

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 Economic Development

EMERGENCY RULE MAKING

Empire Zones Program

I.D. No. EDV-32-06-00006-E

Filing No. 891

Filing date: July 24, 2006

Effective date: July 24, 2006

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

Action taken: Amendment of Parts 10 through 14 of Title 5 NYCRR.

Statutory authority: General Municipal Law, art. 18-B, section 959

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

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

Subject: Empire Zones Program.

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

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 At the same time, the existing regulations contain several outdated references, and the Department has also taken the opportunity to improve its administrative procedures.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

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

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

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

contiguous census tracts that were otherwise suitable for development and have not had any appreciable commercial activity or capital investment or (5) changes to eligible census tracts as a result of the 2000 Census, combined with the requirement in the amended statute that the distinct and separate contiguous areas accommodate already designated lands, alter the amount of nearby acreage used and available for development.

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

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

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

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

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

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

Tenth, the emergency rule fulfills the requirements of Chapter 63 to subject all businesses applying for zone benefits to meet a "cost-benefit

analysis". The cost-benefit analysis is to be included in the zone development plan by the applicant municipality. The definition included in the emergency rule lays out the basic formula for calculating the benefits received to the costs incurred.

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

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

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

The full text of the rule is available at www.empire.state.ny.us

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire October 21, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Donald T. Ross, Deputy Commissioner and General Counsel, Department of Economic Development, 30 S. Pearl St., Albany, NY 12245, (518) 292-5120, e-mail: dtross@empire.state.ny.us

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

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

COSTS:

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

II. Costs to the regulating agency for the implementation and continued administration of the rule: While there will be additional costs to the Department of Economic Development associated with the emergency rule

making, this is a result of the statutory changes which the emergency regulation language tracks or interprets. All existing Empire Zones have to revise their boundaries as a result of the statutory changes, with certain exceptions tied to specific types of business or the timing of certain applications. This results in more paperwork and additional staff time over the course of the next twelve months as the program is reconfigured. However, over time staff and paperwork costs will be minimized because the statutory changes have clarified eligibility for the program and the revised regulations have made procedures for processing applications easier to understand.

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

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

LOCAL GOVERNMENT MANDATES:

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

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Participation in the Empire Zones Program is entirely at the discretion of each eligible municipality and business enterprise. Neither General Municipal Law Article 18-B nor the emergency regulations impose an obligation on any local government or business entity to participate in the program. The emergency regulation does not impose any adverse economic impact, reporting, recordkeeping, or other compliance requirements on small businesses and/or local governments. In fact, the emergency regulations may have a positive economic impact on the small businesses and local governments that do participate due to clarifying changes, the added flexibility and a new application process. The administrative structure of the program was designed to offer a streamlined application and approval process by extracting only essential information from the applicants. In addition, the changes to the regulations that track changes in statute and result in a reconfiguration of zones will actually enhance the ability of businesses yet

to apply which are located in distressed areas to receive program benefits. Local governments will have the additional short-term burden of taking the legal and administrative steps necessary to reconfigure their zones, but this is a statutorily imposed burden, not solely a regulatory one. Because it is evident from the nature of the emergency rule that it will have either no substantive impact, or a positive impact, on small businesses and local governments, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

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

Job Impact Statement

The emergency regulation relates to the Empire Zones Program. The Empire Zones Program itself is a job creation incentive. The emergency regulation will not have a substantial adverse impact on jobs and employment opportunities. In fact, the regulations, which result from statutory-based reforms, will enable the program to better fulfill its mission: job creation and investment for economically distressed areas. At the same time, businesses currently receiving benefits will not have their status jeopardized as a result of the regulations. Because it is evident from the nature of the emergency amendment that it will have either no impact, or a positive impact, on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Marine Fishing Regulations

I.D. No. ENV-20-06-00001-E
Filing No. 889
Filing date: July 21, 2006
Effective date: July 21, 2006

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

Action taken: Amendment of section 40.1 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105, 13-0340-b, 13-0340-e and 13-0340-g

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

Specific reasons underlying the finding of necessity: Pursuant to Section 13-0371 of the ECL, New York State participates in the Atlantic States Marine Fisheries Compact administered through the Atlantic States Marine Fisheries Commission (ASMFC) to promote cooperative utilization of marine and anadromous fish species. The principle mechanism for implementation of cooperative management of migratory fish are the ASMFC’s Interstate Fishery Management Plans for individual species or groups of fish. The Fishery Management Plans (FMPs) are designed to promote the long term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have imple-

mented, in a timely manner, provisions of FMPs with which they are required to comply. If ASMFC determines a state to be in non-compliance with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state comes into compliance with the FMP.

ECL Sections 13-0105, 13-0340-b, 13-0340-e, and 13-0340-g, which authorize the adoption of regulations for the management of summer flounder, scup and monkfish, provide that such regulations must be consistent with the FMPs for these species adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act.

Under the FMP for summer flounder and scup, ASMFC assigns each state an annual harvest target or quota. In addition, a projection is made for each state as to its expected harvest, assuming the state's regulations are unchanged and that harvest patterns and rates remain the same as the previous year. If the projected harvest for a state exceeds that state's assigned quota, that state is required to amend its harvest regulations so that they are sufficiently restrictive to prevent the state from exceeding of its assigned quota. ASMFC reviews each state's regulations and must determine that they are compliant with the FMP. Accordingly, failure to adopt revised regulations for 2006 in a timely matter will result in a non-compliance determination by ASMFC and the Secretary of Commerce, and the imposition of a total closure of the summer flounder fishery in New York State, with significant adverse impacts to the State's economy.

Therefore, in order to prevent imposition of a federal closure for the recreational and commercial fisheries for summer flounder, and the economic hardship that would be associated with such closure, this emergency rule adopts the specific measures necessary to comply with the FMPs. New York's projected harvests for summer flounder in 2006 exceed the State's assigned quota by 26%. The regulatory changes in this emergency rule, which have been approved by ASMFC, are calculated to achieve at least a 26% reduction for summer flounder.

The changes to the FMP for scup allow for immediate expansion of the recreational fishing season for the species. This emergency action is necessary to protect the general welfare of the people of the State by allowing the recreational fishing industry, specifically, the bait and tackle industry, the party/charter boat industry, and the marine recreational anglers, to take immediate advantage of the opportunities presented by a longer open season for scup, consistent with the Interstate FMP. New York State's marine recreational fisheries for the species will derive significant economic benefits as a result of the expanded season. Such benefits would not be realized in 2006 by following the course of normal rule making pursuant to SAPA § 202(1). Delaying implementation of these amendments to 6 NYCRR Part 40 would adversely impact New York's recreational fishing industry by unnecessarily depriving them of the economic benefits associated with the expanded season.

On April 28, 2005, pursuant to the Federal Fishery Conservation and Management Act, the National Marine Fisheries Service (NMFS) revised the federal regulations (50 CFR Part 648) to lower monkfish minimum size limits for all vessels participating in the federal fishery for this species, but never directly notified the Department. New York's current size limit for monkfish is higher than the federal limit. Adjacent states have lowered their size limits to be consistent with the federal rules and the FMP for monkfish. New York is currently the only state with the higher size limit.

The emergency rule making lowers New York's size limit for monkfish in order to achieve consistency with Federal regulations and with regulations in neighboring states (size limit: 17" total length, 11" tail length). Prior to this amendment, New York's size limit for monkfish was 21" total length, 14" tail length, which prevented New York foodfish dealers from taking in product from neighboring states where the size limit was lower. In addition, fishermen with federal permits could not land monkfish in New York if the fish were under New York's size limit, even though the fish were taken legally from adjacent federal EEZ waters in accordance with the federal size limit. The emergency rule making corrects this inequity. There is no conservation benefit associated with maintaining New York's higher size limit. Emergency rule making is necessary to relieve the unnecessary economic hardship imposed by current regulations.

The promulgation of this regulation on an emergency basis is necessary for the Department to maintain compliance with the FMPs for summer flounder, scup, and monkfish, to avoid closure of the summer flounder fisheries and the economic hardship that would be associated with such

closure, and to provide economic relief to the recreational and commercial fishing industries.

Subject: Marine fishing regulations.

Purpose: To control the recreational and commercial harvest and possession of marine fish species (summer flounder, scup and monkfish).

Text of emergency rule: Subdivision 40.1(f) is amended to read as follows:

(f) "Table A-Recreational fishing."

Species	Open Season	Minimum Length	Possession Limit
Striped Bass (except the Hudson River north of the George Washington Bridge)	April 15 - Dec. 15	Licensed Party/ Charter Boat anglers	2
		28" TL	
		All other anglers	1
		28" to 40" TL	
		>40" TL (Total Length) *	1
Red Drum	All year	No minimum size limit	No limit for fish less than 27" TL Fish greater than 27" TL shall not be possessed
Tautog	Oct. 1 - May 31	14" TL	10
American Eel	All year	6" TL	50
Pollock	All year	19" TL	No limit
Haddock	All year	19" TL	No limit
Atlantic cod	All year	22" TL	No limit
Summer flounder	[April 29 - Oct. 31] May 6 - Sept. 12	[17.5"] 18" TL	[5] 4
Yellowtail Flounder	All year	13" TL	No limit
Atlantic Sturgeon	No possession allowed		
Spanish Mackerel	All year	14" TL	15
King Mackerel	All year	23" TL	3
Cobia	All year	37" TL	2
Monkfish (Goosefish)	All year	[21] 17" TL [14] 11" tail length #	No limit
Weakfish	All year	16" TL 10" Fillet length + 12" Dressed length**	6
Bluefish	All year	No minimum size limit for the first 10 fish; 12" TL for the next 5 fish.	15, no more than 10 of which shall be less than 12" TL.
Winter Flounder	April 1 - May 30	12" TL	10
Scup (porgy)	[July 1] June 1 - Aug. 31	10.5" TL	25
licensed party/ charter boat anglers	Sept. 1 - Oct. 31	10.5" TL	60

Scup (porgy)	[July] June 1 - Oct. 31	10.5" TL	25
All other anglers			
Black Sea Bass	All year	12" TL	25
American Shad	All year	No minimum size limit	5
Hickory Shad	All year	No minimum size limit	5
Oyster toadfish	Jan. 1 - May 14 and July 16 - Dec. 31	10" TL	3
Large & Small Coastal Sharks ##, ###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
Pelagic Sharks ++ ,###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
Prohibited Sharks***, ###	No possession allowed		

* Total length is the longest straight line measurement from the tip of the snout, with the mouth closed, to the longest lobe of the caudal fin (tail), with the lobes squeezed together, laid flat on the measuring device.

The tail length is the longest straight line measurement from the tip of the caudal fin (tail) to the fourth cephalic dorsal spine (all dorsal spines must be intact), laid flat on the measuring device.

+ The fillet length is the longest straight line measurement from end to end of any fleshy side portion of the fish cut lengthwise away from the backbone, which must have the skin intact, laid flat on the measuring device.

** Dressed length is the longest straight line measurement from the most anterior portion of the fish, with the head removed, to the longest lobe of the caudal fin (tail), with the caudal fin intact and with the lobes squeezed together, laid flat on the measuring device.

Large and Small Coastal Sharks include those shark species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations.

++Pelagic sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations.

***Prohibited sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations.

###Applicable provisions of the following are incorporated herein by reference: 50 CFR Part 635-Atlantic Highly Migratory Species, final rule as adopted by U.S. Department of Commerce as published in the Federal Register, Volume 64, Number 103, pages 29135-29160, May 28, 1999, and as amended in volume 68, Number 247, pages 74746-74789, December 24, 2003. A copy of the federal rule incorporated by reference herein may be viewed at: New York State Department of Environmental Conservation, Bureau of Marine Resources, 205 N. Belle Mead Road, East Setauket, New York, 11733.

****See Special Regulations contained in 6NYCRR 40.1(h)(3).

Subdivision 40.1(i) is amended to read as follows:

(i) "Table B - Commercial fishing."

Species	Open Season	Minimum Length	Trip Limit			
Striped Bass (the area east of a line drawn due north from the mouth of Wading River Creek & east of a line at 73 degrees 46 minutes west longitude, which is near the terminus of East Rockaway Inlet). Red drum	July 1 - Dec. 15 #	Not less than 24" TL nor greater than 36" TL	See Subdivision (j) of this Section	Monkfish (Goosefish)	All year	[21] 17" TL [14] 11" Tail length + No more than 25% of the total weight of Monkfish landed per trip may be monkfish livers No limit No limit
				Weakfish	Hook and Line April 1 - June 24 and August 28 - Nov. 15 All other gears April 1 - June 24 and August 28 - Nov. 15 June 25 - Aug. 27 and Nov. 16 - Mar. 31	16" TL 10" fillet length** 12" dressed length## No more than 300 pounds, per vessel, in the round***, and provided that at least an equal poundage of other foodfish species caught during the same trip is on board the vessel A trip limit set by the department and adjusted in consultation with the commercial fishing industry No limit No limit No limit
				Bluefish	Jan. 1 - Dec. 31	9" TL A trip limit set by the department and adjusted in consultation with the commercial fishing industry No limit No limit No limit
		No minimum size limit	No limit for fish less than 27" TL Fish greater than 27" TL shall not be possessed	Winter flounder	Pound and Trap nets Jul 26 - June 14 Fyke nets Oct. 1 - Mar. 22 All other gear Dec. 1 - June 13	12" TL 12" TL 12" TL
Tautog	April 8 to last day of February	14" TL	25 per vessel (except, 10 per vessel when fishing lobster pot gear and more than six lobsters are in possession)	Scup	All year	9" A trip limit set by the department to be consistent with the requirements of the Interstate Fishery Management Plan for Scup. The Department, in its discretion, may establish a weekly limit or a biweekly limit authorizing holders of New York State Commercial Foodfish Licenses to possess and land up to a specified maximum quantity of scup in a seven day (weekly limit) or fourteen day (biweekly limit) period.
American eel	All year	6" TL	No limit			
Pollock	All year	19" TL	No limit			
Haddock	All year	19" TL	No limit			
Atlantic cod	All year	22" TL	No limit			
Summer flounder	All year	14" TL	A trip limit set by the department in consultation with the commercial fishing industry, consistent with the requirements of the Interstate Fishery Management Plan for Summer Flounder. The Department, in its discretion, may establish a weekly limit authorizing holders of commercial summer flounder permits to possess and land up to a specified amount of summer flounder in a seven day period.	Black Sea Bass	All year	11" TL A trip limit set by the department to be consistent with the requirements of the Interstate Fishery Management Plan for Black Sea Bass
Yellowtail flounder	All year	13" TL	No limit	American shad	All year	No minimum length No more than 5% of the total weight of all foodfish landed per trip
Atlantic sturgeon	No possession allowed					
Spanish mackerel	All year	14" TL	3,500 pounds in possession, per vessel	Oyster toadfish	Jan. 1 - May 14 and July 16 - Dec. 31	10" TL 25
King mackerel	All year	23" TL	3,500 pounds in possession, per vessel	Large & Small Coastal Sharks	As per Title 50 CFR, Part 635+++ ++ , +++	As per Title 50 CFR, Part 635+++ As per Title 50 CFR, Part 635++
Cobia	All year	37" TL	2 per vessel			

Pelagic Sharks ***,+++	As per Title 50 CFR, Part 635+++	As per Title 50 CFR, Part 635+++	As per Title 50 CFR, Part 635+++
Prohibited Sharks ###,+++	No possession allowed		

* Total length is the longest straight line measurement from the tip of the snout, with the mouth closed, to the longest lobe on the caudal fin (tail), with the lobes squeezed together, laid flat on the measuring device.

The commercial striped bass fishery may be closed before December 31st if the allowable harvest cap is projected to be met prior to such date.

+ The tail length is the longest straight line measurement from the tip of the caudal fin (tail) to the fourth cephalic dorsal spine. All dorsal spines must be intact, laid flat on the measuring device.

** The fillet length is the longest straight line measurement from end to end of any fleshy side portion of the fish cut lengthwise away from the backbone, which must have the skin intact, laid flat on the measuring device.

The dressed length is the longest straight line measurement from the most anterior portion of the fish, with the head removed, to the longest lobe of the caudal fin (tail), with the caudal fin intact and with the lobes squeezed together, laid flat on the measuring device.

++ Large and Small Coastal Sharks include those shark species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

*** Pelagic sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

Prohibited sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

+++ Applicable provisions of the following are incorporated herein by reference: 50 CFR Part 635-Atlantic Highly Migratory Species, final rule as adopted by U.S. Department of Commerce as published in the Federal Register, Volume 64, Number 103, pages 29135-29160, May 28, 1999, and as amended in volume 68, Number 247, pages 74746-74789, December 24, 2003. A copy of the federal rule incorporated by reference herein may be viewed at: New York State Department of Environmental Conservation, Bureau of Marine Resources, 205 N. Belle Mead Road, East Setauket, New York, 11733.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. ENV-20-06-00001-EP, Issue of May 17, 2006. The emergency rule will expire September 18, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Stephen W. Heins, Department of Environmental Conservation, 205 N. Belle Meade Rd., Suite 1, Setauket, NY 11733-3400, (631) 444-0435, e-mail: swheins@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to the requirements of article 8 of the ECL, a negative declaration is on file with the Department of Environmental Conservation.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) Sections 13-0340-b, 13-0340-e, and 13-0340-g authorize the Department of Environmental Conservation (Department) to establish, by regulation, open seasons, size limits, catch limits, possession and sale restrictions and manner of taking for summer flounder, scup and monkfish. ECL Section 11-0303 directs the Department to efficiently manage the fish and wildlife resources of the State. ECL Section 13-0105 requires the Department to manage marine fisheries resources to maintain long term health and abundance, and to ensure that these resources are sustained in usable abundance and diversity for future generations.

2. Legislative objectives:

It is the objective of the above-cited legislation that the Department manage marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies and interstate agreements.

3. Needs and benefits:

Pursuant to Section 13-0371 of the ECL, New York State participates in the Atlantic States Marine Fisheries Compact administered through the Atlantic States Marine Fisheries Commission (ASMFC) to promote cooperative utilization of marine and anadromous fish species. The principle mechanism for implementation of cooperative management of migratory fish are the ASMFC's Interstate Fishery Management Plans for individual species or groups of fish. The Fishery Management Plans (FMPs) are designed to promote the long term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have implemented, in a timely manner, provisions of FMPs with which they are required to comply. If ASMFC determines a state to be in non-compliance

with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state comes into compliance with the FMP.

ECL Sections 13-0105, 13-0340-b, 13-0340-e, and 13-0340-g, which authorize the adoption of regulations for the management of summer flounder, scup and monkfish, provide that such regulations must be consistent with the FMPs for these species adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act.

Under the FMP for summer flounder and scup, ASMFC assigns each state an annual harvest target or quota. In addition, a projection is made for each state as to its expected harvest, assuming the state's regulations are unchanged and that harvest patterns and rates remain the same as the previous year. If the projected harvest for a state exceeds that state's assigned quota, that state is required to amend its harvest regulations so that they are sufficiently restrictive to prevent the state from exceeding of its assigned quota. ASMFC reviews each state's regulations and must determine that they are compliant with the FMP. Accordingly, failure to adopt revised regulations for 2006 in a timely matter will result in a non-compliance determination by ASMFC and the Secretary of Commerce, and the imposition of a total closure of the summer flounder fishery in New York State, with significant adverse impacts to the State's economy.

Therefore, in order to prevent imposition of a federal closure for the recreational and commercial fisheries for summer flounder, and the economic hardship that would be associated with such closure, this emergency rule adopts the specific measures necessary to comply with the FMPs. New York's projected harvests for summer flounder in 2006 exceed the State's assigned quota by 26%. The regulatory changes in this emergency rule, which have been approved by ASMFC, are calculated to achieve at least a 26% reduction for summer flounder.

The changes to the FMP for scup allow for immediate expansion of the recreational fishing season for the species. This emergency action is necessary to protect the general welfare of the people of the State by allowing the recreational fishing industry, specifically, the bait and tackle industry, the party/charter boat industry, and the marine recreational anglers, to take immediate advantage of the opportunities presented by a longer open season for scup, consistent with the Interstate FMP. New York State's marine recreational fisheries for the species will derive significant economic benefits as a result of the expanded season. Such benefits would not be realized in 2006 by following the course of normal rulemaking pursuant to SAPA § 202(1). Delaying implementation of these amendments to 6 NYCRR Part 40 would adversely impact New York's recreational fishing industry by unnecessarily depriving them of the economic benefits associated with the expanded season.

On April 28, 2005, pursuant to the Federal Fishery Conservation and Management Act, the National Marine Fisheries Service (NMFS) revised the federal regulations (50 CFR Part 648) to lower monkfish minimum size limits for all vessels participating in the federal fishery for this species, but never directly notified the Department. New York's current size limit for monkfish is higher than the federal limit. Adjacent states have lowered their size limits to be consistent with the federal rules and the FMP for monkfish. New York is currently the only state with the higher size limit. The emergency rule making lowers New York's size limit for monkfish in order to achieve consistency with federal regulations and with regulations in neighboring states (size limit: 17" total length, 11" tail length). Prior to this amendment, New York's size limit for monkfish was 21" total length, 14" tail length, which prevented New York foodfish dealers from taking in product from neighboring states where the size limit was lower. In addition, fishermen with federal permits could not land monkfish in New York if the fish were under New York's size limit, even though the fish were taken legally from adjacent federal EEZ waters in accordance with the federal size limit. The emergency rule making corrects this inequity. There is no conservation benefit associated with maintaining New York's higher size limit. Emergency rule making is necessary to relieve the unnecessary economic hardship imposed by current regulations.

The promulgation of this regulation on an emergency basis is necessary for the Department to maintain compliance with the FMPs for summer flounder, scup, and monkfish, to avoid closure of the summer flounder fisheries and the economic hardship that would be associated with such closure, and to provide economic relief to the recreational and commercial fishing industries. Specific major changes to the regulations include the following items:

Summer Flounder

Implement an open season of May 6 to September 12 for the summer flounder recreational fishery. The current fishing season for summer flounder is open from April 29 to October 31. Also, lower the recreational possession limit from 5 fish per person per trip to 4 fish per person per trip, and raise the minimum size limit from 17.5" total length (TL) to 18" TL.

Scup

Implement an open season from June 1 through October 31 for the scup recreational fishery. The current fishing season for scup in New York is open July 1 to October 31. The possession limits and size limits are unchanged.

Monkfish

Lower the minimum size limit for whole fish from 21" TL to 17" TL and lower the minimum size limit for tails from 14" TL to 11" TL for both the commercial and recreational fisheries.

4. Costs:**(a) Cost to State government:**

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

(b) Cost to Local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

There are no new costs to regulated parties resulting from this action. Certain regulated parties (party/charter vessels, bait and tackle shops) may experience some adverse economic effects through lost economic opportunities due to the restrictions on summer flounder. These same regulated parties may experience some positive economic effects through new opportunities provided by the longer scup season.

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

The Department of Environmental Conservation will incur limited costs associated with both the implementation and administration of these rules. The implementation costs will be associated with the public notification and final adoption of these regulations, and costs relating to the expense of updating informational materials and notifying recreational harvesters, party and charter boat operators and other recreational support industries of the new rules.

There will also be additional costs associated with enforcement of these new regulations.

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

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

8. Alternatives:

The following significant alternatives, listed by species, have been considered by the Department and rejected for the reasons set forth below:

Summer flounder alternatives:

(1) One alternative considered was a more conservative approach, one which would result in a 38% reduction and a higher probability of keeping New York anglers from over-harvesting in 2006. This could be accomplished with an increase in the proposed size limit of 18 inches to 18.5 inches. This was rejected because higher size limits impose a disproportionately negative effect on shore-based anglers and those boating anglers who are restricted to fishing inside the bays. It would have little to no effect on those boating anglers who can fish in the ocean.

(2) No Action (no amendment to regulations).

The "no action" alternative would leave current regulations in place and defer short term adverse economic impacts to the summer flounder fishery from regulations. This option would, however, likely result in a non-compliance determination by ASMFC and NMFS, which would bring about a federal closure of all fishing for summer flounder in New York under ACFCMA. This would have a much more severe economic impact than the imposition of tighter restrictions.

Scup alternatives:

(1) One alternative considered was raising the bag limit to 60 fish per angler during the open season, removing the differential bag limit for party/charter boat anglers that is in effect during September and October under the current regulation, and leaving the open season as it is. This alternative was rejected because the preferred alternative reflects a regional approach mutually decided upon by New York, Connecticut, Rhode Island and Massachusetts. The four-state regional approach, approved by ASMFC, provides consistent regulations, which facilitate law enforcement

in boundary waters and reduce competition for customers among party and charter boats in the different states.

(2) No Action (status quo regulations).

The "no action" alternative would leave current regulations in place and forego the economic benefits to the scup fishery which would result from the earlier season opener.

Monkfish alternatives:**(1) No Action (status quo regulations).**

The "no action" alternative would leave current regulations in place and forego the economic benefits to the seafood dealers and markets and our fishermen. All other states have the lower size limits allowed under the FMP, which puts New York's dealers, markets and fishermen at a disadvantage.

9. Federal standards:

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

10. Compliance schedule:

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

Regulatory Flexibility Analysis**1. Effect of the regulations:**

a. Summer flounder. Pursuant to Section 13-0371 of the ECL, New York State participates in the Atlantic States Marine Fisheries Compact administered through the Atlantic States Marine Fisheries Commission (ASMFC) to promote cooperative utilization of marine and anadromous fish species. The principle mechanism for implementation of cooperative management of migratory fish are the ASMFC's Interstate Fishery Management Plans for individual species or groups of fish. The Fishery Management Plans (FMPs) are designed to promote the long term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have implemented, in a timely manner, provisions of FMPs with which they are required to comply. If ASMFC determines a state to be in non-compliance with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state comes into compliance with the FMP.

ECL Sections 13-0105, 13-0340-b, 13-0340-e, and 13-0340-g, which authorize the adoption of regulations for the management of summer flounder, scup and monkfish, provide that such regulations must be consistent with the FMPs for these species adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act.

Under the FMP for summer flounder and scup, ASMFC assigns each state an annual harvest target or quota. In addition, a projection is made for each state as to its expected harvest, assuming the state's regulations are unchanged and that harvest patterns and rates remain the same as the previous year. If the projected harvest for a state exceeds that state's assigned quota, that state is required to amend its harvest regulations so that they are sufficiently restrictive to prevent the state from exceeding of its assigned quota. ASMFC reviews each state's regulations and must determine that they are compliant with the FMP. Accordingly, failure to adopt revised regulations for 2006 in a timely matter will result in a non-compliance determination by ASMFC and the Secretary of Commerce, and the imposition of a total closure of the summer flounder fishery in New York State, with significant adverse impacts to the State's economy.

Therefore, in order to prevent imposition of a federal closure for the recreational and commercial fisheries for summer flounder, and the economic hardship that would be associated with such closure, this emergency rule adopts the specific measures necessary to comply with the FMPs. New York's projected harvests for summer flounder in 2006 exceed the State's assigned quota by 26%. The regulatory changes in this emergency rule, which have been approved by ASMFC, are calculated to achieve at least a 26% reduction for summer flounder.

b. Scup. There were 500 licensed party/charter vessels operating in New York during 2005 and an unknown number of retail and wholesale marine bait and tackle shop businesses operating in New York in that year. Many currently licensed party and charter boat owners and operators, as well as bait and tackle businesses, will benefit financially from the opening

of the recreational scup season on June 1. This is particularly important because the closed season for the recreational winter flounder fishery was recently amended to begin on May 31 instead of June 30. The additional opportunity to fish for scup during the month of June may provide some economic relief to party/charter boat businesses and bait and tackle shops who are affected by the earlier season closure for winter flounder.

c. Monkfish. New York's current commercial and recreational size limits for monkfish are both higher than the federal size limits. Adjacent states have lowered their size limits to be consistent with the federal rules and the FMP for monkfish. Current state regulations for monkfish place New York's seafood dealers and harvesters at a competitive disadvantage with the rest of the nation due to a disparity in size limits. The emergency rule making lowers New York's size limit for monkfish in order to achieve consistency with federal regulations and with regulations in neighboring states (size limit: 17" total length, 11" tail length). Prior to this amendment, New York's size limit for monkfish was 21" total length, 14" tail length, which prevented New York foodfish dealers from taking in product from neighboring states where the size limit was lower. In addition, fishermen with federal permits could not land monkfish in New York if the fish were under New York's size limit, even though the fish were taken legally from adjacent federal EEZ waters in accordance with the federal size limit. The emergency rule making corrects this inequity. There is no conservation benefit from leaving New York's size limit in place.

There are no local governments involved in the recreational fish harvesting business, nor do any participate in the sale of marine bait fish or tackle. Therefore, no local governments are affected under these proposed regulations.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

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

5. Minimizing adverse impact:

The purpose to these regulations is to constrain the recreational harvest of these species by controlling the length of the fishing season, the minimum size limits, and possession limits consistent with the standards established in any Fishery Management Plan (FMP) and neighboring states. Since these regulatory amendments are consistent with federal and interstate fishery management plans, the Department anticipates limited or no adverse impacts.

Ultimately, the maintenance of long term sustainable fisheries will have a positive affect on employment for the fisheries in question, including party and charter boat fisheries as well as wholesale and retail outlets and other support industries for recreational fisheries. Failing to comply with FMPs and take required actions to protect our natural resources could cause the collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. Regulations are proposed which provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

6. Small business and local government participation:

The development of this proposal has drawn upon input from the Marine Resources Advisory Council, which is comprised of representatives from recreational and commercial fishing interests. The proposed regulations are also based upon consultation with and recommendations received from other interested and affected parties, including recreational fishing organizations, party and charter boat owners and operators, retail and wholesale bait and tackle shop owners and state law enforcement personnel. There was no special effort to contact local governments because the rule does not affect them.

7. Economic and technological feasibility:

The changes required by this action have been determined to be economically feasible for the majority of the affected parties.

There is no additional technology required for small businesses. These regulations do not have direct application to local governments, so there are no economic or technological impacts for any such bodies.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The summer flounder, scup and monkfish fisheries directly affected by the emergency rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the state. Further, the emergency rule does not impose

any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the emergency amendments of 6 NYCRR Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

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

There were 500 licensed party/charter vessels operating in New York during 2005 and an unknown number of retail and wholesale marine bait and tackle shop businesses operating in New York in that year. Many currently licensed party and charter boat owners and operators, as well as bait and tackle businesses, will be affected by these regulations. The regulations will likely result in a short term economic gain due to the relaxation in allowable catch and availability of scup fishery resources for the affected parties. There may be some adverse effect on the number of fishing trips and/or lower bait and tackle sales during the upcoming fishing season as a result of the proposed summer flounder regulatory amendments.

The purpose of these regulations is to allow appropriate harvest of certain marine fish species to maintain fishing mortality at prescribed levels and to continue to rebuild or maintain stock biomass. The potential impact of these regulations may be that some recreational party and charter boat owners experience continued reductions in customers, and bait and tackle businesses could continue to lose sales revenue from a decline in bait and tackle sales during the proposed fishing season. However, based on outreach with members of the recreational summer flounder and scup fisheries, the Department anticipates that there could be a slight positive impact on jobs as a result of the proposed changes, primarily due to the earlier opening to the scup season. Moreover, in the long term, the effect of this proposed rule on jobs and employment opportunities should be positive. Protection of the summer flounder and scup resources is essential to the survival of the party and charter boat operations and bait and tackle businesses that support in these fisheries.

The maintenance of long term sustainable fisheries will have a positive affect on employment for the fisheries in question, including party and charter boat owners and operators, wholesale and retail bait and tackle outlets and other support industries for recreational fisheries. Any short-term losses in participation and sales will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources. These regulations are designed to protect stocks while allowing appropriate harvest, to prevent over-harvest, and to continue to rebuild or maintain them for future utilization.

The impact on jobs related to the monkfish fishery is expected to be slightly positive, without detriment to the fishery resource. There is no biological or conservation justification for keeping the higher size limits, and lowering them will allow product harvested from out of state to flow into our markets, increasing local sales, and allowing our fishermen to take advantage of increased product availability.

Based on the above and Department's past experience with the adoption of finfish rules, the Department has concluded that there will not be any substantial adverse impact on jobs or employment opportunities as a consequence of these amendments.

Assessment of Public Comment

The agency received no public comment.

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

**Use of Disease-Resistant or Immune Cultivars of the Genus *Ribes*
I.D. No. ENV-32-06-00005-P**

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

Proposed action: Repeal of Part 192 and addition of new Part 192 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0103(3)(b), 3-0301(1)(b), 3-0301(2)(m) and 9-1301(5)

Subject: Use of disease-resistant or immune cultivars of the genus *Ribes*.

Purpose: To allow the planting of disease-resistant or immune cultivars of the genus *Ribes*.

Text of proposed rule: 6 NYCRR Part 192 is hereby repealed, and a new Part 192 is adopted to read as follows:

FOREST INSECT AND DISEASE CONTROL

(Statutory authority: Environmental Conservation Law, § 9-1301)
 § 192.1 Certain cultivars of black currants prohibited.

The planting, growing, propagating, cultivating or selling of plants, roots, or cuttings of cultivated black currants (*Ribes nigrum*), other than those cultivars that are immune or resistant to white pine blister rust disease or currant rust (*Cronartium ribicola*) as described in Section 192.2 of this rule, is prohibited, except in designated fruiting currant districts as defined in Section 192.3 of this rule.

§ 192.2 Immune and resistant cultivars of currants and gooseberries.

(a) Certification of cultivars.

Any person wishing to plant, propagate, cultivate or sell plants, roots, or cuttings of cultivated black currants (*Ribes nigrum*) outside of designated fruiting districts, and any person wishing to plant, propagate, cultivate or sell plants, roots, or cuttings of any cultivated plants of the genus *Ribes* within designated white pine blister rust quarantine districts, must obtain written certification from the Department that the cultivar(s) to be planted are immune or resistant to white pine blister rust disease. Such certification shall only apply to the cultivar(s) and location(s) listed on the certificate, and will be valid for the life of the planting unless revoked by the Department. Persons seeking cultivar certification must submit application to the NYSDEC, Division of Lands & Forests, 625 Broadway, Albany, NY 12233-4253. Application for certification must include name, address and phone number of applicant; and name of cultivar(s) proposed for certification and locations to be planted.

(b) Grounds for certification.

The Department shall respond to all cultivar certification applications within 60 days or less from the receipt of a complete application. In reviewing applications for cultivar certification, the Department shall take into consideration relevant peer-reviewed scientific literature, the advice of expert plant pathologists and geneticists, and any topographic or climatic factors that would influence the epidemiology of white pine blister rust disease.

(c) Revocation of certification.

The Department reserves the right to revoke any certification if the plants so certified become visibly infected by white pine blister rust disease, or if it finds clear scientific evidence that the plant(s) or cultivar(s) in question pose a serious threat to the health of forests.

§ 192.3 Fruiting currant districts.

The following districts where the growing of plants of the genus *Ribes* (currants and gooseberries) for the production of fruit is carried on extensively, or is a potentially important commercial enterprise, are hereby designated as fruiting currant districts:

(a) All of Cattaraugus, Cayuga, Chataqua, Columbia, Dutchess, Erie, Nassau, Niagara, Onondaga, Ontario, Orange, Putnam, Rockland, Schuylers, Seneca, Steuben, Suffolk, Tompkins, Westchester and Yates counties.

(b) In Clinton County, all of the Towns of Altona, Beekmantown, Champlain, Chazy, Clinton, Keeseville, Mooers, Peru, Plattsburgh, Rouses Point and Schuylers Falls.

(d) In Greene County, all of the Towns of Athens, Catskill, Coxsackie, Greenville, and New Baltimore.

(e) In Ulster County, all of the Towns of Esopus, Gardiner, Kingston, Lloyd, Marblertown, Marlborough, New Paltz, Plattekill, Rosendale, Saugerties, Shawangunk, and Ulster.

§ 192.4 White pine blister rust quarantine districts.

The bringing into, planting, possession or propagation of plants of the genus *Ribes* (currants and gooseberries), unless otherwise permitted as specified in section 192.2, is hereby forbidden in the following localities:

(a) All of Essex, Hamilton, Herkimer, Sullivan and Warren Counties.

(b) In Clinton, Franklin, Greene, and Ulster Counties, all of the Towns not listed in section 192.3 of this title.

(c) In Delaware County, all of the Towns of Andes, Colchester, Fleischmanns, Margaretville and Middletown.

(d) In Fulton County, all of the Towns of Bleecker, Broadalbin, Caroga, Mayfield, Northampton, and Stratford.

(d) In Lewis County, all of the Towns of Croghan, Diana, Greig, Harrisville, Lyonsdale and Watson.

(e) In Oneida County, all of the Town of Forestport.

(f) In St. Lawrence County, all of the Towns of Clare, Clifton, Colton, Fine, Hopkinton, Parishville and Piercefield.

(g) In Washington County, all of the Towns of Dresden, Fort Ann, and Putnam.

Text of proposed rule and any required statements and analyses may be obtained from: Jason Denham, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4253, (518) 402-9425, e-mail: jbdenham@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 compliance with article 8 of the Environmental Conservation Law.

Summary of Regulatory Impact Statement

1. Statutory authority.

By ECL Section 9-1301 the Department is authorized to control white pine blister rust. White pine blister rust is a fungal disease which is caused by the organism '*Cronartium ribicola*', and infects both 5-leafed pines and plants belonging to the genus '*Ribes*', (currants and gooseberries). Environmental Conservation Law (ECL) section 3-0301(2)(m) authorizes the Department to adopt rules and regulations "as may be necessary, convenient or desirable to effectuate the purposes of (the ECL)".

The Department has general authority to amend this regulation pursuant to ECL section 3-0301(2)(m). ECL section 1-0101(3)(b) directs the Department to guarantee "that the widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintentional consequences." ECL section 3-0301(1)(b) authorizes the Department to "promote and coordinate management of water, land, fish, wildlife and air resources to assure their protection...and balanced utilization consistent with the environmental policy of the state." ECL section 9-1301 (2) grants the Department authority to determine the location and extent of "fruiting currant districts" in conjunction with the State Department of Agriculture and Markets. Furthermore, ECL section 9-1301 (5) grants the Department "the authority, by order, to establish quarantine districts in any part or parts of the state. In such districts, it may prohibit the possession of any five-leafed pine trees or plants of the genus *Ribes* (currants and gooseberries), or so much thereof as is deemed necessary" to control the white pine blister rust organism. ECL also prohibits the planting of '*Ribes nigrum*' (black currant) anywhere in the state, with the exception of cultivars of '*Ribes nigrum*' that are immune or resistant to white pine blister rust.

There are now commercially available plants of the genus '*Ribes*' which do not act as a significant alternate host of white pine blister rust. Since the disease organism requires susceptible '*Ribes*' plants as hosts to complete its life cycle, it cannot logically be deemed necessary to prohibit possession of immune and resistant plants in order to control the disease. Agricultural production of currants and gooseberries is potentially a beneficial use of the environment, and therefore should be allowed by the Department to the extent that it can be attained without risk of environmental degradation.

2. Legislative objectives.

Since 1952, the Department has maintained pursuant to 6NYCRR Part 192 "fruiting currant districts" and "quarantine districts" in order to fulfill the legislative mandate to suppress and control the organism '*Cronartium ribicola*' as stated in ECL section 9-1301. While the disease causes only aesthetic damage to '*Ribes*', it is fatal to white pine. The disease requires the presence of both species to complete its life cycle, so removal of either species halts the development and spread of the disease.

At the time 6 NYCRR Part 192 was adopted, it was believed that all '*Ribes*' species acted as alternate hosts for the rust disease. Recent research has indicated that cultivars of '*Ribes*' exist that are immune or highly resistant to the disease.

In recognition of these advancements in horticultural science, in 2003 the State Legislature amended ECL Section 9-1301 to except immune or resistant cultivars of '*Ribes nigrum*' from restrictions on planting or possession.

3. Needs and benefits.

'*Cronartium ribicola*' was first introduced to the United States in the late 1800s, and has been a pathogen with serious impacts on five leafed pines. The fungus cannot complete its life cycle without occupying both '*Pinus*' and '*Ribes*' hosts. Historical methods of control have ranged from physical eradication of wild '*Ribes*' to prohibition of the plants within designated quarantine districts. An active eradication program no longer exists in New York, but 6 NYCRR Part 192 still designates quarantine areas in which "the bringing into, planting, possession or propagation of currants and gooseberries is... forbidden".

This approach was effective in controlling white pine blister rust for many years. However, it no longer reflects the most recent scientific knowledge about resistance and immunity in some cultivars of '*Ribes*'. Adoption of the proposed rule would permit those cultivars which do not act as a significant host for white pine blister rust to be possessed, planted, and propagated in those areas where they are presently prohibited.

There is both an environmental need and a legislative mandate for the Department to control white pine blister rust. There is also a need and mandate to ensure the widest possible range of beneficial uses of the environment. In order for these two requirements not to conflict in the case of white pine blister rust control, Department regulations must accurately reflect the best scientific knowledge available.

The benefits of adopting the proposed rule are both economic and environmental. Eastern white pines will benefit by being protected from white pine blister rust to the same degree as they are by the current regulation. By definition, immune plants do not contract the disease, and sufficiently resistant plants, though they may contract the disease, do not produce large quantities of the spores capable of infecting white pine.

Another environmental benefit of the proposed rule is that pesticide use is likely to decrease in proportion to any increase in agricultural production of immune currants and gooseberries, which generally require less use of agricultural pesticides than most other crops grown in New York State.

Potential economic benefits of the new regulation are a result of an increasing world demand for currants and gooseberries, their juice and other products. About 600,000 tons of Ribes fruit are produced annually, mostly in Europe. New York is thought to be even better suited to 'Ribes' production because of its climate. It is speculated that total U.S. production of black currants could match or exceed European levels. Consequently, in the past several years, several other states have relaxed or eliminated anti-'Ribes' regulations.

Presently 6 NYCRR Part 192 places New York producers at an unnecessary competitive disadvantage in the growing market. Most currants and gooseberries consumed in the U.S. are still grown overseas. New York State has the potential to capture a significant share of that market with a domestic agricultural product. Potential results within five years are expanded nursery production and sale of 'Ribes' to home growers, agricultural production totaling 4,000 acres valued at \$4,000 to \$5,000 per acre a year (potentially a \$16 to \$20 million annual crop production), and siting of a fruit processing plant. Another desired outcome is the creation of an economically viable use for some fallow agricultural lands. 'Ribes' production may help agriculturalists stay in business and keep lands free of development.

4. Costs.

a) Costs to regulated parties for the implementation of and continuing compliance with the proposed rule.

There will be no significant cost to the regulated parties for achieving and continuing compliance with the proposed rule. Parties which have been in compliance with 6 NYCRR Part 192 previously will already be in compliance with the proposed rule, because the proposed rule is less restrictive than the present version. It is possible that parties exist who are not presently in compliance with the regulation, but would either be compliant with the new regulation already, or find it less costly to become compliant to the new regulation than had previously been the case.

b) Costs to the agency, the state and local governments for the implementation and continuation of the proposed rule.

The proposed regulation would be promulgated and implemented with existing Department staff. Department staff will be needed to educate the public about the new regulation, potentially including the development and delivery of public presentations and press releases, as well as direct contacts with affected groups and individuals within previously established quarantine districts. Department staff will also be needed to administer an approval process for 'Ribes' cultivars, as detailed in the proposed rule. However, these activities can be done with existing staff resources as part of existing job responsibilities.

The proposed regulation would impose little, if any, additional costs to State government at large. Most of the resources needed to implement and continue the proposed regulation would also be required for the continuation of the present white pine blister rust regulation. To the extent that the adoption of the proposed regulation may result in an increased interest in commercial agricultural production of currants and gooseberries, the State's income from taxation may be increased by some undetermined amount.

The proposed regulation should not impose any significant additional costs on local governments. The resources needed to implement and continue the proposed regulation would also be required for the continuation of the current white pine blister rust regulation. No increase in the workload of town courts due to citations for violating the proposed regulation is anticipated, as the proposed regulation is less restrictive than the present regulation.

5. Paperwork.

The proposed regulations will not impose any reporting requirements or other paperwork on any private or public entity. They do not require any person or agency to complete or submit any forms, reports or documents, with the following exception: Parties wishing to plant or possess immune or resistant cultivars of 'Ribes' within quarantine districts, and/or wishing to plant or possess immune or resistant varieties of 'Ribes nigrum' outside of currant fruiting districts must obtain written certification from the Department that the cultivar(s) to be planted are immune or resistant to white pine blister rust disease. This will require a minimal expenditure of time and energy on the part of those parties.

6. Local government mandates.

The proposed regulations would impose no program, service, duty or responsibility upon any county, city, town, village, school district or other special district. They do not require any local government to take any action, perform any additional function, or initiate any program as a result of their implementation and/or continuance. Activities necessary for the enforcement of the proposed regulations are the responsibility of Department law enforcement staff.

7. Duplication.

Other rules and legal requirements of the state and federal governments would not duplicate, overlap or conflict with these regulations.

8. Alternatives.

The alternative to revising the present regulation is to allow the existing regulation to stand. This alternative is not desirable because it does not conform to statutory changes, which recognize improvements in scientific knowledge, nor does it provide the fruit-growing community with any information or guidelines about disease-resistant cultivars of Ribes.

The 'no action' alternative will not impact the white pine industry in New York; however, the current regulation strongly limits the 'Ribes' industry in the State. The Department could continue to accomplish the suppression and control of 'Cronartium ribicola' with the present regulation in place, but the potential benefits of agricultural production of immune or resistant cultivars would not be achieved.

9. Federal standards.

This regulation does not exceed any minimum standards of the federal government for the same or similar subject areas. There are no federal standards related to this proposed regulation.

10. Compliance schedule.

No time is needed for regulated persons to achieve compliance with the proposed regulation. Any persons in compliance with the current regulation would necessarily be in compliance with the new regulation as well. The proposed regulation becomes effective upon publication in the State Register, and all persons would be expected to comply with it at that time. A person who violates the regulation will be subject to the potential penalties for a violation set forth in ECL section 71-0703.

Because of the potential for public sensitivity regarding this rule making, prior to filing these regulations with the Department of State, the Department of Environmental Conservation chose to do outreach to interested parties.

The Department would seek to educate the public about the proposed regulation through the Department's internet web site and contact between Department staff and the regulated communities. The Department plans to use this public outreach as the primary tool for implementation of the new regulation.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for small Businesses and Local Government is not submitted with these regulations because the proposal will impose no adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. Consequently, SAPA section 202-b(3)(a) exempts the proposed regulation from the requirement that a Regulatory Flexibility Analysis ("RFA") be prepared.

There is a significant chance that adoption of the proposed regulation would actually have beneficial results for small businesses and/or local governments. Whereas previously all plants belonging to the genus 'Ribes' have been prohibited within designated quarantine districts, certain cultivars of currants and gooseberries that are immune or resistant to white pine blister rust will be permitted. To the extent that growth in the fruiting and/or nursery industries in the state result from the regulation, there may be expanded markets or opportunities for small businesses that process, use, or sell those fruits.

Potential results within five years are expanded nursery production and sale of 'Ribes' to home growers, agricultural production totaling 4,000 acres valued at \$4,000 to \$5,000 per acre a year (potentially a \$16 to \$20 million annual crop production), and siting of a fruit processing plant. One

desired outcome is the creation of an economic use for fallow agricultural lands. 'Ribes' production could help agriculturalists stay in business and keep lands free of development, which would help local governments to meet their own open space conservation goals. In addition, the potential creation of new jobs and businesses as a result of an expanding fruit industry could help to increase some communities' tax bases.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will not impose any reporting, record keeping or other compliance requirements on rural areas. Consequently, SAPA section 202-bb(4)(a) provides that a Rural Area Flexibility Analysis ("RAFA") need not be prepared.

There is a significant chance that the proposed regulation would have positive economic impacts for some rural areas at least indirectly, by creating opportunities for individuals in rural areas. For example, small farmers within the boundaries of quarantine districts would have the option to grow a heretofore banned crop which has a high market value and requires less pesticides to produce than most agricultural crops. As a result, produce markets may be able to buy currants and currant products from local growers, rather than having to choose between importing the fruit, etc., from outside of quarantine districts or not carrying those products at all. The long-term economic benefits of growth in the 'Ribes' fruiting industry in New York are highly speculative, and there is no guarantee that such growth will result from the adoption of this proposed regulation. Possible outcomes include increased agricultural revenue, increased tax revenue, and jobs created by the construction and staffing of fruit processing facilities. Non-economic benefits to the State could be a small decrease in overall pesticide usage and preservation of open space.

The following economic conditions could occur as a result of adoption of the proposed regulation: within five years expanded nursery production and sale of 'Ribes' to home growers, agricultural production totaling 4,000 acres valued at \$4,000 to \$5,000 per acre a year (potentially a \$16 to \$20 million annual crop production), and siting of a fruit processing plant. One desired outcome is the creation of an economic use for fallow agricultural lands. 'Ribes' production could help agriculturalists stay in business and keep lands free of development.

Job Impact Statement

A Job Impact Statement is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities. As discussed below, the adoption of the proposed regulation for the allowed use of immune and resistant cultivars of 'Ribes' would not affect a decrease of more than one hundred full-time annual jobs and employment opportunities, including opportunities for self-employment, in the state. Consequently, the proposed regulation would have no substantial adverse impact on existing jobs and employment opportunities and, pursuant to SAPA section 201-a(2)(a), no Job Impact Statement ("JIS") is required.

There is a significant chance that adoption of the proposed regulation would actually result in an increase in the number of jobs and employment opportunities available to residents of the state. Whereas previously all plants belonging to the genus 'Ribes' have been prohibited within designated quarantine districts, certain cultivars of currants and gooseberries that are immune or resistant to white pine blister rust will be permitted. This creates opportunities for self-employment for individuals who are interested in growing these fruits for profit. To the extent that growth in the fruiting and/or nursery industries in the state result from the regulation, jobs may be created by the construction and staffing of fruit processing facilities and increased staffing of nurseries.

Potential results within five years are expanded nursery production and sale of 'Ribes' to home growers, agricultural production totaling 4,000 acres valued at \$4,000 to \$5,000 per acre a year (potentially a \$16 to \$20 million annual crop production), and siting of a fruit processing plant. One desired outcome is the creation of an economic use for fallow agricultural lands. 'Ribes' production could help agriculturalists stay in business and keep lands free of development.

Department of Health

EMERGENCY RULE MAKING

Recreational Aquatic Spray Ground

I.D. No. HLT-32-06-00001-E

Filing No. 884

Filing date: July 19, 2006

Effective date: July 19, 2006

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

Action taken: Addition of Subpart 6-3 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

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

Specific reasons underlying the finding of necessity: During the summer of 2005, approximately 4,000 patrons of the Seneca Lake State Park spray ground became ill with cryptosporidiosis as a result of exposure to the spray ground water.

This type of aquatic facility poses a significant risk of illness to the patrons due to the design which involves the collection and recirculation of the sprayed water. To prevent a similar illness outbreak involving this type of recreational aquatic activity, spray ground design and operation regulations are necessary.

Emergency adoption of the new regulation is necessary to provide the operators of existing facilities with adequate time to evaluate facilities, complete an engineering report and make modifications, as needed, prior to use. Proposed facilities will be able to utilize the design standards to ensure new facilities are in compliance.

Subject: Recreational aquatic spray ground.

Purpose: To establish standards for the safe and sanitary operation of recreational aquatic spray grounds that re-circulate water.

Substance of emergency rule: The proposed Subpart contains the following provisions:

Recreational aquatic spray grounds (spray ground) are defined and spray ground owners are required to obtain an annual permit to operate from the local health department (LHD) having jurisdiction in the county that the spray ground is located.

Design standards for new and existing spray grounds are established. The standards including requirements for disinfection (chemical and ultraviolet) and filtration equipment, as well as, requirements for spray pad, spray pad treatment tank, decking and spray pad enclosure construction and design.

Existing spray ground operators must provide a report to the LHD which evaluates compliance with the design criteria contained in the regulation and needed improvements. The report must be prepared by a New York State licensed professional engineer and submitted to the LHD at least 90 days prior to operation.

LHDs must follow the recommendations of the State Health Department prior to accepting or denying alternative designs for new and existing spray grounds.

Operation and maintenance standards are established including daily start-up procedures, minimum disinfection levels, filtration rates, water quality standards and general safety provisions. The spray ground operator must maintain daily operation records.

On-site water supplies, toilet facilities, and sanitary wastewater treatment systems must comply with sanitary and operation standards.

Spray grounds must be supervised when open for use and must be maintained by a qualified swimming pool water treatment operator.

Spray ground operators must develop, update and implement a written safety plan consisting of procedures for patron supervision, injury prevention, reacting to emergencies, injuries and other incidents providing first aid and assistance.

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 October 16, 2006.

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

Summary of Regulatory Impact Statement

Statutory Authority:

The Public Health Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. PHL Sections 225(5)(a) and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health.

Needs and Benefits:

During the summer of 2005, approximately 3,000 patrons of the Seneca Lake State Park spray ground became ill with cryptosporidiosis as a result of exposure to the spray ground water. This type of aquatic facility poses a significant risk of illness to the patrons due to the design, which involves the collection and recirculation of sprayed water. To prevent future illness outbreaks involving this type of aquatic activity, spray ground design and operation regulations are necessary including design criteria for new and existing spray grounds for water recirculation, filtration and disinfection (chemical and ultraviolet), electrical safety and spray pad enclosure.

Additionally, the regulation contains requirements for obtaining an annual permit to operate from the state or local health department (LHD) having jurisdiction, as well as, other bathhouse, personnel, potable water supply, wastewater disposal and general safety requirements.

Regulated Parties:

Statewide in 2005, there were thirty-two seasonally operated spray grounds that use re-circulated water. Four additional spray grounds are under construction. Until the emergency regulations became effective on January 18, 2006, spray ground operations were not regulated by the SSC. Of the 36 existing and proposed spray grounds, 14 have submitted the required engineering report and plans for installation of ultraviolet disinfection systems and other necessary modifications, and 5 indicated they will not meet the spray ground definition because they plan to discharge feature water to waste, therefore regulatory compliance is not necessary. The proposed regulation clarifies of certain requirements but is consistent with the emergency regulation effective April 18, 2006.

Costs to Regulated Parties:

There may be significant cost to spray grounds operators for water recirculation, filtration and disinfection (chemical and ultraviolet) improvements and additions. Additionally there will be expenses associated with an engineering report, which addresses the design criteria, and other miscellaneous improvements.

Government:

The printing and distribution the new Code and the corresponding revised inspection report will be a minimal State Health Department expense. There may be additional costs to some city and county health departments that enforce the proposed rule, because the proposed rule will increase the number of facilities regulated by some of these agencies. LHD's are expected to use existing staff to for the workload because of the low number of spray grounds in a jurisdiction.

The costs to municipally operated spray grounds are described above in Costs to Regulated Parties.

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

Alternatives Considered:

Several treatment options were considered for control of cryptosporidium including the use of ozone, membrane filtration, dilution and patron control. UV disinfection was selected as the code standard because of its effectiveness and appropriateness for the high flow rates of spray grounds. Other treatment options that can be documented to effectively remove cryptosporidium are acceptable in the proposed regulation.

Compliance Schedule:

The proposed regulation will be effective upon publication of a notice of adoption in the *State Register*.

Regulatory Flexibility Analysis

Effect on small business and local government:

There are thirty-two (32) recreational aquatic spray grounds (spray grounds) in New York State and four that are under construction. Eighteen (18) of the thirty-six (36) are or will be operated by local governments.

Compliance requirements:

Reporting and Recordkeeping:

A spray ground operator must maintain daily operation records of the recreational aquatic spray ground including disinfection levels, bather usage and other maintenance. A copy of the records must be maintained at the facility for 12 months.

Facilities that are required to disinfect their potable water supply must maintain daily records of the potable water system disinfection. Forms will be provided by the permit-issuing official and require monthly submittal to the permit-issuing official.

Injury and illness that occur at a spray ground must be reported by the owner/operator to the permit-issuing official within 24 hours of its occurrence and recorded in a logbook.

A written safety plan must be developed and implemented. The safety plan must contain procedures for daily patron supervision, injury prevention, reacting to emergencies, injuries and other incidents, providing first aid and summoning help. The safety plan must be approved by the permit-issuing official and maintained at the spray ground.

Other affirmative acts:

Spray ground owners are required to obtain an annual permit to operate from the local health department (LHD) having jurisdiction in the county that the facility is located.

Design criteria for new and existing spray grounds are established to assure safe and sanitary spray ground operation.

1. Water recirculation, filtration and disinfection (chemical and ultraviolet) standards are established to assure all water that is sprayed onto patrons is free of pathogens. Filtration is essential for effective disinfection. Both ultraviolet (UV) and chemical disinfection are required because UV is necessary to destroy cryptosporidium and chemical disinfection is effective for many other pathogens normally associated with swimming pools.

2. Spray pad and spray pad treatment tank construction standards ensure that there is no standing water on the spray pad, the spray pad is slip resistant, and the spray pad and spray pad treatment tank do not promote bacterial growth or harbor pathogens.

3. Electrical standards protect patrons from electrocution.

4. Spray pad enclosure requirements prevent access to the pad by people and animals during non-supervised time periods. Preventing access will reduce contaminants that can enter the recirculation system.

To ensure compliance with the regulation, spray grounds existing prior to January 18, 2006 effective date of initial emergency regulation) are required to submit an engineering report addressing the design criteria specified in the regulation. Reports must be prepared by a professional engineer and identify areas of non-compliance with the regulation and include recommendations for correcting the identified deficiencies.

Personnel:

Spray grounds must provide at least one supervisory staff to provide periodic supervision of the spray pad. Supervisory staff is necessary to control patron activities and respond to events that can affect patron health and safety.

Spray feature water treatment systems must be maintained by a qualified swimming pool water treatment operator to assure continuous and proper operation of water treatment equipment.

Safety:

Signs, which contain seven rules and warning statements, must be posted at the spray pad or enclosure/entrance and bathhouse/toilet facilities. The statements inform the patrons that the water is recirculated (not potable) and highlights the practices to reduce the potential for the contamination of the spray ground water.

First aid equipment must be provided at the spray ground unless otherwise specified in the safety plan.

A written safety plan must be developed and implemented. The safety plan must contain procedures for daily patron supervision, injury prevention, reacting to emergencies, injuries and other incidents, providing first aid and summoning help. The safety plan must be approved by the permit-issuing official and maintained at the spray ground.

Potable water supply and waste water disposal:

Potable water supplies serving the spray ground must comply with Subpart 5-1 of the State Sanitary Code. On-site water supplies that do not meet the definition of a Public Water supply must comply with the requirements in Subpart 5-1 for non-community water supplies.

Sewage and other wastewater must be disposed of in acceptable sanitary facilities.

Bathhouse and foot shower:

Adequate sanitary facilities are required including toilets, lavatories, refuse disposal, diaper changing areas and foot showers. The presence and maintenance of conveniently located toilet facilities, diaper changing areas and foot shower will help eliminate diaper changing on or near the spray pad and reduce the potential for spray pad contamination.

Professional services:

Operators of existing spray grounds must submit an engineering report that addresses the design criteria contained in the proposed Subpart. Reports must be prepared by a professional engineer and identify areas of non-compliance with the regulation and include recommendations for correcting the identified deficiencies. Spray grounds that require modifications to the existing equipment and plumbing will require additional engineering services related to design modification(s).

A qualified swimming pool water treatment operator must maintain the spray pad water treatment system. Facilities that do not currently employ such personnel may hire a company to provide the service or send a current employee to become certified.

Compliance cost:

The proposed rule has cost impacts that affect thirty-two (32) existing seasonally operated spray grounds and four spray grounds that are under construction.

Existing spray grounds must submit an engineering report that addresses the design criteria contained in the proposed Subpart. Some facilities may have existing reports that can be submitted; however, those that do not have an adequate existing report will need to hire a licensed professional engineer to prepare one. Cost estimates for the report range between \$2,000 and \$20,000. The cost is expected to be at the lower end of the range because spray ground operators will most likely utilize engineering firms that are already familiar with the facility and therefore require less time to prepare the report.

Spray grounds that require modifications to the existing equipment and plumbing incur additional cost. The estimated cost for engineering services related to design modification(s) range from 6% to 15% of the project cost.

The estimated cost for other modifications are as follows:

Spray Ground Feature Water Treatment:

Ultraviolet (UV) disinfection equipment cost will vary based on the spray ground feature flow rate. Costs are based on estimates provided by two leading UV reactor manufacturers.

Flow rate (gpm)	UV reactor cost	Installation ¹	Lamp replacement ²
50	\$6,585-\$12,000	\$1,930-\$4,000	\$240-\$500
100	\$9,000-\$17,500	\$2,050-\$4,000	\$480-\$500
140-150	\$13,800-\$19,000	\$2,290-\$4,500	\$600-\$720
250	\$20,965-\$23,000	\$2,650-\$5,000	\$600-\$840
500	\$29,355-\$31,000	\$3,068-\$5,500	\$700-\$1,680
1,000-1,300	\$34,000-\$42,225	\$3,712-\$6,000	\$700-\$2,320
2,000-2,300	\$40,000-\$50,000	\$4,100-\$7,000	\$800-\$3,480

¹UV reactor installation includes necessary labor and supplies for plumbing and electrical connection.

²Lamp replacement is anticipated to be once every 4-5 years for seasonally operated facilities.

The cost to operate UV reactors ranges from \$30 to \$875 per season for electric and \$350 to \$450 for cleaning and other maintenance.

Spray grounds that do not have adequate treatment tank filtration will require an additional pump and filtration. The pump and filter costs are based on the volume of water to be filtered. Costs range between \$350 and \$620 for pumps and \$350 and \$850 for filters. The number of required filters varies for each facility and cannot be estimated.

The proposed regulation requires spray grounds to have an automatic chemical controller for monitoring and adjusting the disinfectant and pH levels in the treatment tank. The cost for a chemical controller is between \$1800 and \$4,200 plus installation.

Each spray ground is required to have valves and piping in the spray pad drain system to allow for discharging water to waste prior entering the spray pad treatment tank. The cost of installing a water diversion valve will vary based on the accessibility of piping at the point where the valve must be installed. Cost estimates range between \$750 and \$6,400.

Bathroom/foot shower:

Some spray grounds may need to replace or add bathroom facilities and/or foot showers when insufficient facilities are provided. The need and cost for additional fixtures will vary greatly by facility and cannot be estimated.

Personnel:

Spray grounds must be provided with periodic supervision. Most spray grounds will have acceptable staff already on-site fulfilling this role and will incur no additional expense. Spray grounds that do not have staff to periodically supervise the facility will have a cost increase associated with hiring someone or reassigning staff to perform supervisory duties. Staff may perform other duties such as facility maintenance in addition to

performing the supervisory responsibilities. The minimum wage is currently \$6.75 an hour.

A qualified swimming pool water treatment operator must maintain the spray pad water treatment system. Facilities that do not currently employ such personnel may hire a company to provide the service or send a current employee to a course to become certified. Courses to become certified as a qualified swimming pool water treatment operator cost approximately \$280. The cost of hiring a company to provide the service is \$6,000 a season.

Miscellaneous expenses:

Spray grounds must be enclosed to prevent access by people and animals during non-supervised time periods. The cost of enclosures varies depending on the style. Fencing cost range from \$9.00 a lineal foot to \$23.00 per foot which includes installation. Some fence installation types include the cost of a gate while others have an additional gate charge.

Facilities must post signs stating seven rules/warning statements. The cost of a 2 feet by 3 feet commercially prepared sign ranges from \$85 to \$400. Two signs are required at each facility.

Spray grounds are required to have a 24-unit first aid kit or adequate first aid supplies. The cost of a 24-unit first aid kit is between \$25 and \$75. Purchasing first aid supplies to satisfy the requirement will cost less.

Economic and technological feasibility:

The proposal is technologically feasible because it requires the use of existing technology. The overall economic feasibility cannot be predicted at this time because the economic feasibility for each regulated spray ground is dependent upon the financial condition of that spray ground and the extent to which that spray ground must undertake additional actions to comply with the requirements of this regulation.

Minimizing adverse economic impact:

The proposed rule establishes standards for recreational aquatic spray grounds to minimize risk to the public health. Should this rule have a substantial adverse impact on a particular facility, a waiver of one or more requirements other than spray ground feature water disinfection (chemical and ultraviolet or accepted equivalent) and filtration, will be considered, so long as alternative arrangements protect public health and safety. Alternatively, a variance, allowing additional time to comply with one or more requirements, can be granted if the health and safety of the public is not prejudiced by the variance.

Small business participation:

During the development of the emergency regulation, the Department met with design professionals and industry representatives on one occasion and had numerous telephone conversations to develop a better understanding of spray ground operation, particularly concerning spray ground feature water recirculation and treatment, and incorporated the information into the proposed regulation.

Rural Area Flexibility Analysis

Types and estimated number of rural areas:

There are thirty-six (36) recreational aquatic spray grounds (spray grounds) in New York State grounds including four that are under construction. Approximately half are located in rural areas.

Reporting and recordkeeping and other compliance requirements:

A spray ground operator must maintain daily operation records of the recreational aquatic spray ground including disinfection levels, bather usage and other maintenance. A copy of the records must be maintained at the facility for 12 months.

Facilities that are required to disinfect their potable water supply must maintain daily records of the potable water system disinfection. Forms will be provided by the permit-issuing official and require monthly submittal to the permit-issuing official.

Injury and illness that occur at a spray ground must be reported by the owner/operator to the permit-issuing official within 24 hours of its occurrence and recorded in a logbook.

Spray ground owners are required to obtain an annual permit to operate from the local health department (LHD) having jurisdiction in the county that the facility is located.

Design criteria for new and existing spray grounds is established to assure safe and sanitary spray ground operation.

(1) Water recirculation, filtration and disinfection (chemical and ultraviolet) standards are established to assure all water that is sprayed onto patrons is free of pathogens. Filtration is essential for effective disinfection. Both ultraviolet (UV) or other acceptable equivalent, and chemical disinfection are required because UV is necessary to destroy cryptosporidium and chemical disinfection is effective for many other pathogens normally associated with swimming pools.

(2) Spray pad and spray pad treatment tank construction standards ensure that there is no standing water on the spray pad, the spray pad is slip resistant, and the spray pad and spray pad treatment tank do not promote bacterial growth or harbor pathogens.

(3) Electrical standards protect patrons from electrocution.

(4) Spray pad enclosure requirements prevent access to the pad by people and animals during non-supervised time periods. Preventing access will reduce contaminants that can enter the recirculation system.

To ensure compliance with the regulation, existing spray grounds are required to submit an engineering report addressing the design criteria specified in the regulation. Reports must be prepared by a professional engineer and identify areas of non-compliance with the regulation and include recommendations for correcting the identified deficiencies.

Personnel:

Spray grounds must provide at least one supervisory staff to provide periodic supervision of the spray pad. Supervisory staff is necessary to control patron activities and respond to events that can affect patron health and safety.

Spray feature water treatment systems must be maintained by a qualified swimming pool water treatment operator to assure continuous and proper operation of water treatment equipment.

Safety:

Signs, which contain seven rules and warning statements, must be posted at the spray pad or enclosure/entrance and bathhouse/toilet facilities. The statements inform the patrons that the water is recirculated (not potable) and highlights the practices to reduce the potential for the contamination of the spray ground water.

First aid equipment must be provided at the spray ground unless otherwise specified in the safety plan.

A written safety plan must be developed and implemented. The safety plan must contain procedures for daily patron supervision, injury prevention, reacting to emergencies, injuries and other incidents, providing first aid and summoning help. The safety plan must be approved by the permit-issuing official and maintained at the spray ground.

Potable water supply and waste water disposal:

Potable water supplies serving the spray ground must comply with Subpart 5-1 of the State Sanitary Code. On-site water supplies that do not meet the definition of a Public Water supply must comply with the requirements in Subpart 5-1 for non-community water supplies.

Sewage and other wastewater must be disposed of in acceptable sanitary facilities.

Bathhouse and foot shower:

Adequate sanitary facilities are required including toilets, lavatories, refuse disposal, diaper changing areas and foot showers. The presence and maintenance of conveniently located toilet facilities, diaper changing areas and foot showers will help eliminate diaper changing on or near the spray pad and reduce the potential for spray pad contamination.

Professional services:

Operators of spray grounds existing prior to January 18, 2006 (effective date of the initial emergency regulation) must submit an engineering report that addresses the design criteria contained in the proposed Subpart. Reports must be prepared by a professional engineer and identify areas of non-compliance with the regulation and include recommendations for correcting the identified deficiencies. Spray grounds that require modifications to the existing equipment and plumbing will require additional engineering services related to design modification(s).

A qualified swimming pool water treatment operator must maintain the spray pad water treatment system. Facilities that do not currently employ such personnel may hire a company to provide the service or send a current employee to become certified.

Cost:

The proposed rule has cost impacts that affect thirty-two (32) existing seasonally operated spray grounds and four spray grounds that are under construction.

Existing spray grounds must submit an engineering report that addresses the design criteria contained in the proposed Subpart. Some facilities may have existing reports that can be submitted; however, those that do not have an adequate existing report will need to hire a licensed professional engineer to prepare one. Cost estimates for the report range between \$2,000 and \$20,000. The cost is expected to be at the lower end of the range because spray ground operators will most likely utilize engineering firms that are already familiar with the facility and therefore require less time to prepare the report.

Spray grounds that require modifications to the existing equipment and plumbing incur additional cost. The estimated cost for engineering ser-

vices related to design modification(s) range from 6% to 15% of the project cost.

The estimated cost for other modifications are as follows:

Spray Ground Feature Water Treatment:

Ultraviolet (UV) disinfection equipment cost will vary based on the spray ground feature flow rate. Costs are based on estimates provided by two leading UV reactor manufacturers.

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1,000-1,300	\$34,000-\$42,225	\$3,712-\$6,000	\$700-\$2,320
2,000-2,300	\$40,000-\$50,000	\$4,100-\$7,000	\$800-\$3,480

¹UV reactor installation includes necessary labor and supplies for plumbing and electrical connection.

²Lamp replacement is anticipated to be once every 4-5 years for seasonally operated facilities.

The cost to operate UV reactors ranges from \$30 to \$875 per season for electric and \$350 to \$450 for cleaning and other maintenance.

Spray grounds that do not have adequate treatment tank filtration will require an additional pump and filtration. The pump and filter costs are based on the volume of water to be filtered. Costs range between \$350 and \$620 for pumps and \$350 and \$850 for filters. The number of required filters varies for each facility and cannot be estimated.

The proposed regulation requires spray grounds to have an automatic chemical controller for monitoring and adjusting the disinfectant and pH levels in the treatment tank. The cost for a chemical controller is between \$1800 and \$4,200 plus installation.

Each spray ground is required to have valves and piping in the spray pad drain system to allow for discharging water to waste prior entering the spray pad treatment tank. The cost of installing a water diversion valve will vary based on the accessibility of piping at the point where the valve must be installed. Cost estimates range between \$750 and \$6,400.

Bathhouse/Foot Shower:

Some spray grounds may need to replace or add bathhouse facilities and/or foot showers when insufficient facilities are provided. The need and cost for additional fixtures will vary greatly by facility and cannot be estimated.

Personnel:

Spray grounds must be provided with periodic supervision. Most spray grounds will have acceptable staff already on-site fulfilling this role and will incur no additional expense. Spray grounds that do not have staff to periodically supervise the facility will have a cost increase associated with hiring someone or reassigning staff to perform supervisory duties. Staff may perform other duties such as facility maintenance in addition to performing the supervisory responsibilities. The minimum wage is currently \$6.75 an hour.

A qualified swimming pool water treatment operator must maintain the spray pad water treatment system. Facilities that do not currently employ such personnel may hire a company to provide the service or send a current employee to a course to become certified. Courses to become certified as a qualified swimming pool water treatment operator cost approximately \$280. The cost of hiring a company to provide the service is \$6,000 a season.

Miscellaneous expenses:

Spray grounds must be enclosed to prevent access by people and animals during non-supervised time periods. The cost of enclosures varies depending on the style. Fencing cost range from \$9.00 a lineal foot to \$23.00 per foot which includes installation. Some fence installation types include the cost of a gate while others have an additional gate charge.

Facilities must post signs stating seven rules/warning statements. The cost of a 2 feet by 3 feet commercially prepared sign ranges from \$85 to \$400. Two signs are required at each facility.

Spray grounds are required to have a 24-unit first aid kit or adequate first aid supplies. The cost of a 24-unit first aid kit is between \$25 and \$75. Purchasing first aid supplies to satisfy the requirement will cost less.

Minimizing adverse economic impact on rural areas:

The proposed rule establishes standards for recreational aquatic spray grounds to minimize risk to the public health. Should this rule have a substantial adverse impact on a particular facility, a waiver of one or more requirements other than spray ground feature water disinfection (chemical

and ultraviolet or accepted equivalent) and filtration, will be considered, so long as alternative arrangements protect public health and safety. Alternatively, a variance, allowing additional time to comply with one or more requirements, can be granted if the health and safety of the public is not prejudiced by the variance.

Rural area participation:

During the development of the emergency regulation, the Department met with design professionals and industry representatives on one occasion and had numerous telephone conversations to developed a better understanding of spray ground operation, particularly concerning spray ground feature water recirculation and treatment, and incorporated the information into the proposed regulation.

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities.

NOTICE OF ADOPTION

Cytotechnologists Work Standard

I.D. No. HLT-20-06-00005-A

Filing No. 887

Filing date: July 21, 2006

Effective date: Aug. 9, 2006

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

Action taken: Amendment of section 58-1.12(b)(7) of Title 10 NYCRR.

Statutory authority: Public Health Law, section 576-a

Subject: Cytotechnologists work standard.

Purpose: To provide flexibility to the department in establishing work standards that consider new technologies for pap smear testing.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-20-06-00005-P, Issue of May 17, 2006.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inpatient Medical Orders

I.D. No. HLT-32-06-00002-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 section 94.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 3308, 3701 and 3703

Subject: Inpatient medical orders.

Purpose: To allow the supervising physician and the hospital to determine if countersignature of RPA in-patient medical orders is necessary. Currently such countersignature is mandatory.

Text of proposed rule: Paragraph (6) of subdivision (e) of section 94.2 is amended to read as follows:

(e) Prescriptions and medical orders may be written by a registered physician's assistant as provided in this subdivision when assigned by the supervising physician.

(6) A registered physician's assistant employed or extended privileges by a hospital may, if permissible under the bylaws, rules and regulations of the hospital, write medical orders, including those for controlled

substances, for inpatients under the care of the physician responsible for his supervision. [In every case, medical orders so written shall be countersigned by the supervising physician within 24 hours, but such countersignature shall not be required prior to the execution of any such order.] *Countersignature of such orders may be required if deemed necessary and appropriate by the supervising physician or the hospital, but in no event shall countersignature be required prior to execution.*

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.

Consensus Rule Making Determination

Statutory Authority:

This proposal is authorized by Sections 3308 and 3701 of the Public Health Law (PHL). Section 3308 authorizes the Commissioner of Health to adopt rules and regulations as necessary to implement PHL Article 33 (Controlled Substances). Section 3701 authorizes the Commissioner of Health to adopt rules and regulations as necessary to implement PHL Article 37 (Physician's Assistants and Specialist's Assistants). Chapter 351 of the Laws of 2005 created a new section 3703 in PHL Article 37 entitled Inpatient Medical Orders. This new law authorizes physician assistants working or extended privileges in a hospital to issue inpatient medical orders without countersignature if deemed appropriate by the supervising physician or the hospital.

Basis:

Compliance with the mandatory requirement that a supervising physician countersign RPAs in-hospital orders within 24 hours can be difficult for such supervising physician. Furthermore, inpatient medical orders written by RPAs are executed prior to the supervising physician's co-signature. It is believed that the meaningful supervision comes from the relationship from the supervising physician and the RPA, the credentialing process, the documentation of ongoing competency, and other internal review mechanisms. The Legislature determined that a decision to require countersignature should be determined by the supervising physician or the hospital. The current regulation is out of compliance with this new law. Section 94.2(e)(6) needs to be amended to be in compliance.

A consensus regulation is warranted since this regulation is merely updating the current provisions in order to comply with Chapter 351 of the Laws of 2005.

Job Impact Statement

Registered physician assistants (RPAs) have become an integral part of the health caregiver team in New York State since they were authorized to practice in 1971. Under Public Health Law (PHL) Article 37, the Commissioner of Health was given the authority to promulgate rules and regulations defining the duties which may be assigned to RPAs by their supervising physician and the degree of supervision required. Section 94.2(e)(6) as currently written, requiring a mandatory 24-hour co-signature of inpatient orders, has unintentionally become a significant barrier to employment for RPAs who are losing jobs to other mid-level practitioners who are not subject to this requirement. This proposal will remove that barrier to employment for RPAs.

Some nursing homes are reluctant to hire RPAs due to the current requirement because their nursing home physicians may not do rounds every 24 hours. In the rural health care setting, it is not an efficient use of time for a physician, who may live far away from work, to have to return to the workplace to countersign inpatient medical orders written by an RPA.

Chapter 351 of the Laws of 2005 authorizes RPAs working or extended privileges in a hospital to issue inpatient medical orders without a countersignature if deemed appropriate by the supervising physician or the hospital. Section 94.2 of 10 NYCRR is currently not in compliance with this new statute. This proposal is a necessary revision to Part 94 of 10 NYCRR to be in compliance with Chapter 351 of the Laws of 2005.

Division of Housing and Community Renewal

EMERGENCY RULE MAKING

Assessment of Real Property Used for Residential Rental Purposes

I.D. No. HCR-32-06-00003-E

Filing No. 888

Filing date: July 21, 2006

Effective date: July 21, 2006

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

Action taken: Addition of Part 2656 to Title 9 NYCRR.

Statutory authority: Public Housing Law, section 14(a); and Real Property Tax Law, section 581-a

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

Specific reasons underlying the finding of necessity: RPTL section 581-a applies to taxable status on or after 1/1/06. Therefore, it is imperative to re-adopt this rule to provide the necessary guidance to ensure properties are properly assessed.

Subject: Assessment of real property used for residential purposes.

Purpose: To set forth regulations governing the assessment of real property used for residential purposes.

Text of emergency rule: A new Part 2656 is added to Title 9 NYCRR as follows:

ASSESSMENT OF RESIDENTIAL REAL PROPERTY

Section 2656.1 Statutory authority.

This Part is adopted and promulgated pursuant to the powers granted to the New York State Division of Housing and Community Renewal by Public Housing Law section 14(a) and Real Property Tax Law section 581-a.

Section 2656.2 Definitions.

As used in this Part:

(a) *Residential rental purposes shall mean all permitted uses on residential real property which has the same owner(s).*

(b) *Regulatory agreement shall mean any agreement, including but not limited to a contract or covenant, between the property owner(s) and the municipal, state or federal government, or an instrumentality thereof, which requires the property owner(s) to rent at least twenty percent of the residential units to tenants who qualify in accordance with an income test.*

(c) *Income documentation shall mean the most recent financial statement, independent auditor's report and rent roll for the residential real property or, if the most recent financial statement does not reflect twelve (12) months of occupancy, the most recent operating budget approved by the municipal, state, or federal government, or instrumentality thereof, that is party to the regulatory agreement.*

Section 2656.3 Submission requirements.

The property owner(s) shall provide the local assessing unit with a copy of all applicable regulatory agreements and, on an annual basis, income documentation prior to the taxable status date.

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 September 18, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Brian P. McCartney, Division of Housing and Community Renewal, 38-40 State St., Albany, NY 12207, (518) 473-5439, e-mail: bmccartney@dchr.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Public Housing Law section 14(a) and Real Property Tax Law section 581-a authorizes the Division of Housing and Community Renewal ("DHCR") to promulgate regulations concerning the assessment of real property used for residential rental purposes.

2. Legislative objectives:

Real Property Tax Law section 581-a was enacted to encourage the construction of affordable housing by providing for more realistic assess-

ment rates on residential rental property subject to rent restrictions. The proposed rule will assist in the orderly implementation of this statute.

3. Needs and benefits:

Prior to drafting the proposed rule, DHCR held several round table discussions with representatives of organizations that are representative of the regulated community. DHCR representatives met with the New York State Association for Affordable Housing (owners of properties impacted by Real Property Tax Law section 581-a), the New York State Assessor's Association (local assessors) and the New York State Office of Real Property Services ("ORPS"). The participants concluded that the implementation of Real Property Tax Law section 581-a would be enhanced by the adoption of a rule that provided for the following clarifications:

a) Definition of the term "residential rental purposes". Real Property Tax Law section 581-a defines residential real property as property used for "residential rental purposes". The statute does not define the term "residential rental purposes". During the round table discussions, it was agreed that the statute was not explicit as to how it applied to mixed use buildings or parcels comprised of multiple buildings. It was further agreed that a reasonable interpretation of the statute and its stated legislative intent is that if property subject to a regulatory agreement had a single owner, then all income, from whatever source, should be considered in arriving at a single valuation of the property. The proposed rule defines "residential rental purposes" to clarify that if the property meets the requirements of Real Property Tax Law section 581-a, all income should be considered in determining the property's assessed valuation.

b) Definition of the term "agreement". Real Property Tax Law section 581-a applies to residential rental property that is subject to an agreement with a municipality, the state, the federal government, or an instrumentality thereof. The statute does not define the term "agreement". The proposed rule introduces and defines the term "regulatory agreement" in order to identify, with more specificity, the various forms that may be used by governmental entities to enforce occupancy restrictions.

c) Enumeration of documentation used to determine operating income. The proposed rule introduces and defines the term "income documentation" to specify those documents which are available for assessors to refer to in order to calculate a property's operating income.

d) Assignment of responsibility for providing income documentation. The proposed rule clarifies that it is the obligation of the property owner seeking reassessment under Real Property Tax Law section 581-a to furnish the local assessing unit with the necessary income documentation.

4. Costs:

a) Costs to State government: None.

b) Costs to private regulated parties: None. The proposed rule merely requires property owners to provide assessors with copies of preexisting income documentation.

c) Costs to local government: None.

5. Local government mandates:

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

6. Paperwork:

No additional paperwork is required.

7. Duplication:

The requirements of this proposed regulation do not duplicate any other state or federal requirement.

8. Alternatives:

The proposed rule was specifically designed to minimize its impact by requiring property owners to furnish copies of preexisting documentation only. The idea of requiring certified financial statements was discussed and dismissed due to the consensus that such a requirement would cause some property owners to incur the additional expense of obtaining such certification. There were no other significant alternatives to be considered.

9. Federal standards:

The proposed rule does not exceed any minimum standards of the federal government.

10. Compliance schedule:

These regulations will become effective immediately upon the filing of a Notice of Adoption with the Secretary of State.

Regulatory Flexibility Analysis

It is the finding of DHCR that the proposed rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Prior to drafting the proposed rule, DHCR held several round table discussions with representatives of the New York State Association for Affordable Housing, the New York State Assessor's Association and the

New York State Office of Real Property Services (“ORPS”). None of the participants expressed an opinion indicating that the proposed rule would have any adverse economic impact on small businesses or local governments.

Regarding compliance requirements, the proposed rule was specifically designed to minimize its impact by requiring property owners to furnish copies of preexisting documentation only. The idea of requiring certified financial statements was discussed and dismissed due to the consensus that such a requirement would cause some property owners to incur the additional expense of obtaining such certification.

Rural Area Flexibility Analysis

It is the finding of DHCR that the proposed rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Prior to drafting the proposed rule, DHCR held several round table discussions with representatives of the New York State Association for Affordable Housing, the New York State Assessor’s Association and the New York State Office of Real Property Services (“ORPS”). None of the participants expressed an opinion indicating that the proposed rule would have any adverse impact on rural areas.

Regarding compliance requirements, the proposed rule was specifically designed to minimize its impact by requiring property owners to furnish copies of preexisting documentation only. The idea of requiring certified financial statements was discussed and dismissed due to the consensus that such a requirement would cause some property owners to incur the additional expense of obtaining such certification.

Job Impact Statement

It is the finding of DHCR that the nature and purpose of the proposed rule is such that it will have no impact on jobs and employment opportunities.

Prior to drafting the proposed rule, DHCR held several round table discussions with representatives of the New York State Association for Affordable Housing, the New York State Assessor’s Association and the New York State Office of Real Property Services (“ORPS”). None of the participants expressed an opinion indicating that the proposed rule would have any impact on jobs or employment opportunities.

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

**Assessment of Real Property Used for Residential Rental Purposes
I.D. No. HCR-32-06-00003-P**

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

Proposed action: Addition of Part 2656 to Title 9 NYCRR.

Statutory authority: Public Housing Law, section 14(a); and Real Property Tax Law, section 581-a

Subject: Assessment of real property used for residential rental purposes.

Purpose: To set forth regulations governing the assessment of real property used for residential rental purposes.

Text of proposed rule: A new Part 2656 is added to Title 9 NYCRR as follows:

ASSESSMENT OF RESIDENTIAL REAL PROPERTY

Section 2656.1 Statutory authority.

This Part is adopted and promulgated pursuant to the powers granted to the New York State Division of Housing and Community Renewal by Public Housing Law section 14(a) and Real Property Tax Law section 581-a.

Section 2656.2 Definitions.

As used in this Part:

(a) Residential rental purposes shall mean all permitted uses on residential real property which has the same owner(s).

(b) Regulatory agreement shall mean any agreement, including but not limited to a contract or covenant, between the property owner(s) and the municipal, state or federal government, or an instrumentality thereof, which requires the property owner(s) to rent at least twenty percent of the residential units to tenants who qualify in accordance with an income test.

(c) Income documentation shall mean the most recent financial statement, independent auditor’s report and rent roll for the residential real property or, if the most recent financial statement does not reflect twelve (12) months of occupancy, the most recent operating budget approved by the municipal, state, or federal government, or instrumentality thereof, that is party to the regulatory agreement.

Section 2656.3 Submission requirements.

The property owner(s) shall provide the local assessing unit with a copy of all applicable regulatory agreements and, on an annual basis, income documentation prior to the taxable status date.

Text of proposed rule and any required statements and analyses may be obtained from: Brian P. McCartney, Division of Housing and Community Renewal, 38-40 State St., Albany, NY 12207, (518) 473-5439, e-mail: bmccartney@dhcr.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:

Public Housing Law section 14(a) and Real Property Tax Law section 581-a authorizes the Division of Housing and Community Renewal (“DHCR”) to promulgate regulations concerning the assessment of real property used for residential rental purposes.

2. Legislative objectives:

Real Property Tax Law section 581-a was enacted to encourage the construction of affordable housing by providing for more realistic assessment rates on residential rental property subject to rent restrictions. The proposed rule will assist in the orderly implementation of this statute.

3. Needs and benefits:

Prior to drafting the proposed rule, DHCR held several round table discussions with representatives of organizations that are representative of the regulated community. DHCR representatives met with the New York State Association for Affordable Housing (owners of properties impacted by Real Property Tax Law section 581-a), the New York State Assessor’s Association (local assessors) and the New York State Office of Real Property Services (“ORPS”). The participants concluded that the implementation of Real Property Tax Law section 581-a would be enhanced by the adoption of a rule that provided for the following clarifications:

a) Definition of the term “residential rental purposes”. Real Property Tax Law section 581-a defines residential real property as property used for “residential rental purposes”. The statute does not define the term “residential rental purposes”. During the round table discussions, it was agreed that the statute was not explicit as to how it applied to mixed use buildings or parcels comprised of multiple buildings. It was further agreed that a reasonable interpretation of the statute and its stated legislative intent is that if property subject to a regulatory agreement had a single owner, then all income, from whatever source, should be considered in arriving at a single valuation of the property. The proposed rule defines “residential rental purposes” to clarify that if the property meets the requirements of Real Property Tax Law section 581-a, all income should be considered in determining the property’s assessed valuation.

b) Definition of the term “agreement”. Real Property Tax Law section 581-a applies to residential rental property that is subject to an agreement with a municipality, the state, the federal government, or an instrumentality thereof. The statute does not define the term “agreement”. The proposed rule introduces and defines the term “regulatory agreement” in order to identify, with more specificity, the various forms that may be used by governmental entities to enforce occupancy restrictions.

c) Enumeration of documentation used to determine operating income. The proposed rule introduces and defines the term “income documentation” to specify those documents which are available for assessors to refer to in order to calculate a property’s operating income.

d) Assignment of responsibility for providing income documentation. The proposed rule clarifies that it is the obligation of the property owner seeking reassessment under Real Property Tax Law section 581-a to furnish the local assessing unit with the necessary income documentation.

4. Costs:

a) Costs to State government: None.

b) Costs to private regulated parties: None. The proposed rule merely requires property owners to provide assessors with copies of preexisting income documentation.

c) Costs to local government: None.

5. Local government mandates:

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

6. Paperwork:

No additional paperwork is required.

7. Duplication:

The requirements of this proposed regulation do not duplicate any other state or federal requirement.

8. Alternatives:

The proposed rule was specifically designed to minimize its impact by requiring property owners to furnish copies of preexisting documentation only. The idea of requiring certified financial statements was discussed and dismissed due to the consensus that such a requirement would cause some property owners to incur the additional expense of obtaining such certification. There were no other significant alternatives to be considered.

9. Federal standards:

The proposed rule does not exceed any minimum standards of the federal government.

10. Compliance schedule:

These regulations will become effective immediately upon the filing of a Notice of Adoption with the Secretary of State.

Regulatory Flexibility Analysis

It is the finding of DHCR that the proposed rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Prior to drafting the proposed rule, DHCR held several round table discussions with representatives of the New York State Association for Affordable Housing, the New York State Assessor's Association and the New York State Office of Real Property Services ("ORPS"). None of the participants expressed an opinion indicating that the proposed rule would have any adverse economic impact on small businesses or local governments.

Regarding compliance requirements, the proposed rule was specifically designed to minimize its impact by requiring property owners to furnish copies of preexisting documentation only. The idea of requiring certified financial statements was discussed and dismissed due to the consensus that such a requirement would cause some property owners to incur the additional expense of obtaining such certification.

Rural Area Flexibility Analysis

It is the finding of DHCR that the proposed rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Prior to drafting the proposed rule, DHCR held several round table discussions with representatives of the New York State Association for Affordable Housing, the New York State Assessor's Association and the New York State Office of Real Property Services ("ORPS"). None of the participants expressed an opinion indicating that the proposed rule would have any adverse impact on rural areas.

Regarding compliance requirements, the proposed rule was specifically designed to minimize its impact by requiring property owners to furnish copies of preexisting documentation only. The idea of requiring certified financial statements was discussed and dismissed due to the consensus that such a requirement would cause some property owners to incur the additional expense of obtaining such certification.

Job Impact Statement

It is the finding of DHCR that the nature and purpose of the proposed rule is such that it will have no impact on jobs and employment opportunities.

Prior to drafting the proposed rule, DHCR held several round table discussions with representatives of the New York State Association for Affordable Housing, the New York State Assessor's Association and the New York State Office of Real Property Services ("ORPS"). None of the participants expressed an opinion indicating that the proposed rule would have any impact on jobs or employment opportunities.

Insurance Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rules Governing Valuation of Life Insurance Reserves

I.D. No. INS-32-06-00004-EP

Filing No. 890

Filing date: July 24, 2006

Effective date: July 24, 2006

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

Action taken: Amendment of Part 98 (Regulation 147) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1304, 1308, 4217, 4218, 4240 and 4517

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

Specific reasons underlying the finding of necessity: During 2004, the Department became aware that some insurers have designed certain life insurance products with the clear intent of circumventing the existing reserve standards. The department is concerned with the solvency of those insurers who fail to set aside sufficient funds to pay claims as they pose a serious threat to consumers who rely on insurers to honor their commitment both now and in the future. In addition, insurers who have elected to circumvent the law place themselves at a competitive advantage over those insurers who follow the rules and establish the appropriate level of reserves. On a daily basis, those insurers who abide by the law suffer substantial losses in terms of market share, as they cannot effectively compete against insurers that do not set aside adequate reserves. Action must be taken now to end to this practice of under reserving by insurers that have decided market share is more important than the safety and soundness of policyholder funds.

New York authorized insurers must file quarterly financial statements based upon minimum reserve standards in effect on the date of filing. The filing date for the September 30, 2006 quarterly statement is November 15, 2006. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner.

For all of the reasons stated above, an emergency adoption of this first amendment to Regulation No. 147 is necessary for the general welfare.

Subject: Rules governing valuation of life insurance reserves.

Purpose: To prescribe rules and guidelines for valuing individual life insurance policies and certain group life insurance certificates, with primary emphasis on valuation of non-level premium and/or non-level benefit life insurance policies, indeterminate premium life insurance policies, universal life insurance policies, variable life insurance policies, and credit life insurance policies in accordance with statutory reserve formulas.

Substance of emergency/proposed rule (Full text is posted at the following State website: <http://www.ins.state.ny.us/rproindx.htm>): The First Amendment to Regulation No. 147 provides new mortality and reserve standards for credit life insurance policies. It also provides new reserve standards for certain other specified life insurance policies. The following is a summary of the amendments to Regulation No. 147:

Section 98.1(a) was amended to include credit life insurance policies and to mention clarification of principles.

Section 98.2(b) was amended to ensure consistency in applicability wording within the regulation.

Section 98.2(i) was amended to state that unless notification was previously provided to the superintendent to adopt lower reserves based on the requirements of this Part, insurers may not adopt such lower reserves without the prior approval of the superintendent.

A new subdivision (j) was added to section 98.2 regarding the use of the minimum mortality standards defined in Part 100 of this Title.

A new subdivision (k) was added to section 98.2 regarding the applicability of this regulation to certain specified life insurance policies.

A new subdivision (l) was added to section 98.2 regarding the applicability of this regulation to credit life insurance.

Subdivision (d)(2) of section 98.4 was amended to change an incorrect reference.

The last sentence of section 98.4(s) was amended to change a reference from 1% to one percent, in order to be consistent with similar references in other sections of the regulation.

Section 98.4(u) was amended to reference the examples and reserve methodologies described in section 98.9 of this Part.

A new Section 98.4(v) was added to describe the reserve methodology for life insurance policies that provide long-term care benefits through the acceleration of benefits.

The third sentence of paragraph (2) of section 98.6(a) was amended to change an incorrect reference to the Contract Segmentation Method to the mortality and interest rates used in calculating basic unitary reserves.

Section 98.7(b)(1)(ii) was amended to have the definition of secondary guarantee period extended to this whole Part rather than just paragraph (1) of section 98.7.

Section 98.7(b)(1)(iii) was amended to provide clarification of an example supplied in this section.

Section 98.7(c) was amended to change the reference from age 100 to the age at the end of the applicable valuation mortality table, since the 2001 CSO Mortality Tables go out to ages greater than 100.

Section 98.8(b) was amended to reference section 98.9 of this Part.

A new section 98.9 was added for certain specified life insurance policies. This section provides examples of policy designs which constitute guarantees and describes the reserve methodologies to be used in valuing such policies.

A new section 98.10 was added for credit life insurance. This section provides minimum mortality standards and minimum reserve standards for such policies.

Section 98.9 was renumbered to section 98.11. This is the severability provision.

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 October 21, 2006.

Text of rule and any required statements and analyses may be obtained from: Michael Barry, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: mbarry@ins.state.ny.us

Data, views or arguments may be submitted to: Frederick Andersen, Insurance Department, One Commerce Plaza, Albany, NY 12257, (518) 474-7929, e-mail: fanderse@ins.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority:

The superintendent's authority for the First Amendment of Regulation No. 147 (11 NYCRR 98) is derived from sections 201, 301, 1304, 1308, 4217, 4218, 4240 and 4517 of the Insurance Law.

These sections establish the superintendent's authority to promulgate regulations governing reserve requirements for life insurers. Sections 201 and 301 of the Insurance Law authorize the superintendent to prescribe regulations accomplishing, among other concerns, interpretation of the provisions of the Insurance Law, as well as effectuating any power given to him under the provisions of the Insurance Law to prescribe forms or otherwise to make regulations.

Section 1304 of the Insurance Law enables the superintendent to require any additional reserves as necessary on account of life insurers' policies, certificates and contracts.

Section 1308 of the Insurance Law describes when reinsurance is permitted and the effect that reinsurance will have on reserves.

Section 4217(c)(6)(C) provides that reserves according to the commissioners reserve valuation method for life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums shall be calculated by a method consistent with the principles of this paragraph.

Section 4217(c)(6)(D) permits the superintendent to issue, by regulation, guidelines for the application of the reserve valuation provisions for section 4217 to such policies and contracts, as the superintendent deems appropriate.

Section 4217(c)(9) requires that reserves for any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or which is of such a nature that the minimum reserves cannot be determined by the methods prescribed in sections 4217 and 4218, must be computed by a method consistent with the principles of sections 4217 and 4218 as determined by the superintendent.

Section 4218 requires that when the actual premium charged for life insurance under any life insurance policy is less than the modified net

premium calculated on the basis of the commissioners reserve valuation method, the minimum reserve required for such policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy, or the reserve calculated by the commissioners reserve valuation method replacing the modified net premium by the actual premium charged for the policy in each contract year for which such modified net premium exceeds the actual premium.

Section 4240(d)(6) states that the reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees provided in the contract.

Section 4240(d)(7) states that the superintendent shall have the power to promulgate regulations, as may be appropriate, to carry out the provisions of this section.

For fraternal benefit societies, section 4517(b)(2) provides that reserves according to the commissioners reserve valuation method for life insurance certificates providing for a varying amount of benefits or requiring the payment of varying premiums shall be calculated by a method consistent with the principles of this subsection (b).

2. Legislative objectives:

One major area of focus of the Insurance Law is solvency of insurers doing business in New York. One way the Insurance Law seeks to ensure solvency is through requiring all insurers authorized to do business in New York State to hold reserve funds necessary in relation to the obligations made to policyholders.

3. Needs and benefits:

The regulation is necessary to help ensure the solvency of life insurers doing business in New York. After the adoption of the current version of Regulation No. 147, which incorporates the National Association of Insurance Commissioners (NAIC) Valuation of Life Insurance Policies model regulation (adopted in 1999), some insurers developed life insurance products that resulted in reserves being held that were lower than the reserves defined in section 4217 of the Insurance Law and the current version of Regulation No. 147, even though these products had similar death benefit and premium guarantees. To clarify the intent of the NAIC model regulation, NAIC Actuarial Guideline 38 was developed in 2002. The Guideline stated that new policy designs which are created to simply disguise guarantees provided by the policy must be reserved in a manner similar to more typical designs with similar guarantees. Section 98.4(u) of the current version of Regulation No. 147 also contains wording to address consistent reserving principles. In the past year the Department and other states became aware that, in spite of such wording, some insurers were creating new products in order to avoid the reserve methodologies described in Regulation No. 147. As a result, the NAIC began revising the Guideline in 2004 and ultimately addressed the concerns of the Department and other regulators by eliminating any perceived ambiguity in the Guideline for policies issued July 1, 2005 and later. This revision was adopted at the NAIC level in October 2005. The new reserve methodologies for various policy features that constitute guarantees, as described in section 98.9 of this amendment, are consistent with the principles of section 4217 of the Insurance Law and with the standards adopted at the NAIC level for policies issued July 1, 2005 and later. Not adopting this amendment could result in inadequate reserves for some insurers, which would jeopardize the security of policyholder funds.

The regulation will also set standards for determining policy reserves for credit life insurance and for determining reserves for life insurance policies that provide long-term care benefits through the acceleration of benefits.

4. Costs:

Administrative costs to most insurers authorized to do business in New York State will be minimal. Since the majority of the reserve requirements and methodologies included in this regulation have been in effect since the original adoption of this regulation in March of 2003, most insurers would only need to update their current computer programs to implement the new reserve methodologies for policies with secondary guarantees and credit life insurance policies. An insurer that needs to modify its current system could produce the modifications internally or if the system was purchased from a consultant, have their consultant produce the modifications. The cost associated with the modifications is estimated to be \$50,000 - \$100,000. The cost would include the actual modifications as well as the testing and implementation of the new software. Once the modifications to the system have been developed, no additional costs should be incurred due to those requirements.

All insurers were in compliance with Regulation No. 147 as of December 31, 2004. Therefore, actual realized reserve impact will be close to

zero. Regarding costs in terms of reserve impact, for insurers following the intent of the Law and Regulation No. 147, there will be no reserve impact. A survey conducted by the Department showed that the reserve impact, for insurers not previously in compliance with Regulation No. 147, ranged from zero for many insurers to \$50 million to nearly \$200 million for a few insurers as of December 31, 2004. For no insurer was the reserve impact as a percentage of capital and surplus greater than 16% as of December 31, 2004. Notwithstanding these reserve increases, holding reserves at appropriate levels is mandated by statute and will help guarantee that insurers will be able to pay future claims.

Costs to the Insurance Department will be minimal as existing personnel are available to verify that the appropriate reserves are held by insurers for policies affected by the amendment to Regulation No. 147. There are no costs to other government agencies or local governments.

5. Local government mandates:

The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork:

The regulation imposes no new reporting requirements.

7. Duplication:

The regulation does not duplicate any existing law or regulation.

8. Alternatives:

One significant alternative considered was to keep the current version of Regulation No. 147, which would result in some insurers holding reserves lower than those intended by section 4217 of the Insurance Law. Over the course of several months, the Department discussed this matter as part of the NAIC Life and Health Actuarial Task Force (LHATF) forums and in several conference calls and meetings with impacted insurers. During mid to late 2004, revised wording to NAIC Actuarial Guideline 38 was exposed in order to extend the principles of the NAIC's Standard Valuation Law to products not contemplated at the time of the writing of the NAIC Law by removing any perceived ambiguity in the Actuarial Guideline. Since the same perceived ambiguity exists in the current version of Regulation No. 147 when the Regulation is applied to some new product designs, the amendment is necessary to clarify the rules that apply to these products. The Department reviewed insurers' concerns related to the exposed wording, but determined that such change was needed because the Department believes the reserves that would be held by these insurers would be lower than those intended by section 4217 of the Insurance Law. Before drafting the amendment to Regulation No. 147, the Department analyzed a spreadsheet that calculates the reserve impact of the revised language to Regulation No. 147. The Department also discussed the impact with several potentially affected insurers. As confirmed by the results of the survey conducted by the Department in early 2005, the Department believes that the amendment to Regulation No. 147 has had the appropriate effect on reserves, *i.e.*, reserves consistent with those intended by the Insurance Law and consistent with the reserve level for similar products.

Another alternative was to keep the current minimum standard for credit life insurance, but this would result in a mortality standard that is inconsistent with the national NAIC standard.

Another alternative was to not include the wording in section 98.4(v) that describes the reserve methodology for life insurance policies that provide long-term care benefits through the acceleration of benefits, but this would result in a standard that is inconsistent with the national NAIC standard.

9. Federal standards:

There are no federal standards in this subject area.

10. Compliance schedule:

This regulation applies to financial statements filed on or after December 31, 2004. The Department's concern about very low reserves being held for certain product designs is well known in the insurance industry. Numerous discussions with impacted insurers have taken place during the course of developing a national standard through the National Association of Insurance Commissioners. Since this regulation has been adopted on an emergency basis since December 29, 2004, insurers have had ample time to achieve full compliance.

Regulatory Flexibility Analysis

1. Small businesses:

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all insurers authorized to do business in New York State, none of which fall within the definition of "small business" as found in section 102(8) of the State

Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and believes that none of them fall within the definition of "small business", because there are none which are both independently owned and have under one hundred employees.

2. Local governments:

The regulation does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Insurance companies covered by the regulation do business in every county in this state, including rural areas as defined under SAPA 102(10).

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

The amendment to this regulation establishes reserve requirements for certain types of life insurance, including universal life insurance with secondary guarantees, and for credit life insurance.

3. Costs:

Administrative costs to most insurers authorized to do business in New York State will be minimal. Since the majority of the reserve requirements and methodologies included in this regulation have been in effect since the original adoption of this regulation in March of 2003, most insurers would only need to update their current computer programs to implement the new reserve methodologies for policies with secondary guarantees and credit life insurance policies. An insurer that needs to modify its current system could produce the modifications internally or if the system was purchased from a consultant, have their consultant produce the modifications. The cost associated with these modifications is estimated to be \$50,000 - \$100,000. The cost would include the actual modifications as well as the testing and implementation of the new software. Once the modifications to the system have been developed, no additional costs should be incurred due to those requirements.

All insurers were in compliance with Regulation No. 147 as of December 31, 2004. Therefore, actual realized reserve impact will be close to zero. Regarding costs in terms of reserve impact, for insurers following the intent of the Law and Regulation No. 147, there will be no reserve impact. A survey conducted by the Department showed that the reserve impact, for insurers not previously in compliance with Regulation No. 147, ranged from zero for many insurers to \$50 million to nearly \$200 million for a few insurers as of December 31, 2004. For no insurer was the reserve impact as a percentage of capital and surplus greater than 16% as of December 31, 2004.

4. Minimizing adverse impact:

The regulation does not impose any adverse impact on rural areas.

5. Rural area participation:

The Department's concern about very low reserves being held for certain product designs is well known in the insurance industry. Numerous discussions with impacted insurers have taken place during the course of developing a national standard through the National Association of Insurance Commissioners. Insurers that may be impacted by this standard are aware of the issues and should have already formed an estimate of the impact. In addition, a discussion of the proposed rule making was included in the Insurance Department's regulatory agenda which was published in the June 28, 2006 issue of the *State Register*.

Job Impact Statement

Nature of impact:

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This regulation sets standards for setting life insurance reserves for insurers. The regulation is unlikely to impact jobs and employment opportunities.

Categories and number affected:

No categories of jobs or number of jobs will be affected.

Regions of adverse impact:

This rule applies to all insurers authorized to do business in New York State. There would be no region in New York which would experience an adverse impact on jobs and employment opportunities.

Minimizing adverse impact:

No measures would need to be taken by the Department to minimize adverse impacts.

Self-employment opportunities:

This rule would not have a measurable impact on self-employment opportunities.

Long Island Power Authority

NOTICE OF ADOPTION

Tariff for Electric Service

I.D. No. LPA-17-06-00015-A

Filing date: July 20, 2006

Effective date: July 20, 2006

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

Action taken: The authority adopted revisions to LIPA's tariff for electric services involving the movement into the fuel and purchased power cost adjustment, fuel and purchased power costs that are embedded in LIPA's base rates. The revisions are revenue and bill neutral.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: Tariff for electric service.

Purpose: To adopt revisions to the authority's tariff that are bill and revenue neutral.

Text or summary was published in the notice of proposed rule making, I.D. No. LPA-17-06-00015-P, Issue of April 26, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Richard M. Kessel, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, e-mail: rkessel@lipower.org

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.

Public Service Commission

NOTICE OF ADOPTION

810 Invoice—Utility Rate Ready

I.D. No. PSC-31-04-00024-A

Filing date: July 21, 2006

Effective date: July 21, 2006

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

Action taken: The commission adopted an order on July 19, 2006 approving modifications in the electronic data interchange (EDI) 810 invoice—utility rate ready standard.

Statutory authority: Public Service Law, section 5(2)

Subject: Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible energy service companies marketers.

Purpose: To revise the EDI transaction set standard for the 810 invoice—utility rate ready.

Substance of final rule: The Commission adopted an order approving modifications in the Electronic Data Interchange 810 Invoice—Utility Rate Ready standard, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(98-M-0667SA43)

NOTICE OF ADOPTION

814 Drop Request and Response by Orange & Rockland Utilities, Inc. and Niagara Mohawk Power Corporation

I.D. No. PSC-31-04-00027-A

Filing date: July 21, 2006

Effective date: July 21, 2006

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

Action taken: The commission adopted an order on July 19, 2006 approving modifications in the electronic data interchange (EDI) 814 drop request and response standard.

Statutory authority: Public Service Law, section 5(2)

Subject: Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible energy service companies/marketers.

Purpose: To revise EDI transaction set standard for the 814 drop request and response.

Substance of final rule: The Commission adopted an order approving modifications in the Electronic Data Interchange 814 Drop Request and Response standard, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(98-M-0667SA46)

NOTICE OF ADOPTION

814 Consumption History Request and Response Standard by Orange & Rockland Utilities, Inc.

I.D. No. PSC-32-04-00014-A

Filing date: July 21, 2006

Effective date: July 21, 2006

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

Action taken: The commission adopted an order on July 19, 2006 approving modifications in the electronic data interchange (EDI) 814 consumption history request and response standard.

Statutory authority: Public Service Law, section 5(2)

Subject: Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible energy service companies/marketers.

Purpose: To revise the EDI transaction set standard for the 814 consumption history request and response.

Substance of final rule: The Commission adopted an order approving modifications in the Electronic Data Interchange 814 Consumption History Request and Response standard, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(98-M-0667SA47)

NOTICE OF ADOPTION

Exchange of Retail Access Data by National Fuel Gas Distribution Corporation

I.D. No. PSC-52-04-00006-A
Filing date: July 21, 2006
Effective date: July 21, 2006

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

Action taken: The commission adopted an order on July 19, 2006 approving modifications in the electronic data interchange (EDI) version 2.2 of the TS867 monthly usage transaction set standard.

Statutory authority: Public Service Law, section 5(2)

Subject: Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible energy service companies/marketers.

Purpose: To establish uniform statewide retail access EDI data standards and business practices governing the exchange of data necessary for implementation of consolidated billing.

Substance of final rule: The Commission adopted an order approving modifications in the Electronic Data Interchange version 2.2 of the TS867 Monthly Usage Transaction Set Standard, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(98-M-0667SA49)

NOTICE OF ADOPTION

814 Enrollment Request and Response Standard by National Fuel Gas Distribution Corporation and Rochester Gas & Electric Corporation

I.D. No. PSC-52-04-00007-A
Filing date: July 21, 2006
Effective date: July 21, 2006

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

Action taken: The commission adopted an order on July 19, 2006 approving modifications in the electronic data interchange (EDI) 814 drop request and response standard.

Statutory authority: Public Service Law, section 5(2)

Subject: Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible energy service companies/marketers.

Purpose: To revise the EDI transaction set standard for the 814 drop request & response.

Substance of final rule: The Commission adopted an order approving modifications in the Electronic Data Interchange 814 Drop Request & Response Standard, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(98-M-0667SA50)

NOTICE OF ADOPTION

Rules and Guidelines for the Exchange of Retail Access Data Between Jurisdictional Utilities and Eligible ESCO/Marketers

I.D. No. PSC-24-05-00007-A
Filing date: July 21, 2006
Effective date: July 21, 2006

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

Action taken: The Commission adopted an order on July 19, 2006 approving modifications in the electronic data interchange (EDI) 248 account assignment standard.

Statutory authority: Public Service Law, section 5(2)

Subject: Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible energy service companies/marketers.

Purpose: To revise the TS248 account assignment to enable a billing party to communicate more information to the non-billing party concerning the status of its customers receivables when a retail access customer receives a consolidated bill.

Substance of final rule: The Commission adopted an order approving modifications in the Electronic Data Interchange 248 Account Assignment standard, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(98-M-0667SA54)

NOTICE OF ADOPTION

Procedure Used for Lost Revenues by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-33-05-00006-A
Filing date: July 24, 2006
Effective date: July 24, 2006

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

Action taken: The commission, on July 19, 2006, adopted an order approving Consolidated Edison Company of New York, Inc.'s request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 9.

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

Subject: Procedure used for lost revenues.

Purpose: To specify in the Monthly Adjustment Clause the procedure for calculating the lost revenue associated with the company's Demand Management Program.

Substance of final rule: The Commission adopted an order approving Consolidated Edison Company of New York, Inc.'s tariff amendments, with modifications, to specify in the Monthly Adjustment Clause, the procedure for calculating the lost revenues associated with the company's Demand Management Program, and directed the company to file further revisions, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-E-0572SA5)

NOTICE OF ADOPTION**Electric Rates and Services by Central Hudson Gas & Electric Corporation**

I.D. No. PSC-06-06-00011-A

Filing date: July 24, 2006

Effective date: July 24, 2006

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

Action taken: The commission, on July 19, 2006, adopted an order establishing a three year rate plan for Central Hudson Gas & Electric Corporation.

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

Subject: Electric rates and service.

Purpose: To approve Central Hudson Gas & Electric Corporation's request to increase annual electric revenues.

Substance of final rule: The Commission adopted an order establishing a three year rate plan for Central Hudson Gas & Electric Corporation, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(05-E-0934SA1)

NOTICE OF ADOPTION**Gas Rates and Service by Central Hudson Gas & Electric Corporation**

I.D. No. PSC-06-06-00013-A

Filing date: July 24, 2006

Effective date: July 24, 2006

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

Action taken: The commission, on July 19, 2006, adopted an order establishing a three year rate plan for Central Hudson Gas & Electric Corporation.

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

Subject: Gas rates and service.

Purpose: To approve Central Hudson Gas & Electric Corporation's request to increase annual gas revenues.

Substance of final rule: The Commission adopted an order establishing a three year rate plan for Central Hudson Gas & Electric Corporation, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(05-G-0935SA1)

NOTICE OF ADOPTION**Submetering of Electricity by Maiden Lane Properties, LLC**

I.D. No. PSC-13-06-00021-A

Filing date: July 20, 2006

Effective date: July 20, 2006

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

Action taken: The commission, on July 19, 2006, adopted an order approving Maiden Lane Properties, LLC's request to submeter electricity at 100 Maiden Lane, New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Petition for the submetering of electricity.

Purpose: To approve the request of Maiden Lane Properties, LLC to submeter electricity at 100 Maiden Lane, New York, NY.

Substance of final rule: The Commission adopted an order approving Maiden Lane Properties, LLC's request to submeter electricity at 100 Maiden Lane, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(06-E-0230SA1)

NOTICE OF ADOPTION**Electric Service at the Griffiss Business and Technology Park by Niagara Mohawk Power Corporation, et al.**

I.D. No. PSC-14-06-00010-A

Filing date: July 20, 2006

Effective date: July 20, 2006

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

Action taken: The commission, on July 19, 2006, adopted an order approving Niagara Mohawk Power Corporation, Griffiss Local Development Corporation and Griffiss Utility Services Corporation's request for a service agreement for electric service, the transfer of settlement service agreement, the transfer of certificate of public convenience and necessity and lightened regulation.

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

Subject: Service agreement, transfer of certificate of public convenience and necessity, and lightened regulatory regime for electric service at the Griffiss Business and Technology Park.

Purpose: To approve the service agreement, transfer of certificate of public convenience and necessity, and lightened regulatory regime for electric service at the Griffiss Business and Technology Park.

Substance of final rule: The Commission adopted an order approving the request of Niagara Mohawk Power Corporation, Griffiss Local Development Corporation and Griffiss Utility Services Corporation for a settlement service agreement, transfer of a Certificate of Public Convenience and Necessity and a lightened regulatory regime for electric service at the Griffiss Business and Technology Park located in Rome, New York, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to

be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(06-E-0287SA1)

NOTICE OF ADOPTION

Disposition of Property Tax Refund by Niagara Mohawk Power Corporation d/b/a National Grid

I.D. No. PSC-19-06-00011-A
Filing date: July 21, 2006
Effective date: July 21, 2006

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

Action taken: The commission, on July 19, 2006, adopted an order approving the terms of a joint proposal, with one exception, submitted by Niagara Mohawk Power Corporation d/b/a National Grid, staff of the Department of Public Service and multiple intervenors for the disposition of a \$4 million property tax refund received by National Grid from the Town of Marcy.

Statutory authority: Public Service Law, section 113-2

Subject: Disposition of the property tax refund received from the Town of Marcy by National Grid.

Purpose: To grant a waiver of 16 NYCRR section 89.3(b), and approve the disposition of the property tax refund received by National Grid from the Town of Marcy.

Substance of final rule: The Commission adopted an order granting a waiver of 16 NYCRR Section 89.3(b) of the 60-day deadline for submitting notification of a property tax refund, and approving the terms of a joint proposal, with one exception, submitted by Niagara Mohawk Power Corporation d/b/a National Grid, Staff of the Department of Public Service and Multiple Intervenors for the disposition of a \$4 million property tax refund received by National Grid from the Town of Marcy, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(06-M-0377SA1)

NOTICE OF ADOPTION

Cash-out Mechanism by Rochester Gas and Electric Corporation

I.D. No. PSC-20-06-00015-A
Filing date: July 19, 2006
Effective date: July 19, 2006

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

Action taken: The commission, adopted an order on July 19, 2006 approving Rochester Gas and Electric Corporation's request to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 16.

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

Subject: Cash-out mechanism for energy service companies.

Purpose: To institute a cash-out mechanism for energy service companies that over deliver gas on the Empire Pipeline.

Substance of final rule: The Commission adopted an order approving Rochester Gas and Electric Corporation's request to implement a cash-out mechanism for energy service companies that over-deliver gas on the Empire Pipeline.

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.
(06-G-0511SA1)

NOTICE OF ADOPTION

Water Rates and Charges by Birch Hill Water Supply Corporation

I.D. No. PSC-20-06-00016-A
Filing date: July 19, 2006
Effective date: July 19, 2006

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

Action taken: The Commission, on July 19, 2006, adopted an order approving the request of Birch Hill Water Supply Corporation to make changes in the rates and charges contained in its tariff schedule for water service—P.S.C. No. 3.

Statutory authority: Public Service Law, section 89-c(10)

Subject: Water rates and charges.

Purpose: To continue Birch Hill Water Supply Corporation's escrow account established in Statement No. 1 to cover the costs of a new well or redevelopment of existing wells.

Substance of final rule: The Commission adopted an order approving Birch Hill Water Supply Corporation's request to continue its escrow account surcharge of \$55 per customer for two additional billing periods, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(06-W-0498SA1)

NOTICE OF ADOPTION

Transfer of Ownership of Stock and Other Related Matters between Corning Natural Gas Corporation and C&T Enterprises

I.D. No. PSC-22-06-00028-A
Filing date: July 24, 2006
Effective date: July 24, 2006

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

Action taken: The commission, on July 19, 2006, approved the joint petition of Corning Natural Gas Corporation (Corning) and C&T Enterprises (C&T) to transfer ownership of the stock of Corning to C&T and other related approvals.

Statutory authority: Public Service Law, sections 69, 70 & 110

Subject: Request to transfer ownership of stock and other related approvals.

Purpose: To approve the request of Corning and C&T to transfer ownership of stock and other related approvals.

Substance of final rule: The Commission adopted an order approving the joint petition of Corning Natural Gas Corporation (Corning) and C&T Enterprises (C&T) for authorization under Sections 69 and 70 of the Public Service Law to transfer ownership of the stock of Corning to C&T, under Section 110 of the Public Service Law for financing approval and other related approvals, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-G-0569SA1)

NOTICE OF ADOPTION

Residential and Farm Service Rates by Niagara Mohawk Power Corporation

I.D. No. PSC-22-06-00029-A

Filing date: July 24, 2006

Effective date: July 24, 2006

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

Action taken: The commission, on July 19, 2006, adopted an order approving Niagara Mohawk Power Corporation's request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 207.

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

Subject: Residential and farm service rates.

Purpose: To approve the rates contained in the Residential Service Classification Nos. 1—Residential and Farm Service and 1C—Residential and Farm Service Option Time of Use Rates and cancel 1B—Residential and Farm Service.

Substance of final rule: The Commission adopted an order approving, with modifications, Niagara Mohawk Power Corporation's request to make various changes in the rates contained in Service Classification Nos. 1 and 1B—Residential and Farm Service, and Service Classification No. 1C—Residential Farm Service Optional Large Time of Use, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (01-M-0075SA29)

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

Marketer/Direct Customer Capacity Program by The Brooklyn Union Gas Company

I.D. No. PSC-32-06-00007-P

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

Proposed action: The Public Service Commission is considering whether to approve, reject, or modify in whole or in part, a proposal filed by The Brooklyn Union Gas Company (the company) 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 Nov. 1, 2006.

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

Subject: Marketer/Direct Customer Capacity Program.

Purpose: To incorporate in the company's tariff a Marketer/Direct Customer Capacity Program, including a Virtual Storage Program and customer surcharges/credits related to the Marketer/Direct Customer Capacity Program and extend its current merchant function back-out credit.

Substance of proposed rule: The Commission is considering The Brooklyn Union Gas Company's request to incorporate in its gas tariff a Marketer/Direct Customer Capacity Program, including a Virtual Storage Pro-

gram and customer surcharges/credits related to the Marketer/Direct Customer Capacity Program and to extend its current merchant function back-out credit.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaelyn 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.

(06-G-0871SA1)

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

Marketer/Direct Customer Capacity Program by KeySpan Gas East Corporation d/b/a Brooklyn Union of L.I.

I.D. No. PSC-32-06-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve, reject, or modify in whole or in part, a proposal filed by KeySpan Gas East Corporation, d/b/a Brooklyn Union of L.I. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 1 to become effective Nov. 1, 2006.

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

Subject: Marketer/Direct Customer Capacity Program.

Purpose: To incorporate in the company's tariff a Marketer/Direct Customer Capacity Program, including a Virtual Storage Program and customer surcharges/credits related to the Marketer/Direct Customer Capacity Program and extend its current merchant function back-out credit.

Substance of proposed rule: The Commission is considering KeySpan Gas East Corporation, d/b/a Brooklyn Union of L.I.'s request to incorporate in its gas tariff a Marketer/Direct Customer Capacity Program, including a Virtual Storage Program and customer surcharges/credits related to the Marketer/Direct Customer Capacity Program and to extend its current merchant function back-out credit.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaelyn 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.

(06-G-0873SA1)

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

Transfer of Land by Devon Farms Water Works, Inc.

I.D. No. PSC-32-06-00009-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a petition filed by

Devon Farms Water Works, Inc. for approval to transfer approximately 0.65 acre of land to an adjacent property owner.

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

Subject: Transfer a parcel of land.

Purpose: To approve the transfer.

Substance of proposed rule: On June 13, 2006, Devon Farms Water Works, Inc. (Devon) filed a petition requesting approval to transfer approximately 0.65 acres of land to an adjacent property owner. Devon currently provides water service to approximately 61 residential customers in the Town of East Fishkill, Dutchess County. The Commission may approve or reject, in whole or in part, or modify the petition.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(06-W-0706SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Land by Four Seasons Water Corp.

I.D. No. PSC-32-06-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a petition filed by Four Seasons Water Corp. for approval to transfer approximately one acre of land to an adjacent property owner.

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

Subject: Transfer a parcel of land.

Purpose: To approve the transfer.

Substance of proposed rule: On June 13, 2006, Four Seasons Water Corp. (Four Seasons) filed a petition requesting approval to transfer approximately one acre of land to an adjacent property owner. Four Seasons currently provides water service to approximately 70 residential customers in the Town of East Fishkill, Dutchess County. The Commission may approve or reject, in whole or in part, or modify the petition.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(06-W-0855SA1)