

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

EMERGENCY RULE MAKING

Golden Nematode Quarantine

I.D. No. AAM-20-05-00020-E

Filing No. 473

Filing date: April 29, 2005

Effective date: April 29, 2005

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

Action taken: Amendment of section 127.2 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

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

Specific reasons underlying the finding of necessity: This rule amends the golden nematode quarantine in section 127.2 of 1 NYCRR by extending that quarantine to certain lands currently owned or operated by Martens Farms in the Town of Mentz in Cayuga County and to a field currently owned or operated by Hoeffner Farms in the Town of Fremont in Steuben County. The extension of the quarantine to certain lands currently owned or operated by Martens Farms is in response to the recent detection of golden nematode on that farm. The extension of the quarantine to a field

currently owned or operated by Hoeffner Farms is consistent with the most recent revisions to the federal regulations at 7 CFR sections 301.85-1 through 301.85-10 which extend the federal golden nematode quarantine to that field.

The golden nematode, *Globodera rostochiensis*, non-indigenous to the United States, is a microscopic eelworm native to Europe. It is one of the world's most destructive crop pests, which attacks potatoes, tomatoes and eggplants by boring into their roots. The resulting damage by the golden nematode affects the growth and crop yield of the plant and may result in the death of the plant. Once established in the soil, the golden nematode is easily spread to non-infested areas through the movement of the infested plants and infected soil. The golden nematode was discovered in Europe during the 19th century and was first detected in the United States on a potato farm on Long Island in 1941. The pest subsequently spread beyond that farm to other areas on Long Island. The emergence of this pest prompted the establishment of a cooperative federal-state golden nematode control program shortly after the end of World War II. The program was dedicated to the control of the golden nematode and included laboratory analysis, research, survey activities and quarantine enforcement. In 1967, the golden nematode was detected on a farm near the Town of Prattsburg in Steuben County and subsequently spread to parts of Cayuga, Genesee, Livingston, Orleans, Seneca and Wayne Counties. The establishment of federal and state golden nematode quarantines as well as restrictions on the movement of host materials played key roles in preventing the further spread of the golden nematode. As of 2002, the quarantines had effectively confined this pest to 6,000 acres of farmland in Nassau and Suffolk Counties on Long Island and the Counties of Cayuga, Genesee, Livingston, Orleans, Seneca, Steuben and Wayne in western New York State. However, the golden nematode has since been detected on a farm in the Town of Mentz in Cayuga County and a farm in the Town of Fremont in Steuben County. Accordingly, it is necessary to extend the golden nematode quarantine to the lands owned and operated by these farms.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest. Since the federal quarantine has not yet been revised to address the recent detection of the golden nematode on certain lands currently owned or operated by the Martens Farm in the Town of Mentz in Cayuga County, the failure to immediately extend the State quarantine to those areas will promote the spread of this pest to uninfested areas within and outside New York State, through the movement of infested plants and infected soil. Although the federal quarantine has been extended to a field currently owned or operated by Hoeffner Farms in the Town of Fremont in Steuben County, that quarantine only addresses the interstate movement of infested plants and infected soil. Consequently, the failure to immediately extend the State quarantine to that field will promote the spread of this pest to uninfested areas within New York State. This would not only result in damage to potato, tomato and eggplant crops in New York and other states, but could also result in a federal quarantine or quarantines by other states which would cause economic hardship to the potato, tomato and eggplant producers and producers of soil-bearing commodities, such as nursery stock and onions, throughout New York State. The consequent loss of business to these producers would harm the agriculture industry which is important to New York State's economy and as such, would harm the general welfare. Given the potential for the spread of the golden nematode beyond the areas currently infested and the detrimental consequences that would have, it appears that this rule should be

implemented on an emergency basis and without complying with the requirements of subdivision one of section 202 of the State Administrative Procedure Act, including the minimum periods therein for notice and comment.

Subject: Golden nematode quarantine.

Purpose: To prevent the further spread of this pest.

Text of emergency rule: Section 127.2 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding new subdivisions (l) and (m) to read as follows:

(l) *That area located in the Town of Fremont in Steuben County and bounded by a line beginning at a point on Babcock Road which intersects a farm road at latitude/longitude coordinates N42°26'12.5" W77°34'30.4" then west along the farm road to coordinates N42°26'12.2" W77°34'41.0", then south to coordinates N42°26'09.6" W77°34'40.9" then west to coordinates N42°26'09.4" W77°34'50.7" then south to coordinates N42°26'00.7" W77°34'50.3" then east to coordinates N42°25'59.9" W77°34'40.4", then south to coordinates N42°25'54.7" W77°34'40.0" then east to coordinates N42°25'56.3" W77°34'37.7" then northeast to coordinates N42°25'58.9" W77°34'35.0" then east to coordinates N42°25'58.9" W77°34'34.1" then north to N42°26'05.8" W77°34'32.5" then east to N42°26'05.7" W77°34'29.9" then north to the point of beginning.*

(m) *That area located in the Town of Mentz in Cayuga County currently owned or operated by Martens Farms which lies in an area bounded as follows: beginning at the intersection of Tow Path Road and Maiden Lane following Tow Path Road west to a point where it intersects with the Town of Mentz boundary, following north along Town of Mentz boundary to a point where it intersects with Maiden Lane, followed eastward back to the intersection of Maiden Lane and Tow Path Road, in the Town of Mentz in the county of Cayuga.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire July 27, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Robert Mungari, Director, Division of Plant Industry, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-2087

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Said Section also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law as he may deem necessary.

2. Legislative objectives:

This rule amends the golden nematode quarantine in section 127.2 of 1 NYCRR by extending that quarantine to certain lands currently owned or operated by Martens Farms in the Town of Mentz in Cayuga County and to a field currently owned or operated by Hoeffner Farms in the Town of Fremont in Steuben County.

The modification of the golden nematode quarantine accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the spread within the State of this injurious pest.

3. Needs and benefits:

The golden nematode, *Globodera rostochiensis*, non-indigenous to the United States, is a microscopic eelworm native to Europe. It is one of the world's most destructive crop pests, which attacks potatoes, tomatoes and eggplants by boring into their roots. The resulting damage by the golden nematode affects the growth and crop yield of the plant and may result in the death of the plant. Once established in the soil, the golden nematode is easily spread to non-infested areas through the movement of the infested plants and infested soil. The golden nematode was discovered in Europe

during the 19th century and was first detected in the United States on a potato farm on Long Island in 1941. The pest subsequently spread beyond that farm to other areas on Long Island. The emergence of this pest prompted the establishment of a cooperative federal-state golden nematode control program shortly after the end of World War II. The program was dedicated to the control of the golden nematode and included laboratory analysis, research, survey activities and quarantine enforcement. In 1967, the golden nematode was detected on a farm near the Town of Prattsburg in Steuben County and subsequently spread to parts of Cayuga, Genesee, Livingston, Orleans, Seneca and Wayne Counties. The establishment of federal and state golden nematode quarantines as well as restrictions on the movement of host materials played key roles in preventing the further spread of the golden nematode. As of 2002, the quarantines had effectively confined this pest to 6,000 acres of farmland in Nassau and Suffolk Counties on Long Island and the Counties of Cayuga, Genesee, Livingston, Orleans, Seneca, Steuben and Wayne in western New York State. However, the golden nematode has since been detected on a farm in the Town of Mentz in Cayuga County and a farm in the Town of Fremont in Steuben County. Accordingly, it is necessary to extend the golden nematode quarantine to certain lands owned or operated by these farms.

The effective control of the golden nematode within the areas of the State where this pest has been found is important to protect New York agriculture generally, and potato, tomato and eggplant producers in New York, specifically. The failure to immediately extend the golden nematode quarantine to certain lands owned or operated by these two farms will promote the spread of this pest to uninfested areas through the movement of infested plants and infested soil. This would not only result in damage to potato, tomato and eggplant crops in New York and other states, but could also result in a federal quarantine or quarantines by other states which would cause economic hardship to the potato, tomato and eggplant producers and producers of soil-bearing commodities, such as nursery stock and onions, throughout New York State. It is estimated that there are 530 potato producers, 1,212 tomato producers and 124 eggplant producers in New York. They employ an estimated 2,420 people and generate 92.7-million dollars in revenue per year. The consequent loss of business to these producers would harm the agriculture industry which is vastly important to New York State's economy and as such, would harm the general welfare.

4. Costs:

(a) Costs to the State government:

None.

(b) Costs to local government:

None.

(c) Costs to private regulated parties:

Farming and construction equipment located on the two farms affected by the extension of the quarantine will have to be cleaned and sanitized prior to leaving the quarantine zone. Depending upon the availability of resources and personnel, cleaning and sanitizing will be provided free of charge by the United States Department of Agriculture (USDA) and/or the Department. If, however, resources and personnel are not available at a given point in time, regulated parties will have to clean and sanitize their own equipment prior to leaving the quarantine zone. Regulated parties will incur an initial capital cost of \$400.00 for the purchase of a gasoline-powered power washer to clean and sanitize the equipment. It is estimated that one worker earning \$10.00 per hour can clean and sanitize equipment in one hour. Since a potato field is entered 11 times a growing season for purposes of planting, crop management and harvest, regulated parties will incur, at most, annual costs for continued compliance with the rule of \$110.00 (\$10.00 per hour × 11). Of course, these costs will be lower to the extent scheduling permits the USDA and/or the Department to clean and sanitize the equipment.

Any potatoes planted at the two farm locations affected by the extension of the quarantine will have to be varieties which are resistant to the golden nematode and rotated, as required by Part 127 of the Regulations. The approved rotation allows growers to continue to produce potatoes on regulated (*i.e.*, infested) acreage while maintaining populations of the golden nematode below a level at which the pest can spread. Since the cost for seeds of resistant varieties is comparable to that for seeds of non-resistant varieties, the two farms will not incur any additional costs in the purchase of potato seeds.

(d) Costs to the regulatory agency:

(i) The initial expenses the agency will incur in order to implement and administer the regulation: None

(ii) It is anticipated that the Department will be able to use existing personnel to administer the extension of the quarantine and to perform the

necessary cleaning and sanitizing of equipment in the extended quarantine area.

- 5. Local government mandates:
None.
- 6. Paperwork:
None.
- 7. Duplication:
None.
- 8. Alternatives:

None. The failure of the State to modify the quarantine to reflect the areas in which the golden nematode has been detected would result not only in damage to potato, tomato and eggplant crops in New York and other states, but could also result in a federal quarantine or quarantines by other states which would cause economic hardship to the potato, tomato and eggplant producers and producers of soil-bearing commodities, such as nursery stock and onions, throughout New York State.

9. Federal standards: The extension of the quarantine to certain lands currently owned or operated by Hoeffner Farm in the Town of Fremont in Steuben County is consistent with the most recent revisions to the federal regulations at 7 CFR sections 301.85-1 through 301.85-10. Accordingly, this part of the amendment does not exceed any minimum standards for the same or similar subject areas. The extension of the quarantine to certain lands currently owned or operated by Martens Farm in the Town of Mentz in Cayuga County is in response to the recent detection by the Department of golden nematode on that farm. The federal quarantine has not yet been revised to address this detection of the pest.

- 10. Compliance schedule:
Immediate.

Regulatory Flexibility Analysis

- 1. Effect on small business:

This rule amends the golden nematode quarantine in section 127.2 of 1 NYCRR by extending that quarantine to certain lands currently owned or operated by Martens Farms in the Town of Mentz in Cayuga County and to a field currently owned or operated by Hoeffner Farms in the Town of Fremont in Steuben County.

The rule will affect these two farms, both of which are small businesses. It is anticipated that the rule will have no impact on local governments.

- 2. Compliance requirements:

Farming and construction equipment on the two farms affected by the extension of the quarantine will have to be cleaned and sanitized prior to leaving the quarantine zone.

Any potatoes planted at the two farm locations affected by the extension of the quarantine will have to be varieties which are resistant to the golden nematode and rotated, as required by Part 127 of the Regulations.

It is anticipated that the rule will have no impact on local governments.

- 3. Professional services:

In order to comply with the amendments, the two farms will have to have their farming and construction equipment cleaned and sanitized before it leaves the quarantine zone. Depending upon the availability of resources and personnel, this service will be provided by the United States Department of Agriculture (USDA) and/or the Department. Otherwise, regulated parties will have to clean and sanitize their own equipment prior to leaving the quarantine zone.

It is anticipated that the rule will have no impact on local governments.

- 4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the proposed rule:

Regulated parties will incur an initial capital cost of \$400.00 for the purchase of a gasoline-powered power washer to clean and sanitize the equipment.

(b) Annual cost for continuing compliance with the proposed rule:

Farming and construction equipment located on the two farms affected by the extension of the quarantine will have to be cleaned and sanitized prior to leaving the quarantine zone. Depending upon the availability of resources and personnel, cleaning and sanitizing will be provided free of charge by the United States Department of Agriculture (USDA) and/or the Department. If, however, resources and personnel are not available at a given point in time, regulated parties will have to clean and sanitize their own equipment prior to leaving the quarantine zone. It is estimated that one worker earning \$10.00 per hour can clean and sanitize equipment in one hour. Since a potato field is entered 11 times a growing season for purposes of planting, crop management and harvest, regulated parties will incur, at most, annual costs for continued compliance with the rule of \$110.00 (\$10.00 per hour × 11). Of course, this cost will be lower to the extent

scheduling permits the USDA and/or the Department to clean and sanitize the equipment.

Any potatoes planted at the two farm locations affected by the extension of the quarantine will have to be varieties which are resistant to the golden nematode and rotated, as required by Part 127 of the Regulations. The approved rotation allows growers to continue to produce potatoes on regulated (*i.e.*, infested) acreage while maintaining populations of the golden nematode below a level at which the pest can spread. Since the cost for seeds of resistant varieties is comparable to that for seeds of non-resistant varieties, the two farms will not incur any additional costs in the purchase of potato seeds.

It is anticipated that the rule will have no impact on local governments.

- 5. Minimizing adverse impact:

The Department has designed the rule to minimize adverse economic impact on small businesses and local governments. The rule minimizes adverse economic impact by limiting the modified quarantined areas to only those areas where the golden nematode has been detected. The rule also minimizes adverse economic impact by providing that the USDA and/or Department will clean and sanitize farm and construction equipment free of charge, depending upon the availability of resources and personnel. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

It is anticipated that the rule will have no impact on local governments.

- 6. Small business and local government participation:

The Department has contacted the owners, operators and representatives of the two farms which are affected by the extension of the quarantine.

It is anticipated that the rule will have no impact on local governments.

7. Assessment of the economic and technological feasibility of compliance with the rule by small businesses and local governments:

The economic and technological feasibility of compliance with the rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Farming and construction equipment located on the two farms affected by the extension of the quarantine will have to be cleaned and sanitized prior to leaving the quarantine zone. However, cleaning and sanitizing will be provided at no charge by USDA and/or the Department, depending upon the availability of resources and personnel. Any potatoes planted at the two farm locations affected by the extension of the quarantine will have to be varieties which are resistant to the golden nematode and rotated, as required by Part 127 of the Regulations. The approved rotation allows growers to continue to produce potatoes on regulated (*i.e.*, infested) acreage while maintaining populations of the golden nematode below a level at which the pest can spread. Since the cost for seeds of resistant varieties is comparable to that for seeds of non-resistant varieties, the two farms will not incur any additional costs in the purchase of potato seeds.

It is anticipated that the rule will have no impact on local governments.

Rural Area Flexibility Analysis

- 1. Type and estimated numbers of rural areas:

This rule amends the golden nematode quarantine in section 127.2 of 1 NYCRR by extending that quarantine to certain lands currently owned or operated by Martens Farms in the Town of Mentz in Cayuga County and to a field currently owned or operated by Hoeffner Farms in the Town of Fremont in Steuben County.

The rule will affect these two farms, both of which are in rural areas.

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

The rule will not require any reporting or recordkeeping requirements for regulated parties.

With respect to compliance requirements, farming and construction equipment on the two farms affected by the extension of the quarantine will have to be cleaned and sanitized prior to leaving the quarantine zone. Depending upon the availability of resources and personnel, this service will be provided by the United States Department of Agriculture (USDA) and/or the Department. Otherwise, regulated parties will have to clean and sanitize their own equipment prior to leaving the quarantine zone. Any potatoes planted at the two farm locations affected by the extension of the quarantine will have to be varieties which are resistant to the golden nematode and rotated, as required by Part 127 of the Regulations. The approved rotation allows growers to continue to produce potatoes on regulated (*i.e.*, infested) acreage while maintaining populations of the golden nematode below a level at which the pest can spread. Since the cost

for seeds of resistant varieties is comparable to that for seeds of non-resistant varieties, the two farms will not incur any additional costs in the purchase of potato seeds.

3. Costs:

Farming and construction equipment located on the two farms affected by the extension of the quarantine will have to be cleaned and sanitized prior to leaving the quarantine zone. However, cleaning and sanitizing is provided free of charge by USDA and/or the Department, depending upon the availability of resources and personnel. If resources and personnel are not available at a given point in time, regulated parties will have to clean and sanitize their own equipment prior to leaving the quarantine zone. Regulated parties will incur an initial capital cost of \$400.00 for the purchase of a gasoline-powered power washer to clean and sanitize the equipment. It is estimated that one worker earning \$10.00 per hour can clean and sanitize equipment in one hour. Since a potato field is entered 11 times a growing season for purposes of planting, crop management and harvest, regulated parties will incur, at most, annual costs for continued compliance with the rule of \$110.00 (\$10.00 per hour × 11). Of course, these costs will be lower to the extent scheduling permits the USDA and/or the Department to clean and sanitize the equipment.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act Section 202-bb(2), the amendments were drafted to minimize adverse impact on all regulated parties, including those in rural areas. The rule minimizes adverse economic impact by limiting the modified quarantined areas to only those areas where the golden nematode has been detected. The rule also minimizes adverse economic impact by providing that the USDA and/or Department will clean and sanitize farm and construction equipment free of charge, depending upon the availability of resources and personnel. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

5. Rural area participation:

The Department has contacted the owners, operators and representatives of the two farms which are affected by the extension of the quarantine. Both farms are located in rural areas of the State.

Job Impact Statement

The rule will not have a substantial adverse impact on jobs and employment opportunities. The modification of the quarantine area is designed to prevent the spread of the golden nematode to other parts of the State. It is estimated that there are 530 potato producers, 1,212 tomato producers and 124 eggplant producers in New York. They employ an estimated 2,420 people and generate 92.7-million dollars in revenue per year. A spread of the infestation would have very adverse economic consequences to these industries in New York State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government and by other states. By helping to prevent the spread of the golden nematode, the rule will help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the production of potatoes, tomatoes and eggplant in New York State.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-04-00001-A

Filing No. 478

Filing date: May 3, 2005

Effective date: May 18, 2005

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-51-04-00001-P, Issue of December 22, 2004.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-04-00002-A

Filing No. 484

Filing date: May 3, 2005

Effective date: May 18, 2004

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-51-04-00002-P, Issue of December 22, 2004.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-04-00003-A

Filing No. 481

Filing date: May 3, 2005

Effective date: May 18, 2005

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

Action taken: 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 Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-51-04-00003-P, Issue of December 22, 2004.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-04-00004-A

Filing No. 485

Filing date: May 3, 2005

Effective date: May 18, 2005

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

Action taken: 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 Audit and Control.

Text was published in the notice of proposed rule making, I.D. No. CVS-51-04-00004-P, Issue of December 22, 2004.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-04-00005-A
Filing No. 483
Filing date: May 3, 2005
Effective date: May 18, 2005

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify positions in the exempt class in the Department of Audit and Control.

Text was published in the notice of proposed rule making, I.D. No. CVS-51-04-00005-P, Issue of December 22, 2004.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-04-00006-A
Filing No. 482
Filing date: May 3, 2005
Effective date: May 18, 2005

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

Action taken: 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 Department of Transportation.

Text was published in the notice of proposed rule making, I.D. No. CVS-51-04-00006-P, Issue of December 22, 2004.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-04-00007-A
Filing No. 480
Filing date: May 3, 2005
Effective date: May 18, 2005

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To delete a position from the non-competitive class in the Department of Transportation.

Text was published in the notice of proposed rule making, I.D. No. CVS-51-04-00007-P, Issue of December 22, 2004.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-04-00008-A
Filing No. 479
Filing date: May 3, 2005
Effective date: May 18, 2005

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

Action taken: Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-51-04-00008-P, Issue of December 22, 2004.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Attendance Rules, Extension of Supplemental Military Leave with Pay, Leave at Reduced Pay, and Annual Grants of Training Leave at Reduced Pay

I.D. No. CVS-03-05-00005-A
Filing No. 491
Filing date: May 3, 2005
Effective date: May 18, 2005

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

Action taken: Amendment of sections 21.15 and 28-1.17 of Title 4 NYCRR.

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

Subject: Attendance rules for employees in New York State departments and institutions.

Purpose: To extend the availability of supplemental military leave with pay, leave at reduced pay and annual grants of training leave at reduced pay for eligible New York State employees, through Dec. 31, 2006.

Text was published in the notice of proposed rule making, I.D. No. CVS-03-05-00005-P, Issue of January 19, 2005.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-03-05-00009-A
Filing No. 487
Filing date: May 3, 2005
Effective date: May 18, 2005

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

Action taken: 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 Insurance Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-03-05-00009-P, Issue of January 19, 2005.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-03-05-00010-A

Filing No. 488

Filing date: May 3, 2005

Effective date: May 18, 2005

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

Action taken: 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 Insurance Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-03-05-00010-P, Issue of January 19, 2005.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-03-05-00011-A

Filing No. 486

Filing date: May 3, 2005

Effective date: May 18, 2005

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-03-05-00011-P, Issue of January 19, 2005.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-03-05-00012-A

Filing No. 489

Filing date: May 3, 2005

Effective date: May 18, 2005

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-03-05-00012-P, Issue of January 19, 2005.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-03-05-00013-A

Filing No. 490

Filing date: May 3, 2005

Effective date: May 18, 2005

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-03-05-00013-P, Issue of January 19, 2005.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-07-05-00003-A

Filing No. 451

Filing date: April 27, 2005

Effective date: May 18, 2005

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

Action taken: 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 Labor.

Text was published in the notice of proposed rule making, I.D. No. CVS-07-05-00003-P Issue of February 16, 2005.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-07-05-00004-A

Filing No. 448

Filing date: April 27, 2005

Effective date: May 18, 2005

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

Action taken: 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 was published in the notice of proposed rule making, I.D. No. CVS-07-05-00004-P, Issue of February 16, 2005.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-07-05-00005-A

Filing No. 450

Filing date: April 27, 2005

Effective date: May 18, 2005

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

Action taken: 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 was published in the notice of proposed rule making, I.D. No. CVS-07-05-00005-P, Issue of February 16, 2005.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-07-05-00006-A

Filing No. 449

Filing date: April 27, 2005

Effective date: May 18, 2005

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

Action taken: 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 Department of Mental Hygiene.

Text was published in the notice of proposed rule making, I.D. No. CVS-07-05-00006-P, Issue of February 16, 2005.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-20-05-00002-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 a position 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 increasing the number of positions of Associate Counsel from 3 to 4.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, 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-20-05-00003-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 a position in the exempt class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Housing and Community Renewal," by increasing the number of positions of Special Assistant from 5 to 6.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, 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-20-05-00004-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) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

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 Labor under the subheading "State Insurance Fund," by increasing the number of positions of Special Investment Officer from 2 to 3.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, 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-20-05-00005-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) 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 6, Investigator from 121 to 156 and Secretary from 28 to 31.

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-20-05-00006-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) 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 Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of the Budget," by adding thereto the positions of Associate Counsel (2).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, 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-20-05-00007-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 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 "State University Colleges," by increasing the number of positions of Secretary 2 at SUC at Oswego from 4 to 5.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, 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-20-05-00008-P

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

Proposed action: Amendment of Appendix(es) 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 Department of Labor.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor under the subheading "State Insurance Fund," by adding thereto the position of Information Security Officer (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-20-05-00009-P

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

Proposed action: Amendment of Appendix(es) 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 Department of Public Service.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Public Service, by adding thereto the position of Utility Security Specialist 2 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, 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-20-05-00010-P

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

Proposed action: Amendment of Appendix(es) 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 "Governor's Office for Regulatory Reform," by adding thereto the position of ϕ Principal Program Specialist (OPAL) (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-20-05-00011-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete 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 "Division of Alcoholic Beverage Control," by deleting therefrom the position of ϕ Assistant to Secretary to State Liquor Authority (1) (Until first vacated after August 27, 1981).

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-20-05-00012-P

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

Proposed action: Amendment of Appendix(es) 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 "Office of General Services," by increasing the number of positions of Visitor Services Assistant 1 from 9 to 14.

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-20-05-00013-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Economic Development, by decreasing the number of positions of Senior Certification Analyst from 10 to 9 by adding thereto the position of Senior Public Information Specialist (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-20-05-00014-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Law, by deleting therefrom the positions of Environmental Scientist 1 (2), Environmental Scientist 2 (4), Environmental Scientist 3 (6), Environmental Scientist 4 (2) and Environmental Scientist 5 (2) and by adding thereto the positions of Environmental Scientist 1, Environmental Scientist 2, Environmental Scientist 3, Environmental Scientist 4 and Environmental Scientist 5.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, 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-20-05-00015-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor under the subheading "Workers' Compensation Board," by deleting therefrom the positions of ϕ Senior Auditor (3), decreasing the number of positions of ϕ Workers' Compensation Fraud Assistant Inspector General from 5 to 4 and by adding thereto the positions of ϕ Administrative Assistant (1) and ϕ Associate Auditor (3).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, 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-20-05-00016-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify positions in the non-competitive class in the Banking Department, Executive Department, Department of Labor and Department of Correctional Services.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Banking Department, by deleting therefrom the position of ϕ Director of Data Processing Services 1 (1) and by adding thereto the position of ϕ Director Information Technology Services 1 (1); in the Department of Correctional Services, by deleting therefrom the position of ϕ Director of Data Processing Services 3 (1) (Until first vacated after May 6, 1987) and by adding thereto the position of ϕ Director of Information Technology Services 3 (1) (Until first vacated after May 6, 1987); in the Executive Department under the subheading "Office for Technology," by deleting therefrom the position of ϕ Director Data Processing Services 3 (1) and by adding thereto the position of ϕ Director Information Technology Services 3 (1); and, in the Department of Labor under the subheading "Workers' Compensation Board," by deleting therefrom the position of ϕ Assistant Director Data Processing Services 1 (1) and by adding thereto the position of ϕ Assistant Director Information Technology Services 1 (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-20-05-00017-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office of Alcoholism and Substance Abuse Services," by increasing the number of positions of Special Assistant from 2 to 3; and

Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Alcoholism and Substance Abuse Services," by deleting therefrom the position of ϕ Assistant Director for Substance Abuse Government and Community Relations (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.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Chronic Wasting Disease

I.D. No. ENV-20-05-00019-EP

Filing No. 472

Filing date: April 29, 2005

Effective date: April 29, 2005

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

Action taken: Amendment of Parts 189 and 360 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 11-0325, 11-1905 and 27-0703

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

Specific reasons underlying the finding of necessity: Chronic wasting disease (CWD) was recently discovered in two captive white-tailed deer herds and in a wild white-tailed deer in Oneida county, New York. CWD is an infectious neurological disease of cervidae, the family which includes deer and elk. It is categorized within a group of diseases known as transmissible spongiform encephalopathies. Chronic Wasting Disease is a progressively fatal disease with no known immunity, vaccine or treatment. Management of CWD is further complicated by the fact that it is a poorly understood disease with clinical signs not apparent for at least 18 months and an unknown mode of transmission.

The promulgation of this regulation on an emergency basis is necessary in order for the Department to prevent the spread of Chronic Wasting Disease in New York and protect New York's white-tailed deer. Prior to these discoveries, regulations enacted by the Department and the Department of Agriculture and Markets were designed to prevent entry of this disease into the state from outside sources. With the discovery of CWD in New York, the Department must now implement actions designed to determine the prevalence and distribution of the disease in the area surrounding the locations of the confirmed cases and prevent the spread of CWD into other parts of New York.

The emergency rule will legally define a "containment area," control the movement of deer parts, regulate the sale and use of materials known to be causative factors in the transmission of CWD, and establish other requirements intended to prevent the spread of CWD in New York.

Subject: Definition of a Chronic Wasting Disease (CWD) "containment area" and regulations governing the movement of deer parts from that area, and other regulatory measures to control the transmission of CWD to wild deer.

Purpose: To prevent the spread of Chronic Wasting Disease in New York.

Text of emergency/proposed rule: Section 189.1 is amended to read as follows:

§ 189.1 Findings and purpose.

The Department of Environmental Conservation hereby finds that chronic wasting disease, a fatal transmissible neurodegenerative disease which endangers the health and welfare of wildlife populations and captive cervids, [is in imminent danger of being introduced into] *has been confirmed to exist in New York State*. The nature of chronic wasting disease requires prompt and extraordinary actions to address the threat posed by this disease. The purpose of this rule is to prevent [the] *further* introduction of this disease into New York, *to contain the spread of this disease within New York, to prevent exportation of this disease outside of New York*, [to restrict those activities that may increase the risk of the development or spread of chronic wasting disease in New York] and to protect the health of wild white-tailed deer (*Odocoileus virginianus*) in New York.

Section 189.2 is amended as follows:

Subdivisions 189.2(a) through (h) remain unchanged.

A new subdivision 189.2(i) is added to read as follows:

(i) *CWD Containment Area means an area identified in Section 189.7 of this Part in which chronic wasting disease has been detected, and which is subject to special conditions in order to effect the purposes of this Part.*

Section 189.3 is amended as follows:

Subdivision 189.3(d) is amended to read as follows:

(d) Importation and possession of certain animal parts. No person shall import into New York or possess the brain, eyes, spinal cord, tonsils, *intestinal tract*, spleen, or retropharyngeal lymph nodes, or any portion of such parts, of wild, captive, or captive-bred animals of the Genus *Cervus* or the Genus *Odocoileus* obtained from or taken outside New York, or any carcass containing such parts, except that:

A new subdivision 189.3(g) is added to read as follows:

(g) *Transportation of captive animals. No person shall transport within New York any captive animal of the Genus Cervus or the Genus Odocoileus except under permit issued by the New York State Department of Agriculture and Markets pursuant to section 68.2 of Title 1 of NYCRR.*

A new subdivision 189.3(h) is added to read as follows:

(h) *Sale of deer feed.*

(1) *No person shall offer for sale feed or equipment which is specifically labeled or packaged as a product to be used for feeding or attracting wild white-tailed deer.*

(2) *No person shall offer for sale feed for domestic livestock or wildlife unless a sign, provided by the Department, is prominently displayed and visible to the public on the premises where such feed is being offered for sale. Such sign shall read as follows, and may be obtained by download from the Department's website at www.dec.state.ny.us or by calling the nearest regional DEC office:*

NOTICE TO CUSTOMERS

It is illegal to feed wild white-tailed deer in New York State. The Department of Environmental Conservation (DEC) has imposed a prohibition on the feeding of wild white-tailed deer in order to prevent the introduction or spread of Chronic Wasting Disease. 6 NYCRR Part 189. Any feed for domestic livestock or wildlife sold on this premises is not intended for use in feeding or attracting wild white-tailed deer. Any person found feeding wild white-tailed deer will be subject to prosecution by the DEC. Information on Chronic Wasting Disease and DEC's regulations may be obtained from the DEC website at www.dec.state.ny.us or by calling your nearest regional DEC office.

A new subdivision 189.3 (i) is added to read as follows:

(i) *Possession of wild white-tailed deer.*

(1) *No person who possesses any captive bred animals of the Genus Cervus or the Genus Odocoileus shall capture or possess any live wild white-tailed deer.*

(2) *No person who engages in the art or operation of preparing, stuffing, and mounting the skins or other parts of animals of the Genus Cervus or the Genus Odocoileus shall capture or possess any live wild white-tailed deer.*

Sections 189.4 through 189.6 remain unchanged.

A new section 189.7 is adopted to read as follows:

§ 189.7 *CWD Containment Area.*

(a) *CWD Containment Area. The CWD containment area shall be that area of the state falling within the boundaries of the following cities and towns:*

(i) *Oneida County: Rome, Sherrill, Utica, Annsville, Augusta, Floyd, Kirkland, Lee, Marcy, New Hartford, Trenton, Vernon, Verona, Vienna, Western, Westmoreland, and Whitestown;*

(ii) *Madison County: Lenox, Oneida, and Stockbridge.*

(b) *Additional CWD containment areas. The Department may establish additional CWD containment areas in the event that CWD is discovered to exist in captive or wild deer in other areas of New York. Additional CWD*

containment areas shall be established by the Department through publication of a notice in the Environmental Notice Bulletin. Such notice shall identify the boundaries of the containment area(s). Upon publication of notice of an additional CWD containment area, the provisions of this section shall apply to the identified area. The Department shall also publicize the establishment of an additional CWD containment area through press release and by posting notice on the Department's website.

(c) Exportation of certain animal parts from the CWD Containment Area. No person shall remove from the CWD containment area the brain, eyes, spinal cord, tonsils, intestinal tract, spleen, or retropharyngeal lymph nodes, or any portion of such parts, of wild, captive, or captive-bred animals of the Genus *Cervus* or the Genus *Odocoileus* obtained from or taken within the CWD containment area, or any carcass containing such parts, except under permit issued by the Department or as authorized by subdivision h of this Section.

(d) Mandatory check of deer taken within the CWD containment area. All statutes, rules and regulations governing the taking of wild white-tailed deer apply within the CWD containment area. In addition, the following restrictions apply:

(1) All wild white-tailed deer taken within the CWD containment area during the open hunting seasons for deer shall be registered at a designated DEC check station, located within the CWD containment area, no later than 5:00 p.m. on the day after it was taken. The Department shall post on the DEC website (www.dec.state.ny.us) and publish in the Environmental Notice Bulletin information regarding deer check station locations within the containment area and times of operation. Hunters may also obtain check station information by contacting DEC's Watertown office at (315) 785-2261 or DEC's Utica office at (315) 793-2555.

(2) Deer shall be kept intact, except for field dressing, prior to registration.

(3) Any person registering a deer at a DEC check station located within the CWD containment area shall allow DEC staff to collect and retain tissue samples from the deer in order to test for the presence of CWD.

(e) Possession of deer killed by collision. Notwithstanding the provisions of Environmental Conservation Law Section 11-0915, the owner of a motor vehicle which has been damaged by collision with a deer within the CWD containment area is prohibited from possessing such deer, and no permit for possession of the deer carcass shall be issued to the vehicle owner or to any other party.

(f) Deer and elk urine. No person shall collect, possess, transport or sell the urine of any deer or elk located or taken within the CWD containment area.

(g) Rehabilitation of wild white-tailed deer.

(1) No person, including any licensed wildlife rehabilitator, shall take, capture, possess, or transport wild white-tailed deer for the purpose of rehabilitation within a CWD Containment Area.

(2) No person shall import into a CWD Containment Area, from outside such CWD Containment Area, any live wild white-tailed deer for any purpose.

(h) Disposal of carcasses and parts. All carcasses and parts of animals of the Genus *Cervus* or the Genus *Odocoileus* which are to be discarded in the CWD containment area, except those parts removed in the field during normal field dressing, shall be disposed of in a landfill authorized pursuant to Part 360 of this Title. Transfer or treatment of the waste prior to disposal, at a facility authorized pursuant to Part 360 of this Title, is acceptable.

§ 189.8 Taxidermy.

(a) No person who engages in the art or operation of preparing, stuffing, and mounting the skins or other parts of animals of the Genus *Cervus* or the Genus *Odocoileus* shall allow live cervids to come in contact with any materials, including taxidermy materials, that may contain the infectious agent that causes CWD.

(b) In addition to the requirements of Environmental Conservation Law Section 11-1733, any person who engages in the art or operation of preparing, stuffing, and mounting the skins or other parts of animals of the Genus *Cervus* or the Genus *Odocoileus* shall maintain and keep in their taxidermy shop or place of business a taxidermy log, on forms provided by the Department, that includes the following information for each specimen:

(1) common name of the species submitted for mounting and a description of the specimen;

(2) name, address and telephone number of the person who submitted the animal for mounting;

(3) date the animal was received for mounting;

(4) hunting license number used by the person who took the animal or the carcass tag number used by the taker to tag the animal;

(5) state or province in which the animal was taken;

(6) county and town in which the animal was taken; and

(7) date on which the animal was taken.

Taxidermy log forms may be obtained from the Department's website (www.dec.state.ny.us) or by calling the nearest Department Regional Office.

(c) Taxidermy logs shall be updated within 48 hours of the receipt of each animal or specimen.

(d) A photocopy of the taxidermy log for each calendar year shall be sent to the New York State Department of Environmental Conservation, Special Licenses Unit, 5th Floor, 625 Broadway, Albany, New York 12233-4572 no later than 30 calendar days following the end of each calendar year.

(e) Original taxidermy logs for the current year and for the previous five years shall be maintained at the taxidermy shop or place of business.

(f) Conservation officers and other persons authorized by the department shall have access to the taxidermy logs at all times and photocopies of such documents must be provided upon request.

Title 6 of the Codes, Rules and Regulations of the State of New York, Part 360, entitled "Solid Waste Management Facilities," is amended as follows:

Paragraph 10 of subdivision (b) of Section 360-1.7 is amended to read as follows:

(10) Disposal areas for road-killed animals on local roads and State and County highways under the jurisdiction of government agencies, except for the disposal of carcasses and parts of animals of the Genus *Cervus* or the Genus *Odocoileus* from a CWD Containment area, as provided under Section 189.7 of this Title. Such disposal areas must, however, be located on property owned by the government agency and within the highway right-of-way. Disposal areas must be a minimum of 50 feet from any residence, surface water or any other disposal area for road-killed animals. No more than 10 road-killed animals may be placed in a single disposal area. Road-killed animals placed in disposal areas must be covered with at least three feet of excavated soil material and in no case shall be placed within groundwater. Mass burial of road-killed animals is not exempt from the provisions of this Part. Acceptable alternatives for the disposal of road-killed animals include disposal at a department-approved solid waste landfill, disposal at a rendering facility or other means as approved by the department.

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire July 27, 2005.

Text of rule and any required statements and analyses may be obtained from: Randall Stumvoll, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8919, e-mail: rxstumvo@gw.dec.state.ny.us

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

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

Additional matter required by statute: A negative declaration has been prepared in accordance with article 8 of the Environmental Conservation Law and is on file with the Department of Environmental Conservation.

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Regulatory Impact Statement

Statutory authority:

The Commissioner of Environmental Conservation, pursuant to Environmental Conservation Law (ECL) Section 3-0301, has authority to protect the wildlife resources of New York State.

Environmental Conservation Law Section 11-0325 provides the Department of Environmental Conservation (Department) with authority to take action necessary to protect fish and wildlife from dangerous diseases. Where a disease is a threat to livestock, as well as to the fish and wildlife populations of the state, Section 11-0325 requires that the Department consult the Department of Agriculture and Markets. If the Department and the Department of Agriculture and Markets jointly determine that a disease, which endangers the health and welfare of fish or wildlife populations, or of domestic livestock, exists in any area of the state or is in imminent danger of being introduced into the state, the Department is authorized to adopt measures or regulations necessary to prevent the introduction or spread of such disease.

ECL Section 11-1905 provides the Department with authority to regulate the possession, propagation, transportation and sale of captive-bred white-tailed deer.

ECL Section 27-0703 provides the Department with authority to regulate the disposal of solid waste.

Legislative objectives:

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

The legislative objective of ECL Section 11-0325 is to provide the Department with broad authority to respond to the presence or threat of a disease that endangers the health or welfare of fish or wildlife populations. In addition, this Section provides for collaboration between the Department and the Department of Agriculture and Markets when such disease also poses a threat to livestock.

The legislative objective of ECL Section 11-1905 is to provide the Department with authority to regulate the captive-bred white-tailed deer population in New York.

The legislative objective of ECL Section 27-0703 is to provide the Department with authority to regulate the disposal of solid waste.

Needs and benefits:

The white-tailed deer herd in New York is estimated to be approximately one million animals. In 2000-01, over 650,000 licenses were sold to hunt white-tailed deer in New York, resulting in expenditures by hunters and for hunting related activities of approximately \$1 billion dollars.

Chronic wasting disease is an infectious neurological disease that belongs to a group of diseases known as transmissible spongiform encephalopathies. CWD is a progressively fatal disease with no known immunity, vaccine or treatment. Management of CWD is further complicated by the fact that it is a poorly understood disease with clinical signs not apparent for 18-36 months and an unknown mode of transmission. To date, CWD has been found only in members of the deer family in North America. There has never been a case reported in a human or in livestock other than captive-bred elk or deer.

Chronic wasting disease has been diagnosed in captive deer or elk in Colorado, Wyoming, Nebraska, Montana, Oklahoma, South Dakota, Minnesota, New York and the Canadian provinces of Saskatchewan and Alberta. It has also been confirmed in wild white-tailed deer and/or mule deer populations, in Colorado, Wyoming, Nebraska, South Dakota, Wisconsin, New Mexico, New York and, Illinois.

Chronic wasting disease was recently discovered in two captive herds and in a wild white-tailed deer in Oneida county, New York. Prior to these discoveries, regulations enacted by the Department and the Department of Agriculture and Markets were designed to prevent entry of this disease from outside sources. With the discovery of CWD, the Department must now implement actions designed to determine the prevalence and distribution of the disease in the area surrounding the locations of the confirmed cases and prevent the spread of CWD into other parts of New York. In order to accomplish these objectives, additional regulatory actions must be taken.

The proposed rulemaking will directly affect those people engaged in: deer hunting; wildlife rehabilitation of wild deer; retail businesses that sell deer feed; taxidermy; and captive deer farming who market deer urine and deer urine products.

Actions to contain the spread of CWD include regulations that designate a "containment area" where CWD is most likely to be found. Within the containment area, the Department will regulate the movement and disposal of potentially infected carcasses and parts to insure that CWD is not spread into other areas by human assisted means. The movement and transport of live deer from within to outside the CWD containment area, as well as from outside to within the containment area, will be regulated to reduce the spread of CWD by natural means.

In order to determine and monitor the frequency and distribution of CWD within the containment area, regulations are needed that require hunters harvesting deer within the containment area to register harvested deer at Department designated check stations and allow samples to be taken to test for CWD. Outside the CWD containment area, regulations are needed that prevent the commingling of captive and wild deer with potentially infected animals or animal parts and to reduce animal to animal exposure by eliminating the concentration of wild deer by artificial feeding.

Costs:

The Department will incur significant additional costs associated with the checking and sampling of deer. This rule making will result in the loss

of revenue to businesses that sell deer urine and deer urine products and additional record keeping and reporting for taxidermists. This rule making could result in additional costs to hunters who must deliver their harvested deer to a Department designated check station and must process their harvested deer prior to transporting it from specified locations.

Local government mandates:

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

Paperwork:

For those engaged in the sale of ruminant feeds, this regulation will require the sellers to post warning signs regarding the use of these products for feeding deer. Taxidermists will be required to keep more comprehensive and detailed records and annually provide such records to the Department.

Duplication:

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

Alternatives:

No Action: The Department has rejected this option. Failing to act to contain CWD would allow the disease to spread unchecked to other parts of the state. The spread of CWD could compromise the health of New York's White-tailed deer herd and could have significant economic impacts on commercial and recreational activities associated with white-tailed deer.

Federal Standards:

The United States Department of Agriculture-Animal and Plant Health Inspection Service (USDA-APHIS) developed an Environmental Assessment (EA) in 2002. The EA outlined the role of the federal government in CWD management. This role included providing coordination and assistance with research, surveillance, disease management, diagnostic testing, technology, communications, information dissemination, education and funding for State CWD Programs. At this time, there are no federal standards governing captive deer or elk or wild deer or elk management.

Compliance Schedule:

Immediate compliance will be required.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed regulations, also adopted by emergency rulemaking, are necessary to protect the white-tailed deer population in New York from Chronic Wasting Disease (CWD). The white-tailed deer is a very important natural resource to small businesses and local governments in New York. The purpose of the new regulation is to protect this resource so that New Yorkers may continue to enjoy viewing deer, and benefit from deer hunting, and the positive economic and social effects of deer and deer hunting.

Under the proposed regulations, game animal breeders within the containment area will not be allowed to sell deer urine. This is a relatively minor effect on these small businesses. Also, taxidermists who receive and process deer and elk will be required to maintain specific records about their activity related to handling wildlife parts. Taxidermists are already required to keep certain records by the Environmental Conservation Law. This regulation requires more comprehensive and detailed information from taxidermists who receive and process deer and elk, and requires that such taxidermists file an annual report with the Department of their activities.

The regulation also will affect businesses that sell livestock feeds or speciality feeds for attracting wildlife. The Department's current regulations already prohibit the feeding of wild white-tailed deer. However, this proposed regulation will prohibit the actual sale of feeds specifically labeled as intended to feed or attract white-tailed deer. Moreover, retailers will be required to post a sign informing potential customers that they are not allowed to feed wild white-tailed deer. This will potentially affect the sale of livestock grains such as cracked or whole corn, which may also be used to attract deer.

No local governments will be affected by this rule.

2. Compliance Requirements:

Businesses that sell livestock feeds will be required to post a notice, provided by the Department, stating that feeding deer is unlawful. Taxidermists will be required to submit annual records of their activity to the Department. Since taxidermists already are required to maintain records and submit them to the Department upon request, the new regulation simply codifies an existing requirement and establishes an automatic reporting date.

3. Professional Services:

The rule will not require local governments or small businesses to engage professional services to comply with this rule.

4. Compliance Costs:

This rule will require the posting of a notice about the existing prohibition on the feeding of white-tailed deer. Retail businesses that sell livestock feeds will need to provide a space for the posting of this notice. Because store owners will need to provide space for the notice, there may be some small costs associated with the rearranging of retail display areas.

5. Economic and Technological Feasibility:

There is no economic or technological affect on local governments or small businesses. The rule will not require any technological changes or capital expenditures to comply with the new regulation.

6. Minimizing Adverse Impact:

As the serious nature of Chronic Wasting Disease is explained to the public, the new restrictions are likely to be accepted as reasonable and balanced. The Department strongly supports continued research on Chronic Wasting Disease to understand the paths of transmission, and associated risk variables. As new information becomes available, the Department will adjust regulations in response to new data or findings.

7. Small Business and Local Government Participation:

When Chronic Wasting Disease was first confirmed, the Department held public meetings in the containment area to explain the nature of the disease and the Department's initial response. Since early April 2005, the Department has issued press releases to continue to inform the public of developments and findings relative to the monitoring program. Similarly, as the Department establishes appropriate and necessary regulations to contain the disease, outreach to affected stakeholders (businesses and local governments) will be done so that the importance of the new regulations are understood.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

Portions of this regulation will be applied to the entire state (*e.g.*, restrictions on the sale of feed intended for white-tailed deer; posting of public notices where feeds are sold; rehabilitation of deer fawns; reporting by taxidermists). Other parts of the regulation (*e.g.*, movement of specified deer) will apply only to the Chronic Wasting Disease "containment area," an area primarily in Oneida County, but including parts of Madison County.

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

Taxidermists will be required to submit records to the Department on an annual basis. By statute, taxidermists already are required to maintain records. The emergency regulation will stipulate that these records be submitted annually, rather than only upon request. Retail outlets that sell products that are fed to livestock will be required to post a notice that informs the public about the prohibition on feeding wild deer.

3. Costs:

There are no significant direct costs associated with implementation of this regulation. There is an existing prohibition on the feeding of wild deer. However, some landowners or homeowners continue to feed deer in violation of this restriction. Therefore, the posting of a sign notifying potential customers of this prohibition may reduce the sale of feeds that may be used for feeding deer (*e.g.*, cracked or whole corn). Moreover, the restriction on the sale of feeds specifically labeled for the feeding of deer will likely reduce sales in the retail sector.

4. Minimizing adverse impact:

As the serious nature of Chronic Wasting Disease is explained to the public, the new restrictions are likely to be accepted as reasonable and balanced. The Department strongly supports continued research on Chronic Wasting Disease to understand the paths of transmission, and associated risk variables. As new information becomes available, the Department will adjust regulations in response to new data or findings.

5. Rural area participation:

The Department conducted public meetings shortly after Chronic Wasting Disease was confirmed. These meetings informed the public about the nature of the emergency, and about the immediate actions planned to intensely monitor white-tailed deer, and to control the spread of Chronic Wasting Disease in the deer population. Throughout the Department's response program, news releases have been issued to inform the public of new developments. Moreover, within the containment area, the Department has deployed landowner contact teams to make sure that affected residents were informed about the specific management actions being planned. Following the adoption of this emergency regulation, and during the 45 day public comment period, the Department will continue its public relations initiative to make sure that stakeholders in rural areas understand the nature of the emergency, and the rationale for the Department's response.

Job Impact Statement

The purpose of the proposed rule is to control the spread of Chronic Wasting Disease to deer living in a wild state. The proposed rule includes a requirement that retail outlets selling products that could potentially be fed to wild deer display a public notice informing customers that the feeding of wild white-tailed deer is prohibited. (The existing regulation on Chronic Wasting Disease already prohibits the feeding of wild deer.) Since the feeding wild deer is already prohibited, the requirement to post a notice should not have a significant impact on sales or have a negative effect on job creation or retention.

Proposed regulations on the sale of urine are generally restricted to licensed game animal breeders within the legally defined containment area. The sale of urine is a very small component of game animal breeding operations and this prohibition will not have a negative effect on jobs associated with game animal breeding.

Taxidermists will be required to provide an annual written report to the Department. However, taxidermists already are required to maintain records and provide them to the Department upon request. The proposed regulation simply codifies that request as an annual requirement.

The Department has determined that the proposed rule will not have a substantial adverse impact on jobs and employment opportunities, and that by its nature and purpose (protecting the white-tailed deer resource), the proposed rule will protect jobs and employment opportunities. Therefore, a job impact statement is not required.

NOTICE OF ADOPTION

Emissions Testing, Sampling, Analytical Determinations and Emission Statements

I.D. No. ENV-44-04-00012-A

Filing No. 492

Filing date: April 29, 2005

Effective date: 30 days after filing

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

Action taken: Amendment of section 200.1 and Part 200 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 19-0301, 19-0303 and 72-0303

Subject: Emissions testing, sampling, analytical determinations, and emission statements.

Purpose: To revise the emission statement rule to reflect the requirements of EPA's Consolidated Emission Reporting Rule and align emission reporting requirements under Subpart 202-2 with the operating permits issued to facilities pursuant to Part 201; incorporate new EPA test methods and streamline emission reporting procedures; add new definitions; revise the Volatile Methyl Siloxanes table; and update cross references.

Substance of final rule:

6 NYCRR SUBPART 202-1, EMISSIONS TESTING, SAMPLING AND ANALYTICAL DETERMINATIONS

Subpart 202-1 currently lists test methods contained in 40 CFR Part 60, Appendix A and Part 61, Appendix B as acceptable methods when used for sources to which they are applicable. Most of the Environmental Protection Agency's (EPA) newer test methods for hazardous air pollutants (HAPs) are contained in 40 CFR Part 63, Appendix A. Appendix M of 40 CFR Part 51 contains recommended test methods for state implementation plans. Test methods from both of these appendices are frequently used in New York, but under Subpart 202-1 can only be used upon submittal of a special request. The proposed amendment would incorporate Parts 51, Appendix M and Part 63, Appendix A and eliminate the special request requirement.

Subpart 202-1 also requires a notification and test plan to be submitted 30 days before a test is scheduled. Recent State and EPA regulations contain conflicting schedules, requiring such notifications up to 90 days before the test is scheduled. For example, the National Emission Standards for Hazardous Air Pollutants from Source Categories (40 CFR Part 63) usually require test notification 60 days before the test is scheduled. Since these new regulations can require dozens of existing facilities to conduct a performance test by a specific deadline, the additional time is needed to accommodate the sheer quantity of tests. The proposed amendments will clarify that the specific regulatory timelines or those required in a permit or consent order supersede the timeline contained in Subpart 202-1.

6 NYCRR SUBPART 202-2, EMISSION STATEMENTS

The New York State Department of Environmental Conservation (Department) is revising 6 NYCRR Subpart 202-2, Emission Statements, to reflect several legal and regulatory developments. These include a Consent Order the Department entered into to settle litigation commenced by Eastman Kodak Company, revisions to the operating permit program contained in 6 NYCRR Part 201, and the requirements of the EPA's newly promulgated Consolidated Emission Reporting Rule (CERR). More specifically, Eastman Kodak Company sued the Department claiming that Subpart 202-2 exceeded the emission statement reporting requirements contained in Section 182(a)(3)(B) of the federal Clean Air Act (CAA). In settlement, the State of New York Supreme Court issued an order requiring the Department to revise Subpart 202-2 to align a facility's emission reporting requirements under Subpart 202-2 with the operating permit issued to the facility pursuant to Part 201. These revisions address the terms of that consent order. This rulemaking will also address the Department's need to efficiently and effectively track facility information for administrative and regulatory purposes. In addition, the Department is proposing changes to Subpart 202-2 to comply with EPA's CERR. The CERR is designed to establish common reporting dates for various categories of emissions and simplify state emissions reporting requirements. This rulemaking ensures that the Department can comply with the reporting schedule and other requirements of the CERR.

Section 3-0301. This section empowers the Department to promulgate regulations to carry out the environmental policy of New York State set forth in Section 1-0101 and specifically empowers the Department to cooperate with officials and representatives of the federal government, other states and interstate agencies regarding problems affecting the environment of New York State. Section 3-0301 specifically empowers the Department to provide for the prevention and abatement of air pollution.

Section 19-0301. This section declares that the Department has the power to promulgate regulations for preventing, controlling or prohibiting air pollution.

Section 19-0303 of the ECL requires specific justification of regulations that are more stringent than the Clean Air Act or EPA regulations promulgated under the ACT. EPA has promulgated alternative emission test methods and test planning timelines that are not recognized by Subpart 202-1, Emissions Testing, Sampling and Analytical Determinations. In effect, Subpart 202-1 has become more stringent than EPA's regulations by default. The proposed amendments would realign the allowable test methods and timelines.

Title I of the CAA designates that a non-attainment area for ozone collect and report emissions annually from major stationary point sources within the state. CAA Section 182(a)(3)(B) requires stationary sources of NO_x and VOC emissions (precursors to the formation of ozone) located within any ozone non-attainment area or within the federally designated ozone transport region, to provide the Department with an annual emission statement demonstrating actual emissions of NO_x and VOC. Annual emission statements provide an accurate accounting of all emissions from major stationary sources, and assist the state in tracking progress towards attainment and maintaining the national ambient air quality standards for the criteria pollutants (ozone, SO₂, NO_x, CO, PM₁₀, PM_{2.5} and lead).

Emission statements assist the Department with the administration of its operating permit program for major stationary sources subject to Title V of the CAA. Emission statements are used to determine whether a facility is operating in compliance with its permit and are a critical component of a facility's annual Title V compliance certification. Emission statements provide a means for a Title V facility source owner or operator to document actual annual emissions to the Department for the purpose of determining its annual operating permit fees.

Emission statements are used by the Department to meet its reporting obligations under the CERR for regulated air pollutants including SO₂, NO_x, VOC, CO, PM₁₀, PM_{2.5} and NH₃. The CERR is a compilation of all the current federal emissions reporting requirements which defines reporting thresholds and schedules. The Department currently collects most of the data necessary to comply with the CERR but must add PM_{2.5} and PM_{2.5} precursors to the criteria pollutants inventory and emission reporting requirements.

Emission statements are used to track the State's annual progress toward attaining the ozone standard in non-attainment areas and throughout the Ozone Transport Region. Emission statements are also used to compile the three year periodic inventories required by CAA Section 182(a)(3)(A).

The Department utilizes emission statements to compile a HAP inventory in addition to its criteria pollutant inventory. The National Toxics Inventory is an emission inventory developed every three years (1993,

1996, 1999, etc.) by EPA. Emission statements provide the data which is used to develop the State's HAP inventory. The HAP inventory satisfies the Department's obligation under 112(m) of the CAA to assess the atmospheric deposition to the Great Lakes and coastal waters and to provide an overall indication of the level of HAPs in the ambient air.

6 NYCRR PART 200.1, DEFINITIONS

The New York State Department of Environmental Conservation is revising 6 NYCRR Part 200.1, "Definitions" to incorporate two definitions that appear in multiple regulations. These definitions are: maintenance area, and PM_{2.5}. Also, the Volatile Methyl Siloxanes (VMS) table is being revised to reflect the correct chemical abstract service numbers for hexamethyldisiloxane and tetradecamethylhexasiloxane.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 202-2.2(b)(1), (3), (5), (7), 202-2.3(a)(3)(v), (x), (xi), (xii), (xiii), (b), (f), 202-2.4(a), (c), (d)(4) and (h).

Text of rule and any required statements and analyses may be obtained from: Michael Miliani, Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, e-mail: mfmiliani@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 have been prepared and are on file. This rule was approved by the Environmental Board.

Revised Regulatory Impact Statement

STATUTORY AUTHORITY

Sections 3-0301, 19-0301, 19-0303 of the New York State Environmental Conservation Law (ECL), and section 72-0303 of the ECL as added by the New York State Clean Air Compliance Act, Chapter 608 of the Laws of 1993 authorize the Department to promulgate this regulation.

The New York State Department of Environmental Conservation (Department) is revising 6 NYCRR Subpart 202-2, Emission Statements, to reflect several legal and regulatory developments. These include a settlement the Department entered in connection with litigation commenced by Eastman Kodak Company, previous modifications to the operating permit program contained in 6 NYCRR Part 201, and the requirements of the Environmental Protection Agency's (EPA) newly promulgated Consolidated Emission Reporting Rule (CERR). More specifically, Eastman Kodak Company sued the Department claiming that Subpart 202-2 exceeded the emission statement reporting requirements contained in Section 182(a)(3)(B) of the federal Clean Air Act (CAA). In settlement, the State of New York Supreme Court issued an order requiring the Department to revise Subpart 202-2 to align a facility's emission reporting requirements under Subpart 202-2 with the operating permit issued to the facility pursuant to Part 201. These revisions address the terms of that order. This rulemaking will also address the Department's need to efficiently and effectively track facility information for administrative and regulatory purposes. In addition, the Department is proposing changes to Subpart 202-2 to comply with EPA's CERR. The CERR is designed to establish common reporting dates for various categories of emissions and simplify State emissions reporting requirements. This rulemaking ensures that the Department can comply with the reporting schedule and other requirements of the CERR.

The Department is revising 6 NYCRR Subpart 202-1, "Emissions Testing, Sampling and Analytical Determinations", to add the new EPA Reference Methods for emission testing, sampling and analysis and allow specific regulations and permit conditions to supersede the 30-day advance notice requirement for emission tests. In addition, the Department is updating the referenced material in section 200.9 pertaining to Part 202.

Section 3-0301. This Section empowers the Department to promulgate regulations to carry out the environmental policy of New York State set forth in Section 1-0101 and specifically empowers the Department to cooperate with officials and representatives of the federal government, other States and interstate agencies regarding problems affecting the environment of New York State. Section 3-0301 specifically empowers the Department to provide for the prevention and abatement of air pollution.

Section 19-0301. This section declares that the Department has the power to promulgate regulations for preventing, controlling or prohibiting air pollution.

Section 19-0303. This section requires specific justification of regulations that are more stringent than the Clean Air Act or EPA regulations promulgated under the ACT. EPA has promulgated alternative emission test methods and test planning time lines that are not recognized by Subpart 202-1, Emissions Testing, Sampling and Analytical Determinations. In effect, Subpart 202-1 has become more stringent than EPA's

regulations by default. The proposed amendments would realign the allowable test methods and time lines.

LEGISLATIVE OBJECTIVES

The Department is authorized to require emissions reporting from facilities subject to the requirements of obtaining a Title V Operating Permit. This enables the Department to fulfill the State's obligation under Section 182 of the CAA to submit a comprehensive, accurate and current inventory of actual emissions from all sources. Results of emission tests are used for the emission inventory as well as for compliance purposes.

NEEDS AND BENEFITS

Subpart 202-1 currently lists test methods contained in 40 CFR Part 60, Appendix A and Part 61, Appendix B as acceptable methods when used for sources to which they are applicable. Most of EPA's newer test methods for Hazardous Air Pollutants (HAPs) are contained in 40 CFR Part 63, Appendix A. Appendix M of 40 CFR Part 51 contains recommended test methods for state implementation plans. Test methods from both of these appendices are frequently used in New York, but under Subpart 202-1 can only be used upon submittal of a special request. The proposed amendment would eliminate this requirement.

Subpart 202-1 also requires a notification and test plan to be submitted 30 days before a test is scheduled. Recent State and EPA regulations contain conflicting schedules, requiring such notifications up to 90 days before the test is scheduled. For example, the National Emission Standards for Hazardous Air Pollutants from Source Categories (40 CFR Part 63) usually require test notification 60 days before the test is scheduled. Since these new regulations can require dozens of existing facilities to conduct a performance test by a specific deadline, the additional time is needed to accommodate the sheer quantity of tests. The proposed amendments will clarify that the specific regulatory time lines or those required in an operating permit order supersede the time line contained in Subpart 202-1.

Title I of the CAA designates that a non-attainment area for ozone collect and report emissions annually from major stationary point sources within the state. Specifically, CAA Section 182 (a)(3)(B) requires stationary sources of NO_x and VOC emissions (precursors to the formation of ozone) located within any ozone non-attainment area or within the federally designated ozone transport region, to provide the Department with an annual emission statement demonstrating actual emissions of NO_x and VOC. Subpart 202-2 currently requires that all state and federally regulated air contaminants be reported in the annual emissions statement. Annual emission statements provide an accurate accounting of all emissions from major stationary sources, and assist the state in tracking progress towards attainment and maintaining the national ambient air quality standards for the criteria pollutants (ozone, SO₂, NO_x, CO, PM₁₀, PM_{2.5} and lead).

Emission statements are used by the Department for a number of regulatory purposes. Emission statements assist the Department with the administration of its operating permit program for major stationary sources subject to Title V of the CAA. Emission statements are also used to determine whether a facility is operating in compliance with its permit and are a critical component of a facility's annual Title V compliance certification. In addition, emission statements provide a means for a Title V facility source owner or operator to document actual annual emissions to the Department for the purpose of determining its annual operating permit fees. Facilities subject to the Title V permitting program are required to pay a per ton emission fee for all regulated air contaminants (criteria and hazardous air pollutants) pursuant to Title V of the CAA and Section 72-0303 of the ECL.

Emission statements are used by the Department to meet its reporting obligations under the CERR for regulated air pollutants including SO₂, NO_x, VOC, CO, PM₁₀, PM_{2.5} and NH₃. The CERR is a compilation of all the current federal emissions reporting requirements which defines reporting thresholds and schedules. The Department currently collects most of the data necessary to comply with the CERR but must add PM_{2.5} and PM_{2.5} precursors to the criteria pollutants inventory and emission reporting requirements.

On a broader scale, emission statements are used to track the State's annual progress toward attaining the ozone standard in non-attainment areas and throughout the Ozone Transport Region. Emission statements are also used to compile the three year periodic inventories required by CAA Section 182(a)(3)(A). Section 182(a) of the CAA requires that state and local agencies develop a comprehensive Periodic Emission Inventory (PEI) every three years, with 1990 as the base year. Data from the PEI process is used for multiple purposes, including being the starting point for air quality modeling, assessment of regulatory progress and control strategy effectiveness, and milestone compliance demonstrations.

The Department utilizes emission statements to compile a HAP inventory in addition to its criteria pollutant inventory. The 1990 amendments to the CAA established the need for a comprehensive HAP emissions inventory effort that can be used to track progress by the EPA over time in reducing HAPs in ambient air. To estimate risk and HAP emission reductions, the EPA compiled the 1996 National Toxics Inventory (NTI) to provide a model-ready emissions inventory. The NTI is an emission inventory developed every three years (1993, 1996, 1999, etc.) by EPA. The NTI is a complete national inventory of stationary and mobile sources that emit HAPs. The NTI contains emission estimates for stationary point sources (large), stationary, non-point sources (small), and mobile sources. Point sources in the NTI include major and area source categories as defined in Section 112 of the CAA. Non-point source categories in the NTI include area sources that are not included in the point sources and other stationary source categories. Individual emission estimates are developed for point sources, while aggregate emission estimates at the county level are developed and stored for non-point stationary and mobile sources. The NTI also identifies facilities and non-point source categories that are associated with Maximum Achievable Control Technology (MACT) categories. The EPA compiled the 1996 NTI using various sources of data. The five primary sources of 1996 NTI data are: (1) state and local HAP inventories developed by state and local air pollution control agencies; (2) existing databases related to EPA's MACT programs to reduce HAP emissions; (3) Toxic Release Inventory (TRI) data; (4) emissions estimated by using mobile source methodology developed by experts in EPA's Office of Transportation; and (5) air quality, and area source emission estimates generated using emission factors and activity data. Emission statements provide the data which is used to develop the state's HAP inventory.

The HAP inventory satisfies the Department's obligation under 112(m) of the CAA to assess the atmospheric deposition to the Great Lakes and coastal waters and to provide an overall indication of the level of HAPs in the ambient air. Emission statements are also used to collect the facility specific information for the Great Lakes Regional Air Toxics Emission Inventory. This collaborative effort between the eight Great Lakes States and the Province of Ontario is used in the atmospheric deposition portion of the assessment of toxic contamination to the Great Waters in accordance with the Great Lakes Toxic Substances Control Agreement signed by the Great Lakes' Governors and Premiers in 1986.

COSTS

There should be no additional cost associated with the amendments to Subpart 202-1. In fact the clarifications should reduce the amount of time the Department and the regulated community spend resolving questions about acceptable procedures and applicable notification schedules.

It is difficult to accurately estimate the cost for a facility to complete an annual emission statement under Subpart 202-2. These costs include maintaining appropriate records of operation, staff resources to fill out and submit the emission statements, and computer equipment and software to manage the data needed to submit the emission statement. Generally, the cost to comply with this regulation increases with the number of emission sources at a facility. Factors which would decrease the cost of compliance include: (1) the level at which the facility already maintains operating and emission records containing information required to be reported under this regulation; and (2) whether the facility already has qualified staff available to collect and record the required information.

The Department investigated the costs of compliance for subject facilities. In 1992, the Department conducted a telephone poll of 48 facilities that completed the emission statements for the 1990 State Implementation Plan (SIP) inventory. The facilities chosen were of diverse characterization and ranged in size from small to large. According to the polled facilities, costs to complete an emission statement ranged from \$20 to \$7,000. The mean average cost was \$628. This converts to approximately \$812 in 2002 dollars applying the U.S. Department of Labor, CPI inflation calculator. However, emission reporting requirements have changed since 1990.

In 1994, the Department promulgated Subpart 202-2, the current emission reporting rule, which expanded emission reporting requirements to include VOCs, NO_x, CO, SO₂, PM₁₀, lead, hazardous air pollutants and any other regulated air contaminant. Subpart 202-2 required facilities to report emissions by chemical abstract service number (CAS) at the stack or emission point level. In 1995, the Department entered into a Stipulation agreement to settle a lawsuit commenced by Kodak. As a result, the Department modified its implementation of Subpart 202-2 to more closely align emission reporting requirements with operating permits issued pursuant to Part 201. Since 1994, the Department has instructed facilities to report emissions on the basis of the emission units and processes contained in their Title V permits rather than an emission point basis. The Depart-

ment has also instructed facilities to only report emissions of contaminants that are defined in their Title V permit.

Subpart 202-2 is being revised in part to reflect the 1995 Stipulation and the Department's implementation of the rule over the last ten years. Facilities will not have to substantially alter the collection and reporting of emission information to comply with the new rule, although there will be two additional contaminants to report on as a result of the CERR: PM_{2.5} and Ammonia. The additional costs associated with the revised Subpart 202-2 are essentially the costs associated with the federally mandated reporting of these two additional contaminants. A majority of facilities have voluntarily reported this information to the Department for the 2002 inventory year. Accordingly, the Department believes the incremental costs of complying with the revised Subpart 202-2 will be minimal, especially considering the reporting and data collection facilities already undertake in connection with their Title V permits.

This regulation will have a long-term positive economic impact, by contributing to the Department's efforts to more effectively control emissions of reportable contaminants. Progressing toward the attainment of the NAAQS for ozone will avoid a significant negative economic impact on the general public.

PAPERWORK

No additional paperwork is required by the amendments to Subpart 202-1. For Subpart 202-2, the Department has minimized paperwork by consolidating the emission statement reporting requirement with the periodic emission inventory requirement, the annual permit compliance certification required by Title V of the CAA and the annual point source emissions reporting submittal to the EPA.

LOCAL GOVERNMENT MANDATES

Subpart 202-1 already potentially applies to all air contamination sources in the state. No additional local government mandates are included in the amendments. Subpart 202-2 requires local governments operating facilities that trigger the reporting thresholds to complete annual emission statements. Otherwise, no local government mandates will ensue from this regulation.

DUPLICATION BETWEEN THIS REGULATION AND OTHER REGULATION AND LAWS

Several other state and EPA air regulations contain emission testing requirements, but none apply to all sources in the State as does Subpart 202-1. The amendments seek in part to clarify when the other regulations supersede Subpart 202-1.

There are no other state air emissions reporting requirements. The Department considered consolidating Subpart 202-2 reporting requirements with the annual SARA TRI, but determined that it was not feasible to do so because of the differences in the scope of the two reports and schedule for submission. The SARA report includes emissions into the air, land and water, while the emission statement includes only air emissions. The reportable toxic chemicals under SARA do not correspond with the hazardous air pollutants ("HAPs") or VOCs required to be reported on the emission statement. The SARA reports are required to be submitted not later than July 1 each year, while the emission statements are due by April 15 each year.

ALTERNATIVES

The alternative to the amendments of Subpart 202-1 is to not change the rule. This would leave the current, somewhat confusing, requirements in place. This change clarifies the currently existing requirements.

Emission statements are a requirement of the CAA and therefore, there is no alternative to promulgating a regulation to meet the CAA Title I requirements for reporting VOC and NO_x emissions. 40 CFR Part 51, CERR, requires states to submit emissions information to EPA on an annual and three year cycle. This regulation allows the Department to collect the information to comply with these federal reporting requirements.

FEDERAL STANDARDS

Subpart 202-1 allows EPA test methods to be used for emissions controlled under state regulations. These methods are in fact required under some EPA regulations. Allowing their use at other sources (for example those sources smaller than an EPA applicability threshold) will encourage uniformity in emissions information.

This regulation combines the reporting requirements of Title I and Title V of the CAA. The Title I requirements are concerned with the annual emissions of VOC and NO_x for ozone pollution abatement. Title V is concerned with the provisions for a federally enforceable operating permit program for "major" facilities. 40 Part 51, CERR requires New York State to add PM_{2.5} and PM_{2.5} precursors (*i.e.*, ammonia) to the criteria pollutants inventory. Subpart 202-2 enables the Department to collect emission

statements that meet the Title I reporting requirements and provide the information to identify Title V affected facilities and assess the correct per ton Title V emission fee.

COMPLIANCE SCHEDULE

Subpart 202-1 does not contain any compliance obligations. Subpart 202-2 requires facility owners to submit an annual emission statement no later than April 15.

Revised Regulatory Flexibility Analysis

There were no changes to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments. The effect of the regulations on small businesses and local governments remains the same.

Revised Rural Area Flexibility Analysis

There were no changes to the previously published Rural Area Flexibility Analysis. The effect of the regulations on rural areas remains the same.

Revised Job Impact Statement

There were no changes to the previously published Job Impact Statement. The effect of the regulations remains the same.

Assessment of Public Comment

INTRODUCTION

The Department is revising 6 NYCRR Subpart 202-2, Emission Statements, to reflect the requirements of the United States Environmental Protection Agency's (EPA) Consolidated Emissions Reporting Rule (CERR) and align emission reporting requirements with the operating permits issued to facilities pursuant to Part 201. This rule will also incorporate new EPA test methods in Subpart 202-1, Emissions Testing, Sampling and Analytical Determinations. As part of this rulemaking, Part 200 will be amended to add new definitions, revise the Volatile Methyl Siloxanes table, and update cross references in section 200.9, Referenced Material.

In March 2003, the Department sent a preliminary draft of the revised Subpart 202-2 to affected facility owners and operators (Title V sources) who file annual Emission Statements. The Department invited stakeholders to review and comment on this preliminary rule. Comments were received by the Department from Title V sources, Federal and State agencies, and environmental consultants. The Department reviewed and considered the comments, and where appropriate, incorporated all constructive comments into the Subpart 202-2 regulation.

The Department formally proposed 6 NYCRR Part 202 on November 3, 2004. Hearings were held in Avon, on December 7, 2004, in Albany on December 8, 2004, and in Long Island City on December 9, 2004. The comment period closed at 5:00 P.M. on December 16, 2004. The Department received approximately twenty-two written comments from Eastman Kodak Company. The Department will make several minor clarifications to Part 202 based on Kodak's comments. Kodak's comments. The Department's responses are summarized in this document.

GENERAL COMMENTS

1. Comment - To provide the regulated community with certainty for any given reporting year and sufficient time to update necessary databases, reporting schemes and potentially emission estimation methods, the new reporting requirements in the rule should not become effective until the next full reporting year following the promulgation date of the rule. Kodak recommends that if the revised rule is promulgated at some point during 2005, the Department should not require facilities to include the new information in the report for 2005, due by April 15, 2006. Rather, the new information should only be required in the statement for 2006, due by April 15, 2007.

Response - The Department has carefully considered this comment, but has determined not to alter the rule effective date. The CERR requires the Department to collect specific emissions information, which is specified in the revised Subpart 202-2, for the 2005 calendar year as part of the periodic inventory that must be submitted to EPA. In order to meet our federal obligations, the requirements of 6 NYCRR Subpart 202-2 become applicable to affected facilities beginning with the 2005 Emission Statement, which includes actual emission estimates for the 2005 calendar year. The 2005 Emission Statement must be submitted to the Department by April 15, 2006. This reporting schedule provides the regulated community with substantial time to make any necessary adjustments in emissions collection procedures to comply with the new provisions. The Department has made minor revisions to the draft regulation in response to input from the regulated community during the public outreach, but the essential requirements have remained unchanged.

2. Comment - Kodak believes that information submittals under Part 202 have become largely redundant. In particular, this includes the detailed process level information required by paragraph 202-2.3(a)(3). Kodak challenges the Department to carefully consider the minimum information that is absolutely required, and to limit the proposal to only that informa-

tion. Kodak recommends an option of developing a two-tier reporting scheme, with detailed information required for Type A sources and some lesser requirements for others. Kodak indicates that in the Regulatory Impact Statement for this proposed rule, the Department notes that compliance with the revised version of this regulation will be “more time consuming and more costly”.

Response - The Department has carefully reviewed the reporting requirements contained in Subpart 202-2 but has determined not to make any changes to the reporting requirements or in response to this comment. Subpart 202-2 requires the reporting of the minimum amount of information that is required under the CERR. The Department does not believe that anything contained in Subpart 202-2 is superfluous or redundant and Kodak has not specifically identified what information qualifies as such. Moreover, the additional requirements of revised Subpart 202-2 to report PM_{2.5}, NH₃ and verify or collect process parameters for permitted activities in the Title V permit upon request by the Department emanate directly from the CERR and cannot be dispensed with. EPA defines Type A sources in the CERR as larger facilities (above minimum pollutant thresholds) required to report a lesser amount of data elements on an annual basis. Essentially, the Department collects detailed information for Title V permitted processes at a facility each year. Every three years, the Department collects process data and emission data for limited pollutants for exempt processes, as part of the periodic inventory. The Regulatory Impact Statement in fact states that “the emission statement format in this regulation requires the reporting of individual chemicals by chemical abstract service number (CAS) and therefore will be more time consuming and more costly to complete than the 1990 emission statement”. Although facilities will have to spend more time and money to complete the 2005 emission statement as compared to the 1990 emission statement, it will not be significantly more costly and time consuming for facilities to complete the 2005 emission statement under the revised regulation as compared to the 2004 emission statement under the existing regulation. The Department is going to revise the RIS to clarify the point that the extent of additional reporting required under revised Subpart 202-2 is minimal and that emission statements should not be significantly more time consuming and costly under the revised regulation.

3. Comment - 202-2.2(b)(1) Modify Definition of “Actual Annual Emissions”. Kodak recommends that this definition be modified to reflect that the parameter of “Actual Annual Emissions” may be estimated.

Response - The Department agrees with this comment and has revised the definition of “Actual Annual Emissions” to include actual (or estimated) emissions.

4. Comment - 202-2.2(b)(3) Revise definition of “Annual Reportable Emissions”. Kodak recommends that this definition be modified for clarity in terminology, suggesting that the phrase “defined in section” be removed and replaced with “set forth in subdivision”.

Response - The Department agrees with this comment and has revised the definition of “Annual Reportable Emissions” to remove the phrase “defined in section” and replace it with “set forth in subdivision”.

5. Comment - The term “Chemical Family Code” is used in several places in the regulation without definition. Kodak recommends that a formal definition of the term “Chemical Family Code” be developed and included in the regulation to assist the regulated community.

Response - The Department agrees with this comment and has included the definition of “Chemical Family Code”. The definition includes the numerical codes associated with a specific chemical family determined as follows: Chemical Family Code: 1 Particulates (PART); 2 Sulfur Dioxide (SO₂); 3 Nitrogen Oxides (NO_x); 4 Volatile Organic Compounds (VOC); 5 Carbon Monoxide (CO); 6 Other; 7 PM₁₀; 8 Particulates and Hazardous Air Pollutant (HAP); 9 VOC and HAP; 10 HAP Only.

6. Comment - For clarity and consistency, Kodak recommends that wording be standardized wherever possible throughout the regulation for “air pollution control equipment”, specifically in the definition of “Control Efficiency”.

Response - The Department agrees with this comment and has revised the definition of “Control Efficiency” to include the word “pollution”.

7. Comment - Kodak recommends that a formal definition of “Criteria Groups” be developed and included to assist the regulated community.

Response - The Department recognizes the term “criteria groups” is not defined in the regulation. The Department, however, feels that replacing the term “criteria group” in subparagraph 202-2.3(a)(3)(xi) with “air contaminant” and removing “(reported as criteria groups)” in subparagraph 202-2.3(e) is a better option for assisting the regulated community, rather than defining the term in the regulation. The Department has revised the regulation accordingly.

8. Comment - Kodak recommends either eliminating the definition of “Work Weekday” or changing the definition to not limit it to days other than Saturday or Sunday.

Response - The Department has carefully considered this comment and has determined to retain the definition of “Work Weekday” as proposed. The term “Work Weekday” is defined in the CERR. The Department is required to report this data element to EPA. The CERR requires the collection of weekday data as opposed to weekend data so that regulating agencies can more accurately determine what contaminants are emitted into the atmosphere, during what time periods, and at what concentrations. This information is used by modelers to estimate emissions and develop control programs for various forms of air pollution (*i.e.*, PM_{2.5}, regional haze, ozone).

9. Comment - Kodak recommends that the term SIC Code be eliminated from subparagraph 202-2.3(a)(2)(iv).

Response - The Department has carefully considered this comment but has determined not to make the suggested change. The four digit SIC code is still used by the Department to identify and classify business activities in the Title V program pursuant to Part 201. In addition, subparagraph 202-2.3(a)(2)(iv) allows facilities the option of reporting either the SIC code or the NAICS code. Accordingly, the Department believes it is appropriate to include associated SIC codes on the emission statement forms.

10. Comment - Kodak recommends that subparagraphs 202-2.3(a)(3)(v) and 202-2.3(a)(3)(xi) be specified to relate to “air pollution control equipment”.

Response - The Department agrees with this comment and has revised subparagraphs 202-2.3(a)(3)(v) and 202-2.3(a)(3)(xi) to specify “air pollution control equipment”.

11. Comment - Kodak is unsure if there is an intent to not require the later data in carbon monoxide “maintenance” areas, or if there was a drafting oversight in subparagraphs 202-2.3(a)(3)(vi through viii).

Response - The Department recognizes this as a drafting oversight and has revised subparagraphs 202-2.3(a)(3)(x) to include “maintenance” areas consistent with other subparagraphs in 202-2.3(a)(3).

12. Comment - Kodak recommends that the ability to report “<10 pounds” be included back in subparagraph 202-2.3(a)(3)(xii) or other relevant location within the regulation, as it was in an earlier draft of this regulation.

Response - The Department agrees with this comment and will revise subparagraph 202-2.3(a)(3)(xii) to include language allowing facilities to report small quantities of emission by reporting “<10 pounds”.

13. Comment - Kodak recommends the language of subparagraph 202-2.3(a)(3)(xiii) be modified to simplify fugitive emissions reporting. Kodak also points out possible overlap (perhaps leading to double counting of some fugitive emissions) or cause for confusion. By definition, “annual reportable emissions” include “actual annual emissions”, and “actual annual emissions” are defined to include fugitive emissions. Thus, separate reporting of fugitives at the process level could lead to confusion about what estimates should be provided with the annual fugitive emissions versus the annual reportable process emissions.

Response - The Department agrees with the first part of this comment and has revised subparagraph 202-2.3(a)(3)(xiii) to remove the term “measure and quantify” and replace it with “estimate”. The Department has considered the remainder of this comment with respect to fugitive emission reporting at the process level and has determined that no additional changes to the provisions of Subpart 202-2 are necessary. The Department intends and expects that facilities will aggregate and report fugitive emissions that are not accounted for under another specified process and include them in a separate facility level process which aggregates fugitive emissions that are not otherwise associated with another process. The Department does not believe that the aggregation of facility level fugitive emissions for reporting purposes will be misleading. Any process aggregation should be clearly identified in the description field. The Department will maintain this process description as part of the facility information.

14. Comment - Kodak recommends that the data elements “start time (hour)” and “work weekday emissions” be removed from subparagraph 202-2.3(a)(3)(xvi) and (xvii). Kodak also expressed concern that this information constituted confidential business information and that the Department did not have a compelling need for it.

Response - The Department has considered this comment but cannot make the suggested changes to remove these data elements. The CERR requires States to report “start time hour” and “work weekday emissions” to EPA. See 40 CFR Part 51 Appendix A. Subpart 202-2 must be consistent with the CERR. Consequently, the Department must include these data elements in Subpart 202-2 and require facilities to report them on their

Emission Statements. If Kodak is concerned that some of this information is confidential business information, Kodak can follow the procedures set forth in Part 616 to seek a determination from the Department whether that information qualifies as confidential under applicable State laws and regulations.

15. Comment - Kodak recommends that subparagraph 202-2.3(b) be reworded for consistency with regulatory definitions to remove the terms "estimated" and "emission" and include the term "equipment".

Response - The Department agrees with this comment and has revised subparagraph 202-2.3(b) to include the suggested language.

16. Comment - Kodak recommends that until reasonable estimation methodologies are developed and made available to the regulated community, the requirements to report PM_{2.5} as a separate constituent should be eliminated. In addition, neither PM_{2.5} nor NH₃ should be reported until EPA satisfies its obligation of publishing an approved Information Collection Request (ICR).

Response - The Department has carefully considered this comment but has determined to retain the requirement to report PM_{2.5} as a separate constituent. The CERR requires States to report PM_{2.5} and NH₃ emissions for point sources. See 40 CFR § 51.15. By way of background, EPA published an approved ICR on May 23, 2003 (See EPA ICR Number 0916.10; Final Consolidated Emissions Reporting Rule; in 40 CFR 51.321, 51.322 and 51.323). The approval of this ICR activated the point source reporting requirements for PM_{2.5} and NH₃ found in the CERR at 40 CFR 51.30(e) (67 FR 39602, June 10, 2002) and established the applicable reporting deadline from point sources beginning with the 2002 inventory year report due on June 1, 2004. Consequently, the Department must collect PM_{2.5} and NH₃ emissions data from facilities for the 2005 reporting year to satisfy its regulatory obligation under the CERR to report periodic emission inventories. To accomplish this, Subpart 202-2 must retain the requirement for facilities to report PM_{2.5} and NH₃ emissions. Therefore, the Department cannot make Kodak's suggested change.

17. Comment - Kodak recommends a simple clarification to the regulatory text to address triennial reporting requirements in subparagraph 202-2.3(f). Kodak recommends the subparagraph be edited as follows: "As part of the periodic inventory the department shall provide additional forms to facilities in order to verify the following information for permitted activities in the Title V permit, or collect the information if it is not in the permit."

Response - The Department agrees with this comment insofar as the need to make minor clarifications to the regulatory language. The Department, however, has determined to revise subparagraph 202-2.3(f) to read as follows rather than adopting verbatim the changes proposed by Kodak: "As part of the periodic inventory, the department shall provide additional forms and instructions to facilities in order to verify or collect the following information for permitted activities in the Title V permit:"

18. Comment - Kodak recommends the regulatory language in subparagraph 202-2.4(a) be adjusted for clarity by including the term "annual".

Response - The Department agrees with this comment and has revised subparagraph 202-2.4(a) to include the term "annual".

19. Comment - Kodak recommends that the Department modify the regulatory language to eliminate the hard deadline of requesting an extension on or before March 15th, for the associated reporting year, and allow extension requests to be submitted up until the due date for the report.

Response - The Department has carefully considered this comment and has determined to adopt a compromise provision rather than the proposal preferred by Kodak. The Department understands that unforeseen circumstances may arise which may impact the ability of a facility to complete its emission inventory form in a timely manner. Moreover, the Department must have adequate time to evaluate an extension request prior to the April 15th deadline and to ensure that the final emission report is received in a timely manner to allow the Department to complete its periodic emission inventory for point sources. In the interest of reaching a reasonable compromise on this issue, the Department will allow an additional two weeks for facilities to submit extension requests to the Department. All such requests must be received by the Department no later than April 1st. The Department has modified subparagraph 202-2.4(c) to reflect this.

20. Comment - Kodak recommends that subparagraph 202-2.4(d)(3) be changed to remove "date of test" when the methodology of stack test of emissions is used. While Kodak understands that the date of an emissions test may be important to know in determining how relevant the data may be, Kodak is unclear of its use as a qualifier here where only methodologies are being listed. Kodak also recommends that identical or similar sources may be tested to estimated emissions.

Response - The Department has carefully considered this comment but cannot make the suggested changes. With respect to Kodak's request to remove the date of an emissions test, the Department, as the commenter acknowledges, must know the date of an emissions test to determine how relevant and accurate the stack test data may be. Therefore, the Department cannot eliminate the requirement to report the date of the stack test. The Department, however, agrees with Kodak's position that there are several ways in which a stack test may be used to estimate emissions. The Department agrees with the commenter's suggestion to include the method of "stack test of emissions from identical or similar emission sources" and will add this methodology to the regulation.

21. Comment - Kodak recommends that subparagraph 202-2.4(h) be reworded to allow for various, available technologies for electronically submitting emission reports. Kodak also recommends broader wording to acknowledge evolving technologies for certification signatures. Kodak recommends that the terms "on forms" be replaced with "in a format", "computer diskette" be replaced with "electronic storage media", "original copy of the" be replaced with "acceptably" and include the terms "or the original signed certificate page must be submitted under separate cover".

Response - The Department agrees with this comment and will revise subparagraph 202-2.4(h) to include the suggested language.

22. Comment - Kodak recommends that the Department clarify the meaning of "days" in subparagraph 202.4(j) to avoid confusion between a 24-hour period or a business day when allowing a facility 15 days to provide required information upon the Department's determination of an inaccurate or incomplete emission statement.

Response - The Department agrees that the potential for confusion exists and has modified subparagraph 202-2.4(j) to clarify that a facility is allowed 15 business days following a determination of inaccuracy or incompleteness to provide required emission statement information to the Department.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Emission Standards for Motor Vehicles and Motor Vehicle Engines

I.D. No. ENV-20-05-00018-P

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

Proposed action: Amendment of Parts 200 and 218 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103, 71-2105; and Federal Clean Air Act, section 177

Subject: Emission standards for motor vehicles and motor vehicle engines.

Purpose: To incorporate revisions California has made to its vehicle emission control program regarding the reduction of green house gas (GHG) emissions from motor vehicles, and otherwise update various incorporation by reference citations included in the LEV program.

Public hearing(s) will be held at: 1:00 p.m., July 5, 2005 at Department of Environmental Conservation, Region 8, Conference Rm., 6274 E. Avon-Lima Rd., Avon, NY; 9:00 a.m., July 6, 2005 at Department of Environmental Conservation Annex, Region 2, 11-15 47th Ave., Hearing Rm. 106, Long Island City, NY; 9:00 a.m., July 7, 2005 at Department of Environmental Conservation, Region 5, Conference Rm., 1115 Route 86, Ray Brook, NY; and 9:00 a.m., July 8, 2005 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129B, Albany, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: www.dec.state.ny.us): The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Part 218 and Section 200.9. Section 200.9 is a list that cites Federal and California codes and regulations that have been referenced by the Department in the course of amending this Part. The purpose of the amendment is to revise the existing low emission vehicle (LEV) program to incorporate modifications California has made to its vehicle emission control program

to reduce greenhouse gas (GHG) emissions. The Department is proposing to amend sections 218-1.2 Definitions, 218-2.1(b) Prohibitions, 218-8 GHG Exhaust Emission Standards, and 218-9 Severability. The remaining sections are unchanged.

Section 218-1.2 was amended to include revisions to definitions that govern the provisions of this Part. Section 218-2.1(b) was also amended to change Subpart to Part to clarify applicability.

Section 218-8.1 lists the definitions that govern the GHG provisions of this Part. Section 218-8.2 establishes the prohibitions that pertain to the GHG provisions. Specifically, these provisions apply to all 2009 and subsequent model year new vehicles delivered or sold in New York.

Section 218-8.3 has been revised to incorporate the proposed fleet average GHG exhaust emission standards established by California, as well as credit and debit trading provisions. The standards are in CO₂ equivalent grams per mile for passenger cars/light duty truck1 (PC/LDT1) and light duty truck2 (LDT2) vehicle categories. PC/LDT1 consists of vehicles up to 3,750 pounds loaded vehicle weight (LVW), and LDT2 consists of vehicles between 3,751 pounds LVW and 8,500 pounds gross vehicle weight (GVW). Medium duty passenger vehicles (MDPV) up to 10,000 pounds GVW are also included in LDT2.

CO₂ equivalent grams per mile standards are obtained by multiplying the emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), and hydrofluorocarbons (HFC) by their global warming potentials and adding them together. Global warming potential (GWP) is an estimate of the climate changing ability of 1 kilogram of any GHG relative to the climate changing ability of 1 kilogram of CO₂. Over a 100 year period, CO₂ has a GWP of 1, CH₄ is 23, N₂O is 296, and HFC-134a is 1300. The Department will incorporate California standards identically, which includes a declining fleet average standard for model years 2009 through 2016. This is done similar to the existing LEV program. The standards are shown below.

CO₂ Equivalent Emission Standards for Model Years 2009 through 2016

Tier	Year	CO ₂ Equivalent Emission Standard by Vehicle Category g/mile	
		PC/LDT1	LDT2
Near-Term	2009	323	439
	2010	301	420
	2011	267	390
	2012	233	361
Mid-term	2013	227	355
	2014	222	350
	2015	213	341
	2016	205	332

An alternative compliance option is also proposed in section 218-8.4, as in California. This proposal would provide vehicle manufacturers flexibility in meeting the GHG reduction requirements by allowing them to earn credits by utilizing 2009 and subsequent model year vehicles that operate on alternative fuel vehicles. The manufacturers would be required to demonstrate that the vehicles achieve equal or greater GHG reductions as compared to the regulations and meet strict eligibility criteria. The criteria include real or additional GHG emission reductions, reductions must be regulatory surplus, permanent, and enforceable. The Department proposes to adopt California criteria and crediting for determining acceptable alternative compliance programs.

The Department also proposes to include New York specific GHG exhaust emissions reporting requirements in section 218-8.5. Starting with the 2009 model year, each manufacturer must report the average GHG emissions of its fleet sold in New York to the Department. These reports will contain the same information and format as those submitted to California.

Existing section 218-8 was renumbered to create section 218-9. This section contains severability provisions.

Text of proposed rule and any required statements and analyses may be obtained from: Jeff Marshall, Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233-3255, (518) 402-8292, e-mail: jtmarsa@gw.dec.state.ny.us

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

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

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 have been

prepared and are on file. This rule must be approved by the environmental board.

Summary of Regulatory Impact Statement

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Part 218 and Section 200.9. This will be accomplished by revising the existing Part 218 to reflect changes to California's low emission vehicle (LEV) program that incorporated greenhouse gas (GHG) standards for light and medium duty vehicles, and to maintain identical standards with California for all vehicle weight classes as required under section 177 of the Clean Air Act. Subpart 200.9 will also be revised in order to reflect updates to the reference material incorporated in the Part 218 revisions.

By statutory authority of, and pursuant to, Environmental Conservation Law (ECL), the Commissioner of Environmental Conservation is responsible for protecting the air resources of New York State. The Commissioner is authorized to adopt rules and regulations to enforce the ECL. The Legislature bestowed on the Department the power to formulate, adopt, promulgate, amend and repeal regulations for preventing, controlling or prohibiting air pollution.

The main purpose of enacting this regulation is to address the adverse climate change impacts that GHG such as carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), and hydrofluorocarbons (HFC) will cause in New York State, and globally, if left uncontrolled. The global warming effects of GHG can adversely affect human health and the environment.

Heat related illnesses and mortality can increase as a result of intensified and prolonged heat waves resulting from global warming induced temperature increases. Increased temperatures could also exacerbate respiratory illnesses by contributing to conditions favorable to the formation of ground-level ozone. Vector-borne illnesses such as West Nile Virus, Equine Encephalitis, and Lyme Disease could also increase as a result of increased temperature and precipitation resulting from global warming.

New York's shoreline could be adversely affected by sea level rise due to thermal expansion of the oceans caused by global warming. New York has approximately 2,625 miles of coastline including barrier islands, coastal wetlands, and bays. As sea level rises, erosion and flooding due to storm surge can increase. This can lead to loss of beaches, damage to coastal ecosystems, and flood damage to infrastructure.

New York's water supply may also be stressed by changes in temperature and precipitation caused by global warming. The majority of New York's population is served by surface water flow, which can be highly variable. Extended periods of drought could be expected to place additional stress on the water supply. Global warming is also likely to lower the water levels of the Great Lakes, which would impact drinking water supplies, hydroelectric power production, commercial shipping, and recreational activities.

Agriculture and forests may be adversely affected by global warming. Crop mix and growing seasons for cold weather crops could be shortened or lost due to changes in temperature and precipitation. Tree species such as sugar maples could be displaced from New York due to climate change. This would impact maple syrup production and regional tourism related to fall foliage. The existence of hardwood ecosystems such as the Adirondack Park would be threatened. Wildlife distribution and diversity are also likely to be affected by climate change. Species such as trout and migratory birds could be displaced by loss or changes in habitat resulting from increased temperatures or precipitation.

The GHG emission reduction regulation mandates lower new vehicle certification levels for all 2009-2016 model year passenger cars, light duty trucks, and medium duty passenger vehicles. The vehicle classes are combined into 2 vehicle classes: PC/LDT1 and LDT2. The PC/LDT1 category consists of all passenger cars, as well as minivans, sport utility vehicles (SUVs) and light trucks up to 3,750 pounds loaded vehicle weight (LVW). The LDT2 category consists of light duty trucks and SUVs between 3,751 pounds LVW and 8,500 pounds gross vehicle weight (GVW), as well as medium duty passenger vehicles (MDPV) between 8,500 and 10,000 pounds GVW.

Vehicle climate change emissions comprise four main elements: 1) CO₂, CH₄ and N₂O emissions resulting directly from the operation of the vehicle; 2) CO₂ emissions resulting from the operation of the air conditioning (AC) system (indirect AC emissions); 3) refrigerant emissions from the AC system due to either leakage, losses during recharging, or release from scrapping of the vehicle at the end of life (direct AC emissions); and 4) upstream emissions associated with the production of the fuel used by the vehicle. All of these elements are incorporated into the GHG emissions reduction standard.

The California Air Resources Board (CARB) estimated the emissions from light duty vehicles for the years 2020 and 2030 in CO₂ equivalent tons per day. These estimates represent the light duty vehicle emissions that would be expected without the proposed regulation and serve as a baseline to estimate the benefits of the program. CO₂ equivalent tons per day are obtained by multiplying the emissions of each GHG (CO₂, CH₄, N₂O, HFC) by its global warming potential (GWP). The GWP is an estimate of the climate changing ability of 1 kilogram of any GHG relative to the climate changing ability of 1 kilogram of CO₂. Over a 100 year period, CO₂ has a GWP of 1, CH₄ is 23, N₂O is 296, and HFC-134a, the current vehicle air conditioner refrigerant, is 1300.

New York proposes to incorporate California's GHG emissions standards as a declining fleet average requirement similar to the LEV program. Vehicle manufacturers would be required to comply with the emissions standards in New York for each year starting in 2000. The proposed standards, expressed in terms of CO₂ equivalent grams/ mile are as follows:

CO₂ Equivalent Emission Standards for Model Years 2009 through 2016

Tier	Year	CO ₂ Equivalent Emission Standard by Vehicle Category g/mile	
		PC/LDT1	LDT2
Near-Term	2009	323	439
	2010	301	420
	2011	267	390
	2012	233	361
Mid-term	2013	227	355
	2014	222	350
	2015	213	341
	2016	205	332

New York estimates that adoption of the regulation will reduce New York's GHG emissions by an estimated 40,700 CO₂ equivalent tons per day in 2020 and by 72,000 CO₂ equivalent tons per day in 2030. New York estimated the reductions by comparing 2002 new vehicle registrations in California and New York. California had approximately 1,500,000 new vehicles registered compared to approximately 696,000 new vehicles registered in New York. This ratio was used as the basis for estimating the baseline emissions and emissions reductions in New York due to the regulation. New York's baseline emissions, emissions due to the regulation, and total emissions reductions are shown below.

New York Light Duty Fleet CO₂ Equivalent Emissions and Reductions

	2020 CO ₂ Equivalent (tpd)	2030 CO ₂ Equivalent (tpd)
Baseline Emissions (Total Light Duty)	230,800	267,000
Emissions with Regulation (Total Light Duty)	191,100	195,000
Emissions Reductions (Total Light Duty)	40,700	72,000

New York proposes to incorporate early reduction credit provisions that are identical to California's provisions. The credit trading provision in this rule offers flexibility for each manufacturer to over comply with one vehicle category's standard and trade those credits to compensate for a deficit, or undercompliance, within another category. Credit trading is also allowed among manufacturers. CARB shall utilize the 2000 model year as a baseline for calculating emission reduction credits. Under CARB's proposal, manufacturer fleet average emissions for model year 2000 through model year 2008 for PC/LDT1 will be compared with the 2012 fully phased-in near-term standard of 233 g/mile CO₂ equivalent. For LDT2, the baseline is 361 g/mile CO₂ equivalent. If a manufacturer has certified fleet average emissions in a specific model year lower than these standards, the manufacturer will earn early compliance credits. Any emission reduction early credits earned could be used during model year 2009 through 2015, or traded with another manufacturer. To ensure that the regulation ultimately achieves the greatest possible climate change emission reductions, CARB staff proposes that the credits generated by early compliance retain full value through the 2013 model year. These credits will then be worth 50 percent of their initial value in model year 2014, 25 percent of their initial value in model year 2015 and have no value thereafter.

New York proposes to incorporate an alternative compliance strategy that employs criteria identical to those put forth by California. The criteria are: real or additional emissions reductions; emissions reductions that can be reasonably measured; emissions reductions must be surplus of any

reductions required by separate entities; reductions must be independently verified and legally binding; projects should be irreversible and permanent. CARB Staff will explore ways to evaluate that alternative compliance strategies do not increase GHG emissions outside the alternative compliance project. The exception would be that the proposed projects would be required to be in the state of New York to be eligible for consideration. These projects would also be required to be made available to inspection by New York State representatives upon request.

CARB estimates that the near-term standards will result in an average incremental cost in 2012 of \$367 for PC/LDT1, and \$277 for LDT2 compared to the 2009 baseline vehicle fleet. The fully phased-in mid-term standards will result in an incremental cost in 2016 of \$1,064 for Passenger cars and LDT1, and \$1,029 for LDT2. The CARB analysis concludes, however, that these increased costs will be more than offset by operating cost savings over the lifetime of the vehicle.

Operating cost savings are the basis for determining the cost effectiveness of the regulation. As gasoline prices increase, the operating cost savings will also increase. New York performed a benefit-cost analysis using VMT obtained from Mobile6 and gasoline price to estimate the cost effectiveness. The break-even year is the first year in which the overall return from gasoline savings exceeds the initial cost and interest payments of purchasing the new vehicle. New York also performed a sensitivity analysis utilizing different gasoline prices per gallon, ranging from \$1.50 to \$2.00, to estimate the cost effectiveness of the regulation. The Department's analysis indicates that the regulation is cost effective for even the low estimate of \$1.50 per gallon of gasoline.

Currently, there is no automobile manufacturing in New York. However, when "automotive facilities" are taken into account, such as parts manufacturing and distribution, corporate offices, research and development, automobile dealerships, financial centers, and engineering and design facilities, the employment share of the automotive industry in the state is 3.2 percent, according to the Alliance of Automobile Manufacturers. These affiliated businesses in addition to gasoline service stations are local businesses. They compete within the state and generally are not subject to competition from out-of-state businesses. New York dealerships will be able to sell California certified vehicles to states bordering New York. New York residents will not be able to buy noncomplying vehicles out of state since vehicles must be California certified in order to be registered in New York. Therefore, the proposed regulation is not expected to impose a competitive disadvantage on affiliated businesses.

State and local governments who own or operate vehicles in New York State are subject to the same requirements as privately owned vehicles. In other words, they must purchase California certified vehicles. There should not be any additional costs for State and local governments to comply with this regulation.

The climate change emission regulations will not result in any significant paperwork requirements for New York vehicle suppliers, dealers or government. New York relies on materials submitted to California for certification while manufacturers must submit to New York annual sales, and corporate fleet average reports to show compliance with the fleet average requirements. This is the current arrangement in the LEV program. Also, the climate change emission regulations will not result in an increased amount of paperwork for dealers. While dealers must ensure that the vehicles they sell are California certified, most manufacturers will include provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. This has been the case since New York first adopted the California LEV program in 1992. The implementation of the climate change regulatory proposal is not expected to be burdensome in terms of paperwork to owners/ operators of vehicles.

California's GHG standards are the most stringent and most protective of public health and the environment in the absence of federal GHG emission standards. There are no equivalent federal vehicle GHG standards available as a regulatory alternative. The only regulatory alternative to the proposed climate change amendments to the LEV regulation is to revert back to less stringent federal new motor vehicle emission standards. This is because the Clean Air Act requires states adopting the California programs under section 177 to maintain identical standards and consistent programs for a given weight class. Since the GHG provisions affect light and medium duty vehicles, New York must adopt such standards in order to remain identical.

Another alternative available would be to require reductions of GHG emissions from stationary sources. New York has already begun to address stationary source GHG reductions through its RGGI and RPS initiatives discussed previously. These are being developed in conjunction with the

vehicle GHG regulation in an attempt to establish a comprehensive program to reduce GHG emissions from both mobile and stationary sources in New York.

In addition, in the absence of the climate change emissions regulation New York would forfeit other emission benefits, NO_x, VOC and CO reductions for example, that are an important part of its state implementation plans (SIP) for ozone and CO. For example, New York estimates that the LEV program achieves VOC reductions in the year 2020 that are approximately 7.5 percent greater than corresponding reductions that would result from the federal standards. NO_x reductions were approximately equal when comparing LEV to the federal standards for the year 2020. It would be difficult, if not impossible, for New York to find additional reductions from other sources to offset the loss of mobile source reductions that would occur if the State were forced to revert back to federal standards. For the light-duty fleet, New York would be losing emission benefits by not requiring the climate change emission reductions adopted by California as part of the LEV program. The climate change regulation is also expected to result in additional reductions of criteria pollutants in addition to GHG as discussed previously.

This regulatory proposal will take effect for the 2009 model year for light-duty and medium duty passenger vehicles up to 10,000 pounds GVWR.

Regulatory Flexibility Analysis

1. Effect of rule:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9, and 6 NYCRR Part 218 low emission vehicle (LEV) program. The changes to the regulations incorporate New York State's adoption of the motor vehicle greenhouse gas (GHG) emission reduction standards adopted by the California Air Resources Board (CARB). These changes apply to vehicles purchased by consumers, businesses, and government agencies in New York. The proposed changes to the regulations may impact businesses involved in manufacturing, selling, purchasing or repairing passenger cars or trucks.

There are about 202,233 state and local agency owned vehicles in New York State, or 2.0 percent of the total state fleet of about 10.2 million vehicles, according to data provided by the US Department of Energy, and the Alliance of Automobile Manufacturers. The Department operated a fleet consisting of a combined 1,850 PC/LDT1 and LDT2 vehicles during the State fiscal year from April 1, 2003 to March 31, 2004. PC/LDT1 consists of vehicles up to 3,750 pounds loaded vehicle weight (LVW), and LDT2 consists of vehicles between 3,751 pounds LVW and 8,500 pounds gross vehicle weight (GVW). Medium duty passenger vehicles (MDPV) up to 10,000 pounds GVW are also included in LDT2.

State and local governments are also consumers of vehicles that will be regulated under the proposed GHG amendments. Therefore, local governments who own or operate vehicles in New York State are subject to the same requirements as privately owned vehicles in New York State; i.e., they must purchase California certified vehicles.

The changes are an addition to the current LEV standards. The new motor vehicle emissions program has been in effect in New York State since model year 1993 for passenger cars and light-duty trucks, with the exception of the 1995 model year, and the Department is unaware of any adverse impact to small businesses or local governments as a result.

There are no equivalent federal vehicle GHG standards available as a regulatory alternative. The only regulatory alternative to the proposed climate change amendments to the LEV regulation is to revert back to less stringent federal new motor vehicle emission standards. This is because the Clean Air Act requires states adopting the California programs under section 177 to maintain identical standards and consistent programs. Since the GHG provisions affect light and medium duty vehicles, New York must adopt such standards in order to remain identical.

Another alternative available would be to require reductions of GHG emissions from stationary sources. New York has already begun to address stationary source GHG reductions through its regional greenhouse gas (RGGI) and renewable portfolio standards (RPS) initiatives. These are being developed in conjunction with the vehicle GHG regulation in an attempt to establish a comprehensive program to reduce GHG emissions from both mobile and stationary sources in New York.

2. Compliance requirements:

There are no specific requirements in the regulation which apply exclusively to small businesses or local governments. Reporting, recordkeeping and compliance requirements are effective statewide. Automobile dealers (some of which may be small businesses) selling new cars are required to sell or offer for sale only California certified vehicles. These proposed amendments will not result in any additional reporting requirements to

dealerships other than the current requirements to maintain records demonstrating that vehicles are California certified. This documentation is the same documentation already required by the New York State Department of Motor Vehicles for vehicle registration. If local governments are buying new fleet vehicles they should make sure that the vehicles are California certified.

3. Professional services:

There are no professional services needed by small business or local government to comply with the proposed rule.

4. Compliance costs:

California has estimated that in the year 2012 the incremental per vehicle cost for passenger cars/light duty truck1 (PC/LDT1) will be approximately \$367, and light duty truck2/medium duty passenger vehicles (LDT2) will be approximately \$277. In the year 2016 the incremental per vehicle cost for PC/LDT1 vehicles is estimated to be \$1,064, and the incremental cost for LDT2 vehicles is expected to be \$1,029. As manufacturing economies of scale and further technological developments are achieved, it is expected that the incremental costs will be reduced. PC/LDT1 consists of vehicles up to 3,750 pounds loaded vehicle weight (LVW), and LDT2 consists of vehicles between 3,751 pounds LVW and 8,500 pounds gross vehicle weight (GVW). Medium duty passenger vehicles (MDPV) up to 10,000 pounds GVW are also included in LDT2.

New York performed a benefit-cost analysis using gasoline price and vehicle miles traveled (VMT) obtained from Mobile6 to estimate the cost effectiveness. The break-even year is the first year in which the overall return from gasoline savings exceeds the initial cost and interest payments of purchasing the new vehicle. The table shown below assumes an average gasoline price of \$1.74 per gallon, which is identical to CARB's analysis.

New York State Break-Even Years for Pavley Vehicles Using \$1.74 Per Gallon Gasoline

Model Year	Vehicle Group	Break-Even Year	Control Cost (\$)	Fuel Savings (%)	Gallons Saved in 10 years	\$ Saved in 10 Years
2009	PC/LDT1	2	17	1.3	67	85
2010	PC/LDT1	2	58	4.4	222	277
2011	PC/LDT1	3	230	14.0	646	718
2012	PC/LDT1	2	367	24.9	1048	1174
2013	PC/LDT1	3	504	26.7	1108	1073
2014	PC/LDT1	4	609	28.5	1166	1015
2015	PC/LDT1	5	836	31.2	1250	822
2016	PC/LDT1	6	1064	33.9	1331	622
2009	LDT2	1	36	2.1	192	266
2010	LDT2	1	85	5.5	487	685
2011	LDT2	1	176	11.8	986	1380
2012	LDT2	1	277	18.3	1445	1995
2013	LDT2	2	434	19.6	1531	1909
2014	LDT2	2	581	20.9	1615	1835
2015	LDT2	3	804	22.9	1741	1720
2016	LDT2	4	1029	24.8	1857	1585

- Note: Assumes: 1) 5 percent interest and discount rates, compounded annually
 2) California control costs, baseline fuel economy, and percent fuel savings
 3) Gasoline cost \$1.74 per gallon

- Uses: 1) New York State miles driven in each year of vehicle life
 2) Baseline fuel economy calculated from CARB 2009 model year EMFAC data
 3) Control costs from revised Table 6.2-8, Addendum to CARB ISOR, Sept. 2004
 4) Percent CO₂ reduction from Table 6.2-2, CARB ISOR, Aug. 2004

The Department also performed a sensitivity analysis using gasoline prices of \$2.00 and \$1.50 per gallon to estimate cost effectiveness. An increase in the cost of gasoline would serve to increase the cost effectiveness due to reduced vehicle operating costs. The Department's analysis indicates that the regulation would be cost effective even if the average price of gasoline fell to \$1.50, which would result in a slightly longer period to break-even as well as a corresponding reduction in overall savings.

New York State currently maintains personnel and equipment to administer the LEV program. It is expected that these personnel will be retained to administer the revisions to this program. Therefore, no additional costs will be incurred by the State of New York for the administration of this program.

5. Minimizing adverse impact:

The climate change regulation may impact several sectors of the economy. The steps that manufacturers need to take to comply with the new

regulation are expected to lead to increases in the price of new vehicles. It is expected that the manufacturers will recoup these costs by passing them on to consumers in the form of increased vehicle prices, which occurred with the implementation of the LEV program. For example, it is expected that manufacturers may selectively increase vehicle prices on popular or high-end models to subsidize lower price increases on economy models. Manufacturers also have other options which include changing "standard" equipment packages, increasing prices across their entire product line, incentives, and financing. It is also possible that consumers could regard vehicles equipped with the new technology to be desirable, leading to increased sales despite higher prices.

The technological options that manufacturers choose to comply with the new regulation are also expected to reduce operating costs. These two responses have combined negative and positive impacts on businesses and consumers. The vehicle price increase may negatively affect businesses by possibly reducing demand for their vehicles, while the reduction in operating costs will have a positive impact on consumers and local businesses due to increased disposable income. This increased disposable income would allow consumers to make additional purchases of goods and services, including new vehicles, resulting in an expansion of businesses and employment.

The flexibility of the GHG mandate allows manufacturers to earn early reduction credits, phase-in advanced technology, and utilize a vast array of existing and emerging advanced emission reduction technology. The proposed regulation also provides mechanisms for implementation flexibility which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. These options will provide general long term air quality benefits, as well as a long term GHG program compliance benefit.

Currently, there is no automobile manufacturing in New York. However, when "automotive facilities" are taken into account, such as parts manufacturing and distribution, corporate offices, research and development, automobile dealerships, financial centers, and engineering and design facilities, the employment share of the automotive industry in the state is 3.2 percent, according to the Alliance of Automobile Manufacturers.¹ These affiliated businesses in addition to gasoline service stations are local businesses. They compete within the state and generally are not subject to competition from out-of-state businesses. New York dealerships will be able to sell California certified vehicles to states bordering New York. New York residents will not be able to buy noncomplying vehicles out of state since vehicles must be California certified in order to be registered in New York. Therefore, the proposed regulation is not expected to impose a competitive disadvantage on affiliated businesses, and there would be no change from the current relationship with out-of-state businesses.

The GHG requirements are not expected to have a major cost impact on automobile dealers. Dealerships will experience some cost increases associated with sale and service of vehicles equipped with advanced GHG reduction technology. This is expected due to the fact that in some cases these are technologies that a dealership has not previously handled, and would thus be required to train service personnel to service these vehicles.

The proposed amendments may have a positive impact on New York employment since the new technologies associated with sale and service of vehicles equipped with advanced GHG technology may require hiring or training personnel who are familiar with the products and associated technologies. In some cases these are a technology that a dealership has not previously handled. New marketing strategies will also need to be developed to promote the advantages of driving these cleaner vehicles, including significant air quality benefits, and thus increase sales to consumers. It is also anticipated that the money saved due to reduced operating expenses will trickle into other sectors of the economy, thereby stimulating economic growth.

There will be no adverse impact on local governments who own or operate vehicles in the state because they are subject to the same requirements as those imposed upon privately owned vehicles. In other words, state and local governments will be required to purchase California certified vehicles. Individual consumers, businesses, and governments are likely to experience net savings since the initial cost is more than offset by decreased operating expenses over the life of the vehicle as a result of the regulation.

This regulation contains exemptions for emergency vehicles, and military tactical vehicles and equipment.

6. Small business and local government participation:

The Department plans on holding public hearings at various locations throughout New York State after the amendments are proposed. Small

businesses and local governments will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties who are unable to attend a public hearing can submit written comments.

7. Economic and technological feasibility:

The proposed regulations are feasible for all vehicle manufacturers. California used 2002 vehicle emissions to establish the baseline emissions for the GHG regulation. The manufacturer with the heaviest average fleet was selected to set the GHG emissions standards. This manufacturer would require the most extensive use of advanced existing and emerging technology to meet the proposed standards. The remaining manufacturers would utilize these technologies to varying degrees to achieve compliance with the proposed standards.

Given the climate change emission program, manufacturers of 2009-2016 model year vehicles can choose the vehicle models to which they wish to apply technology packages, as long as the emissions of the entire product line meet the fleet average requirement. This average requirement declines from 2009 through 2016 model year. It is important to note that in the case of CO₂ tailpipe emissions, there are generally no aftertreatment devices that can be applied to reduce engine out CO₂ emissions. Therefore, there is greater reliance on engine modifications to achieve these reductions.

The proposed amendments may have a positive impact on New York employment since the new technologies associated with sale and service of vehicles equipped with advanced GHG technology may require hiring or training personnel who are familiar with the products and associated technologies. In some cases these are a technology that a dealership has not previously handled. New marketing strategies will also need to be developed to promote the advantages of driving these cleaner vehicles, including significant air quality benefits, and thus increase sales to consumers. It is also anticipated that the money saved due to reduced operating expenses will trickle into other sectors of the economy, thereby stimulating economic growth.

¹ Alliance of Automobile Manufacturers: The Auto Industry in New York.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9, and 6 NYCRR Part 218 low emission vehicle (LEV) program. The changes to the regulations incorporate New York State's adoption of the motor vehicle greenhouse gas (GHG) emission reduction standards adopted by the California Air Resources Board (CARB). There are no requirements in the regulation which apply only to rural areas. These changes apply to vehicles purchased by consumers, businesses, and government agencies in New York. The changes to these regulations may impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks, as well as businesses that distribute gasoline.

The changes are additions to the current LEV standards. The new motor vehicle emission program has been in effect in New York State since model year 1993 for passenger cars as well as light-duty trucks, with the exception of model year 1995, and the Department is unaware of any adverse impact to rural areas as a result. The beneficial GHG emission reductions from the program accrue to all areas of the state.

There are no equivalent federal vehicle GHG standards available as a regulatory alternative. The only regulatory alternative to the proposed climate change amendments to the LEV regulation is to revert back to less stringent federal new motor vehicle emission standards. This is because the Clean Air Act requires states adopting the California programs under section 177 to maintain identical standards and consistent programs. Since the GHG provisions affect light and medium duty vehicles, New York must adopt such standards in order to remain identical.

Another alternative available would be to require reductions of GHG emissions from stationary sources. New York has already begun to address stationary source GHG reductions through its regional greenhouse gas (RGGI) and renewable portfolio standards (RPS) initiatives. These are being developed in conjunction with the vehicle GHG regulation in an attempt to establish a comprehensive program to reduce GHG emissions from both mobile and stationary sources in New York.

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

There are no specific requirements in the proposed regulations which apply exclusively to rural areas. Reporting, recordkeeping and compliance requirements apply primarily to vehicle manufacturers, and to a lesser degree to automobile dealerships. Manufacturers reporting requirements

mirror the California requirements, and are thus not expected to be burdensome. Dealerships do not have reporting requirements, but must maintain records to demonstrate that vehicles and some engines are California certified. This documentation is the same as documentation already required by the New York State Department of Motor Vehicles for vehicle registration. Professional services are not anticipated to be necessary to comply with the rules.

3. Costs:

California has estimated that in the year 2012 the incremental per vehicle cost for passenger cars/light duty truck1 (PC/LDT1) will be approximately \$367, and light duty truck2/medium duty passenger vehicles (LDT2) will be approximately \$277. In the year 2016 the incremental per vehicle cost for PC/LDT1 vehicles is estimated to be \$1,064, and the incremental cost for LDT2 vehicles is expected to be \$1,029. As manufacturing economies of scale and further technological developments are achieved, it is expected that the incremental costs will be reduced. PC/LDT1 consists of vehicles up to 3,750 pounds loaded vehicle weight (LVW), and LDT2 consists of vehicles between 3,751 pounds LVW and 8,500 pounds gross vehicle weight (GVW). Medium duty passenger vehicles (MDPV) up to 10,000 pounds GVW are also included in LDT2.

New York performed a benefit-cost analysis using gasoline price and vehicle miles traveled (VMT) obtained from Mobile6 to estimate the cost effectiveness. The break-even year is the first year in which the overall return from gasoline savings exceeds the initial cost and interest payments of purchasing the new vehicle. The table shown below assumes an average gasoline price of \$1.74 per gallon, which is identical to CARB's analysis.

New York State Break-Even Years for Pavley Vehicles Using \$1.74 Per Gallon Gasoline

Model Year	Vehicle Group	Break-Even Year	Control Cost (\$)	Fuel Savings (%)	Gallons Saved in 10 years	\$ Saved in 10 Years
2009	PC/LDT1	2	17	1.3	67	85
2010	PC/LDT1	2	58	4.4	222	277
2011	PC/LDT1	3	230	14.0	646	718
2012	PC/LDT1	2	367	24.9	1048	1174
2013	PC/LDT1	3	504	26.7	1108	1073
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Note: Assumes: 1) 5 percent interest and discount rates, compounded annually
 2) California control costs, baseline fuel economy, and percent fuel savings
 3) Gasoline cost \$1.74 per gallon

Uses: 1) New York State miles driven in each year of vehicle life
 2) Baseline fuel economy calculated from CARB 2009 model year EMFAC data
 3) Control costs from revised Table 6.2-8, Addendum to CARB ISOR, Sept. 2004
 4) Percent CO₂ reduction from Table 6.2-2, CARB ISOR, Aug. 2004

The Department also performed a sensitivity analysis using gasoline prices of \$2.00 and \$1.50 per gallon to estimate cost effectiveness. An increase in the cost of gasoline would serve to increase the cost effectiveness due to reduced vehicle operating costs. The Department's analysis indicates that the regulation would be cost effective even if the average price of gasoline fell to \$1.50, which would result in a slightly longer period to break-even as well as a corresponding reduction in overall savings.

4. Minimizing adverse impact:

The changes will not adversely impact rural areas. As a result of the adoption of the GHG emission reduction requirements, rural areas may benefit by seeing an improvement in the air quality. Individual consumers, businesses, and governments are likely to experience net savings since the initial cost is more than offset by decreased operating expenses over the life of the vehicle as a result of the regulation.

5. Rural area participation:

The Department plans on holding public hearings at various locations throughout New York State once the regulation is proposed. Some of these locations will be convenient for persons from rural areas to participate. Additionally, there will be a public comment period in which interested parties who are unable to attend a public hearing can submit written comments.

Job Impact Statement

1. Nature of Impact:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9, and 6 NYCRR Part 218 low emission vehicle (LEV) program. Part 218 is being amended to incorporate vehicle greenhouse gas (GHG) emission reduction standards that are being adopted by the California Air Resources Board (CARB). The amendments to the regulations are not expected to negatively impact jobs and employment opportunities in New York State. New York State has had a new motor vehicle emission standards program in effect since model year 1993 for passenger cars and light-duty trucks, with the exception of model year 1995, and the Department is unaware of any adverse impact to jobs and employment opportunities as a result.

There are no equivalent federal vehicle GHG standards available as a regulatory alternative. The only regulatory alternative to the proposed climate change amendments to the LEV regulation is to revert back to less stringent federal new motor vehicle emission standards. This is because the Clean Air Act requires states adopting the California programs under section 177 to maintain identical standards and consistent programs. Since the GHG provisions affect light and medium duty vehicles, New York must adopt such standards in order to remain identical.

Another alternative available would be to require reductions of GHG emissions from stationary sources. New York has already begun to address stationary source GHG reductions through its regional greenhouse gas (RGGI) and renewable portfolio standards (RPS) initiatives. These are being developed in conjunction with the vehicle GHG regulation in an attempt to establish a comprehensive program to reduce GHG emissions from both mobile and stationary sources in New York.

2. Categories and numbers affected:

The changes to this regulation may impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks. Automobile manufacturers are likely to incur significant costs in order to comply with the regulation. These increased compliance costs are expected to be passed on to consumers in the form of higher vehicle prices. Dealerships may see decreased sales as a result of new vehicle prices. Dealerships will be able to sell California certified vehicles to buyers from states bordering New York. Since vehicles must be California certified in order to be registered in New York, New York residents will not be able to buy non-complying vehicles out of state, but may be able to buy complying vehicles out of state. These businesses compete within the state and generally are not subject to competition from out-of-state businesses. Therefore, the proposed regulation is not expected to impose a competitive disadvantage on affiliated businesses, and there would be no change from the current relationship with out-of-state businesses.

3. Regions of adverse impact:

None.

4. Minimizing adverse impact:

The climate change regulation may impact several sectors of the economy. The steps that manufacturers need to take to comply with the new regulation are expected to lead to increases in the cost of new vehicles. It is expected that the manufacturers will recoup these costs by passing them on to consumers in the form of increased vehicle prices, which occurred with the implementation of other regulatory programs. For example, it is expected that manufacturers may selectively increase vehicle prices on popular or high-end models to subsidize lower price increases on economy models. Manufacturers also have other options which include changing "standard" equipment packages, incentives, and financing. It is also possible that consumers could regard vehicles equipped with the new technology to be desirable, leading to increased sales despite higher prices.

The technological options that manufacturers choose to comply with the new regulation are also expected to reduce operating costs. These two responses have combined negative and positive impacts on businesses and consumers. The vehicle price increase may negatively affect businesses by possibly reducing demand for their vehicles, while the reduction in operating costs will have a positive impact on consumers and local businesses due to increased disposable income. This increased disposable income would allow consumers to make additional purchases of goods and services, including new vehicles, resulting in an expansion of businesses and employment.

The flexibility of the GHG mandate allows manufacturers to earn early reduction credits, phase-in advanced technology, and utilize a vast array of existing and emerging advanced emission reduction technology. The proposed regulation also provides mechanisms for implementation flexibility which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. These options will provide a general long term air quality benefit, as well as a long term GHG program compliance benefit.

Currently, there is no automobile manufacturing in New York. However, when "automotive facilities" are taken into account, such as parts manufacturing and distribution, corporate offices, research and development, automobile dealerships, financial centers, and engineering and design facilities, the employment share of the automotive industry in the state is 3.2 percent, according to the Alliance of Automobile Manufacturers.¹ These affiliated businesses in addition to gasoline service stations are local businesses. They compete within the state and generally are not subject to competition from out-of-state businesses. New York dealerships will be able to sell California certified vehicles to states bordering New York. New York residents will not be able to buy noncomplying vehicles out of state since vehicles must be California certified in order to be registered in New York. Therefore, the proposed regulation is not expected to impose a competitive disadvantage on affiliated businesses. As stated previously, there would be no change in the competitive relationship with out-of-state businesses.

The GHG requirements are not expected to have a major cost impact on automobile dealers. Dealerships will experience some cost increases associated with sale and service of vehicles equipped with advanced GHG reduction technology. This is expected due to the fact that in some cases these are technologies that a dealership has not previously handled, and would thus be required to train service personnel to service these vehicles.

The proposed amendments may have a positive impact on New York employment since the new technologies associated with sale and service of vehicles equipped with advanced GHG technology may require hiring or training personnel who are familiar with the products and associated technologies. In some cases these are a technology that a dealership has not previously handled. New marketing strategies will also need to be developed to promote the advantages of driving these cleaner vehicles, including significant air quality benefits, and thus increase sales to consumers. It is also anticipated that the money saved due to reduced operating expenses will trickle into other sectors of the economy, thereby stimulating economic growth.

5. Self-employment opportunities:

None that the Department is aware of at this time.

¹ Alliance of Automobile Manufacturers: The Auto Industry in New York.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Bear Resistant Food Canisters

I.D. No. ENV-20-05-00026-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 190.13 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301 and 9-0105

Subject: Required use of bear-resistant food canisters in the Eastern High Peaks Wilderness Area of the Adirondack Park.

Purpose: To reduce the incidence of negative interactions between black bears and people in the Eastern High Peaks Wilderness Area.

Text of proposed rule: Paragraphs (2), (3), (4), (6), (7), (8), (9), and (10) of subdivision (b) of 6 NYCRR section 190.13 are renumbered as paragraphs (3), (4), (8), (7), (9), (10) (11) and (12), respectively.

A new paragraph (2) is added to subdivision (b) of 6 NYCRR section 190.13 to read as follows:

(2) *Bear-resistant canister means a commercially made container constructed of solid, non-pliable material manufactured for the specific purpose of resisting entry by bears.*

A new paragraph (6) is added to subdivision (b) of 6 NYCRR section 190.13 to read as follows:

(6) *Overnight camper means a person who stays or intends to stay in the Eastern High Peaks Zone during the night.*

Subparagraph (xiv) of paragraph (3) of subdivision (f) of 6 NYCRR section 190.13 is amended to read as follows:

(xiv) fail to take reasonable steps to keep food, food containers, [and] garbage, *and toiletries* from bears, [such as the use of bear proof canisters or cable or rope hanging systems] *and, during the period April 1 through November 30, no overnight camper in the Eastern High Peaks Zone shall fail to use bear-resistant canisters for the storage of all food, food containers, garbage, and toiletries ; or*

Text of proposed rule and any required statements and analyses may be obtained from: Kenneth Kogut, Regional Wildlife Manager, Department of Environmental Conservation, Region 5 Headquarters, Rte. 86, Box 296, Ray Brook, NY 12977, (518) 897-1200, e-mail: kxkogut@gw.dec.state.ny.us

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

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

Additional matter required by statute: A negative declaration has been prepared by the department pursuant to the State Environmental Quality Review Act.

Regulatory Impact Statement

1. Statutory Authority

Environmental Conservation Law (ECL) Section 1-0101 establishes the Legislature's policy on environmental conservation, including promoting conditions under which humans and nature can thrive in harmony, and preserving the unique qualities of the forest preserve system. ECL Section 3-0301 defines the general functions, powers and duties of the Department of Environmental Conservation (Department) and the Commissioner of Environmental Conservation. These include providing for the care, custody, and control of the forest preserve (ECL Section 3-0301[1][d]); promoting and coordinating the management of wildlife to assure their protection and balanced utilization (ECL Section 3-0301[1][b]); and administering properties with wilderness character (ECL Section 3-0301[1][p]). ECL Section 9-0105 provides that the Department shall have the authority to exercise care, custody and control of "several preserves" and other state lands within the Department's jurisdiction; and shall have the authority to make the necessary rules and regulations to establish proper enforcement of duties pertaining to the forest preserve.

2. Legislative Objectives

Collectively, the statutory authority for managing wildlife within the forest preserve and managing human use of forest preserve properties affirms the Legislature's objective to ensure responsible utilization of wildlife within the preserve, with particular care expected within designated wilderness areas. It is the clear policy of the Legislature to require the Department to carry out its duties in such a manner that the environmental quality of preserve lands are sustained and improved, while providing for healthy and enjoyable recreational opportunities that enable people to benefit from the environment.

3. Needs and Benefits

The purpose of the proposed regulation is to protect people from black bears in the Eastern High Peaks Wilderness Area (EHPWA) of the Adirondack Forest Preserve (AFP). It also will accomplish the objective of managing the black bear population to ensure that individual bears do not become dependent on people for food, thereby jeopardizing human safety and potentially requiring the killing of those bears.

Beginning in the 1970s, hikers and campers within the EHPWA reported an increasing number of potentially harmful encounters with black bears as bears sought to acquire food from people. The larger number of reported problem bear incidents coincided with an increase in public use of the EHPWA. The Department received complaints about bears breaking into tents and other shelters, damaging backpacks, and frightening people as bears closely approached to acquire food. The Department has attempted to curb these negative behaviors by adopting regulations addressing food and garbage handling by people, and installing cable systems in some areas to allow food supplies to be raised out of a bear's reach. At the same time, Department officials educated the public about the risks associated with bears, and ways of reducing negative bear behaviors.

Notwithstanding these efforts, problems have continued to grow in number and seriousness. In the summer of 2003, there were 170 reported bear encounters with campers where the bear either destroyed camping equipment, or otherwise obtained food from campers. In at least one instance, a hiker sustained physical injuries during an encounter with a bear that was trying to take the hiker's food bag.

The Department has concluded that it is necessary to take immediate action to change the behavior of both black bears and people in the EHPWA by adopting measures to break the cycle that causes black bears

to learn that people constitute a source of food. Failure to take this action will result in the perpetuation of negative bear/people interactions, putting both people and bears at risk.

Therefore, the Department proposes requiring the use of bear resistant food/garbage canisters by overnight campers in the EHPWA during the period of highest public use and bear activity, April 1 through November 30 when camping overnight. Similar regulations are now in place in a number of national parks in the western United States (*e.g.*, Yosemite National Park). Bear resistant canisters are available commercially in a variety of designs and costs. While the Department acknowledges that implementation of this regulation will require overnight campers in the EHPWA to either purchase or rent an acceptable bear resistant canister, it is imperative that black bear interactions with people be significantly reduced. The only practical means of doing so is to condition bears to learn that they are unable to acquire food from people. Bear resistant canisters are the only practical means of reducing bear/human contact, while retaining the ability of people to enjoy the wilderness character of the EHPWA.

Since the use of bear resistant canisters by overnight campers only will not entirely eliminate this problem, the Department will also initiate an intensive outreach campaign to educate overnight campers in the EHPWA about the importance of following the regulation, and the rationale supporting it. The Department's outreach campaign will involve all of the major stakeholders concerned about the environmental integrity of the Adirondack Forest Preserve, as well as organizations likely to use the EHPWA for both organized and individual excursions. Moreover, the Department has already initiated efforts to haze, negatively condition and, when necessary, remove bears from the population within the EHPWA.

4. Costs

The primary cost associated with this regulation is the acquisition of bear resistant canisters by overnight campers. Commercial sources market canisters for approximately \$70, and these are now available at many camping/sporting goods retailers throughout the Adirondacks and also through web-based internet merchants. Local outfitters, non-governmental organizations, and merchants are currently renting units for substantially less than this, some for as low as \$5 for the length of the camping trip. These low rental prices make compliance affordable for overnight campers.

5. Local Government Mandates

This rule making does not impose any cost, program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

6. Paperwork

The proposed rules do not impose additional reporting requirements upon the regulated public (hikers, campers, and other users of the EHPWA).

7. Duplication

There are no other local, state or federal regulations involving public use of the EHPWA. The administration of public use activity of the EHPWA is solely within the jurisdiction of the Department.

8. Alternatives

No Action: The Department could continue with the existing regulations and limited outreach efforts. However, these efforts have been ineffective over the past 15 years and do not address the increasing bear/human interaction problem.

Increase Outreach Efforts/Construct Many Cable Systems: The Department already intends to accelerate its public outreach efforts to help manage the problem of bear/human interactions. The Department has been working with the Wildlife Conservation Society to develop literature and hand-out materials to campers in the EHPWA. Cable systems in the EHPWA are considered a non-conforming use under the State Land Master Plan. The cable systems currently in place were intended only to be "experimental" and in use for a short duration. The agreement with the Adirondack Park Agency allowing for the installation of cables makes it clear that they were not to be permanently allowed in the EHPWA. All cables will be permanently removed by November 30, 2010. Problems associated with the cables include inadequate and costly maintenance of the cable systems and, perhaps more importantly, an apparent lack of ability by the public to use cables in a successful manner that consistently keeps bears from getting food. Surveys completed by the Department during the summer of 2004 show almost complete failure of the cable systems at protecting camper's supplies from bears.

Lethally Remove All Nuisance Bears from the EHPWA: It may be possible to kill all nuisance bears from the EHPWA using the Department's standard operating procedures for managing black bear problems for guidance. However, lethally removing a nuisance bear from the area

does not address the long term need to stop the cycle of bear habituation on human food sources. When a dominant nuisance bear is removed from the EHPWA, a second bear from another area will quickly fill its vacated territory. Without proper storage of food and garbage by campers, this new bear will also quickly learn to identify camper's food supplies as a readily available, high quality food source, and the nuisance bear cycle will be repeated.

9. Federal Standards

There are no federal government standards for the public use of the EHPWA.

10. Compliance Schedule

If adopted, the Department would seek to begin enforcement this regulation immediately upon its effective date. However, the Department's intensive outreach campaign has already started, and will continue up to and beyond the adoption date for the regulation. The campaign focuses on altering human behavior, with the expectation that black bear behavior will consequently also change. It will also focus on achieving public understanding and acceptance of the new regulation.

Regulatory Flexibility Analysis

The purpose of this proposed regulation is to protect people from black bears in the Eastern High Peaks Wilderness Area (EHPWA) of the Adirondack Forest Preserve (AFP). It also will accomplish the objective of managing the black bear population to ensure that individual bears do not become dependent on people for food, thereby jeopardizing human safety and potentially requiring the killing of those bears.

The proposed regulation will be administered and enforced solely by the Department of Environmental Conservation (Department). The terms of the rule require overnight campers to use bear resistant food canisters to store food supplies. The only persons directly affected by this rule will be overnight campers in the Eastern High Peaks Wilderness Area within the Adirondack Forest Preserve. Therefore, the Department has determined that this rule making will not impose an adverse economic impact on small businesses or local governments. The Department has also determined that this amendment will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments. Based on these findings, the Department has concluded that a regulatory flexibility analysis is not required.

Rural Area Flexibility Analysis

The purpose of this proposed regulation is to protect people from black bears in the Eastern High Peaks Wilderness Area (EHPWA) of the Adirondack Forest Preserve (AFP). It also will accomplish the objective of managing the black bear population to ensure that individual bears do not become dependent on people for food, thereby jeopardizing human safety and potentially requiring the killing of those bears.

The EHPWA is one of the most remote and rural parts of New York, and is a designated wilderness area of the Adirondack Forest Preserve. The area attracts a large number of outdoor and wilderness enthusiasts, primarily during the period from early spring to late fall. Black bears in this area have learned that food may often be obtained from overnight campers. The proposed regulation will require the use of bear resistant canisters by overnight campers during this period. The expected benefit of this regulation is two-fold: (1) Provide for a safer and more enjoyable outdoor experience. (2) Change the behavior of black bears so that they are more dependent on natural foods, thereby less habituated to people. Both of these benefits will enhance and reinforce the natural rural and wilderness character of the EHPWA.

The proposed regulation will be administered and enforced solely by the Department of Environmental Conservation (Department). The only persons directly affected by this rule will be overnight campers in the Eastern High Peaks Wilderness Area within the Adirondack Forest Preserve. Therefore, the Department has determined that these amendments will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, and that a rural area flexibility analysis is not required.

Job Impact Statement

The purpose of this proposed regulation is to protect people from black bears in the Eastern High Peaks Wilderness Area (EHPWA) of the Adirondack Forest Preserve (AFP). It also will accomplish the objective of managing the black bear population to ensure that individual bears do not become dependent on people for food, thereby jeopardizing human safety and potentially requiring the killing of those bears.

The terms of the rule require overnight campers to use bear resistant food canisters to store food supplies. No jobs or employment opportunities will be directly affected by this rule making. However, implementation of the regulation will have an indirect positive benefit on jobs that relate to

tourism and outdoor activities in the EHPWA. This regulation will enhance public safety and increase enjoyment of the EHPWA for recreational users by lessening problems associated with black bears in the EHPWA.

The Department of Environmental Conservation (Department) has determined that this rule making will not have a substantial adverse impact on jobs or employment opportunities. Therefore, a job impact statement is not required.

Department of Health

EMERGENCY RULE MAKING

Laboratory Confirmed Influenza

I.D. No. HLT-20-05-00025-E

Filing No. 477

Filing date: May 2, 2005

Effective date: May 2, 2005

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

Action taken: Amendment of section 2.1 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 225(4), (5)(a), (h), (i) and 206(1)(d) and (e)

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: Influenza causes respiratory illness affecting 5% to 20% of the U.S. population each year. Complications of influenza can be severe and lead to pneumonia, exacerbation of chronic medical conditions or death. The incidence of influenza is typically reduced by the widespread availability of influenza vaccine. The U.S. influenza vaccine supply for the 2004-05 influenza season has been reduced by half due to manufacturing problems. This season's shortage of influenza vaccine underscores the urgent need for public health officials to track the disease.

The typical New York state influenza season runs from October to March. As of January 7, 2005, 8 hospitals and 165 nursing home nosocomial outbreaks of influenza in the state have already been reported to the New York State Department of Health. The Centers for Disease Control and Prevention (CDC) monitors state influenza activity levels based on CDC defined criteria. Since December 11, 2004, influenza activity in New York State has been "widespread," meaning there is increased influenza-like illness (ILI) and/or institutional outbreaks (ILI or laboratory-confirmed) reported in at least half of the regions. New York State was the first state in the nation to report widespread activity this season.

The new reporting requirements will enable the NYSDOH to have more comprehensive and complete information on influenza cases and will permit the NYSDOH to systematically monitor influenza activity. This finer level of detail will enable us to detect earlier the geographic and temporal occurrence of influenza cases throughout the state. With time, we will be able to do season-to-season comparisons of the number of cases reported, by county and statewide, which will improve assessments of yearly variations in influenza activity. Moreover, if there is a pandemic or a novel or severe strain of influenza is detected, the enhanced data will permit decisions about disease control efforts to be made on a timely and more accurate basis. All of this information is of critical public health importance and will permit the State and local health departments to channel limited vaccines, anti-viral agents, and public health resources to those in greatest need during an influenza outbreak.

By adopting this rule, laboratory-confirmed influenza will be added to the list of communicable diseases. Immediate adoption of this rule is necessary for accurate identification and monitoring of laboratory-confirmed influenza.

Subject: Addition of laboratory confirmed influenza to the communicable disease reporting list.

Purpose: To enable the Department of Health to have more comprehensive and complete information on influenza cases and permit the State and local health departments to channel limited vaccines, anti-viral agents and

public health resources to those in greatest need during an influenza outbreak.

Text of emergency rule: Subdivision (a) of Section 2.1 is amended to read as follows:

Section 2.1. Communicable diseases designated: cases, suspected cases and certain carriers to be reported to the State Department of Health.

(a) When used in the Public Health Law and in this Chapter, the term infectious, contagious or communicable disease, shall be held to include the following diseases and any other disease which the commissioner, in the reasonable exercise of his or her medical judgment, determines to be communicable, rapidly emergent or a significant threat to public health, provided that the disease which is added to this list solely by the commissioner's authority shall remain on the list only if confirmed by the Public Health Council at its next scheduled meeting:

- Amebiasis
- Anthrax
- Arboviral infection
- Babesiosis
- Botulism
- Brucellosis
- Campylobacteriosis
- Chancroid
- Chlamydia trachomatis infection
- Cholera
- Cryptosporidiosis
- Cyclosporiasis
- Diphtheria
- E. coli 0157:H7 infections
- Ehrlichiosis
- Encephalitis
- Giardiasis
- Glanders
- Gonococcal infection
- Group A Streptococcal invasive disease
- Group B Streptococcal invasive disease
- Hantavirus disease
- Hemolytic uremic syndrome
- Hemophilus influenzae (invasive disease)
- Hepatitis (A; B; C)
- Hospital-associated infections (as defined in section 2.2 of this Part)
- Influenza (laboratory-confirmed)*
- Legionellosis
- Listeriosis
- Lyme disease
- Lymphogranuloma venereum
- Malaria
- Measles
- Melioidosis
- Meningitis
 - Aseptic
 - Hemophilus
 - Meningococcal
 - Other (specify type)
- Meningococemia
- Monkeypox
- Mumps
- Pertussis (whooping cough)
- Plague
- Poliomyelitis
- Psittacosis
- Q Fever
- Rabies
- Rocky Mountain spotted fever
- Rubella
- Congenital rubella syndrome
- Salmonellosis
- Severe Acute Respiratory Syndrome (SARS)
- Shigellosis
- Smallpox
- Staphylococcal enterotoxin B poisoning
- Streptococcus pneumoniae invasive disease
- Syphilis, specify stage
- Tetanus
- Toxic Shock Syndrome
- Trichinosis

Tuberculosis, current disease (specify site)
 Tularemia
 Typhoid
 Vaccinia disease: (as defined in Section 2.2 of this Part)
 Viral hemorrhagic fever
 Yersiniosis

* * *

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire July 30, 2005.

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

Regulatory Impact Statement

Statutory Authority:

Sections 225(4) and 225(5) (a), (h), and (i) of the Public Health Law (PHL) authorize the Public Health Council to establish and amend State Sanitary Code provisions relating to designation of communicable diseases dangerous to public health, and the nature of information required to be furnished by physicians in each case of communicable disease. PHL Section 206(1)(d) authorizes the commissioner to "investigate the causes of disease, epidemics, the sources of mortality, and the effect of localities, employments and other conditions, upon the public health." PHL Section 206(1)(e) permits the commissioner to "obtain, collect and preserve such information relating to marriage, birth, mortality, disease and health as may be useful in the discharge of his duties or may contribute to the promotion of health or the security of life in the state." PHL Article 21 requires local boards of health and health officers to guard against the introduction of such communicable diseases as are designated in the sanitary code by the exercise of proper and vigilant medical inspection and control of persons and things infected with or exposed to such diseases.

Legislative Objectives:

This regulation meets the legislative objective of protecting the public health by adding laboratory-confirmed influenza to reportable disease requirements, thereby permitting enhanced monitoring of disease, prompt identification of unusual strains of influenza or dramatic increases in disease reporting that might indicate an influenza pandemic, and authorizing isolation and quarantine measures, if necessary, to prevent further transmission.

Needs and Benefits:

A. Background

Influenza is an orthomyxovirus causing respiratory illness affecting 5% to 20% of the U.S. population each year. It is readily transmitted from person to person via respiratory droplets and contaminated surfaces. Persons may be able to infect others beginning one day before developing symptoms and up to seven days after onset of symptoms. Influenza can lead to severe complications including bacterial pneumonia, dehydration and worsening of chronic medical conditions, such as congestive heart failure, asthma or diabetes.

It is estimated that 1 to 3.8 million New York State residents are infected with influenza annually, resulting in approximately 13,000 hospitalizations and 2,350 deaths among New York State residents each year. During the 2003 – 2004 influenza season, there were reports from other states of increased pediatric deaths due to influenza. In New York State, reporting of pediatric deaths began mid-season and eight pediatric deaths were reported.

The New York State influenza season typically runs from October through March and as of January 7, 2005, 8 hospitals and 165 nursing homes in the state have reported nosocomial outbreaks of laboratory-confirmed influenza and 56 counties have indicated there is influenza in the community.

The spread of influenza may be prevented or significantly slowed by timely vaccination with the influenza vaccine. New York State, like the nation, has been faced with a severe vaccine shortage this year due to manufacturing problems. Approximately 6.5 million New Yorkers (2.7 million in New York City and 3.8 million in New York State, exclusive of New York City) have been identified as high priority for influenza vaccination this season according to October 5, 2004, national guidelines (these individuals include adults 65 years old and above, children 6 to 23 months old, pregnant women, persons with certain chronic diseases, caregivers of children less than 6 months old, and health care workers with direct patient contact). As a result of the vaccine shortage, more New York State re-

sidents than usual will not receive the vaccine and will be more likely to be susceptible to infection and illness, including hospitalization and death, and potentially transmit influenza to others who will be similarly susceptible.

In addition to the need to detect and target limited vaccine supplies and antiviral agents to those most at risk from an outbreak of influenza, public health officials are concerned about the growing potential for an international influenza pandemic and are particularly alarmed by the growing number of Asian countries that have reported outbreaks of highly pathogenic avian influenza in chickens and ducks, which has the capacity to jump the species barrier and cause severe disease, with high mortality, in humans.

Historically, influenza surveillance in New York State has relied on a variety of disparate, predominantly voluntary, reporting systems. These systems include: voluntary reporting by 13 virology labs in the state (because the patient's county of residence is not reported, information on geographic areas impacted in the state is lacking); voluntary weekly reporting of influenza-like illness, by age group, by 77 upstate and 45 New York City providers through the Sentinel Physician Influenza Surveillance (because other respiratory viruses are circulating and reports are not laboratory-confirmed, this system lacks specificity for influenza); and nosocomial outbreak reporting by hospitals and nursing homes as required by public health regulations.

The addition of laboratory-confirmed influenza to the State Sanitary Code will greatly enhance influenza reporting and surveillance efforts and enhance State and local health department abilities to target vaccine supplies and anti-viral agents when necessary. This regulation will permit the Department to require reporting from all disease reporters subject to Part 2 of the Sanitary Code. It is our intent to implement it by requiring reporting from a subset of these reporters unless disease outbreak conditions indicate the need for widespread reporting. This will permit adequate disease monitoring under current conditions without unnecessarily burdening the disease reporting system.

B. Reporting of Laboratory-Confirmed Influenza: Rationale for a Targeted Implementation Approach

Estimated Number of Laboratory-Confirmed Influenza Reports. As previously mentioned, approximately 1 million to 3.8 million New York State residents contract influenza annually. Not all persons with influenza seek medical attention, and not all persons with influenza who seek medical attention are tested for influenza. Given this reality, if it is conservatively assumed that 1 million New Yorkers will contract influenza and it is further assumed that only 5% of New Yorkers infected with influenza in a given year are tested and have positive results, approximately 50,000 laboratory and subsequent communicable disease reports would be generated yearly in New York State, including New York City. Clearly the estimate would be much higher, if the upper estimate of 4 million residents contracting influenza were used.

An alternative approach is to base New York's expected experience on Colorado which implemented influenza reporting in 2001 and received about 13,000 influenza laboratory reports annually. Extrapolating Colorado's experience to New York, it is estimated that New York State, including New York City, would receive approximately 55,000 reports annually.

Based on these calculations, it seems reasonable to assume that approximately 50-55,000 cases of laboratory-confirmed influenza cases are possible in a given year in New York State.

Impact on Providers, Laboratories and Local Health Departments (LHDs).

If reporting of laboratory-confirmed influenza is fully implemented, health care providers and laboratories will have to report the cases to the LHD, and the LHD, in turn, will have to report them to the New York State Department of Health (NYSDOH). All positive results reported to the LHD will be investigated, as is done with the other diseases on the communicable disease list in 10 New York Codes, Rules and Regulations (NYCRR) Section 2.1. The total number of communicable disease reports investigated would more than double from 30,000 statewide to the 80-85,000 reports, based on estimates in the previous section. The sheer volume of reports, during the six-month influenza season, and especially during periods of widespread influenza activity, would place an undue burden on providers, LHDs and the NYSDOH. Extra staff may have to be hired in order to generate, transmit, receive, and manage the tens of thousands of reports. While full reporting may be needed under certain conditions, e.g., if there is an avian influenza outbreak, the Department is presently planning on using a more targeted implementation.

At present, there are 219 laboratories currently offering influenza rapid testing and/or viral culture in New York State. Required laboratory data can be transmitted to the NYSDOH and LHDs through hard copy reports or, more recently, through an electronic clinical laboratory reporting system (ECLRS). ECLRS was implemented in New York State in 2001 on a voluntary basis and currently 94 out of the 219 laboratories offering influenza testing participate.

The objective of ECLRS is to automate the laboratory reporting process and, thereby, decrease the staff time required to submit the information and also improve the timeliness of reports. The ECLRS system automatically sorts the data by program area and disease and then routes the data to the proper local health department for follow-up. The NYSDOH provides laboratories with access to the ECLRS system at no cost. There are initial costs to laboratories such as internet access, Laboratory Information System (LIS) vendor support for possible file creation, and information technology at the laboratory. Minimal costs are incurred by NYSDOH.

Laboratories that are most efficiently and economically equipped to report influenza results are those that not only participate in ECLRS but also electronically upload daily test results (versus manual entry), and use a coding schema called Logical Observation Identifiers Names and Codes (LOINC). LOINC utilizes universal identifiers for laboratory and other clinical observations and automatically routes the test results to the appropriate disease control program. Twenty-five out of the 94 laboratories participating in ECLRS meet these criteria. Limiting the implementation of laboratory-confirmed influenza reporting to these 25 laboratories, at this time, maximizes the number of reports the NYSDOH will receive, while significantly diminishing the burden this requirement places on all providers, other laboratories, local health departments, and the NYSDOH. It should be noted that two of the 25 laboratories are large commercial laboratories that report 76% of all electronically reported communicable diseases; it is estimated that these two laboratories would report 42,000 influenza results with limited fiscal impact. The large sample of laboratory-confirmed influenza cases is sufficient for determining geographic and temporal trends.

C. Summary Description of Targeted Implementation Approach:

1) Laboratory-Confirmed Influenza Reporting through ECLRS using LOINC Coding. At least during the current influenza season, data reporting efforts will focus on laboratories that are reporting through the NYSDOH ECLRS using the file upload method and necessary LOINC coding system. At this time, medical providers do not need to report individual cases of influenza or submit a confidential case report (DOH-389) to the local health department except for pediatric influenza-related deaths (see #2 below). The data obtained will be useful for determining geographic and temporal trends.

The following two surveillance systems will assist in determining the severity of disease.

2) Pediatric deaths due to suspected or confirmed influenza: Medical providers shall report suspect or confirmed cases of fatal influenza in patients less than 18 years of age by telephone to the local health department.

3) Weekly Reporting of the number of patients hospitalized with laboratory-confirmed influenza: Hospitals shall report the number of confirmed influenza cases by age group among hospitalized patients. Reporting is to occur electronically via the Health Emergency Response Data System (HERDS) each Wednesday for the previous week ending Saturday midnight. This should include both community-acquired and nosocomial cases of influenza. The age groups are aggregated into the following categories: 0-23 months, 2 to 18 years, 19 to 64 years and greater than 64 years.

COSTS:

Costs to Regulated Parties:

The addition of all laboratory-confirmed influenza to the listing of reportable diseases could result in approximately 50-55,000 laboratory-confirmed influenza reports in New York State, including New York City. If fully implemented, the cost of this requirement will be moderate to significant, depending on the extent of each year's outbreak and the need to hire additional staff.

At this time, the Department plans to require reports of laboratory-confirmed influenza cases from (1) clinical laboratories that participate in ECLRS, electronically upload data and use LOINC coding; (2) clinicians who diagnose pediatric deaths, and (3) hospitals (most likely the infection control staff) that will report the number of persons with laboratory-confirmed influenza each week. The justification and cost analysis for each is discussed below.

1. Clinical laboratories will be required to report if they are enrolled in ECLRS, electronically upload data files and use LOINC coding. Limiting this reporting requirement to the 25 such laboratories maximizes the number of reports the NYSDOH will receive (at least 48,000), while significantly diminishing the burden this requirement places on laboratories, local health departments and the NYSDOH. Because these laboratories already report through this existing electronic system, the cost will be minimal to the laboratories to make the modest programming changes required.

2. Providers will be required to report suspected or confirmed influenza-associated pediatric deaths. Influenza-associated pediatric deaths received considerable attention last year, prompting the federal Centers for Disease Control and Prevention to request state and local health departments to report influenza-associated death in persons less than 18 years of age. Most of the children who died last year were less than 5 years of age. Because no similar national data were collected previously, any change in the number of pediatric deaths is unknown. With the increased reports of pediatric deaths in 2003, the Council of State and Territorial Epidemiologists approved a resolution to add pediatric influenza-associated deaths to the list of nationally notifiable conditions in June 2004.

Since only eight pediatric deaths were reported in NYS, including NYC, in 2003-2004, it is not anticipated that this reporting requirement will place an undue burden on providers.

3. Hospitals will be required to report the number of hospital admissions related to laboratory-confirmed influenza using the Health Emergency Response Data System (HERDS). HERDS is a secure data system designed to allow the NYSDOH to identify and monitor select public health incidents as they occur in hospitals. The NYSDOH used HERDS for disease surveillance and control for the first time last year to monitor pediatric influenza morbidity and mortality. HERDS is provided free of charge to hospitals by NYSDOH. All hospitals have access to HERDS and experience using it. It is anticipated that reporting of influenza confirmed hospital admissions through HERDS will have a negligible impact on hospitals. Only weekly reporting of aggregate data by age groups will be requested from hospital infection control practitioners, *i.e.*, individual case reports are not being requested.

Costs to Local and State Governments:

The staff who will be involved in reporting and tracking influenza at the State and local health departments are the same as those currently involved with other communicable diseases listed in 10 NYCRR Section 2.1. If reporting requirements were implemented across all providers, additional staff would need to be hired. The time expended by a local health department to investigate an influenza case is estimated to be at least 15 minutes to receive the report, obtain any missing information, and enter the report into the surveillance data system. Based on this estimate, it would add 18,000 person-hours to complete the additional reports. The equivalent of a public health representative (grade 16) would be needed to complete the investigation (90% of the estimated time – 16,200 hours) and a keyboard specialist (grade 6-9) would be needed to data enter the report (10% of the estimated time – 1,800 hours).

Targeted implementation should have a minimal impact on local and state governments associated with these requirements since the reports submitted through ECLRS are automatically generated into reports, hospital admissions are reported electronically through HERDS, and pediatric deaths are few in number. Case investigations would be done on pediatric deaths only, which are anticipated to be very low in number. Hospitalizations and laboratory-positive reports would not have case investigations conducted by the LHD.

By monitoring and preventing the spread of influenza, savings may include reducing costs associated with public health control activities, morbidity, treatment and premature death.

Costs to the Department of Health:

The NYSDOH already checks communicable disease reports for accuracy and transmits them to the federal Centers for Disease Control and Prevention. The addition of laboratory-confirmed influenza to the list of communicable diseases should not lead to substantial additional costs. Even if fully implemented across all providers, existing staff should be able to handle the workload. Targeted implementation will require some modifications by the NYSDOH to the electronic database querying systems, but the work required should be limited in scope and time required and will be handled by existing staff.

Paperwork:

The existing general communicable disease reporting form (DOH-389) will be revised. This form is familiar to and is already used by regulated parties. The DOH-389 and an approximately 2-page supplemental CDC

form will be used only on pediatric deaths. Reporting of hospitalizations will use an electronic data entry screen on HERDS for aggregate reporting.

Local Government Mandates:

Under Part 2 of the State Sanitary Code (10 NYCRR Part 2), the city, county or district health officer receiving reports of laboratory-confirmed influenza will be required to immediately forward such reports to the State Health Commissioner. Targeted implementation will require the local health officer to forward only reports received from physicians in attendance on cases of pediatric death associated with laboratory-confirmed influenza.

Duplication:

There is no duplication of this initiative in existing State or federal law.

Alternatives:

Voluntary reporting is existing practice in New York State. However, recent experience during the influenza vaccine shortage and concern about an influenza pandemic make reporting of cases of laboratory-confirmed influenza of critical importance to public health. Laboratories in twenty-eight states are legally required to report influenza. In addition, 16 states currently require reporting of pediatric deaths and 3 states mandate reporting of hospital admissions with laboratory-confirmed influenza.

Federal Standards:

Currently there are no federal standards requiring the reporting of all influenza. The Centers for Disease Control and Prevention (CDC), and the Council of State and Territorial Epidemiologists (CSTE) recommend the reporting of pediatric deaths caused by influenza.

Compliance Schedule:

Reporting of laboratory-confirmed influenza will be mandated upon filing of a Notice of Emergency Adoption of this regulation with the Secretary of State and made permanent by publication of a Notice of Adoption of this regulation in the New York *State Register*.

Regulatory Flexibility Analysis

Effect on Small Business and Local Government:

This proposed rule will apply to physicians, hospitals, nursing homes, diagnostic and treatment centers and clinical laboratories. There are approximately 65,000 licensed and registered physicians in New York State; it is not known how many of them practice in small businesses. There are 219 laboratories currently offering influenza rapid testing and/or viral culture in New York State. Three hospitals, 100 nursing homes, 237 diagnostic and treatment centers, and 25 or fewer laboratories offering influenza testing employ less than 100 persons and qualify as small businesses.

Full implementation would require reporting of laboratory confirmed influenza by all such entities to the local health department in New York City and in the other 57 counties of the State.

Targeted implementation will minimally impact clinical laboratories since, at this time, it would be limited to laboratories that participate in ECLRS, electronically upload data files and use LOINC coding. The effect of targeted implementation on other small businesses (hospitals, clinics, nursing homes, and physicians) should be moderate given that hospitals will need to report weekly through HERDS. There should be little impact on small businesses and local governments from reporting pediatric deaths since they are very limited in number.

Compliance Requirements:

Existing reporting forms will be revised. Clinical laboratories that are small businesses will utilize the revised NYSDOH electronic reporting format.

Professional Services:

If this requirement is fully implemented, additional professional staff might be required on a seasonal basis to complete the required forms manually and mail to the local health department. The need for additional staff would be dependent on the extent of each year's outbreak.

No additional professional services will be required for targeted implementation since certified laboratories participating in ECLRS, electronically uploading data files, and using LOINC codes are expected to be able to utilize existing staff to report laboratory-confirmed influenza.

Compliance Costs:

No initial capital costs of compliance are anticipated.

If fully implemented, the cost of complying with required reporting will be dependent on the extent of the outbreak and include staff time to complete the necessary forms and mail to the respective local health department.

The reporting of laboratory-confirmed influenza by certified laboratories that already participate in ECLRS and electronically upload data files will not result in significant compliance costs.

Reporting of pediatric deaths or influenza hospital admissions should have a negligible to modest effect on the estimated cost of disease reporting by hospitals.

The annual cost of compliance will be determined by the extent of any outbreak.

Minimizing Adverse Impact:

The NYSDOH recognizes the workload and cost involved if all aspects of the requirement to report laboratory confirmed influenza were implemented because of the potential volume of reports.

Use of existing data collection and reporting systems (hardware and staff) will minimize adverse impact. In addition, targeted implementation will also minimize adverse impacts by limiting the reporting of laboratory-confirmed influenza cases to clinical laboratories that currently participate in ECLRS, electronically upload data files and use LOINC coding, providers reporting pediatric deaths, and hospitals reporting the number of hospital admissions for laboratory-confirmed influenza.

The approaches suggested in the State Administrative Procedure Act Section 202-b(1) were rejected as inconsistent with the purpose of the regulation.

Feasibility Assessment:

Use of existing reporting systems makes this proposal technologically feasible. Targeted implementation at this time, will ensure economic feasibility. It is anticipated that the reporting requirement will be fully implemented only if disease conditions require it.

Small Business and Local Government Participation:

Local governments have been consulted in the process through ongoing communication on this issue with local health departments and the New York State Association of County Health Officers (NYSACHO).

Rural Area Flexibility Analysis

Effect on Rural Areas:

The proposed rule will apply statewide. It is assumed that the distribution of laboratory-confirmed influenza will be approximately the same across the state (proportional to the population density), although outbreaks do occur at varying times and in differing locations throughout the state throughout the influenza season of October to March.

Compliance Requirements:

Compliance requirements are the same in rural areas as those in all other areas of the state. Existing reporting forms will be revised. Clinical laboratories will use the revised NYSDOH electronic reporting format.

Professional Services:

If this requirement is fully implemented, additional professional staff may need to be hired on a seasonal basis to complete the required forms and mail to the county health department. The targeted implementation of this requirement should not result in the need for additional professional services; rural providers are expected to use existing staff to comply with the requirements of this regulation.

Compliance Costs:

No initial capital costs of compliance are anticipated. See cost statement in Regulatory Impact Statement for additional information. The annual cost of compliance will be determined by the extent of any outbreak.

Minimizing Adverse Impact:

Adverse impacts have been minimized since familiar forms and reporting staff will be utilized by regulated parties. The approaches suggested in State Administrative Procedure Act Section 202-b(2) were rejected as inconsistent with the purpose of the regulation.

Rural Area Input:

The New York State Association of County Health Officers (NYSACHO), including representatives of rural counties, has been informed about this change and has voiced no objections.

Job Impact Statement

This regulation adds laboratory-confirmed influenza to the list of diseases that clinical laboratories, clinicians, and hospitals must report to public health authorities. If fully implemented, these facilities may need to increase staff on a seasonal basis. Targeted implementation should not significantly increase the demands on existing staff nor increase the need to hire additional staff for laboratories, hospitals, and providers. The NYSDOH has determined that this regulatory change will not have a substantial adverse impact on jobs and employment.

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

Perinatal Regionalization

I.D. No. HLT-21-04-00011-RXC

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

Revised action: Amendment of sections 405.21, 407.14, 708.2, 708.5 and 711.4 and addition of Part 721 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2500, 2800, 2803 and 2803-j

Subject: Perinatal regionalization.

Purpose: To update standards for perinatal designation of obstetrical hospitals and consolidate standards for perinatal regionalization.

Expiration date: August 24, 2005.

Substance of revised rule: The proposed regulatory changes update existing requirements for maternal and newborn care, aggregate perinatal regionalization and designation requirements and new Part 721 is being added to collect in one section all the regulations governing the perinatal regionalization system, which are currently divided among several sections of the New York State Hospital Code ("Hospital Code"). The proposed regulatory changes also describe what kinds of resources should be available for different levels of hospitals, and delete outdated appropriateness review standards used in the 1985 designation of hospitals at different levels of high risk neonatal care.

Section 405.21 for hospital-based perinatal services is being amended to support perinatal regionalization efforts and to clarify and simplify some other existing regulatory requirements.

Sections 407.14, 711.4(d)(21) and (e)(10) are being amended merely to reflect the change in terminology in section 405.21 in which hospital-based "maternity and newborn" services are now being referred to as "perinatal" services.

Section 708.2(b)(6) and Section 708.5(f) are repealed since new Part 721 will integrate the requirements for perinatal re-designation and regionalization in one section.

Part 721 defines the perinatal regionalization system including requirements for affiliation agreements between Levels I, II and III hospitals and regional perinatal centers (RPCs), staffing requirements and quality improvement activities. The regulations will formalize the designation process, update the Department of Health expectations for resources to be available at each level of care, and clarify the relationship between Levels I, II, and III programs and RPCs.

Revised rule compared with proposed rule: Substantial revisions were made in sections 405.21(b)(9), (11), (c)(5), (d)(2), (e)(3), (f)(3), (5), (g)(2), (h)(3), (o)(2), 721.2(f), 721.4(b), 721.7(b), 721.8(b) and 721.9(a).

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

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

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

Statutory Authority:

These regulations are authorized pursuant to Public Health Law (PHL) Sections 2500, 2800, 2803, 2805-j and 2805-m.

Legislative Objectives:

Section 2500(1) of the PHL authorizes the Commissioner to oversee care in hospitals ". . . in matters pertaining to the safeguarding of motherhood and the prevention of maternal, perinatal, infant and child mortality, the prevention of diseases, low birth weight, and defects of childhood and the promotion of maternal, prenatal and child health, including care in hospitals." Section 2803(2) of Article 28 of PHL authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations subject to the approval of the Commissioner to effectuate the provisions and purposes of Article 28.

A primary legislative objective of Article 28 of PHL is "the protection and promotion of the health of the inhabitants of this State." PHL § 2800, provides *inter alia*, that, "the Department shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services." Those statutes authorize the Commissioner to establish regulatory standards to promote quality maternal, child and infant health care and to prevent maternal, perinatal, infant, and child mortality and low birth weight, including the care these populations receive in hospital settings.

Public Health Law Section 2805-j requires hospitals to maintain coordinated programs for the identification and prevention of malpractice.

Public Health Law Section 2805-m requires that such programs' information shall be kept confidential and are subject to strict disclosure restrictions.

Needs and Benefits:

The Department has established regulatory standards to promote quality care for women and infants in hospitals throughout the state set forth at:

Section 405.21 – Maternity and newborn services;

Part 407- Primary care hospitals – minimum standards; and,

Section 711.4 – General structural, equipment and safety standards for existing hospitals.

To enhance the quality of appropriate levels of care provided to newborns, the Department implemented a system for regionalization of hospitals providing obstetrical services. In the previous regionalization system, which, up until the recent perinatal designations of all obstetrical hospitals, had been in place since 1985, hospitals had a designation of one of four levels (Level I – Basic care; Level II – Specialty care; Level III – Subspecialty care; and, Regional Perinatal Center ("RPC")). The designations were intended to reflect each hospital's capacity to manage high-risk pregnancies and/or treat mothers and babies who need extraordinary care. The designations were based on a neonatal designation, which reflected the ability of the facility to provide services to neonates (*i.e.*, newborns up to twenty-eight days of age). All Level I through Level III hospitals are affiliated with an RPC to ensure timely access to the continuum of specialized care needed. Additionally, RPCs provide a quality improvement function for all affiliates.

Since 1985, significant changes in perinatal health have directly impacted hospital designations. Changes include an increase in the availability of neonatologists statewide, advances in technology which increase hospitals' capabilities for caring for at-risk neonates, and changes in hospital affiliations and corporate relationships.

Research strongly supports a shift from the concept of neonatal designation to perinatal regionalization to ensure the highest quality care for mothers and infants. Yeast JD, Poskin M, Stockbauer JW, Shaffer S. Changing patterns in regionalization in perinatal care and the impact on neonatal mortality. *American Journal of Obstetrics and Gynecology* (1998) 178 (Pt 1): 131-5. Richardson DK, Reed K, Cutler JC, Boardman RC, Moynihan T, Driscoll J, Raye JR. Perinatal regionalization versus hospital competition: the Hartford example. *Pediatrics* (1995) 96 (Pt 1): 417-23. Perinatal regionalization takes into account factors which enhance quality of care for mothers, as well as newborns. Studies of appropriate patient volume and level of Neonatal Intensive Care Unit ("NICU") care at the hospital of birth shows that regionalization has significant effects on neonatal mortality. Powell SL, Holt VL, Hickok DE, Easterling T, Connell FA. Recent changes in delivery site of low-birth-weight infants in Washington: impact on birth weight-specific mortality. *American Journal of Obstetrics and Gynecology* (1995) 173(5): 1585-92. Cifuentes J, Bronstein J, Phibbs CS, Phibbs RH, Schmitt SK, Carlo WA. Mortality in low birth weight infants according to level of neonatal care at hospital of birth. *Pediatrics* (2002) 109: 745-751. Menard MK, Liu Q, Holgren EA, Sappenfield WM. Neonatal mortality for very low birth weight deliveries in South Carolina by level of hospital perinatal service. *American Journal of Obstetrics and Gynecology* (1998) 179(2): 374-81 Bode MM, O'Shea TM, Metzger KR, Stiles AD. Perinatal regionalization and neonatal mortality in North Carolina, 1986-1994. *American Journal of Obstetrics and Gynecology* (2001) 184(6):1302-7.

Women transported to appropriate levels of care prior to delivery also experience a lower rate of morbidity and mortality. A study of maternal mortality in New York found that a frequent contributing factor was lack of high-level care for women with serious underlying illnesses and/or pregnancy complications. *Maternal Mortality in New York State: A Final Report on the New York State Maternal Mortality Review – Executive Summary*. Recent studies suggest that transfer of infants in utero to appropriate levels of care results in significant reductions of infant morbidity and mortality and a decrease in costs for neonatal care Schlossman PA, Manley JS, Sciscione AC, Colmorgen GHC. An analysis of neonatal morbidity and mortality in maternal (in utero) and neonatal transport at 24-34 weeks gestation. *American Journal of Perinatology* (1997) 14:449-56.

Previously, the designation levels were based solely on newborn criteria extracted from information collected in 1985. The coordination of perinatal care in each region of the state must be optimized to ensure that pregnant women, new mothers, and their newborns receive care at settings appropriate to their needs. The Department of Health has completed the process of updating and refining responsibilities of the perinatal regionalization system for hospitals providing perinatal services statewide. This effort will result in greater access to more appropriate levels of care for

pregnant women and newborns, and strengthen the relationships of the RPCs and affiliative hospitals for purposes of quality improvement.

In order to support this effort, several sections of the current regulations require revision or consolidation as follows:

Section 405.21, which governs hospital-based perinatal services, is amended to update terminology and requirements for affiliation agreements between Levels I, II and III hospitals and RPCs and to clarify and simplify other existing regulatory requirements. Subdivision (b), paragraph 6 of section 708.2 and subdivision (f) of section 708.5 are repealed since the new Part 721 integrates the requirements for perinatal re-designation and regionalization in one section.

New Part 721 is added to consolidate all regulations governing the perinatal regionalization system, which are currently divided among several sections of the Hospital Code. The regulations will formalize the designation process, update expectations for resources to be available at each level of care, and clarify the relationship between each level and RPCs. New Part 721, entitled "Perinatal Regionalization System," articulates responsibilities of regional perinatal centers and their perinatal affiliates including responsibilities for regional quality improvement activities.

Section 407.14 and paragraphs (d)(21) and (e)(10) of section 711.4 are amended to reflect the change in terminology in section 405.21 in which hospital-based "maternity and newborn" services are being referred to as "perinatal" services.

Failure to adopt these regulations will negatively impact the ability of the Department to improve maternal and infant mortality and morbidity.

Background:

Significant efforts have been made by the Bureau of Women's Health to obtain meaningful input into this process by key stakeholders and other interested parties. An Ad Hoc Work Group on Perinatal Regionalization was convened to advise the Department about the impact of managed care on perinatal regionalization. Its thirty-three members included pediatricians, neonatologists, obstetricians, and hospitals, managed care plans, and other organizations concerned with perinatal health around the state. Organizations involved included the Greater New York Hospital Association, Healthcare Association of New York State, Medical Society of the State of New York, State Senate, NYS HMO Council, NYS Perinatal Association, District II of the American College of Obstetricians and Gynecologists, American Academy of Pediatrics, and American College of Nurse-Midwives. The Work Group advised the Department about revising the regionalized perinatal care system, particularly in light of the growth of managed care.

As a result of the advice of the Ad Hoc Work Group, the Department convened a second work group called the Work Group on Perinatal Re-designation in late 1997. Its charge was to implement the recommendations of the Ad Hoc Work Group, including the development of draft regulations, revising the current maternal and newborn section of the Hospital Code, and to add new regulations designed to implement re-designation and a statewide perinatal data system. Its members include neonatologists, obstetricians, hospital administrators, representatives of professional organizations, and representatives of the Greater New York Hospital Association, the Healthcare Association of New York State, and Nassau-Suffolk Hospital Council.

These proposed modifications to the regulations are also based on the current edition of the widely recognized professional standards of care, "Guidelines for Perinatal Care, 4th Edition," published by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists and input from the aforementioned workgroups. DOH has also obtained expert advice from neonatologists, obstetricians, midwives, obstetric anesthesiologists, and hospital administrators. These key stakeholders have had the opportunity to provide input into the development and revisions of regulatory language and the process to implement regulatory requirements.

The concept of perinatal regionalization has widespread acceptance from both health care providers and patient advocates. Regionalization has contributed to the decrease in newborn mortality over the past two decades. The proposed standards reflect existing, generally accepted, standards of care. Specific provisions will continue to be subject to review and input from obstetricians, pediatricians, hospital representatives, midwives, nurses and a wide range of other interested parties.

Costs:

Costs for the Implementation of and Compliance with the Regulations to Regulated Entities:

There should not be a negative fiscal impact on hospitals since the primary intent of the regulations is to update and reorganize current regulations dealing with perinatal services in hospitals, rather than make them

more stringent. Further, hospitals have the ability to apply for a designation that is consistent with the hospital's existing capabilities and current practices, thus resulting in little or no impact on a hospital's cost of providing these services. For some hospitals, this will have a positive impact because they will be able to apply for a higher level perinatal designation resulting in their eligibility for the higher reimbursement rates established for high-risk mothers and newborns. Hospital reimbursement is centered around Diagnosis Related Groups (DRGs), a classification system used to categorize patient discharge information into meaningful groupings. The criteria used to select a DRG includes the principal diagnosis, secondary diagnosis, operating room procedures, the presence of absence of comorbidity and/or complication, age, and discharge status. The concept behind DRGs is that higher levels of reimbursement will be received for more seriously ill patients.

Regionalization will promote the process of lower level hospitals transferring high-risk mothers and newborns to facilities with the capability to treat them, rather than attempting to manage such cases in-house. These transfers will lead to improved outcomes and reduce the incidence of preventable complications that require expensive, extraordinary services. Regionalization should also contribute to more effective management of complex cases and reduced costs through quality improvement. Hospitals receive enhanced reimbursement to provide care to high-risk mothers and newborns based on the DRGs, *i.e.*, the more intense the level of service the higher the reimbursement. In addition, RPCs will receive a grant from the Department to cover certain costs of their added region wide quality improvement responsibilities, depending upon the availability of funding.

Costs to State and Local Governments:

There will be no additional costs to State or local government. RPCs already receive grants from the Department to help cover certain costs of their added region wide quality improvement responsibilities on an annual basis, depending upon the availability of funding so this will not add to the current costs to the state. Currently, this funding is provided by the Commissioner's Priority Pool fund.

Costs to the Department of Health:

The cost of designating hospitals has already been absorbed by the Department using existing resources. The statewide redesignation process was completed in March, 2003. Monitoring activities do not significantly increase the Department's current oversight responsibilities with regard to perinatal services in hospitals.

Paperwork:

Periodically, hospitals must complete questionnaires to enable the Department to determine appropriate perinatal designation. The information included in questionnaires will be similar to information currently required for neonatal special care designation under current section 708.5(f) of Title 10.

All Level I, II and III perinatal care hospitals must have perinatal affiliation agreements with a designated RPC that meet the criteria as contained in regulation. This agreement shall include criteria, policies and procedures for transfer of patients, criteria and process for consultation, provisions for cooperation in outreach, education, training and data collection activities, and provisions for participation in the statewide perinatal data system.

Finally, if two or more hospitals jointly sponsor an RPC, they must define in a written agreement between or among the hospitals comprising the RPC how the functions and responsibilities of the RPC will be implemented.

Neither of these presents an undue burden to any hospital. All Level I, II and IIIs have current affiliation agreements with an RPC. These agreements will need to be updated to ensure all requirements as stipulated in regulation are included in the agreement. The only hospitals currently comprising a joint RPC are Mt. Sinai Hospital and New York University Hospitals Center as well as Bellevue Hospital Center and Jacobi Medical Center.

Local Government Mandates:

These amendments do not impose any new program, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Duplication:

These regulations do not duplicate any other State or federal law or regulation.

Alternatives:

Regulatory changes are necessary to implement and support perinatal regionalization, which is critical to the effective organization and delivery of perinatal services statewide. Existing regulations are not consistent with current standards of care and do not reflect the current structure of the

health care system. In updating the regulations, DOH considered placing standards for the program in section 405.21, currently entitled "Maternity and Newborn Services." The Department subsequently decided to move the standards into a new Part 721 so that the standards describing development and implementation of perinatal regionalization and perinatal services could be viewed as discrete and distinct from the minimum day-to-day operating standards contained in Part 405.

Federal Requirement:

These regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas. Since federal Medicare Conditions of Participation do not address perinatal services, there are no comparable federal requirements in this area. Perinatal regionalization will, however, help New York to meet Healthy People 2010 maternal and infant health goals established by the US Department of Health and Human Services.

Compliance Schedule:

The proposed regulation will become effective upon publication of a Notice of Adoption in the State Register. The voluntary statewide redesignation effort was completed in March 2003. It is anticipated that all hospitals will be in significant compliance by January 1, 2005.

Revised Regulatory Flexibility Analysis

Pursuant to section 202-b of the State Administrative Procedure Act, a Regulatory Flexibility Analysis is not required. These amendments will assist DOH and hospital-based perinatal care programs in the establishment and maintenance of a perinatal regionalization program. They will promote high quality perinatal care statewide by recognizing the appropriate level of care that can be provided by each hospital and will facilitate the movement of patients into facilities that can meet their needs. They will also promote inter-hospital cooperative efforts designed to optimize the quality of care provided at each facility.

The proposed rules will not impose adverse economic impact on small businesses or local governments in New York State and will not impose any additional recordkeeping, reporting or other compliance requirements. Out of the eight hospitals in the state employing less than 100 people, none of them provide obstetrical services. A total of 14 hospitals are either state, county or New York City sponsored hospitals. Out of these, four are RPCs, eight are Level IIIs, one is a Level II and one is a Level I. The RPCs will receive a grant from the Department to cover certain costs of their added region wide quality improvement responsibilities, depending upon the availability of funding. Hospitals will need to update their current perinatal affiliation agreements and complete perinatal designation questionnaires as requested. Both documents are similar to paperwork currently required of facilities and do not present an undue burden.

Revised Rural Area Flexibility Analysis

Pursuant to section 202-bb of the State Administrative Procedure Act, a Rural Area Flexibility Analysis is not required. These amendments will assist DOH and hospital-based programs in the implementation and maintenance of a perinatal regionalization system. This system will be particularly beneficial to rural areas. Rural maternity patients and newborns who have or who develop special care needs will have these needs addressed systematically in the most appropriate setting, and small rural hospitals will have improved access to assistance from a regional perinatal center in meeting their training and quality improvement needs. Perinatal regionalization also includes formalized transfer criteria and protocols to assure the optimal use of such transfers. The proposed regulations also include flexibility to ensure rural areas with potentially limited resources will not be adversely impacted by the re-designation process. Section 721.3(a)(6) states that the department shall consider the geographic distribution of designated hospitals to ensure access to appropriate levels of care. This is especially relevant in rural areas of the state where services tend to be limited. The proposed regulations will have no negative impact on any affected parties. The proposed rules will not impose adverse economic impact on rural areas in New York State and will not impose any additional recordkeeping, reporting or other compliance requirements on rural areas. Hospital will need to update their current perinatal affiliation agreements and to complete perinatal designation questionnaires as requested. Both documents are similar to paperwork currently required of facilities and do not present an undue burden.

Revised Job Impact Statement

A Job Impact Statement is not included because the regulations will not have a substantial adverse impact on jobs and employment opportunities. In fact, enhanced employment opportunities at hospitals designated as regional perinatal centers may exist. These hospitals may increase staff in the areas of training, outreach, data analysis, and quality improvement since they provide support in these areas for their perinatal affiliates.

Summary of Assessment of Public Comment

A total of 47 entities submitted public comments (18 were from midwives or organizations representing midwives). A majority of the comments pertained to current regulation. Many of these suggested revisions were not made as the comments were either made by only one entity and/or was not seen as clarifying the regulatory requirement or resolving an issue with current language. The midwives suggested that regulatory protection be afforded to out-of-hospital births. Since these suggestions did not pertain to the topic of these regulations, *i.e.*, hospitals, these changes were not made. Minor language changes were made to reflect more accurate terminology. For example, in Section 405.21(b)(11) in the definition of Neonatal Intensive Care Unit (NICU), the phrase "infants who require extraordinary care" was revised to read "infants who require specialized care." A definition of quality improvement was added as Section 405.21(b)(23) for clarity. The term "quality assurance" was changed throughout the regulations to "quality improvement" for consistency and accuracy.

Several commenters also suggested that the definition of Level I and II perinatal care hospitals be revised to provide greater flexibility to meet patient needs and regional needs. The revision was unnecessary as that flexibility is already provided in Section 721.4(a)(5). Several comments were also received regarding representatives of an RPC participating as members of an affiliate's quality assurance committee and the confidentiality of patient information. Additional language was added to Section 405.21(d)(2)(v)(d) and 721.10(a) (now 721.9(a)) to clarify that RPC representatives may only access confidential information for quality assurance purposes through their roles on the affiliate hospital's quality assurance committees as set forth in affiliation agreements and the regulations and that quality assurance committee members must maintain the confidentiality of patient information and are subject to the confidentiality restrictions of Public Health Law Section 2805-m.

Comments were also received regarding the qualifications of neonatologists and maternal fetal medicine specialists at Level I, II, III hospitals or RPCs. Previously, the requirements stated that neonatologists or maternal-fetal medicine specialists must be board certified or have "equivalent training and experience." During the redesignation process this was defined as having successfully completed a fellowship in maternal fetal medicine or in neonatal medicine, and these changes were therefore made in Sections 721.5(b) and Section 721.6(c). One commenter also requested the addition of language requiring maternal fetal medicine specialists and neonatologists to be on-site within 20 minutes 24 hours per day to provide necessary services at Level IIIs and RPCs. This language was added to Section 721.6(c) as it clarifies the requirement and mirrors the requirement included in the same section regarding the response time for general pediatricians and general obstetricians. This standard is also consistent with the criteria used by the Department during the perinatal redesignation process.

The published language in Section 721.10(a)(1) (now 721.9(a)(1)) contains a listing of quality information that the RPC would review during the course of quality improvement reviews of affiliate hospitals. Based on comments received, the language was revised to provide greater flexibility in quality improvement reviews based on the needs of the RPC and the affiliate hospital.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Long Term Ventilator Beds

I.D. No. HLT-20-05-00023-P

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

Proposed action: Addition of section 709.17 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)(a)

Subject: Long term ventilator beds.

Purpose: To promulgate a need methodology for long term ventilator beds in residential health care facilities.

Text of proposed rule: A new section 709.17 is added to Part 709 to read as follows:

Section 709.17 Long-term ventilator beds

(a) This methodology will be utilized to evaluate certificate of need applications for the certification of long-term ventilator beds, which are operated in residential health care facilities for individuals experiencing respiratory failure who can be treated through mechanical ventilation. It is the intent of the State Hospital Review and Planning Council that this methodology, when used in conjunction with the planning standards and

criteria set forth in section 709.1 of this Part, become a statement of planning principles and decision making tools for directing the distribution of long-term ventilator beds. The goals and objectives of the methodology expressed herein are expected to ensure that an adequate number of long-term ventilator beds are available to provide access to care and avoid the unnecessary duplication of resources.

(b) The factors for determining the public need for long-term ventilator beds shall include, but not be limited to, the following:

(1) The planning areas for determining the public need for long-term ventilator beds shall be the designated health systems regions.

(2) The number of long-term ventilator beds in each health systems region required to meet the public need shall be determined by dividing the projected annual patient days for the service by three hundred and sixty-five (365), and dividing the result by 0.95 to allow for a ninety-five percent occupancy rate. The projected long-term ventilator patient days used in this calculation shall be determined as follows:

(i) The annual number of potential candidates for long-term ventilator beds shall be determined by calculating the total number of annual general hospital discharges in the planning area for DRG 475 (respiratory system diagnosis with ventilator support), plus an additional ten percent, and multiplying the resulting figure by 0.32.

(ii) The number of potential candidates for long-term ventilator beds shall be multiplied by a 125-day length-of-stay to project the annual number of patient days for long-term ventilator patients.

(3) The review of certificate of need applications will consider the documented referral patterns in the planning area, the expected length-of-stay based on the case-mix of long-term and short-term patients, the ability of the applicant to successfully wean ventilator patients, and the ability and commitment of the applicant to accept the difficult-to-place ventilator patients (e.g. ventilator patients with hemodialysis needs or patients with bacterial infections).

(4) The long-term ventilator bed need methodology will be reviewed within three years from the effective date of this section.

(c) (1) The bed need estimates developed pursuant to subdivision (b) of this section shall constitute the public need for ventilator beds in the planning area subject to further adjustments in accordance with subdivision (d) of this section.

(2) Notwithstanding that there is an indication of need in a planning area for additional long-term ventilator beds as determined in accordance with subdivision (b) of this section, there shall be a rebuttable presumption that there is no need for any additional long-term ventilator beds in such planning area if the overall occupancy rate for existing long-term ventilator beds in such planning area is less than 95 percent based on the most recently available data. It shall be the responsibility of an applicant in such instances to demonstrate that there is a need for additional long-term ventilator beds despite the less than 95 percent occupancy rate in the planning area utilizing the factors set forth in subdivision (d) of this section.

(3) The Department shall evaluate the appropriateness of the 95 percent occupancy threshold criterion in this section, based on the most recent data available, within three years of the effective date of this section.

(d) Notwithstanding any other provision of this section, when the estimates of need for long-term ventilator beds developed in accordance with subdivision (b) of this section indicate the need for additional beds, such estimates of additional need may be modified, based on information and data gathered from relevant sources relating to significant local factors pertaining to the planning area, or on statewide factors, where relevant, which factors may include, but not necessarily be limited to, those set forth in paragraphs (1) through (3) of this subdivision. When making recommendations to the State Hospital Review and Planning Council and the Public Health Council concerning the impact of the factors set forth in this subdivision, the department shall, to the extent practicable, indicate the relative priority of such factors.

(1) the impact of requirements pertaining to placing persons with disabilities into the most integrated setting appropriate so as to enable persons with disabilities to interact with non-disabled persons to the fullest extent possible;

(2) recommendations made by the local health systems agency, if applicable;

(3) documented evidence of the unduplicated number of patients on waiting lists who are appropriate for admission to long-term ventilator care who experience a long stay in acute care facilities awaiting discharge to a residential health care facility for long-term ventilator care.

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

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

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

Regulatory Impact Statement

Statutory Authority

Subdivision (2) of section 2802 of the Public Health Law sets forth the Commissioner of Health's role in the approval of Certificate of Need (CON) applications for the construction of beds for hospitals and nursing homes and authorizes the Commissioner to approve such applications following review by the State Hospital Review and Planning Council (SHRPC). In addition, subdivision (2) of section 2803 of the Public Health Law authorizes the SHRPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law. Pursuant to section 2801(1), (2), (3) and (5) of the Public Health Law, the addition of long-term ventilator beds in nursing homes falls within the definition of construction.

Legislative Objectives

Article 28 of the Public Health Law seeks to protect and promote the health of the inhabitants of the State by assuring the efficient, accessible, and affordable provision of health services of the highest quality and that such services are properly utilized. Subdivision (2) of section 2802 states that the Commissioner shall not act upon an application for construction until he or she is satisfied as to the public need for the construction at the time and place and under the circumstances proposed. Consistent with this legislative objective, the proposed amendments will ensure that the criteria for determination of public need for long-term ventilator beds will provide access to appropriate long-term ventilator care for New Yorkers, while avoiding excess bed capacity.

Needs and Benefits

Current Requirements

Construction projects undertaken by hospitals, nursing homes, clinics and other health care facilities are subject to approval under Article 28 of the Public Health Law. Construction is defined under Article 28 to include the erection or building of a health care facility and the "substantial acquisition, alteration, reconstruction, improvement, extension or modification of a facility, including its equipment . . ." Such "equipment" includes inpatient beds for hospitals and residential health care facilities (nursing homes). The review of public need under Article 28 helps ensure that beds and services are distributed throughout the State in a manner that both provides sufficient access to care and guards against the costs associated with the operation and maintenance of beds in excess of those needed. By limiting the beds in a given area to the number appropriate for the population, the public need methodology also discourages inappropriate admissions to inpatient care.

Patients requiring long-term ventilator services in residential health care facilities (RHCs, or nursing homes) are of two types: those who have a chronic problem and will need ventilators for their remaining lifetime; and those who can eventually be weaned from the machines and resume normal breathing. As medicine and medical technology have progressed, the number of individuals experiencing respiratory failure who can be treated through mechanical ventilation has increased. Despite this growth in long-term ventilator care, however, New York does not have a separate need methodology for long-term ventilator beds. The Department's current practice is to certify RHCs to provide "ventilator services" within their complement of regular nursing home beds. As a practical matter, ventilator-dependent residents are served in discrete ventilator services units within the nursing home. The beds therein are referred to as ventilator beds, though, strictly speaking, they are regular RHC beds whose occupants require ventilator services. Currently, 47 nursing homes in New York State operate ventilator services units.

In 1989, the Department adopted program and reimbursement regulations to encourage the development of care for ventilator dependent residents who could be served in institutions other than general hospitals. There were two major reasons for encouraging the use of long-term ventilator beds in nursing homes in New York State:

- New York residents were being sent to other states, especially Massachusetts to obtain ventilator care;

- Hospitals were being forced to keep ventilator-dependent patients for long periods of time because they could not be placed in nursing homes.

Following issuance of the regulations, the development of ventilator units in nursing homes proceeded relatively slowly, with the first beds becoming operational in 1991. In 1993, there were 53 licensed long-term ventilator beds in New York State nursing homes. Today, there are 950 such beds in the State. But despite the large number of beds now available, their distribution is uneven. Over 80 percent of existing long-term ventilator beds, for example, are located in New York City, Long Island, and the Hudson Valley regions. However, a recent study by the Finger Lakes Health Systems Agency (HSA) suggests a need for more long-term ventilator beds in that region.

The significant growth in long-term ventilator beds in the past 10 years, and their disproportionate concentration in the Downstate area, suggest that the clinical, demographic and epidemiological factors that presumably should influence decisions to operate these beds are not being applied in a consistent manner. The Department proposes that a need methodology be issued for long-term ventilator beds in nursing homes to:

- ensure access to needed long-term ventilator care through an appropriate distribution of beds throughout the State;
- prevent inappropriate utilization of long-term ventilator beds, including unduly long dependence on ventilation for patients who can be weaned and returned to normal breathing;
- control costs resulting from the operation of unneeded long-term ventilator beds (excess capacity).

Elements of the Need Methodology

In the proposed rule, the annual number of potential candidates for long-term ventilator beds would be based on the number of annual general hospital discharges for diagnosis related grouping (DRG) 475 (respiratory system diagnosis with ventilator support) in the region, plus an additional ten percent for other DRGs involving respiratory problems. The methodology would assume a length of stay of 125 days. In applying the methodology, the Department would also consider the referral patterns in the applicant's service area, the expected length of stay based on the case-mix of long- and short-term patients, the ability of the applicant to successfully wean ventilator patients, and the ability and commitment of the applicant to serve difficult-to-place ventilator patients (e.g., those with bacterial infections).

Application of the Need Methodology

Despite the fact that the application of a portion of the need formula in a given service area may indicate a need for additional long-term ventilator beds, the proposed methodology also provides that there shall be a rebuttable presumption that there is no need for any additional beds if the overall occupancy rate for existing long-term ventilator beds in the service area is less than 95 percent, based on the most recent available data. This is to ensure that optimum use is being made of existing bed resources before new beds are approved. Therefore, an initial finding of a need for more beds according to the need methodology may be offset by a relatively low occupancy rate for established long-term ventilator beds in toto in the planning area.

Nevertheless, the Department acknowledges that distinctive local circumstances which cannot be recognized in a methodology based on Health Systems Agency (HSA) regions may inhibit access to existing care and warrant the approval of additional beds, despite low occupancy. In such instances, it is the responsibility of the applicant to demonstrate that there is a need for additional long-term ventilator beds in the applicant's service area or subregion. Subdivision (d) of the proposed rules sets forth a number of factors that applicants may cite in arguing for additional beds. These factors include, but are not limited to:

- the impact of requirements pertaining to placing persons with disabilities into the most integrated setting appropriate so as to enable persons with disabilities to interact with non-disabled persons to the fullest extent possible;
- recommendations made by the local health systems agency, if applicable;
- documented evidence of the unduplicated number of patients on waiting lists who are appropriate for admission to long-term ventilator care who experience extended stays in acute care facilities awaiting discharge to a residential health care facility for long-term ventilator care.

To help ensure that the proposed methodology remains adequate and up-to-date, the proposed rule requires the Department to review the revised need formula within three years of its effective date.

Costs:

Costs to State Government Other than the Department of Health
There are no costs to State government other than the Department of Health.

Costs to Local Government

There are no costs to local governments. The proposed rule is merely a means by which the Department will evaluate the need for long-term ventilator beds and therefore imposes no operational, reporting or performance requirements on local governments that operate nursing homes.

Costs to Private Regulated Parties

The proposed rule is merely a means by which the Department will evaluate the need for long-term ventilator beds and therefore imposes no operational, reporting or performance requirements on private nursing homes. Hence, this rule involves no costs to private regulated parties.

Costs to the Department of Health

There will be no additional costs to the Department of Health because CON review is an established function of the agency.

Local Government Mandates

The proposed rule does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork

The proposed rule imposes no new reporting requirements, forms or other paperwork.

Duplication

There are no relevant State or Federal rules which duplicate, overlap or conflict with the proposed rule.

Alternatives

The Department considered maintaining current procedures, whereby RHCF beds approved under the need methodology in section 709.3 may be designated for long-term ventilator care. However, the rapid growth in recent years of RHCF beds designated for long-term ventilator care, and their uneven distribution throughout the State, indicate that a more systematic approach to the designation of long-term ventilator beds is needed.

Federal Standards

The proposed amendments do not exceed any minimum standards of the Federal government. There are no Federal rules affecting CON approval of long-term ventilator beds.

Compliance Schedule

The proposed rules will take effect upon publication of a Notice of Adoption in the New York *State Register*. Because CON applications may be submitted at any time, there is no schedule of compliance.

Regulatory Flexibility Analysis

No Regulatory Flexibility Analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

No Rural Area Flexibility Analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

Smaller populations may make it difficult for rural counties to maintain the 95 percent occupancy rates that would allow consideration of applications for additional long-term ventilator beds. However, this concern is addressed in subdivision (d) of the proposed rule, which permits the modification of estimated need for additional long-term ventilator beds based on significant local factors pertaining to the applicant's planning/service area. The rural nature of a county would be one such factor and would allow the consideration of applications from counties where occupancy of existing long-term ventilator beds did not meet the 95 percent occupancy criterion.

Job Impact Statement

No Job Impact Statement is required pursuant to section 201-a (2)(a) of the State Administrative Procedure Act. Because the proposed rule is aimed at maintaining high occupancy of long-term ventilator beds, the jobs and employment opportunities associated with optimum use of such beds should be affected favorably.

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

Regulated Medical Waste

I.D. No. HLT-20-05-00024-P

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

Proposed action: Amendment of Part 70 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 1389-bb and 1389-ff

Subject: Regulated medical waste.

Purpose: To update regulated medical waste regulations.

Substance of proposed rule (Full text is posted at the following State website: www.health.state.ny.us): Existing Part 70 is rescinded and replaced with a new Part 70 containing five Subparts: 70-1 Applications and Definitions; 70-2 Management of Regulated Medical Waste (RMW); 70-3 Requirements for Autoclaves to Treat Regulated Medical Waste; 70-4 Approval of Alternative Regulated Medical Waste Treatment Systems; and 70-5 Approval Process for Alternative Technologies.

This amendment clarifies terminology; adds flexibility to existing regulatory requirements; and codifies advisories for RMW management previously promulgated in guidance documents, following 1993 statutory amendments. This proposal revises regulatory definitions for RMW, infectious agents and treatment in conformance with the Law; amends container-labeling requirements; and incorporates applicable requirements for transport and disposal of RMW, allowing for increased flexibility in financial management and planning.

Section 70-1.1 specifies that the requirements apply to hospitals, residential health care facilities, and diagnostic and treatment centers and clinical laboratories.

Section 70-1.2 includes new and revised definitions for terms used throughout the Subpart, including "alternative regulated medical waste treatment system," "autoclave," "biologicals," "certificate of treatment," "challenge testing," "clinical laboratory," "culture and stocks," "culture dishes and devices for transferring, inoculating and mixing cultures," "cycle," "decontamination," "destroyed waste," "efficacy testing," "hazardous waste," "household medical waste," "incinerator," "infectious agent," "monitoring," "operating parameters," "operation plan," "parametric control," "primary container," "residence time," "secondary container," "sharp," "solid waste," "sterilize," "universal warning sign," and "validation testing."

Section 70-2.1 stipulates the minimum requirements of a written plan for the management of RMW.

Section 70-2.2 contains requirements and standards for containment and storage of RMW; clarifies requirements for disposal and establishes time frames for storage of primary containers used to discard sharps; clarifies time frame for storage of RMW in patient care areas and clinical laboratories; sets requirements for rooms or areas used to store RMW; sets labeling requirements for secondary containers used to transport untreated RMW off-site for treatment; clarifies decontamination procedures and guidelines for reusing secondary containers; specifies disposal requirements for secondary containers intended for single use; clarifies on-site processing procedures for reusable sharps containers; and describes requirements for transport of RMW within a facility.

Section 70-2.3 specifies treatment methods for RMW; provides disposal requirements for hazardous, chemotherapeutic and radioactive waste; provides requirements for treatment of human tissue(s), or organs and animal body parts; stipulates transport, packaging and treatment requirements for cultures and stocks containing infectious agents; provides provision for sharps destruction and treatment; stipulates requirement for a response plan for handling untreated waste found commingled with solid waste; requires a radiation detection system for a facility to screen incoming waste for the presence of radioactive materials; requires a contingency plan for handling radioactive material found commingled with RMW delivered for treatment at a treatment facility; and clarifies treated RMW disposal options.

Section 70-2.4 describes requirements for transfer of untreated waste for off-site treatment; clarifies that generators of RMW must transfer custody of untreated waste only to an appropriately permitted (by DEC) hauler; provides exemption if monthly waste generation is under 50 pounds; establishes requirement for use of medical waste tracking forms; clarifies applicability of Federal Department of Transportation requirements to certain cultures and stocks; specifies treatment requirements for solid waste transported with untreated RMW.

Section 70-2.5 contains recordkeeping requirements and retention times for the quantity, types, on-site treatment and disposal of RMW.

Section 70-3.1 contains validation testing requirements for autoclaves used to treat RMW; and specifies required elements of protocols for validation testing.

Section 70-3.2 contains requirements for, and minimum elements of, an operational plan for facilities using autoclaves; specifies procedures that

must be followed upon autoclave failure to meet operating parameters; contains requirements for monitoring autoclave performance; specifies standards for autoclave performance and for containment of RMW for treatment by autoclaving; and clarifies treatment of autoclaved sharps prior to disposal.

Section 70-3.3 clarifies the minimum operating parameters for treatment of RMW in a gravity-feed autoclave and in a vacuum-displacement autoclave; specifies approval requirements for use of an autoclave at alternative operating parameters.

Section 70-3.4 contains recordkeeping requirements and time frames for efficacy and validation testing, autoclave training, and documentation of corrective actions, modification of approved operating plans, residence time, pressure and temperature of treated loads.

Section 70-4.1 clarifies criteria for department approval of alternative treatment methods for RMW; and provides approval guidelines and time frames.

Section 70-4.2 establishes requirement for an operational plan approved by the department for each facility using an alternative RMW treatment system; stipulates required elements of the operation plan, including segregation of waste, safety and training plans for personnel handling RMW, emergency procedures, performance monitoring and routine maintenance; describes requirements for modification of the approved operation plan; stipulates the need for an approved plan prior to operation; describes procedures for system failure during operation; specifies monitoring requirements during operation; and stipulates operating personnel training requirements.

Section 70-4.3 clarifies the requirement for a protocol for validation testing; stipulates validation testing requirements to be met prior to placing system in operation.

Section 70-4.4 stipulates the additional record-keeping requirements and retention times for efficacy and validation testing; for personnel records; for corrective actions; and for plan modifications.

Section 70-5 summarizes the approval process for Alternative Treatment Technologies in New York State.

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

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

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

Summary of Regulatory Impact Statement

Statutory Authority:

Public Health Law Sections 1389-bb and 1389-ff authorize the Commissioner of Health to promulgate rules and regulations related to storage, containment, treatment and disposal of regulated medical waste (RMW).

Legislative Objectives:

Chapter 438 of the Laws of 1993 amended Public Health Law to revise definitions for RMW, standards for infectious agents and waste treatment, and waste container labeling requirements. The Legislature, in its statement of intent, affirmed the need for a comprehensive review of the State's RMW program to address increasing costs to RMW generators, specifically, hospitals and laboratories. Recent emphasis on homeland security at both the legislative and executive level of State government has raised overall awareness of the need to monitor closely the medical waste stream as a potential source of exposure to, and dissemination of, materials that could harbor infectious agents.

Needs and Benefits:

This proposed amendment's express terms replace existing Part 70, and, as such, promote the Legislature's dual purpose in enacting the 1993 revisions to statute, which are a decrease of RMW volume and concomitant lessening of waste management burdens and costs. Since 1995, hospitals and laboratories that handle RMW have relied on guidance documents issued to inform affected facilities as to the Department's interpretation of the statute's provisions during the time period in which the Governor called for regulatory re-evaluation and reform. Regulatory revision, as follows, is necessary to ensure that Department requirements with potential to bolster this State's preparedness efforts are clear, codified and legally enforceable:

1. Infectious agents. The amendment sets stringent requirements for handling and treating cultures and stocks, which contain high concentrations of microorganisms with heightened potential to cause disease transmission: cultures and stocks containing certain infectious agents will have to be treated only at the generator's site; the practice of open-air transfer

(*i.e.*, dumping from one container to another) of cultures and stocks for loading into a treatment system, and of sharps for consolidation, is prohibited; and reusable secondary containers must be lined with an impervious-moisture liner.

2. Safety. Flexible standards are proposed for temperature control and ventilation of RMW storage space. RMW generators must have an emergency response plan for handling untreated RMW found commingled with solid waste, and radiation detection systems are prescribed for screening waste upon entry into a treatment facility. Facilities must establish procedures to prevent employee percutaneous injury, and occupational exposure to infectious material during loading and unloading of treatment systems, and must provide annual retraining of treatment system operators.

The proposal clarifies that plastic ware, as well as glassware can create sharps, requires removal from patient care areas of containers filled to the designated fill line, and requires that sharps containers be removed from patient care areas within thirty (30) days or upon evidence of putrefaction, without regard to fill level. The amendment also prohibits opening reusable sharps containers for consolidation unless a consolidation procedure is part of the facility's on-site treatment plan.

3. Storage and containment. Container labeling requirements have been upgraded to ensure that RMW mixed with or containing hazardous waste (*e.g.*, volatile chemicals), hazardous drug waste (*e.g.*, chemotherapeutic agents), and radioisotopes resulting from medical procedures are so labeled. The proposed amendment would allow facilities producing less than 50 pounds of RMW per month to store such waste for up to 60 days. The amendment rescinds the requirement that reusable secondary containers used to hold regulated medial waste generated in clinical laboratories be decontaminated each time upon emptying, and would require the use of a removable liner for containers holding highly infectious waste, to more effectively target the potential problem of workers' being infected by contact with contaminated containers during routine container handling.

4. Treatment. Existing regulations prohibit treatment of recognizable human or animal body parts by autoclaving. This proposal would relax this prohibition by allowing treatment of human and animal organs by autoclaving, provided the autoclave has been approved by the Department as an alternative medical waste treatment system. The proposal allows for residence time, temperature or pressure parameters other than the generally accepted parameters codified in current regulations, provided the user facility and the autoclave manufacturer demonstrate to the Department the effectiveness of treatment.

5. Operational requirements. The revisions underscore the generator's responsibility to document standard operating procedures for management of RMW treated on-site or transported for off-site treatment. Documentation of such procedures enhances responsiveness and reduces response time in case of an incident. The amendment codifies the current practice of shut down in case of treatment system failure and details operators' obligations in such an event. A new requirement is added that whenever a system failure results in release of untreated RMW, affected transporters must be notified as soon as possible and the Department notified within 72 hours to preclude ensuing exposure risks to waste handlers and the public.

Currently, a specific alternative treatment system model may be approved indefinitely based on efficacy test data. Under this proposal, modifications that could affect an alternative treatment system's capacity to process RMW would require re-evaluation by the Department for the need of further system testing; approval would be subject to biennial renewal to allow tracking of alterations that might affect an approved system's treatment capabilities. The proposal requires alternative system facilities to have an operation plan in place for the treatment system, and to retain the operation plan for as long as a system is in use.

To accommodate advances in autoclave design, the proposal allows use of parametric controls in place of challenge testing for tracking operational requirements automatically. The amendment further clarifies that time/temperature indicators must be used in autoclaves without automatic parametric controls, but need not be used in loads treated in systems with such controls.

6. Recordkeeping. The proposed revision rescinds the requirement for an annual report to the State Commissioner of Environmental Conservation on the quantity of RMW produced by each generator.

Costs

Costs to Private Regulated Parties:

Clarifications provided in this amendment will ensure that the volume of RMW decreases to minimal allowable levels, such that regulated parties may be relieved, to the extent possible, of burdens and costs associated with waste management. Continued costs savings are anticipated as the increased confidence of affected parties in newer waste treatment and

sorting procedures, attained through a clear understanding of this rule, translates into greater public acceptance of treated medical waste disposal in and around high population areas. A favorable outcome in this regard would be an increase in disposal of treated RMW waste in the same manner as municipal solid waste, since disposal of the latter is less costly. Disposal costs are about three to five cents a pound for solid waste, depending on location; as opposed to about 13 to 15 cents a pound for treated RMW disposal.

Generators choosing to treat cultures and stocks on-site will incur no additional costs, since many, especially those based in hospitals, already have autoclaves in place for processing other RMW. No on-site treatment system is required by these revisions, and consequently, any costs related to installation of such systems are strictly voluntary, but cannot be reasonably estimated because of the wide range of commercially available unit sizes, capacities and treatment technologies.

For facilities generating relatively small quantities of RMW (under 50 pounds per month), the proposal relaxes existing waste retention time requirements. Increased storage time for untreated RMW -- from 30 to 60 days -- will allow less frequent collection, thereby eliminating any additional mileage fees charged by waste haulers. Facilities will experience cost savings from the proposed provision for continuous monitoring of treatment systems via parametric controls in lieu of more costly weekly challenge testing. Facilities that conduct weekly challenge testing incur an annual cost, per autoclave, between a minimum of \$135 and a maximum of \$1,350, based on a cost of average cost of \$2.50 per indicator strip/vial advertised on distributors' websites. The requirement for use of time/temperature indicators has been relaxed, *i.e.*, made applicable to only autoclaves that lack parametric controls. This eliminates costs associated with the use of such indicators, estimated at between two and five dollars per waste load, for qualified treatment systems. Proposed autoclave operation with one or more operating parameters other than the generally accepted parameters specified in current regulation is expected to result in reduced costs proportional to the number of treatment cycles, *e.g.*, lower expenditures for electricity and human resources.

Facilities lacking waste management documentation as part of their standard operating procedure manuals may incur minimal costs related to development and incorporation of standard operating procedures into existing manuals. The proposal extends to alternative treatment systems the requirement for an operation plan currently established for autoclaves. Since criteria for such a plan are clearly laid out in the proposed rule, any costs for development and documentation of an operation plan are expected to be minimal. Since operators of alternative treatment systems are already required to submit validation data packages, copying and mailing costs related to the inclusion of operation plan documents will be minimal.

Costs to State and Local Government:

State and local governments will incur no additional costs as a result of the proposed revisions, unless a county, city, town or village government operates a hospital, residential health care facility, and diagnostic and treatment center, clinical laboratory or blood bank, and, therefore, is subject to these regulations to the same extent as a private regulated party.

Local Government Mandates:

The proposed regulations impose no new mandates on any county, city, town or village government, or school, fire or other special district, unless a county, city, town or village government, or school, fire or other special district operates a clinical laboratory, blood bank or facility licensed pursuant to Public Health Law Article 28, and therefore is subject to these regulations to the same extent as a private regulated party.

Paperwork:

Facilities lacking waste management documentation as part of their standard operating procedure manuals may experience minimal paperwork to develop and incorporate such protocols into existing manuals. The requirement for a contingency plan to handle radioactive waste found commingled with RMW is expected to result in no significant additional paperwork, as such a plan should already be part of the of the facility's overall waste management plan, and is required by the Department before it will issue a radioactive materials license. Imposition of an operation plan on alternative treatment systems, as currently required for autoclaves, should result in minimal paperwork for plan documentation, since criteria for an acceptable operation plan are clearly laid out in the proposed rule and many of the required documents already exist in personnel files and policy manuals.

Duplication:

The proposed regulations are not duplicative of federal statutes. The State Environmental Conservation Law's definitions of RMW are consis-

tent with those in the Public Health Law and have been incorporated into this amendment.

Alternatives:

The alternative of not adopting the proposed amendment is unacceptable because the existing regulation is in conflict with the statute. Continued oversight through Department guidelines, if allowed to persist, would severely curtail the Department's ability to bring necessary enforcement actions in order to protect the public health. In view of the increased oversight of infectious agents and facilities that handle infectious agents, due primarily to risks associated with inappropriate use, this amendment is necessary to bolster the Department's efforts to monitor the medical waste stream.

Federal Standards:

The proposed regulations do not exceed any federal standards, since no federal standards apply to the handling of RMW.

Compliance Schedule:

Regulated parties should be able to comply with these regulations as of their effective date, upon publication of Notice of Adoption in the *New York State Register*.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

The proposed amendment of Part 70, Regulated Medical Waste, will impact small businesses, and facilities owned and operated by local governments, provided such operations are licensed health care facilities, including hospitals, diagnostic and treatment centers, residential facilities (such as nursing homes), and clinical laboratories. Of the approximately 265 New York State hospitals with an operating certificate, six meet the definition of small businesses, and 28 are owned and operated by local governments. Of the 663 New York State residential health care facilities with an operating certificate, 180 meet the definition of small businesses, and 54 are owned and operated by local governments. Of the 364 New York State diagnostic and treatment centers with an operating certificate, 216 meet the definition of small businesses, and 75 are owned and operated by local governments. Of the approximately 1,000 clinical laboratories under Department permit in New York State, some 180 to 200 meet the definition of small businesses, and 49 are owned and operated by local governments.

The proposed revisions' re-categorization of RMW will continue to decrease the volume of regulated medical waste (RMW) generated, and concomitantly reduce waste management burdens for small business- and local government-operated facilities. The proposal allows flexibility in financial management and planning related to RMW, of particular importance to small business and local government operators. For small businesses and government-operated facilities generating relatively low volumes of RMW (under 50 pounds per month), the proposal increases storage time for untreated RMW from 30 to 60 days, resulting in less frequent collection and thus eliminating any additional mileage fees charged by waste haulers. Since the proposal permits self-transport provided certain conditions are met, low-volume generators, including small business- or government-operated facilities, may realize substantial savings by transporting untreated RMW in their own vehicles and thus avoiding hauler fees altogether. The proposed regulations allow each generator to make the most cost-effective individual decision for treatment of cultures and stocks by specifying that any such materials transported off-site for treatment are subject to federal Department of Transportation (DOT) packaging requirements. Generators with autoclaves already in place for processing other waste, such as local government-operated hospitals, will incur no additional costs if they choose to treat cultures and stocks on-site. However, an on-site treatment system is not required, and any costs related to such installation, while strictly voluntary, cannot be estimated because of the wide range of unit sizes, capacities and technologies commercially available for on-site treatment.

The Department expects that affected facilities owned and operated as small businesses or by local governments will experience no additional burdens in complying with the rule's other requisites for developing emergency response plans, notification protocols, and procedures to prevent operator injury and exposure. The need for emergency procedures and documentation of standard operating procedures is widely recognized and unaffected by the size of the waste generator's operation or its ownership. Most small business- and local government-operated facilities are already in substantial compliance with the proposal's procedural and documentation requirements.

Compliance Requirements:

All facilities subject to Public Health Law Article 13, Title XIII, including small businesses or those operated by local governments, will be

required to comply with the proposed requisites. Facilities that have not already done so in response to Department guidance documents may need to revise management procedures to reflect waste classification changes. In formulating policies for RMW handling, facilities will need to consider new time frames for waste storage, installation of treatment equipment to avoid federally mandated packaging costs for shipment, and implementation of procedures to identify commingled waste.

Professional Services:

No professional services are required to comply with the proposed amendment. Facility directors and infection control staff already have the expertise to make all necessary changes to waste management procedures prescribed by this proposal.

Compliance Costs:

Overall, the flexibility inherent in most of the proposal's requirements offers small businesses and local governments enhanced opportunities for RMW fiscal management and planning. For example, such operators are afforded options for the most cost-effective waste storage and transport protocols, and may weigh costs of transport under DOT packaging rules against costs of autoclave installation. Most new requirements are paperwork-related, and simply mandate documentation of existing policies and procedures, so that implementation costs are expected to be minimal.

Most small businesses and local governments operating facilities subject to Part 70 have already realized some RMW cost savings, because Department guidelines issued in 1995 have encouraged waste management in accordance with the proposed re-classification scheme. Since RMW disposal costs are higher than solid waste disposal costs, re-categorization of RMW will offer continued costs savings to all generators, including small businesses or those operated by a local government.

Economic and Technological Feasibility:

The proposed regulations present no economic or technological burdens to small businesses and local governments. Most of the proposed revisions clarify existing statutory provisions and codify advisories for RMW management previously promulgated in Department guidance documents. Although the rule sets forth criteria for approval of alternative treatment systems, no requirement is imposed for implementing new technologies.

Minimizing Adverse Impact:

Prior to 1993, the Public Health Law mirrored broad federal definitions for RMW, established without benefit of a scientific foundation. Although 1993 chapter law re-categorized RMW, reducing some burdens associated with waste management, Department evaluations conducted after the statute's effective date underscored the need for other rules aimed at alternative technologies and increased overall RMW management flexibility. Such evaluations were undertaken in coordination with the State Department of Environmental Conservation and resulted in this proposal. The amendment seeks to minimize potential adverse impact on small businesses by detailing requirements applicable to RMW handling as now categorized. Small business and local government operator needs have been carefully considered in incorporating the flexibility necessary for safe and cost-effective operation of RMW-generating facilities.

Small Business Participation:

In March 2003, a draft of the proposed rule was shared for informal comments with all affected parties, including small businesses and local governments that operate facilities generating RMW. Comments were received from various organizations such as, the Hospital Association of New York State (HANYS), the Greater New York Association (GNYHA), New York Association of Homes and Services (NYAHS), New York Health Facilities Association (NYHFA), and from managers in independent laboratories and hospitals. The merits of informal/formal comments were considered based on cost impact, need to protect the health and safety of employees, patients, and visitors to the affected facilities. Several provisions of the proposal were modified in response to comments and/or communications following receipt of the comments.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with a population under 200,000, and townships in counties with a population of more than 200,000 and a population density of 150 persons or fewer per square mile. Forty-two counties have a population under 200,000, and nine counties include townships with a population density of 150 persons or fewer per square mile. Of the approximately 265 New York State hospitals holding an operating certificate, 75 are located in rural areas, and 28 are owned and operated by local governments. Of the 663 New York State residential health care facilities with an operating certificate, 175 are located in rural areas, and 54 are owned and operated by local governments. Of the 364

New York State diagnostic and treatment centers with an operating certificate, 99 are located in rural areas, and 75 are owned and operated by local governments. Of the approximately 1,000 clinical laboratories under Department permit in New York State, 545 are located in rural areas, and 49 are owned and operated by local governments.

The proposed amendment concerning management of regulated medical waste (RMW) will impact facilities located in rural areas, provided such operations are licensed health care facilities, including hospitals, diagnostic and treatment centers, and residential facilities, such as nursing homes; or clinical laboratories.

The proposed revisions' re-categorization of RMW will continue to decrease the volume of RMW generated and, concomitantly, reduce waste management burdens for facilities located in rural areas. The proposal allows flexibility in financial management and planning related to RMW -- an important benefit to facilities located in rural areas. For rural area facilities generating relatively low RMW volumes of under 50 pounds per month, the proposal increases untreated RMW storage time from 30 to 60 days, resulting in less frequent collection and thus eliminating any additional mileage fees charged by waste haulers. Since the proposal permits self-transport provided certain conditions are met, low-volume generators, including those in rural areas, may realize substantial savings by transporting untreated RMW in their own vehicles, thus avoiding hauler fees altogether. The amendments allow each generator to make the most cost-effective individual decision for treatment of cultures and stocks, by specifying that any such materials transported off-site for treatment are subject to federal Department of Transportation (DOT) packaging requirements. Generators with autoclaves already in place for processing other waste, such as facilities located in rural areas, will incur no additional costs if they choose to treat cultures and stocks on-site. However, an on-site treatment system is not required, and any costs related to such installation, while strictly voluntary, cannot be estimated because of the wide range of unit sizes, capacities and technologies commercially available for on-site treatment.

The Department expects that affected facilities located in rural areas will experience no additional burdens in complying with the rule's other requisites for developing emergency response plans, notification protocols, and procedures to prevent operator injury and exposure. The need for emergency procedures and documentation of standard operating procedures is widely recognized, and unaffected by the location of the waste generator's operation. Most facilities located in rural areas are already in substantial compliance with the proposal's procedural and documentation requirements.

Compliance Requirements:

All facilities subject to Public Health Law Article 13, Title XIII, including those located in rural areas, will be required to comply with the proposed requisites. Facilities that have not already done so in response to Department RMW guidance documents may need to revise RMW management procedures to reflect waste classification changes. In formulating policies for handling RMW, facilities will need to consider new time frames for waste storage, installation of treatment equipment to avoid shipment packaging costs, and implementation of procedures to identify commingled waste.

Professional Services:

No professional services are required to comply with the proposed amendment. Facility directors and infection control staff already have the expertise to make all necessary changes to waste management procedures prescribed by this proposal.

Compliance Costs:

Overall, the flexibility inherent in most of the amendment's requirements offers facilities located in rural areas enhanced opportunities for RMW fiscal management and planning. For example, such operators are afforded options for the most cost-effective waste storage and transport protocols and may weigh costs of transport under DOT packaging rules against costs of autoclave installation. Most new requisites are paperwork-related, and simply mandate documentation of existing policies and procedures, so that implementation costs are expected to be minimal.

Most facilities located in rural areas and subject to Part 70 have already realized some cost savings, because Department guidelines issued in 1995 have encouraged waste management in accordance with the proposed re-classification scheme. Since RMW disposal costs are higher than solid waste disposal costs, the re-categorization of RMW will offer continued costs savings to all generators, including those located in rural areas.

Economic and Technological Feasibility:

The proposed regulation presents no economic or technological burdens to facilities located in rural areas. Most of the revisions clarify

existing statutory requirements and codify advisories for RMW management previously promulgated in Department guidance documents. Although the rule sets forth criteria for approval of alternative treatment systems, no requirements are imposed for the use of any new technology to treat RMW.

Minimizing Adverse Impact:

Prior to 1993, the Public Health Law mirrored broad federal RMW definitions established without benefit of a scientific foundation. Although Chapter 438 of the Laws of 1993 re-categorized RMW, reducing some burdens associated with waste management, Department evaluations conducted after the statute's effective date underscored the need for other rules aimed at alternative technologies and increased overall RMW management flexibility. Such evaluations were undertaken in coordination with the State Department of Environmental Conservation and resulted in this proposal. The amended regulations seek to minimize potential adverse impact on facilities located in rural areas by clarifying requirements applicable to RMW handling as now categorized. The interests of facilities located in rural areas have been carefully considered in incorporating the flexibility necessary for safe and cost-effective operation of RMW-generating facilities.

Participation of Facilities Located in Rural Areas:

A draft of the proposed rule has been shared with all affected parties for informal comment, including RMW-generating facilities in rural areas. Comments were received from various organizations such as, the Hospital Association of New York State (HANYS), the Greater New York Association (GNYHA), New York Association of Homes and Services (NYAHS), New York Health Facilities Association (NYHFA), and from managers in independent laboratories and hospitals, some of which represent facilities located in rural areas. The merits of informal/formal comments were considered based on cost impact, need to protect the health and safety of employees, patients, and visitors to the affected facilities. Several provisions of the proposal were modified in response to comments and/or communications following receipt of the comments.

Job Impact Statement

A Job Impact Statement is not required because it is apparent from the nature and purpose of the proposed rule that it will not have a substantial adverse impact on jobs and employment opportunities.

Department of Motor Vehicles

ERRATUM

A Notice of Proposed Rule Making, I.D. No. MTV-17-05-00008-P, pertaining to Conditional License Eligibility published in the April 27, 2005 issue of the *State Register* contained an error in section 134.1(a) of the text. The Department of State apologizes for any confusion this may have caused. The correct text follows:

Text of Proposed Rule Subdivision (a) of Part 134.1 is amended to read as follows:

(a) Intent. Article 21 of the Vehicle and Traffic Law as added by chapter 291 of the Laws of 1975, and recodified in Article 31 by chapter 47 of the Laws of 1998, provides for the establishment of an alcohol and drug rehabilitation program for the purpose of providing rehabilitation to drivers convicted of alcohol or drug-related driving offenses or persons who have been adjudicated youthful offenders for alcohol or drug-related traffic offenses or persons found to have been operating a motor vehicle after having consumed alcohol in violation of section 1192-a of the Vehicle and Traffic Law to alleviate the threat to the lives and well-being of the citizens of this State posed by alcohol and drug-related driving. Although this article provides for the issuance of conditional licenses to persons enrolled in such program, this provision is incidental to the primary purpose of the legislation, highway safety. This Part is intended to implement the legislative intent by establishing criteria for eligibility of persons for entrance into such programs, issuance and use of conditional licenses, procedures to be followed by the courts, the Department of Motor Vehicles and motorists in conjunction with such programs, as well as the curricula to be used in such programs and the qualifications of persons who will be conducting such programs.

Paragraphs (2), (3), (4) and (5) of subdivision (a) of Part 134.7 are amended to read as follows:

(2) The conviction, *adjudication or finding* upon which eligibility for a rehabilitation program is based involved a fatal accident.

(3) The person does not have a currently valid New York State driver's license. This paragraph shall not apply to a person whose New York State driver's license has expired, but is still renewable, nor to a person who would have a currently valid New York State driver's license except for the revocation or suspension which resulted from the conviction, *adjudication or finding* upon which his eligibility for the rehabilitation program is based, nor to a person who would have a currently valid New York State driver's license except for a suspension or revocation which resulted from a chemical test refusal arising out of the same incident as such conviction, *adjudication or finding of a violation of section 1192-a of the Vehicle and Traffic Law Section*.

(4) The person has been convicted of an offense arising from the same event which resulted in the current alcohol related conviction, *adjudication or finding* which conviction would, aside from the alcohol-related conviction, *adjudication or finding*, result in mandatory revocation or suspension of the person's driver's license.

(5) The person has had two or more revocations and/or suspensions of his driver's license, other than the revocation or suspension upon which his eligibility for the rehabilitation program is based within the last three years. This subdivision shall not apply to suspensions which have been terminated by performance of an act by the person, nor to a suspension or revocation resulting from a chemical test refusal, if the person had been convicted of a violation of section 1192 of the Vehicle and Traffic Law *or found to be in violation of section 1192-a of such law* arising out of the same incident.

Subdivision (c) of Part 134.9 is amended to read as follows:

(c) A conditional license issued to a person convicted of, *or adjudicated a youthful offender for*, a violation of any subdivision [or] of section 1192 of the Vehicle and Traffic Law *or found to have violated section 1192-a of such law* shall not be valid for the operation of commercial motor vehicles as defined in section 501-a of such law or taxicabs as defined in section 148-a of such law.

New York City Transit Authority

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Use of Transit Facilities

I.D. No. NTA-47-04-00002-C

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

The notice of proposed rule making, I.D. No. NTA-47-04-00002-P was published in the *State Register* on November 24, 2004.

Subject: Conduct and safety of the public in the use of transit facilities and paratransit eligibility criteria.

Purpose: To improve police officer enforcement capability, enhance customer safety and security, clarify the meaning and/or intent of certain provisions, conform the language of certain provisions to the American with Disabilities Act, and make the technical revisions and corrections.

Substance of rule: AMENDMENT OF PART 1035 OF TITLE 21 NYCRR - Paratransit Eligibility Criteria

Section 1035.2

A technical revision to correct a typographical error occurring when this provision was last amended is made to Section 1035.2(a) of rules relating to eligibility for paratransit services.

AMENDMENT OF PART 1040 OF TITLE 21 NYCRR - Staten Island Rapid Transit Operating Authority (SIRTOA) Rules of Conduct

Section 1040.2

A new definition of "fare media" is added. "Fare media" means the various instruments accepted for payment of fare. [Section 1040.2(g)]

A new definition of "service animal" is added, patterned after the definition used by the Federal Transit Administration (FTA) to describe

animals trained to perform certain tasks for persons with disabilities. [Section 1040.2(l)]

A new definition of "sound production devices" is added. [Section 1040.2(m)]

Section 1040.4

In order to further enhance passenger security and safety, photography and videorecording is prohibited except for members of the press holding valid identification cards issued by the New York City Police Department or where written authorization has been provided by SIRTOA. [Section 1040.4(f)]

Section 1040.5

Currently, placing one's feet on a seat in a train or on a platform bench is not specifically prohibited. A specific prohibition is therefore added to address this issue. At the time same, placing a package or other item on an empty seat would be a summonsable offense only when it tended to interfere with transit operations or the comfort of other passengers such as the ability of another passenger to obtain a seat. [Section 1040.5(a)]

Straddling a bicycle in motion, wearing in-line skates (or roller skates) or standing on a skateboard constitute conduct that is potentially harmful to others but, currently, is not adequately addressed. This revision enhances enforcement by including a prohibition against straddling a bicycle that is in motion, wearing skates or standing on a skateboard. [Section 1040.5(j)]

Smoking is not permitted anywhere within the SIRTOA system. Section 1040.5(o) is amended so as to delete the language which currently allows smoking in specifically designated locations.

Currently, there appears to be uncertainty as to whether the provisions of section 1040.5(u) which prohibit riding on the platform between cars of a train also prohibit utilizing the platform for purposes of moving between cars. More important, the use of end doors to move between cars carries with it inherent safety hazards whether or not the train is in motion. Accordingly, it is proposed that the use of end doors be prohibited except when passengers are directed to use them by SIRTOA personnel or a police officer. [Section 1040.5(v)]

A specific prohibition against "turnstile jumping", entering through an exit gate, etc. is added [section 1040.5(x)]. Situations arise where passengers "jump" a turnstile or enter through an exit gate when their time-based card is swiped improperly or malfunctions. In other instances, some passengers "jump" a turnstile when their improperly swiped or malfunctioning pay-per-ride MetroCard does not grant access, only to discover, after the fact, that a fare had been deducted from their card. These situations may not give rise to a sustainable charge of theft of services, however, "turnstile jumping" and related conduct, whatever the stated rationale, creates an environment of disorder including the perception among other passengers that the fare was evaded.

Section 1040.8

The provisions regarding service animals are revised so as to conform to the FTA interpretation of requirements under the Americans with Disabilities Act (ADA). Most important is a provision which supercedes any requirement of licensure or written documentation for the animal, if the individual bringing the animal into the system can credibly explain how the animal is needed to perform a task that the person is unable to perform due to his or her disability. As bulletins have been issued previously incorporating the FTA standards, this amendment serves simply to formally codify current practice.

AMENDMENT OF PART 1050 OF TITLE 21 NYCRR - New York City Transit Authority (NYCTA) Rules of Conduct

Section 1050.2

A new definition of "service animal" is added, patterned after the definition used by the Federal Transit Administration (FTA) to describe animals trained to perform certain tasks for persons with disabilities. [Section 1050.29(c)]

A technical revision is made to the definition of "person". [Section 1050.2(g)]

The definition of "fare media" is amended to delete the reference to the term "token" inasmuch as tokens are no longer sold or accepted in the subways or on buses. [Section 1050.2(l)]

A new definition of "farecards" is added to differentiate specifically between value-based and time-based MetroCards. [Section 1050.2(j)]

A new definition of "payment of fare" is added which specifically references the use of time-based farecards. [Section 1050.2(k)]

Section 1050.4

A prohibition against "turnstile jumping", entering through an exit gate, etc. is added to section 1050.4(a) which deals with payment of fare and access to NYCTA facilities. Situations arise currently where passengers "jump" the turnstiles or enter through an exit gate when their time-

based card is swiped improperly or malfunctions. They then seek to have a charge of fare evasion dismissed on the theory that since they had already prepaid for unlimited transportation for a specified period (e.g., 7 days), they therefore cannot be guilty of fare evasion. In other instances, some passengers “jump” the turnstile when their improperly swiped or malfunctioning pay-per-ride MetroCard does not grant access, only to discover, after the fact, that a fare had been deducted from their card. However, “turnstile jumping” and related conduct, whatever the stated rationale, create an environment of disorder, including the perception among other passengers that the fare was evaded.

A technical revision is made to Section 1050.4(c) to provide specifically provide that authorized agents of NYCTA may sell MetroCards.

Section 1050.5

Prohibitions against vandalizing or otherwise damaging New York City Transit property are currently found in two separate provisions of the Rules, Section 1050.5(a) and Section 1050.6(a). Both sections are amended so that the prohibition is contained solely within section 1050.5(a). This simplifies enforcement and allows for more informative statistical analysis. In addition, several technical revisions are made to section 1050.5(a) in order to clarify language including language to make clear that attempts to damage property are prohibited.

Section 1050.6

As noted above, section 1050.6(a) is amended to consolidate prohibitions against damaging New York City Transit property exclusively in section 1050.5(a). It is also amended to specifically provide that acts which tend to interfere with the provision of service, to obstruct traffic and to interfere with safe operation are not permitted.

Voter registration activities are specifically included as a permissible non-transit use or activity. NYCTA currently permits this type of activity, provided that general safety oriented restrictions are observed. [Section 1050.6(c)]

Other revisions to section 1050.6(c) dealing with non-transit uses of the system do not effect substantive change but merely restructure some of its language so that the restrictions are expressed more clearly.

A provision is added to Section 1050.6(d)(3) to provide specifically that persons with farecards issued based on specified individual eligibility criteria which allow entry into the system either for no charge or at a reduced fare are obligated to produce the card for physical inspection when requested to do so by a police officer or NYCTA personnel. In addition, a specific requirement is added that the name of the eligible holder of such farecard be clearly visible on the card.

The restrictions in section 1050.6(f) aimed at preventing the consumption of liquids on a bus or subway are clarified.

Section 1050.7

Smoking is not permitted anywhere within the transit system. Section 1050.7(b) is amended so as to delete the language which currently allows smoking in specifically designated locations.

Currently, placing one’s feet on a seat of a subway or bus or platform bench is not specifically prohibited. A specific prohibition is therefore added to address this issue. At the same time, placing a package or other item on an empty seat would be prohibited only when it tended to interfere with transit operations or the comfort of other passengers such as the ability of another passenger to obtain a seat. [Section 1050.7(j)]

Straddling a bicycle in motion, wearing in-line skates (or roller skates) or standing on a skateboard constitute conduct that is potentially harmful to others but, currently, is not adequately addressed. In particular, with respect to skates and skateboards, it is often difficult to sustain a charge of a violation where offending individuals are stationary at the time they are observed by a police officer. This revision would enhance enforcement by including a prohibition against straddling a bicycle that is in motion, wearing skates or standing on a skateboard. Additionally, scooters are added to the list of vehicles which may not be ridden in the system. [Section 1050.7(k)]

Section 1050.9

Catwalks and emergency stairs are added to the list of areas specifically identified in the prohibition against entering areas not open to the public. [Section 1050.9(a)]

In order to further enhance passenger security and safety, photography and videorecording would be prohibited except for members of the press holding valid identification cards issued by the New York City Police Department or where written authorization has been provided by NYCTA. [Section 1050.9(c)]

Currently, there appears to be uncertainty as to whether the provisions of section 1050.9(d) which prohibit riding between subway cars also prohibit the act of moving between cars. The use of end doors to move

between cars carries with it inherent safety hazards whether or not the train is in motion. Accordingly, the use of end doors is prohibited except when passengers are directed to use them by NYCTA personnel or a police officer.

The provisions regarding use of service animals are revised so as to conform the language of the rules to current practice which incorporates the FTA interpretation of requirements under the ADA. Most important is a provision which would supercede any requirement of licensure or written documentation for the animal, if the individual bringing the animal into the system can credibly explain how the animal is needed to perform a task that the person is unable to perform due to his or her disability. Both NYCTA and the New York City Police Department have previously issued bulletins incorporating the FTA standards and this amendment serves simply to formally codify current practices. [Section 1050.9(h)]

General Revisions

All references to Transit Police and Transit Police Officers contained within Part 1050 are deleted and replaced by references to the New York City Police Department and New York City Police Officers, reflecting the merger of the Transit Police into the New York City Police Department. In addition, The term “token booth” is replaced with the term “station booth”.

Changes to rule: No changes to the previously proposed rule have been made as of the date of the transmittal of this notice, however, revisions to sections 1040.4(f) and 1059(c) of Title 21 NYCRR are being contemplated; no other substantive changes to the rule as proposed are anticipated at this time.

Expiration date: November 24, 2005.

Text of proposed rule and changes, if any, may be obtained from: David Goldenberg, New York City Transit Authority, 130 Livingston St., Rm. 1207, Brooklyn, NY 11201, (718) 694-5454

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

Niagara Frontier Transportation Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Procurement Guidelines

I.D. No. NFT-20-05-00022-P

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

Proposed action: This is a consensus rule making to amend sections 1159.3-1159.5 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 1299-e(5) and 1299-t

Subject: Procurement guidelines.

Purpose: To make technical correctional and conform to State law.

Text of proposed rule: Subsection (2) of subdivision (a) of section 1159.3 is amended to read as follows:

(2) The dissemination of a notice of procurement opportunity to three or more potential bidders, proposers or suppliers [either] by telephone, [or] in writing *or by e-mail*.

Subdivision (af) of section 1159.3 is amended to read as follows:

(af) Small purchase. The acquisition of goods or services [under a written agreement or purchase order] having an actual price less than \$50,000. See section 1159.4(n) of this Part.

Subdivision (aj) of section 1159.3 is amended to read as follows:

The process by which the Authority contacts prospective vendors, suppliers or consultants to provide notice of a procurement opportunity and invite submission of quotes, bids, *proposals* or statements of qualifications.

Subsection (vii) to subsection (3) of subdivision (h) of section 1159.4 is hereby amended to read as follows:

(vii) best and final offers (BAFOS) [are] *may be* requested of all proposers determined to be within the competitive range or on the short-list; and

Subsection (1) of subdivision (i) of section 1159.4 is hereby amended to read as follows:

Subdivision (j) of section 1159.4 is amended to read as follows:

(j) New York State Contract Reporter. All procurements of goods or services having an actual or estimated value of \$15,000 or more shall be published in THE NEW YORK STATE CONTRACT REPORTER (NYSCR). The notice of procurement opportunity shall appear in the NYSCR at least [21] 15 business days prior to the bid or proposal due date. However, advance publication shall not be required under emergency or exigency conditions, or when an expediency action has been adopted by the board, or if the procurement is being resolicited within 45 business days after the date bids or proposals were originally due.

Subsection (2) of subdivision (s) of section 1159.4 is amended to read as follows:

(2) No procurement contracts shall be entered into with former commissioners, officers or employees of the authority except [by a resolution adopted by a two-thirds vote of the members in attendance at a meeting of the board of commissioners upon showing that such contract is in the best interest of the authority and then only] to the extent permitted by section 73 of the Public Officers Law and the NFTA Board of Commissioners' Code of Ethics.

Subsection (3) of subdivision (y) is amended to read as follows:

(3) This information shall be submitted annually through the New York State Public Authorities Data Report to the New York State Division of Budget, and copies thereof to the New York State Department of Audit and Control, the Senate Finance Committee, [and] the Assembly Ways and Means Committee and the Executive Officers and Legislatures of Erie and Niagara County.

Subsection (h) to subsection (ii) to subdivision (z) of section 1159.4 is amended to read as follows:

(h) Maintain all support documentation including small purchases [checklist and] authorization, small purchase tabulation and solicitation summary, single bid/proposal validation reports and single source validation report.

Subsection (1) of subdivision (B) of section 1159.5 is amended to read as follows:

(1) Pre-Bid Opening Protests. If a bidder/*proponent* can demonstrate that the Contract Documents issued by the Authority are unduly exclusionary and restrictive or that federal, state or local laws or regulations have been violated during the course of the procurement, then the bidder/*proponent* may seek a review by the Executive Director or his appointed representative, at 181 Ellicott Street, Buffalo, New York 14203. Protests shall be clearly identified as Protests and submitted in writing as early as possible but no later than five (5) business days before bid opening. With four (4) business days after receipt of a pre-bid protest, the Executive Director shall make one of the determinations listed in paragraph (3).

Text of proposed rule and any required statements and analyses may be obtained from: Ruth Keating, Niagara Frontier Transportation Authority, 181 Ellicott St., Buffalo, NY 14203, (716) 855-7398, e-mail: Ruth_Keating@nfta.com

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 Niagara Frontier Transportation Authority has determined that no person is likely to object to the rule being repealed or the rule as written for the following reasons:

1. All of the changes are being made to conform the regulations to existing laws and regulations and/or are technical in nature.
2. None of the changes are controversial.

Job Impact Statement

The Niagara Frontier Transportation Authority has determined adoption of the proposed rule will have no impact on jobs or employment opportunities for the following reasons:

1. The subject of the proposed rule are technical corrections to the NFTA's Procurement Guidelines. Changes to the rules will not impact the level of procurements made by the NFTA, and therefore will not impact jobs or employment opportunities.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule making has been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-05-05-00007-P	February 2, 2005
PSC-06-05-00011-P	February 9, 2005
PSC-06-05-00012-P	February 9, 2005

NOTICE OF ADOPTION

Consolidated Billing Credit by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-07-05-00014-A

Filing date: April 29, 2005

Effective date: April 29, 2005

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

Action taken: The commission, on April 13, 2005, adopted an order in Case 05-G-0094, approving amendments to Consolidated Edison Company of New York, Inc.'s (Con Edison) schedule for gas service—P.S.C. No. 9.

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

Subject: Tariff filing by Con Edison.

Purpose: To revise the consolidated billing credit provided to firm transportation customers on a combined electric and gas account.

Substance of final rule: The Commission approved a request by Consolidated Edison Company of New York, Inc. to amend the consolidated billing credit provision applicable to firm transportation customers' combined electric and gas accounts when the customer is purchasing both gas and electric commodity from an energy services company.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-G-0094SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection of the Networks between Taconic Telephone Corporation and Chautauqua and Erie Telephone Corporation with Nextel of New York, Inc.

I.D. No. PSC-20-05-00027-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 Taconic Telephone Corporation and Chautauqua and Erie Telephone Corporation with Nextel of New York, Inc. for approval of an interconnection agreement executed on April 26, 2005.

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

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Taconic Telephone Corporation and Chautauqua and Erie Telephone Corporation with Nextel of New York, Inc.

have reached a negotiated agreement whereby Taconic Telephone Corporation and Chautauqua and Erie Telephone Corporation with Nextel of New York, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until April 26, 2006, or as extended.

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-C-0512SA1)

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

Delivery Point Aggregation Fee by Allied Frozen Storage, Inc.

I.D. No. PSC-20-05-00028-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 Allied Frozen Storage, Inc. requesting that a review be conducted of the calculation of the delivery point aggregation fee applicable to its chilled and ambient storage facility located in Brockport, NY under Rule 47 of Niagara Mohawk Power Corporation's tariff, and that the commission's policies for promoting the installation of distributed generation facilities be reflected in that review.

Statutory authority: Public Service Law, sections 5(1)(b) and (2), 64, 65(1), (2) and (3), 66(1), (2), (5), (10) and (12)

Subject: Delivery point aggregation fee.

Purpose: To review the calculation of the fee.

Substance of proposed rule: The Commission is considering a petition from Allied Frozen Storage, Inc. requesting that a review be conducted of the calculation of the delivery point aggregation fee applicable to its chilled and ambient storage facility located in Brockport, NY under Rule 47 of Niagara Mohawk Power Corporation's tariff, and that the Commission's policies for promoting the installation of distributed generation facilities be reflected in that review. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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-E-0406SA1)

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

Submetering of Electricity by The Witkoff Group on behalf of Ten Hanover, LLC

I.D. No. PSC-20-05-00029-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 filed by The Witkoff Group, on behalf of Ten Hanover, LLC, to submeter electricity at 10 Hanover Sq., New York, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Submetering of electricity.

Purpose: To submeter electricity at 10 Hanover Sq., New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by The Witkoff Group, on behalf of Ten Hanover, LLC, to submeter electricity at a new private apartment complex located at 10 Hanover Square, New York, New York.

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-E-0496SA1)

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

Authorization to Incur Indebtedness by the New York Independent System Operator, Inc.

I.D. No. PSC-20-05-00030-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 the petition of the New York Independent System Operator, Inc. (NYISO) for authority to enter into a five-year revolving credit agreement with KeyBank National Association in the amount of \$50,000,000.

Statutory authority: Public Service Law, section 69

Subject: Authorization to incur indebtedness.

Purpose: To incur indebtedness for a term in excess of 12 months.

Substance of proposed rule: The Public Service Commission is considering whether to approve, reject, or modify the petition of New York Independent System Operator, Inc. (NYISO) for authority to incur indebtedness for a term of more than twelve months by executing a Replacement Revolver in the amount of \$50,000,000 as a cash flow management tool, to provide working capital to balance monthly receipts and remittances, and to provide liquidity to the NYISO-administered markets.

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-E-0503SA1)

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

Accounts Receivable Discount Factor by Central Hudson Gas & Electric Corporation

I.D. No. PSC-20-05-00031-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 Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electricity service—P.S.C. No. 15 to become effective Aug. 1, 2005.

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

Subject: Accounts receivable discount factor.

Purpose: To revise effective date of annual update of discount factor applicable to the purchase of retail suppliers' accounts receivable under Central Hudson's Retail Access Program.

Substance of proposed rule: Central Hudson Gas & Electric Corporation (the company) proposes to revise the effective date of the annual update of the discount factor applicable to the purchase of retail supplier's accounts receivable under the company's Retail Access Program from April 1 to the date of the first billing batch of April. The Commission may approve, reject or modify, in whole or in part, the company's filing.

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-E-0506SA1)

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

Submetering of Electricity by Iskalo Development Corporation

I.D. No. PSC-20-05-00032-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 filed by Iskalo Development Corporation to submeter electricity at 535 Washington St., Buffalo, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Submetering of electricity.

Purpose: To submeter electricity at 535 Washington St., Buffalo, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny, or modify, in whole or in part, the petition filed by Iskalo Development Corporation to submeter electricity at 535 Washington Street, Buffalo, New York.

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-E-0507SA1)

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

Accounts Receivable Discount Factor by Central Hudson Gas & Electric Corporation

I.D. No. PSC-20-05-00033-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 Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 12 to become effective Aug. 1, 2005.

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

Subject: Accounts receivable discount factor.

Purpose: To revise effective date of annual update of discount factor applicable to the purchase of retail suppliers' accounts receivable under Central Hudson's Retail Access Program.

Substance of proposed rule: Central Hudson Gas & Electric Corporation (the company) proposes to revise the effective date of the annual update of the discount factor applicable to the purchase of retail suppliers' accounts receivable under the company's Retail Access Program from April 1 to the date of the first billing batch of April. The Commission may approve, reject or modify, in whole or in part, the company's filing.

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-G-0508SA1)

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

Federal Income Tax Refund by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-20-05-00034-P

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

Proposed action: The Public Service Commission is considering a Consolidated Edison Company of New York, Inc. petition seeking reconsideration of the commission's decision concerning a Federal income tax refund the company received.

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

Subject: Consolidated Edison Company of New York, Inc.'s accounting for the Federal income tax refund it received.

Purpose: To consider the utility company's petition for rehearing.

Substance of proposed rule: The Public Service Commission is considering whether to grant or deny, in whole or in part, the petition for rehearing submitted by Consolidated Edison Company of New York, Inc. in Case 03-M-1148. Consolidated Edison has objected to the Commission's decision concerning a Federal income tax refund the company received.

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. (03-M-1148SA1)

Racing and Wagering Board

EMERGENCY RULE MAKING

Administration of Race Day Medications

I.D. No. RWB-20-05-00001-E

Filing No. 471

Filing date: May 3, 2005

Effective date: May 3, 2005

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

Action taken: Amendment of section 4005.5 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, section 101

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

Specific reasons underlying the finding of necessity: This rule is necessary to allow veterinarians employed by the New York State Racing and Wagering Board and licensed thoroughbred racing associations to administer race day medications to horses. Recently, thoroughbred racing associations adopted procedures and policies whereby race horses are segregated into limited access security barns. This practice was adopted to prevent the administration of prohibited medications to the horse. The only veterinarians that are allowed into these limited access security barns are veterinarians employed by the New York State Racing and Wagering Board or the thoroughbred racing association. This rule amendment would allow these veterinarians access to race horses in limited access security barns for the purpose of administering medications which are authorized for race day administration per 9 NYCRR 4043.2.

Subject: Administration of race day medications by veterinarians employed by the New York State Racing and Wagering Board and licensed thoroughbred racing associations.

Purpose: To allow the administration of board-authorized race day medications to horses that are quartered in limited access security barns by board or association veterinarians.

Text of emergency rule: Amendment is made to section 4005.5 of 9 NYCRR to add new language:

No veterinarian employed by the commission or by an association shall be permitted, during the period of his employment, to treat or prescribe for any horse for compensation or otherwise, except in case of emergency, *or in the case of race day medication as authorized by Board Rule 4043.2.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire July 31, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Mark A. Stuart, Racing and Wagering Board, One Watervliet Ave. Ext., Suite 2, Albany, NY 12206, (518) 453-8460, e-mail: mstuart@racing.state.ny.us

Regulatory Impact Statement

Statutory Authority: Section 101(1) of the Racing, Pari-Mutuel Wagering and Breeding Law vests the Board with general jurisdiction over all horse racing and all pari-mutuel wagering activities in New York State.

Legislative Objectives: This amendment advances the legislative objective of regulating the conduct of pari-mutuel wagering in a manner designed to maintain the integrity of racing while generating a reasonable revenue for the support of government.

Needs and Benefits: This rule is necessary to allow veterinarians employed by the New York State Racing and Wagering Board and licensed thoroughbred racing associations to administer race day medications to horses. Recently, thoroughbred racing associations adopted procedures

and policies whereby race horses are segregated into limited access security barns. This practice was adopted to prevent the administration of prohibited medications to the horse. The only veterinarians that are allowed into these limited access security barns are veterinarian employed by the New York State Racing and Wagering Board or the thoroughbred racing association. This rule amendment would allow these veterinarians access to race horses in limited access security barns for the purpose of administering medications which are authorized for race day administration per 9E NYCRR 4043.2.

The is rule is intended to allow the administration of Board-authorized race day medications to horses that are quartered in limited access security barns by Board or association vets. Currently, such vets are prohibited from administering medications except in emergencies. Such security barns are designed to prohibit the unauthorized administration of certain medications. Nevertheless, the Board has authorized the administration of certain medication on the day that a horse will race, including the medication known as Lasix. This amendment will allow the Board vet or association vet to administer such race day medications and preserve the integrity of the limited access security barn.

Costs: There are no projected costs to regulated persons or state and local governments associated with the amendment of 9E NYCRR 4005.5. This amendment will create an exception to an existing rule to permit a veterinarian employed by the Racing and Wagering Board or a racing association to administer medications to horses. There are no costs associated with making such an exception.

Paperwork: There is no additional paperwork required by or associated with this rule amendment.

Local Government Mandates: This rule would impose no local government mandates.

Duplication: There are no other state or federal requirements similar to the provisions contained in the rule amendment.

Alternative Approaches: There are no other significant alternatives to this rule, which was narrowly drafted to accomplish the stated benefits in thoroughbred races of significant merit and interest.

Federal Standards: The rule does not exceed any minimum standards of the federal government because there are no applicable federal rules.

Compliance Schedule: This emergency rule amendment is effective upon filing. Compliance can be accomplished immediately without need for modification of existing procedures.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment merely expand the parlay bet to proposition wagers and increase the amount of races upon which a parlay bet may be made from six to eight. These amendments do not impact upon State Administrative Procedure Act § 102(8). Nor do they affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above, because the Board rules have previously allowed parlay bets to be made on other betting pools.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Pick Six Wager

I.D. No. RWB-20-05-00021-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 4011.23 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 228 and 229

Subject: Pick six wager and the refund or "no contest" of the pick six wager in certain instances.

Purpose: To refund the pick six wager when there are three or less races contested for the pick six; amend it so that if a race is moved from the turf to the dirt, it would be deemed a "no contest"; change the take out amounts so they conform with statutory mandate; and enable the track to share betting information when last leg of pick six remains.

Text of proposed rule: 4011.23. Pick-six pools.

The rules in this section shall govern all pick-six pari-mutuel pools conducted by a thoroughbred track operator.

(a) Wagering tickets. A pick-six pari-mutuel pool known as the "pick-six," or such other name as may be approved by the board, is authorized to be conducted by a thoroughbred track operator upon the outcome of six designated pari-mutuel races to be contested at its track on the same racing program, such designation to be made by the track operator with the approval of the board. Such pool shall be separate and distinct from all other pari-mutuel pools conducted at such track. Wagers in such pool shall be represented by pari-mutuel tickets immediately distinguishable from pari-mutuel tickets issued in other pools. A wager, which shall select a winner for each designated race, shall be included on the same pari-mutuel ticket which shall be issued prior to the start of the first designated pick-six race. Races designated for the pick-six pool shall be clearly described as such in the official program.

(b) Winners and carry-overs. In general, after deductions for cancellations, refunds and statutory takeout, 75 percent of the resulting pick-six net pool for the day shall be distributed, less breaks, to the holders of tickets selecting the winners of all six designated races in the pool, *or to the holders of tickets selecting five winners out of six and have no more than one "all win" event, and no other races are cancelled or declared "all win" in the pick-six sequence of races*, and 25 percent of such net pool shall be distributed to the holders of the remaining tickets selecting the most winners. (Such takeout shall be established [at 36 percent, except that the New York Racing Association may elect to establish a 25 percent takeout before the first pool of a meeting is conducted.] *at a rate between the range of 15 percent to 36 percent inclusively. Such rate may not be changed more than once per calendar quarter to be effective on the first day of the calendar quarter.*) Should there be no wager selecting winners of all six designated races, *or five winners and no more than one "all win"*, 25 percent of the net pool shall be distributed less breaks to the holders of tickets selecting the winners of the most pick-six races and the 75 percent of the net pool reserved for holders of tickets selecting six winners, *or five winners and no more than one "all win"*, shall be carried over and added to and distributed with the 75-percent net pool share of the next subsequent pick-six pool in which a wager correctly selects the winners of all six designated pick-six races, *or five winners and no more than one "all win."* Carryovers from prior pick-six pools, *advertised guaranteed amounts or advertised added amounts will be distributed to winners in such day's pick-six pools, provided that there is no more than one "all win" event and no other races are cancelled or declared "all win" in the pick-six sequence.*

(c) Added payments to winners. In addition to the 75-percent net pool share and any carry-overs distributable when a wager correctly selects winners of all six designated races, *or five winners and no more than one "all win"* of a pick-six pool, there shall be distributed by the track operator from its own funds, upon such occurrence, any amounts it has advertised that it will add to the total distribution, or any amounts necessary to yield an advertised guaranteed total distribution.

(d) Intermediate distributions. Prior to the last two weeks of a race meeting at a track, a date and program approved by the board may be announced by the track operator at which (provided no one thereafter correctly selects the winners of all six designated races, *or five winners and no more than one "all win"* of a pick-six pool through such program) accumulated carry-overs in an amount announced by the track operator will be added to the 25 percent of the net pool distributable to wagers selecting the winners of the most races of the pick-six pool conducted on such program if no one correctly selects all six winners, *or five winners and no more than one "all win"*. The balance of undistributed carry-overs above such announced amount, plus any carry-over from such program, shall in turn carry over for distribution with subsequent pick-six pools conducted by such track operator at such track. An intermediate distribution may also be directed at any time, upon three days' notice by the board, of such portion or all of the accumulated carry-over money as may be directed by the board.

(e) Final distribution. The track shall select, with the approval of the board, a date and program during the final week of the annual assigned racing dates of the track operator, and also during the year during the final week of a meeting (which for purposes of this section shall mean the end of assigned racing dates at a track after which such track operator will operate at another track) when there shall be a final distribution of all accumulated carry-overs together with 75 percent of the net pool of the pick-six pool conducted during such program to the holders of wagers selecting the winners of the most pick-six races contested during such program and 25 percent of such net pool shall be distributed to the holders of the remaining tickets selecting the most winners; except that, if only one, two or three such races are conducted, then all accumulated carry-overs and the entire

net pool shall be distributed to the holders of wagers selecting the most winners of such one, two or three races. Thereafter, no pick-six pools will be conducted during such week. In the event that all pick-six races on the program designated for final distribution are cancelled, and no further programs are conducted at the meeting, the board shall require that a pick-six pool be conducted on the first program of the next subsequent race meeting conducted at such track by such track operator to provide for final distribution for such prior meeting. The board may also order a final distribution for an earlier time in its discretion.

(f) Dead heats. Each horse in a dead heat for win shall be considered the winner, and no allocations among wagers shall be made as a result thereof, unlike the practice in a pari-mutuel win pool. The payoff price per dollar shall be the same for each class of winning wager.

(g) Scratched horses and nonstarters.

At any time after wagering begins on the pick-six pool, should an entire betting entry or field be scratched or declared a nonstarter in any pick-six race, no further tickets selecting such betting entry or field shall be issued, and wagers upon such betting entry or field, for purposes of the pick-six pool, shall be deemed wagers upon the betting entry or field (designated horse) upon which the most wagering money has been registered at the track in the win pool at the close of win pool betting for such race. (In the event of a money tie, the tied betting entry or field with the lowest program number shall be designated.) Wagers in the pick-six pool upon an entry or field of horses from which a starter or starters may have been scratched will, in the case of such entry or field, be deemed wagers upon the horse or horses remaining in such entry or field; except at tracks with totalizator capability to record wagers selecting a coupled entry (or field) and wagers selecting any individual constituent horses therein (merging such wagers for odds display and payoff purposes), in which case, the wagers upon scratched constituent horses will be deemed wagers upon the "designated horse" in such race. In case no starter remains representing any betting entry or field, wagers upon such entry or field shall be deemed wagers upon the "designated horse" in the race affected by the scratch. Should the balance of a betting entry or field race as a nonbetting starter for purposes of other pari-mutuel pools, as provided in section 4009.20 of this Title, wagers upon such entry or field shall be deemed wagers upon the "designated horse" for such race. Should a programmed starter be scratched or declared a nonstarter prior to the start of the first leg, the betting operator shall be authorized to refund any tickets designating betting entries affected thereby prior to such first leg.

(h) Race cancellations and surface transfers. Except for pick-six pools in which an intermediate or final distribution is to be made, should one or more pick-six races be cancelled, no carry-overs from prior pick-six pools, advertised guaranteed amounts nor advertised added amounts will be distributed to winners in such day's pick-six pool; and (1) if more than three such races are contested, 75 percent only of that program's net pool shall be distributed, less breaks, to holders of wagers upon the winners of all pick-six races actually contested for such pool and 25 percent of such program's net pool, less breaks, shall be distributed to the holders of the remaining tickets selecting the most winners; should no wager select the winners of all pick-six races actually contested, 25 percent of that net pool shall be distributed, less breaks, to the holders of wagers selecting the most winners of the pick-six races contested, and the 75-percent balance shall be carried over as elsewhere provided in this section, for subsequent distribution; (2) if three or fewer such races are contested, the entire [net] pool [less breaks] for such program shall be [distributed to holders of wagers selecting the most winners in the races actually contested] *refunded. When the condition of the turf course(s) warrants a change of racing surface in any of the legs of the pick-six races, and such change has not been known to the public prior to the close of wagering for the pick-six pool, the stewards shall declare the changed leg(s) an "all win" race for pick-six wagering purposes only. An "all win" race will assign the winner of that race to each pick six ticketholder as their selection for that race.*

(i) Seed money or insurance allocation. Except where the established takeout is [25 percent] *higher than the prevailing takeout established for non-carryover days*, a percentage designated by the track operator and approved by the board, not exceeding two percent of the total daily pick-six pool wagering, shall be held apart by the track operator from the takeout of each pick-six pool to reimburse such track operator for the cost of any insurance it may secure to guarantee minimum distributions to winners of such pools, or to reimburse a track operator for funds it expends for added money or guaranteed minimum distributions to winners of such pools. Any accumulation of such allocations not necessary to reimburse a track for expenditures actually incurred for such purposes shall be added to

the amounts distributable in the pool designated for final distribution for the meeting.

(j) Posting of winning combinations. Every pick-six wagering combination entitled to a payoff shall be posted publicly by the track operator together with the payoff price therefor.

(k) Trust funds. Carry-over monies shall be held in a separate account in trust by track operators for the benefit of participants in pick-six pools until distributed.

(l) No reduction in guaranteed distributions. Advertised added monies or minimum distributions shall not apply to intermediate or final distributions, unless a wager correctly selects winners of all six designated races, or five winners and no more than one "all win" of the pick-six pool. A guaranteed minimum distribution or guaranteed added money amount, once advertised, may not be reduced and shall continue to be guaranteed by the track operator for every pick-six pool for the balance of the meeting.

(m) Betting information. Unless otherwise ordered by the board, information concerning combinations wagered upon or not wagered upon in a pick-six pool shall not be disclosed by the tote operator, or otherwise, until [all races of a pick-six pool have been contested and declared official] *the final leg of a pick-six wager remains as the only race to be contested for completion of the pick-six wager.* The operation of the totalizer equipment and reports generated thereby, as well as the communication of any information concerning such pool, shall be subject to the strict supervision of the board.

(n) Nontransferability. Pick-six tickets shall be nontransferable, and violations of this subdivision may lead to confiscation and cancellation of such tickets in addition to other disciplinary action.

(o) Unforeseen circumstances. Should circumstances occur which are not foreseen in this section, questions arising thereby shall be resolved in accordance with general pari-mutuel practice. Decisions regarding distribution of pick-six pools will be final and unappealable.

(p) Posting of rules. These rules shall be posted in the public area of the track by the track operator and copies thereof shall be made available to the public by the track operator.

(q) Interfacing of off-track wagers. Interfacing of off-track wagers shall be accomplished according to procedures approved by the board. In the event there is a failure to interface all such wagers with on-track wagers in accordance with such procedures, the procedure for distribution of the pool and computation of payoff prices shall be approved by the board.

Text of proposed rule and any required statements and analyses may be obtained from: Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Watervliet Ave. Ext., Albany, NY 12206-1668, (518) 453-8460, ext. 3300, e-mail: gailpronti@racing.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.

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Regulatory Impact Statement

1. Statutory Authority and Legislative Objectives of Such Authority. The Board is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law ("RPMWBL") §§ 101, 227, 228 and 229. Under § 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel thoroughbred-racing activities. § 227 of the RPMWBL provides that the Board shall make rules regulating the conduct of pari-mutuel betting. §§ 228 and 229 establishes statutory procedures for exotic wagering and tax rates for pari-mutuel pools. This rule amendment pertains to a type of wager named the pick six and its take out rates.

2. Legislative Objectives. To enable the New York State Racing & Wagering Board to preserve the integrity of pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and Benefits. These amendments pertain to § 4011.23, which is entitled "pick six pools." The pick six is a type of wager offered by a racetrack operator to a bettor. The object is for the bettor to choose six winning horses in a series of six consecutive races. The bet is made prior to the beginning of the series.

4011.23(B) AMENDMENT

The first change in 4011.23(b) redefines to whom the 75 percent of the pick-six net pool, (which may also include carryover amounts) is to be distributed. Under the current rule, bettors must select all six winning horses, in order to receive a distribution from the 75 percent of the net pick six pool. With this rule amendment, that group is widened to also include, bettors who have chosen five winners out of six and have no more than one "all win" as their bet. A bettor would have an "all win" designation on his ticket when a race in the series was moved from the turf (grass) track to the

dirt track, after the close of pick six betting. (Section (h) of this subpart is being amended to require this be considered an "all win" situation for pick six bettors. See below.)

The current rule provides that where no bettors have selected six winning horses, only 25 percent of the net pick six pool is distributed. That 25 percent of the net pick six pool is distributed to those bettors selecting the next most winners out of the six designated races for that day. The remaining 75 percent of the net pick six pool is then carried over and added to the 75 percent net pick six part of the pool for the next pick six day pool.

The rule amendment allows the bettor with five plus no more than one "all win", to qualify for a distribution from the pick six pool carryover amounts that may have been added from a previous day or day's 75 percent part of the pool.

The amendment to the rule inserts the five winners and no more than one "all win" language alongside references to "winners of all six designated races" throughout the rule so that a "winner" is defined consistently. That can be seen in paragraphs (c), (d) and (l).

Under the current rule, only bettors who have actually selected all six winning horses are able to avail themselves of the 75 percent of the net pick six pool plus carryovers, if any. In thoroughbred racing, often times weather dictates whether races are run on the turf (grass) or the dirt. When it rains, turf races are potentially more dangerous (slippery) to the racehorses and jockeys than a dirt race. Often, when this happens, track management determines that a race, that was originally written to be a turf race, be switched to a dirt race in the interest of safety. However, this can put fans and the betting public at a disadvantage, particularly when their object is to choose six horses to finish first in six consecutive races. When handicapping, bettors take into consideration the horses' past performance on turf or dirt. If the track is changed after the bet is placed, the bettor's original selection could be scratched and if not, be a terrible prospect as a dirt track runner. The current rule provides that the bettor will be assigned the post time favorite as his selection when there is a track change. The post time favorite is the horse that has the lowest odds and may not originally have been a choice of the pick six bettor. It is not appealing to the pick six bettor to have his bet automatically assigned to the favorite that the bettor dislikes, and discourages pick six betting on race dates with inclement weather and/or forecasts. Accordingly, fans and racetrack management favor a more equitable rule. By giving the fans an "all win" in this situation, and amending the rule to permit a "pick six winner" to be a bettor who selects six winners, or five winners and no more than one "all win," will provide a more equitable result for pick six bettors on inclement weather days, and will encourage them to play the pick six on those days.

The second change to Section 4011.23(b) is being made in order to bring the regulation into compliance with RWPMBL §§ 228(1) and 229(1)(a) concerning take-out rates. A take out is a tax that takes amounts from the gross betting pool and distributes it to various entities such as the track, state, two breeding funds, and other various entities. The take out rate amounts set forth in RWPMBL §§ 228(1) and 229(1) were changed in May of 2003, from a range of twenty-five (25) percent to thirty-six (36) percent to a new range of fifteen (15) percent to thirty-six (36) percent. It is necessary for the Board's rules to conform to specific statutory tax rates for exotic wagering pools as prescribed by RPMWBL §§ 228 and 229.

SECTION 4011.23(h)(2)

There are two proposed amendments to Section 4011.23(h)(2). One requires that when races in the pick six series are cancelled, leaving only three or less contested races in the pick six series, then there is a total refund of the pick six wagers to the bettor. Currently, Section 4011.23(h)(2) requires that where there are three or less races contested for the pick six, the wager is not refunded, but instead the entire net amount of the pool less breaks is distributed to the winners with the most winning horses chosen. Obviously, where only three or less races are contested, out of six, the likelihood of being a winner is easier than to have chosen all six winning horses. The current requirement to pay the pick six pool, including carryovers, to those bettors with winning horses in three or less races, is patently unfair to the betting public. It enables those bettors with less skill and less investment to endure a windfall over others who possess actual betting and handicapping skills or ability. Where there is a carryover, the bigger more serious bettors have invested significantly more money in the pick six pools consistently over the course of time. Those bettors' larger investment is predicated on an advertised jackpot prize along with the understanding that all races in that pool will be contested. When conditions change (for example, inclement weather could cause scratches and races to be deemed no contest) and three or fewer races are contested, it isn't equitable or fair to distribute a larger than normal net pool to those winning ticket holders of three or less races. The pick six pool experiences a

dramatic increase on days when there are carryovers. When a few of these races are cancelled, there can be many winners, so the return to winning bettors can be small. As stated above, this results in a considerable loss to those who have wagered a large amount based on the possibility of the carryover being part of the distribution. As a result, most patrons would prefer to have their money refunded as opposed to split amongst those who have won the pick six by picking three or less winning horses.

The second amendment to Section 4011.23(h)(2) requires that where a race scheduled to run on the turf (grass) part of the track, is moved to the dirt track, after pick six betting is closed, an "all win" designation for that race is given to all pick six bettors. An "all win" designation would mean the bettor automatically is assigned the "winner," no matter which horse he originally chose to win. Under the current practice, if any of the races are moved to the dirt track, some horses are scratched. If a pick six bettor's choice is scratched then the track operator automatically voids the bettors' election for that race and replaces it on the bettors' ticket with the post time favorite as his selection for that race. Instead this rule change would give everyone the winner no matter what horse they chose to actually win because of the surface change. The amendment is a fairer result, in view of the fact that, the bettor does not have the favorite assigned to him, which may not be, among the selections of the bettor and would yield him a winner with the lowest odds and payoff. Further, the rule amendment will now give the track operator clear regulatory direction on how to properly preserve a pick six wagering pool in the event of a surface change from the turf to the dirt. According to the New York Racing Association, which requested this amendment, the current practice discourages bettors from wagering in a pick six if there is a possibility that a track change could occur due to weather or sloppy track conditions. Through this amendment of giving the bettor a "no contest" the bettors know they have a fairer chance of winning the six out of six series of races and are more likely to place a wager on bad weather days. By increasing the number of wagers placed into the pick six pools, the pool increases and thereby increases the revenues paid to the State of New York.

SECTION 4011.23(I)

The amendment to Section 4011.23(i) is being made in order to conform the regulations to the governing statutes, sections 228 and 229 subdivisions (1), which mandate that the takeout rates for super exotic wagers be between fifteen (15) and thirty six (36) percent. The reference in the regulation to the twenty-five percent minimum rate must be deleted.

SECTION 4011.23(m)

The change to Section 4011.23(m) would enable the track and others to provide potential betting payout information when only the last leg of the pick six series of races remains to be contested. Currently the rule prohibits the dissemination of probable payoffs until all races in the pick six series are made official. The amendment permits probable pay off amounts to be made available after the fifth race is concluded. Previously, the dissemination of this information was prohibited as the probable payoff numbers could never be generated or computed accurately or quickly enough between races. However, with new technology and equipment to gather all data, the probable payoff amounts based on different winning combinations can be calculated quickly and with accuracy. The rule change is proposed because it will be more informative and be more exciting for the betting public, thereby making it better for the racing business overall.

4. Costs:

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

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: See (d) below.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. There will be no cost to the agency.

5. Local government mandates: None. See above.

6. Paperwork: None. See above.

7. Duplication: None.

8. Alternatives: The other alternative would be to leave the rule as it is. However, distributing the pick six pool when there are three or less races raced within the pick six series is unfair to larger bettors who have bet over time as those larger bettors would have to divide the pool with less skilled bettors where the series has dwindled down to picking the winners in three or less than three races. It is further unfair to assign the post time favorite selection to a bettor when there has been a track change as the bettor is

assigned a horse as a winner with the lowest odds. It discourages less participation by serious bettors/handicappers who are aiming to pick as many winners of the six and reap a larger payoff.

9. Federal Standards: None.

10. Compliance schedule: Once adopted, the rule can be implemented immediately.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment merely eliminates the distribution of the pick six pool when there are three or less races and substitutes it with a total refund to bettors; declares a track change in a race involved in the pick six series made from the turf to dirt after betting a "no contest"; brings the takeout rates into statutory compliance; and permits for the earlier release of betting information. These amendments do not impact upon State Administrative Procedure Act § 102(8). Nor do they affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above, because the Board rules have previously required the pool to be distributed and instead there will be a distribution in the form of a refund.

Department of Taxation and Finance

ERRATUM

A Notice of Emergency Adoption, I.D. No. TAF-14-05-00002-E pertaining to Signature Requirements Applicable to Tax Return Preparers, published in the April 27, 2005 issue of the *State Register* contained the incorrect filing and effective dates. The correct filing date is April 12, 2005; the correct effective date is April 12, 2005.

The Department of State apologizes for any inconvenience this may have caused.