC-13-05-00014-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by National Fuel Gas Distribution Corporation for approval, pursuant to Public Service Law section 70, to transfer certain facilities, consisting of a stone facade and underlying property formerly used as a manufactured gas plant site and as a service center to HealthNow New York, Inc. for \$100 plus costs as set forth in the contract of sale.

Statutory authority: Public Service Law, section 70

Subject: Transfer of certain National Fuel Gas Distribution Corporation facilities.

Purpose: To determine whether certain facilities of National Fuel Gas Distribution Corporation should be transferred to HealthNow New York, Inc.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify, or deny, in whole or in part, a petition filed by National Fuel Gas Distribution Corporation for approval, pursuant to Public Service Law Section 70, to transfer certain facilities, consisting of a stone facade and underlying property formerly used as a manufactured gas plant and service center located at 249 West Genesee Street, Buffalo,

New York to HealthNow New York, Inc. The purchase price shall be \$100 plus costs as set forth in the Contract of Sale.

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

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

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

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

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

(05-M-0212SA1)

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

Foxboro Reduced Bore Vortex Meter by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-13-05-00015-P

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

Proposed action: The commission is considering whether to approve or reject, in whole or in part, a petition filed by the Consolidated Edison Company of New York, Inc. for the approval of the Foxboro Reduced Bore Vortex meter product line, filed in C 376.

Statutory authority: Public Service Law, section 80(10)

Subject: Installation of house service equipment, operating conditions, and testing of meters of steam quality by corporations having 1,000 installed customers' meters (formerly cited as Case 376).

Purpose: To permit steam utilities in New York State to use the Foxboro Reduced Bore Vortex Meter.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, a petition filed by Consolidated Edison to approve the family of Foxboro Reduced Bore Vortex steam meters consisting of 17 different meter sizes.

The reduced bore meter has the same operating principles as the Foxboro Model 83F vortex meter that was previously approved by the Commission. The differences in the reduced bore meter are changes to length of the meter and a reducer at the inlet and outlet of the meter. The meter has been tested to exceed the new accuracy requirements, as stated by the National Institute of Standards and Technology, which are in accordance with International Standards ISO 4185. The cost of these meters will range from \$4,164 to \$19,840 depending on the model and options ordered.

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

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

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

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

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

(05-S-0236SA1)

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

Calculation of Franchise Fees between Cablevision Systems Long Island Corporation and the Village of Bellerose

I.D. No. PSC-13-05-00016-P

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

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

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

Subject: Calculation of franchise fees.

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

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision Systems Long Island Corporation for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Village of Bellerose (Nassau County).

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

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

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

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

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

(05-V-0191SA1)

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

Administering Public Access Channel Time between Cablevision Systems Corporation and the Town of Huntington by the Town of Brookhaven and Annie McKenna Faraldo

I.D. No. PSC-13-05-00017-P

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

Proposed action: In response to petitions from the Town of Brookhaven and Annie McKenna Faraldo, filed on March 9, 2005, the Public Service Commission will examine whether the procedures for assigning public access channel time employed by Cablevision Systems Corporation under a franchise granted by the Town of Huntington comply with State Law, including a requirement under 9 NYCRR section 595.4(c)(4) that public access channel time be assigned "on a first-come, first-served, nondiscriminatory basis." The commission will also take other related and appropriate actions as a part of this proceeding.

Statutory authority: Public Service Law, sections 215(2), 216 and 229(3); and art. 11

Subject: The procedures of Cablevision Systems Corporation for administering public access channel time under a franchise granted by the Town of Huntington.

Purpose: To determine whether procedures for administering public access channel time comply with applicable State law.

Substance of proposed rule: In respond to petitions from the Town of Brookhaven and Annie McKenna Faraldo, filed on March 9, 2005, the Public Service Commission is considering whether procedures for assigning public access channel time employed by Cablevision Systems Corporation under a franchise granted by the Town of Huntington comply with State Law, including a requirement under 9 N.Y.C.R.R. § 595.4(c)(4) that public access channel time be assigned "on a first-come, first-served, nondiscriminatory basis." The Commission will further consider and determine what other related actions to take, if any, if it determines that Cablevision's procedures do not comply with State Law.

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

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

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

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

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

(05-V-0310SA1)

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

Litigation Costs by United Water New Rochelle, Inc.

I.D. No. PSC-13-05-00018-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by United Water New Rochelle, Inc. for authority to defer and subsequently amortize \$66,839 related to litigating a NYS sales tax proceeding and \$73,080 related to litigating a proceeding concerning NYC excess per capita water charges.

Statutory authority: Public Service Law, sections 89-b(1) and 89-c(7)

Subject: Litigation costs.

Purpose: To defer and recover litigation expenses.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by United Water New Rochelle, Inc. for authority to defer and subsequently amortize \$66,839 related to litigating a NYS sales tax proceeding and \$73,080 related to litigating a proceeding concerning NYC excess per capita water charges.

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

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

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

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

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

(05-W-0193SA1)

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

Extraordinary Expenses by United Water New York, Inc.

I.D. No. PSC-13-05-00019-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by United Water New York, Inc. for authority to defer and subsequently amortize \$107,110 of costs related to painting a storage tank.

Statutory authority: Public Service Law, sections 89-b(1) and 89-c(7)

Subject: Extraordinary expenses.

Purpose: To defer and amortize tank painting expenses.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by United Water New York, Inc. for authority to defer and subsequently amortize \$107,110 of costs related to painting a storage tank.

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

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

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

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

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

(05-W-0194SA1)

Department of State

NOTICE OF ADOPTION

Cease and Desist Zone for Real Estate Brokers and Salespersons

I.D. No. DOS-50-04-00006-A

Filing No. 258

Filing date: March 15, 2005

Effective date: March 30, 2005

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

Action taken: Amendment of section 175.17(c)(2) of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-h(3)(a) and (c)

Subject: Cease and desist zone for real estate brokers and salespersons.

Purpose: To establish a cease and desist zone in community districts 9, 10, 11 and 12 of the Bronx.

Text or summary was published in the notice of proposed rule making, I.D. No. DOS-50-04-00006-P, Issue of December 15, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Bruce Stuart, Department of State, 41 State St., Albany, NY 12231, (518) 473-2728

Assessment of Public Comment:

The agency received no public comment.

NOTICE OF ADOPTION

Cease and Desist Zone for Real Estate Brokers and Salespersons

I.D. No. DOS-50-04-00007-A

Filing No. 259

Filing date: March 15, 2005

Effective date: March 30, 2005

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

Action taken: Amendment of section 175.17(c)(2) of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-h(3)(a) and (c)

Subject: Cease and desist zone for real estate brokers and salespersons.

Purpose: To establish a cease and desist zone in the Borough of Queens.

Text or summary was published in the notice of proposed rule making, I.D. No. DOS-50-04-00007-P, Issue of December 15, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Bruce Stuart, Department of State, 41 State St., Albany, NY 12231, (518) 473-2728

Assessment of Public Comment

The agency received no public comment.

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

Guidance Documents

I.D. No. DOS-13-05-00009-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 add Part 265 to Title 19 NYCRR.

Statutory authority: State Administrative Procedure Act, section 202-e

Subject: Guidance documents.

Purpose: To implement the provisions of State Administrative Procedure Act, section 202-e concerning guidance documents.

Text of proposed rule: PART 265

GUIDANCE DOCUMENTS

265.1 (a) Definition.

A guidance document means any guideline, memorandum or similar document prepared by an agency that provides general information or guidance to assist regulated parties in complying with any statute, rule or other legal requirement, but shall not include documents that concern only the internal management of the agency.

(b) Publication requirements. Not less than once each year, every agency shall submit to the Secretary of State for publication in the State Register a list of all guidance documents on which the agency currently relies, and provide information on where and how regulated parties and members of the public may inspect and obtain copies of any such document. This list shall be in a form as near as practical to the model Guidance Document Certification by Agency Head form contained in Appendix 1 of this Title. Unless otherwise provided for by law, an agency may make such guidance documents available as provided in the Freedom of Information Law, and may charge fees pursuant to such law for copies of any such document.

(c) Exemptions. (1) The Secretary of State may exempt an agency from compliance with the requirements of subdivision (b) of this section upon a determination that the agency has published on its website the full text of all guidance documents on which it currently relies. The Secretary of State shall publish a notice of such determination identifying the website in the State Register.

(2) An agency head may seek a one year exemption from guidance document publication requirements by certifying to the Secretary of State that the full text of all guidance documents on which the agency currently relies are located on the agency's website and identifying the web site location where these guidance documents are located. This request shall be in a form as near as practical to the model Guidance Document Certification by Agency Head form contained in Appendix 1 of this Title. (See Appendix in this issue of the State Register.)

(d) Five year review of guidance documents. Not less than once every five years, every agency shall conduct a process for reviewing and updating all guidance documents on which it currently relies. In conducting such process, the agency shall obtain feedback from regulated parties and members of the public who are directly or indirectly affected by the guidelines.

Text of proposed rule and any required statements and analyses may be obtained from: Deborah Ritzko, Director, Division of Administrative Rules, Department of State, 41 State St., Albany, NY 12231, (518) 474-6957, e-mail: dritzko@dos.state.ny.us

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

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

Consensus Rule Making Determination

The purpose of the rule is to implement the provisions of State Administrative Procedure Act (SAPA) § 202-e concerning Guidance Documents. In particular, the rule would provide guidance to state agencies concerning exemption from the requirement found in SAPA § 202-e(1) that each agency submit to the secretary of state for publication in the State Register a list of all guidance documents on which the agency currently relies. No person is likely to object to the adoption of the proposed rule because it implements statutory provisions which must be complied with by all state agencies and is otherwise non-controversial.

Job Impact Statement

The purpose of the rule is to implement the provisions of State Administrative Procedure Act (SAPA) § 202-e concerning Guidance Documents. In particular, the rule would provide guidance to state agencies concerning exemption from the requirement found in SAPA § 202-e(1) that each agency submit to the secretary of state for publication in the State Register a list of all guidance documents on which the agency currently relies. It is therefore apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Verification of School Attendance

I.D. No. TDA-13-05-00001-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 369.4(f) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 131(1) and 355(3)

Subject: Verification of school attendance.

Purpose: To relieve social services districts of verifying school attendance of children under the age of 18.

Text of proposed rule: Subdivision (f) of section 369.4 is amended to read as follows:

(f) Continued school attendance. Attendance in high school or the equivalent level of vocational or technical training of [a minor] an 18 year old child shall be confirmed at each regular contact with the family. If such a [minor] child fails to resume attendance at the next regular term following vacation, the [minor] child shall be considered ineligible for family assistance.

Text of proposed rule and any required statements and analyses may be obtained from: Ronald Speier, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-6573

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:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Department of Social Services to promulgate regulations to carry out its powers and duties. Section 122 of Part B of Chapter 436 of the Laws of 1997 reorganized the Department of Social Services into the Department of Family Assistance with two distinct offices, the Office of Children and Family Services and the Office of Temporary and Disability Assistance (OTDA). The functions of the former Department of Social Services concerning the public assistance programs were transferred by Chapter 436 to OTDA.

Section 34(3)(f) of the SSL requires the Commissioner of the Department of Social Services to establish regulations for the administration of public assistance and care within the State. Section 122 of Part B of Chapter 436 of the Laws of 1997 provides that the Commissioner of the Department of Social Services will serve as the Commissioner of OTDA.

Section 131(1) of the SSL requires social services districts, insofar as funds are available, to provide adequately for those unable to maintain themselves, in accordance with the provisions of the SSL.

Section 355(3) of the SSL requires the OTDA to promulgate regulations to carry out the provisions of the SSL concerning the provision of Family Assistance.

2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that public assistance is provided to eligible households.

3. Needs and Benefits:

Section 369.2(c) of 18 NYCRR provides that a child is eligible for family assistance if under 18 years of age, or if under 19 if she or he is a full-time student regularly attending a secondary school, or in the equivalent level of vocational or technical training. That section also provides that the fact that a child 18 years of age is a full-time student in a secondary school, or in the equivalent level of vocational or technical training shall be established. Only an 18 year old child must verify school attendance in order to be categorically eligible for TANF-funded benefits in accordance with the age requirements of 18 NYCRR 369.2(c). The current provisions of 18 NYCRR 369.4(f) require the social services districts to confirm the attendance in high school or the equivalent level of vocational or technical training of all minors, not just those 18 years of age.

The proposed amendment would make the requirements of 18 NYCRR 369.4(f) consistent with those of 18 NYCRR 369.2(c) and reduce the administrative burden on social services districts.

The proposed amendment will not prohibit social services districts from requesting information concerning school attendance. The districts routinely request information concerning school attendance to verify public assistance eligibility factors including age, residence and household composition and may continue this practice.

4. Costs:

The proposed amendment will not result in any costs for the State or social services districts.

5. Local Government Mandates:

Social services districts would be required to confirm the attendance in school or vocational training of children who are 18 years of age when determining the continuing eligibility of the children's families for family assistance.

6. Paperwork:

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

7. Duplication:

The proposed amendment does not duplicate State or Federal requirements concerning eligibility for family assistance but is consistent with those requirements.

8. Alternatives:

One alternative would be to leave 18 NYCRR 369.2(f) unchanged. This would result in continued confusion in the social services districts concerning the age of minors whose attendance in school would have to be confirmed.

9. Federal Standards:

The proposed amendment is consistent with Federal standards concerning eligibility for family assistance.

10. Compliance Schedule:

Social services districts will be able to implement the proposed amendment when it becomes effective.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed amendment will not affect small businesses but will have an impact on the 58 social services districts in the State.

2. Compliance requirements:

The proposed amendment would eliminate the requirement that social services districts confirm the attendance of minors in high school or the equivalent level of vocational training when determining the continuing eligibility of the minor's family for family assistance. The proposed amendment would require only that the districts confirm the attendance in school or vocational training of children who are 18 years of age.

3. Professional services:

No new professional services will be required in order for social services districts to comply with the proposed amendment.

4. Compliance costs:

The proposed amendment will not require the social services districts to incur any initial capital costs. The districts will not be required to incur any costs for continuing compliance with the proposed amendments.

5. Economic and technological feasibility:

The social services districts have the economic and technological feasibility to comply with the proposed amendment.

6. Minimizing adverse impact:

The proposed amendment will not have an adverse economic impact on social services districts.

7. Small business and local government participation:

Several social services districts throughout the State have been informed of the proposed changes and no objections to the changes have been expressed.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The proposed amendments will affect the 44 rural social services districts in the State.

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

The proposed amendment would eliminate the requirement that social services districts confirm the attendance of minors in high school or the equivalent level of vocational training when determining the continuing eligibility of the minor's family for family assistance. The proposed amendment would require only that the districts confirm the attendance in school or vocational training of children who are 18 years of age. No new

professional services would be required by the districts in order to implement the proposed amendment.

3. Costs:

It is projected that the proposed amendments will not result in any fiscal impact on the State or social services districts.

4. Minimizing adverse impact:

The proposed amendments will not have an adverse economic impact on social services districts in rural areas.

5. Rural area participation:

Some social services districts in rural areas have been informed of the proposed changes and no adverse comments have been received.

Job Impact Statement

A job impact statement has not been prepared for the proposed regulatory amendments. It is evident from the subject matter of the amendments that the job of the worker making the decisions required by the proposed amendments will not be affected in any real way. Thus, the changes will not have any impact on jobs and employment opportunities in the State.