

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; or EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

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

Department of Correctional Services

NOTICE OF ADOPTION

Cape Vincent Correctional Facility

I.D. No. COR-06-07-00005-A
Filing No. 382
Filing date: April 10, 2007
Effective date: April 25, 2007

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

Action taken: Amendment of section 100.121(c) of Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Cape Vincent Correctional Facility.

Purpose: To amend specific inmate housing unit designations from program dorms to regular dorms.

Text or summary was published in the notice of proposed rule making, I.D. No. COR-06-07-00005-P, Issue of February 7, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 485-9613, e-mail: AJAnnucci@docs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Serialized Official New York State Prescription Form

I.D. No. HLT-42-06-00005-E

Filing No. 381

Filing date: April 9, 2007

Effective date: April 9, 2007

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

Action taken: Addition of Part 910 and amendment of Parts 80 and 85 of Title 10 NYCRR and amendment of section 505.3 and repeal of sections 528.1 and 528.2 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 21

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

Specific reasons underlying the finding of necessity: We are proposing that these regulations be adopted on an emergency basis because immediate adoption is necessary to protect the public health and safety and to meet statutory requirements. The budget proposal enacting section 21 contains explicit authority for the Commissioner to promulgate emergency regulations. This was done recognizing the need to provide for the implementation of the use of statewide forge proof prescriptions by the April 19, 2006 date mandated by the law.

Immediate adoption of these regulations is necessary to allow the implementation of section 21 of Public Health Law, achieve the health care cost savings and to enhance the quality of health care by preventing drug diversion resulting from forged or stolen prescriptions.

The practitioner groups affected by this proposal, PSSNY, MSSNY and the Health Plan Association of New York were consulted during budget negotiations. Their concerns are addressed in the statutory proposal set forth in the state budget and in these regulations.

Subject: Enactment of a serialized New York State prescription form.

Purpose: To enact a serialized New York State prescription form.

Substance of emergency rule: Part 910 (10 NYCRR) These regulations are being proposed on an emergency basis to implement Section 21 of the Public Health Law. The purpose of the law is to combat and prevent prescription fraud by requiring the use of an official New York State prescription for all prescribing done in this state. Official prescriptions contain security features that will curtail alterations and forgeries that divert drugs to black market sale to unsuspecting patients and cost New York's Medicaid program and private insurers tens of millions of dollars annually in fraudulent claims.

The emergency regulations consist of a new Part 910 to Title 10 NYCRR. Section 910.1 defines terms used in the Part. Section 910.2 states requirements for practitioner prescribing, including that, until April 19, 2007, hospitals and comprehensive voluntary non-profit community diagnostic and treatment centers designated by the Department are exempted from the requirement for their staff practitioners to prescribe non-controlled substances on an official prescription form. The exemption will continue beyond April 19, 2007 if the hospital and the comprehensive voluntary non-profit community diagnostic and treatment center imple-

ments and utilizes an electronic prescribing system to transmit prescriptions to pharmacies capable of receiving them. The exemption also will continue beyond April 19, 2007 for those facilities approved by the Department that have implemented a computerized provider order entry system that is capable of generating paper prescriptions throughout the facility. This exemption will allow staff practitioners to issue printed prescriptions which minimize medication errors due to handwritten prescriptions for non-controlled substances on the prescription form of the facility until the Department approves and provides an alternative form of serialized official New York State prescription. Section 910.3 covers registration with the Department, which practitioners and healthcare facilities are required to do to order official prescriptions. Section 910.4 states the manner in which official prescriptions will be issued by the Department, while section 910.5 lists the practitioner and facility requirements for safeguarding the official prescriptions against theft, loss or unauthorized use. Section 910.6 states pharmacy requirements for dispensing official prescriptions and out-of-state prescriptions, which may be dispensed in lieu of an official prescription. Section 910.6 also states pharmacy requirements for submission of official prescription data to the Department. Section 910.6 also authorizes pharmacies to fill prescriptions for non-controlled substances until October 19, 2006 that are not written on an official prescription provided that the pharmacy notify the Department of the prescribing practitioner so that the practitioner may be contacted and issued official prescriptions for subsequent prescribing.

Both 10 NYCRR and 18 NYCRR have been revised to reflect the above regulations, update outdated/obsolete sections and to allow for greater flexibility for changes in law. The following changes have been proposed:

Section 505.3 (18 NYCRR)

- Language included to reflect use of facsimile prescriptions.
- Language included to allow electronically transmitted prescriptions.
- Language included to mandate that all claims for payments of drugs or supplies under the MA program shall contain the serial number of the Official NYS Prescription Form.
- Delete language prohibiting telephone orders for OTCs.
- Language amended—telephone prescriptions for non-controlled substances WILL NOT require a follow-up hard copy prescription (even with refills).
- Delete Estimated Acquisition Cost—defined in Social Services Law 367-a(9)(b)(ii).
- Delete language referencing “triplicate” prescriptions and update to language consistent with Official NYS Prescription Form and Article 33 of the Public Health Law.
- Delete language referencing other Sections that have been deleted (*i.e.*, 10 NYCRR 85.25).
- Delete language referencing dispensing fees—in Social Services Law 367-a(9)(d).
- Language is added to reference prescription drugs filled in compliance with 6810 of the Education Law, Article 33 of the Public Health Law and new 10 NYCRR Part 910.
- A change has been made to the prior version of the emergency filing for 18 NYCRR 505.3(b)(7). The words “or supplies” has been deleted since the enacting legislation (Section 21 of the Public Health Law) only mandated that forged proof prescriptions be utilized for prescription drugs. This change conforms the regulations to the law.

Part 528 (18 NYCRR)

- Section 528.1 is deleted—obsolete listing of non-prescription drugs covered under the MA program. Listing of reimbursable drugs and rate is available on-line at the NYS eMedNY website.
- Section 528.2 is deleted—language regarding “dispensing fees include routine delivery charges” is moved to 18 NYCRR 505.3(f)(6). Compounding fee language in 18 NYCRR 505.3 [6] (3).

Part 85 (10 NYCRR)

- Section 85.21 amended—OTC List—quantities and dosage forms have been deleted to allow greater flexibility in coverage. Remove OTC categories that are no longer marketed.
- Section 85.22 amended—establishment of OTC prices amended to more accurately reflect OTC pricing (Ad Hoc Committee is obsolete) and removal of references to deleted Sections (*i.e.*, 18 NYCRR 528.2 and 10 NYCRR 85.25)
- Section 85.23 deleted—Revisions to list of OTCs and Maximum Reimbursable Prices—in Social Services Law 365-a(4)(a).

Section 85.25 deleted—Prescription drug list covered under MA—obsolete. Drug list available on line at NYS eMedNY website.

Part 80 (10 NYCRR)

- Part 80 table of contents has been revised to reflect amendments in titles of sections of regulations.
- Sections have been amended throughout Part 80 to revise the previous title of ‘Bureau of Narcotic Control’ and ‘Bureau of Controlled Substances’ to the current title of ‘Bureau of Narcotic Enforcement’.
- Sections have been amended throughout Part 80 to revise the previous title of ‘Bureau of Narcotics and Dangerous Drugs’ to the current title of ‘Drug Enforcement Administration’.
- Section 80.1—language added to define ‘automated dispensing system’.
- Section 80.5—language deleted for 3b Institutional Dispenser license due to registration of facilities to be issued official prescriptions. Language added for retail pharmacy license, installation, and operation of automated dispensing system in Residential Healthcare Facility (RHCF).
- Section 80.11—language added to make requirements for supervising pharmacist of controlled substance manufacturer and distributor consistent with pharmacist licensure requirements in New York State Education Law.
- Section 80.46—language added to require supervising physician countersignature of medical order of physician’s assistant if deemed necessary by supervising physician or hospital to bring regulation into consistency with PHL 3703.
- Section 80.47—language revised to except administration of controlled substances in emergency kits to patients in Title 18 adult care facilities.
- Section 80.49—language revised from prescription serial number to pharmacy prescription number.
- Section 80.50—language added to require pharmacies to maintain separate stocks of controlled substances received for use in automated dispensing system in RHCF and to authorize storage of non-controlled substances in such system.
- Section 80.60—language added for female gender reference to practitioner.
- Section 80.63—deleted definition of written prescription and added definition of out-of-state prescription. Language added to authorize printed prescriptions generated by computer or electronic medical record system. Language added regarding practitioner oral prescribing requirement.
- Section 80.67—midazolam and quazepam added to list of benzodiazepine controlled substances, as per PHL 3306. Language added requiring quantity of dosage units to be indicated in both numerical and written word form. Language amended to include chorionic gonadotropin as controlled substance for prescribing up to a 3-month supply. Language added to assign code letters to medical conditions for prescribing more than a 30-day supply.
- Section 80.67(con’t)—language deleted regarding Department’s issuance of official New York State prescriptions, due to added language in section 80.72. Language deleted for face and back of prescription to facilitate timely pharmacist dispensing. Language added authorizing practitioner faxing of prescription for hospice or RHCF patient and for prescription to be compounded for direct parenteral administration to patient.
- Section 80.68—language added for certain other controlled substances. Language deleted requiring pharmacist to endorse pharmacy DEA number on official NYS prescription to facilitate timely dispensing. Language added requiring electronic transmission of prescription data to Department.
- Section 80.69—language added requiring quantity of dosage units to be indicated in numerical and written word form. Language added to assign letters for condition codes. Deleted reference to PHL sections 3335 and 3336, which were deleted by PHL 21, and added reference PHL sections 3332 and 3333, which are now the relevant sections. Deleted written prescription and added official prescription. Deleted back of the prescription and face of the prescription to facilitate timely dispensing. Language added authorizing practitioner faxing of prescription for hospice or RHCF patient and for prescription to be compounded for direct parenteral administration to patient.
- Section 80.70—Language added specifying oral prescriptions for 30-day supply or 100 dosage units does not apply to substance limited to 5-day supply by section 80.68. Deleted serial prescription number and added pharmacy prescription number. Added female gender language in reference to pharmacist. Language added requiring filing of prescription information with Department.
- Section 80.71—Deleted section (b) to reflect that practitioners are no longer required by PHL 3331 to complete an official prescription when dispensing controlled substances. Corrected spelling of chorionic gonadotropin. Added reference to condition codes in sections 80.67 and 80.69.

Added packaging and labeling requirements for practitioner dispensing of controlled substances. Added requirement for practitioners to submit dispensing information to Department by electronic transmission.

- Section 80.72—deleted all references to practitioner dispensing and labeling requirements because practitioner dispensing now covered by section 80.71. Language added regarding practitioner registration with Department and Department issuance of official NYS prescription forms.

- Section 80.73—added language specifying pharmacist dispensing of schedule II and controlled substances listed in section 80.67. Added female gender language in reference to pharmacist. Deleted requirement for pharmacist to endorse pharmacy DEA number on prescription for timely dispensing. Language added requiring pharmacy to verify identity of person picking up dispensed prescription. Language added requiring pharmacy electronic transmission of prescription data to Department.

- Section 80.73(con't)—language added specifying emergency oral prescriptions for schedule II and controlled substances listed in section 80.67 and filing of emergency oral prescription memorandum. Language added requiring pharmacy electronic transmission of oral prescription data to Department. Language added specifying partial filling of official prescription for schedule II and controlled substances listed in section 80.67. Language added authorizing pharmacist dispensing of faxed prescription and requiring delivery of original within 72 hours.

- Section 80.74—language added in section title specifying pharmacist dispensing of controlled substances. Language added for prescription labeling requirements. Added female gender reference to pharmacist. Added requirement for filing prescription data with Department. Language added authorizing pharmacist dispensing of faxed prescription and requiring delivery of original within 72 hours.

- Section 80.74(con't)—language added for pharmacy requirement to verify identification of person picking up prescription. Deleted reference to schedule II controlled substances and those substances listed in section 80.67 because all controlled substances now require official NYS prescription. Deleted labeling requirement reference to section 80.72 and added reference to section 80.71.

- Section 80.75—deleted language regarding requirement to purchase official prescriptions. Added language regarding registration and issuance of official prescriptions for institutional dispenser.

- Section 80.78—Added a new section regarding pharmacist requirements for dispensing of out-of-state prescriptions for controlled substances, to be dispensed in conformity with provisions set forth for official prescriptions.

- Section 80.84—deleted language requiring group practice providing treatment of opiate dependence with buprenorphine to be limited to 30 patients at any one time, making New York State regulations consistent with the federal Drug Addiction Treatment Act. Deleted language requiring practitioners and pharmacies to register with Department to prescribe and dispense buprenorphine. Deleted language requiring pharmacy to file prescription data and report loss of controlled substances because redundant. Deleted reference to PHL 3335 and 3336 because deleted by PHL 21 and added reference to PHL 3332 and 3333 because now relevant sections.

- Section 80.106—added language requiring separate record-keeping for pharmacies installing automated dispensing system in RHCF.

- Section 80.107—added language authorizing Department to notify practitioner of patient treatment with controlled substances by multiple practitioners, consistent with PHL 3371.

- Section 80.131—deleted written prescription, added official prescription and out-of-state prescription. Language added increasing oral prescription for hypodermic needles and syringes to quantity of one hundred hypodermic needles and syringes.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. HLT-42-06-00005-P, Issue of October 18, 2006. The emergency rule will expire June 7, 2007.

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: regsna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

Section 3308(2) of the Public Health Law authorizes and empowers the Commissioner to make any regulations necessary to supplement the provisions of Article 33 of the Public Health Law in order to effectuate its purpose and intent.

The state budget for SFY 2004-2005 enacted new Section 21 of the Public Health Law which mandates a statewide official prescription form for all prescriptions written in New York for the purpose of curtailing prescription fraud and enhancing patient safety. The law, Chapter 58 of the Laws of 2004, permits the Commissioner to promulgate emergency regulations in furtherance of this new section of law.

Legislative Objectives:

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted in 1972 to govern and control the possession, prescribing, manufacturing, dispensing, administering and distribution of controlled substances within New York. New Section 21 of the Public Health law mandates a statewide official prescription, supports electronic prescribing and facilitates the dispensing process.

Needs and Benefits:

This regulation will support the enactment of an official New York State prescription form, which will deter fraud by curtailing theft or copying of prescriptions by individuals engaged in drug diversion. These regulations have been drafted after discussions with such provider groups as the State Health Plan Association, Medical Society of the State of New York and the Pharmacist Society of the State of New York.

Regulations are being proposed to implement Section 21 of the Public Health Law (PHL). The purpose of the law is to combat and prevent prescription fraud by requiring an official New York State prescription for every prescription written in New York. Official prescriptions contain security features designed specifically to curtail alterations, counterfeiting, and forgeries, all of which divert drugs to black market sale to unsuspecting patients and cost New York's Medicaid program and private insurers tens of millions of dollars annually in fraudulent claims.

Regulations have been amended to reflect the implementation of the above Public Health Law and to update obsolete or outdated language in the existing regulations. The proposed regulations also include amendments to authorize a practitioner to deliver a controlled substance prescription to a pharmacy by facsimile transmission in specified circumstances and to authorize a pharmacist to dispense such faxed prescription. By facilitating timely prescribing and dispensing, such facsimile transmission will enhance healthcare for patients enrolled in hospice programs or residing in a Residential Healthcare Facility (RHCF) and for patients who require controlled substance prescriptions to be compounded for administration by parenteral infusion.

Regulations have also been amended to authorize the Department to license a retail pharmacy to install and operate an automated dispensing system in a RHCF, which will bring New York regulations into consistency with federal regulations. The installation and operation of such systems will significantly benefit patient care through timely and efficient dispensing of prescriptions for controlled substances. Automated dispensing systems will also lessen the cost of medications remaining from waste due to discontinued drug therapy and will simultaneously decrease the amount of such controlled substances that are susceptible to diversion.

These regulations are found in amendments to 10 NYCRR Part 80 and in the newly promulgated regulations in 10 NYCRR Part 910. Included in the Part 910 regulations is an exemption allowing hospital practitioners or practitioners in a comprehensive voluntary non-profit diagnostic and treatment center designated by the Department to prescribe non-controlled substances on a non-official hospital prescription until April 19, 2007. The exemption will continue beyond April 19, 2007 for hospitals and designated comprehensive voluntary non-profit diagnostic and treatment centers that implement and utilize an electronic prescription system to transmit prescriptions to pharmacies capable of receiving them. The exemption also will continue beyond April 19, 2007 for those facilities that have implemented a computerized provider order entry system approved by the Department that is capable of generating printed paper prescriptions throughout the facility. This exemption will address concerns expressed by the facilities regarding the required safeguarding of official prescription paper and the added expense to purchase and install additional dedicated computer printers in order to comply with the regulations. The exemption will allow staff practitioners to issue printed prescriptions—which minimize medication errors due to handwritten prescriptions—for non-controlled substances on the prescription form of the facility until the Department approves and provides an alternative form of serialized official New York State prescription.

Also included in the Part 910 regulations is an exemption allowing pharmacies to dispense prescriptions for non-controlled substances that are not issued on an official prescription until October 19, 2006 in order that optimum care may continue to be provided to patients. The regulation requires pharmacies to notify the Department so that the practitioner may

be contacted and issued official prescriptions for all subsequent prescribing.

Costs:

Costs to Regulated Parties:

This program is being funded by an annual assessment on the State Insurance Department of \$16.9 million. The assessment funds the costs of providing 180 million official prescriptions annually as well as administrative and enforcement staffing to operate and enforce the program. The current fee to practitioners and institutions for the official prescription has been eliminated. Private insurers and the Medicaid program will realize, respectively, an estimated \$75 million and \$25 million in annual savings due to the reduction of fraudulent prescription claims.

The \$25 million estimated savings for the Medicaid program represents the 25% New York State share. \$50 million in estimated savings would accrue to the 50% federal government share of Medicaid, while \$25 million in estimated savings would accrue to the 25% local government share of Medicaid.

The allowance for electronic prescribing in the Medicaid program and the expedition of the dispensing process through the use of bar coding will save valuable professional time for practitioners and pharmacists.

There will be a slight expenditure to pharmacies for software adjustments, due to minor changes in reporting requirements for controlled substance prescriptions.

Costs to State and Local Government:

There will be no costs to state or local government. Savings to State government are estimated at \$25 million to the 25% New York State share of Medicaid. Savings to local government, from reduction in subsidizing of prescription costs for patients in their Medicaid population, will result in an estimated \$25 million to the 25% local government share of Medicaid.

Costs to the Department of Health:

There will be no additional costs to the Department. The decrease in prescription fraud as a result of use of the official prescription will result in savings for the Department for the Medicaid, EPIC, and Empire programs. An increase in the efficiency of investigations made possible by the official prescription program will result in additional savings for the Department.

Local Government Mandates:

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

Paperwork:

No additional paperwork is required. The use of a single prescription form for controlled substances and non-controlled substances will simplify paperwork and record keeping for practitioners and institutions. Currently, practitioners use their own prescription form as well as the official prescription. The official prescription will replace existing prescriptions that are currently used in addition to the official prescription. Encouragement of electronic prescribing will significantly reduce paperwork requirements for practitioners, institutions and pharmacists.

Duplication:

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

Alternatives:

There are no alternatives that would support the approach to be taken under the regulations. The limitation on reporting requirements by pharmacies (only for controlled substances as opposed to requiring reporting on all prescriptions) was done after consultation with affected provider organizations.

As a result of consultations with the hospital community, hospitals were granted a one-year exemption, until April 19, 2007, from the requirement for their staff practitioners to prescribe non-controlled substance medications on the official prescription. The purpose of the exemption is to serve as an incentive for hospitals to develop electronic prescription systems. The exemption will be extended if the hospital implements and utilizes an electronic prescription system to transmit such prescriptions directly to a pharmacy in lieu of an official prescription. The exemption also will be extended beyond April 19, 2007 if the hospital implements a computerized provider order entry system approved by the Department that is capable of generating printed prescriptions throughout the facility. This exemption will address concerns expressed by the facilities regarding the expense of safeguarding official prescription paper and purchasing and installing additional dedicated computer printers. The exemption will allow staff practitioners to issue printed prescription—which minimize medication errors due to misinterpretation of handwritten prescriptions—for non-controlled substances on a hospital prescription form until the

Department approves and provides an alternative form of official New York State prescription.

Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government.

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

Regulatory Flexibility Analysis

Effect of Rule on Small Business and Local Government:

This proposed rule will affect practitioners, pharmacists, retail pharmacies, hospitals and nursing homes.

According to the New York State Department of Education, Office of the Professions, there are approximately 120,000 licensed and registered practitioners authorized to prescribe and order prescription drugs. According to the New York State Board of Pharmacy, there are a total of approximately 4,500 pharmacies in New York State. According to the New York State Education Department's Office of the Professions, there are approximately 18,000 licensed and registered pharmacists in New York.

Compliance Requirements:

The regulations follow the newly enacted Section 21 of the Public Health Law and require the use of the official New York State Prescription form. In addition to curtailing fraud and diversion, these regulations will expedite the prescribing and dispensing process. Practitioners, institutions and pharmacists will benefit from the following amendments;

- (1) Eliminating the fee to practitioners and institutions for official prescriptions;
- (2) Eliminating the requirement that pharmacists write the DEA number of the pharmacy on the official prescription;
- (3) Bar coding of the serial number on the official prescription to expedite the dispensing process; and
- (4) Eliminating multiple prescription forms practitioners currently use to prescribe drugs.

Currently, dispensing data is required from all Schedule II and benzodiazepines prescriptions. The only new requirement is the submission of dispensing data from the original dispensing of all prescriptions for controlled substances.

Professional Services:

No additional professional services are necessary.

Compliance Costs:

Pharmacies may require minor adjustments in computer software programming due to additional prescription data submission requirements.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. The process utilizes existing electronic systems for reporting of dispensing by pharmacies. The regulations encourage the use of electronic prescribing by practitioners. Electronic prescribing is not only more efficient than the current paper process, it is also a secure procedure that will reduce prescription fraud. Electronic prescribing will protect the public health and result in substantial savings to the Medicaid program and private insurance as well as enhancing public safety.

Minimize Adverse Impact:

The regulations require only a minimal increase in reporting requirements. These requirements were negotiated with organizations representing the affected groups. The use of bar coding and the encouragement of electronic prescribing minimize any adverse impact.

Small Business and Local Government Participation:

During the drafting of the statute which is the basis of these regulations, the Department met with the Pharmacist Society of the State of New York (PSSNY), the Medical Society of the State of New York (MSSNY) and the Health Plan Association of New York. The regulations were drafted considering their comments. Local governments are not affected.

Rural Area Flexibility Analysis

The proposed rule will apply to participating pharmacies, practitioners and institutions located in all rural areas of the state. Outside of major cities and metropolitan population centers, the majority of counties in New York contain rural areas. These can range in extent from small towns and villages and their surrounding areas, to locations that are sparsely populated.

Compliance Requirements:

The only compliance requirements are the use of the official prescription provided free of charge and additional minimal reporting requirements by pharmacies. The regulations are in furtherance of new Section 21 of the Public Health Law authorizing a statewide official prescription aimed at reducing fraud. Additionally, the regulations assist practitioners and phar-

macies by making the prescribing and dispensing process more efficient through the use of electronic prescribing.

- Professional Services:
None necessary.
- Compliance Costs:

The new law requires all pharmacies in New York State to electronically transmit information from controlled substance prescriptions to the Department on a monthly basis, for monitoring and analysis purposes in combating prescription fraud. Pharmacies may require minor adjustments in computer software programming due to this additional prescription data submission requirement.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. The process will utilize existing electronic systems for reporting of dispensing information by pharmacies. The regulations encourage the use of electronic prescribing, which is more efficient and more secure than a paper process. Electronic prescribing will also enhance patient safety through a reduction in medication error due to legibility issues.

Minimize Adverse Impact:

The regulations require only a minimal increase in reporting requirements. This requirement is minimized by permitting pharmacies to scan the bar code of the prescription serial number onto the Medicaid claim form also through the allowance of electronic prescribing. Additionally, the benefits on regulated entities resulting from these regulations and described herein outweigh any adverse impact.

Rural Area Participation:

During the drafting of this regulation, the Agency met with and solicited comments from pharmacist, health plan and practitioner associations who represent these professions in rural areas. No particular issues relating to the effect of this program on rural areas was expressed.

Job Impact Statement

Nature of Impact:

This proposal will not have a negative impact on jobs and employment opportunities. In benefiting the public health by ensuring that drug diversion does not occur through the use of forged or stolen prescriptions, the proposed amendments are not expected to either increase or decrease jobs overall. The fiscal savings to public and private insurers will result in an economic benefit to these groups and could have a positive influence on jobs. Additionally, the anticipated time saved by practitioners and pharmacists will benefit all parties involved as well as patients.

Assessment of Public Comment

The agency received no public comment.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-06-07-00007-P, Issue of February 7, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Rules Governing Individual and Group Accident and Health Insurance Reserves

I.D. No. INS-17-07-00002-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 94 and addition of new Part 94 (Regulation 56) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1303, 1304, 1305, 1308, 4117, 4217, 4310 and 4517

Subject: Rules governing individual and group accident and health insurance reserves.

Purpose: To prescribe rules and regulations for valuation of minimum individual and group accident and health insurance reserves including standards for valuing certain accident and health benefits in life insurance policies and annuity contracts.

Public hearing(s) will be held at: 11:00 a.m. - 12:30 p.m., May 16, 2007 at Insurance Department, One Commerce Plaza, Life Bureau Conference Rm., Suite 1910, Albany, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: <http://www.ins.state.ny.us/rproindx.htm>): The following is a summary of the substance of the rule:

Section 94.1 lists the main purposes of the regulation including implementation of Sections 1303, 4117, 4217(d), 4517(d) and 4517(f) of the Insurance Law and prescribing rules for valuing certain accident and health benefits in the life insurance policies.

Section 94.2 is the applicability section. This section applies to both individual policies and group certificates. The regulation applies to all insurers, fraternal benefit societies, and accredited reinsurers doing business in the State of New York. It applies to all statutory financial statements filed after its effective date.

Section 94.3 is the definitions section.

Section 94.4 sets forth the general requirements and minimum standards for claim reserves, including claim expense reserves and the testing of prior year reserves for adequacy and reasonableness using claim runoff schedules and residual unpaid liability.

Section 94.5 sets forth the general requirements for premium reserves and minimum standards for unearned premium reserves.

Section 94.6 sets forth the general requirements and minimum standards for contract reserves.

Section 94.7 concerns increases to, or credits against reserves carried, arising from reinsurance agreements.

Section 94.8 prescribes the methodology of adequately calculating the reserves for waiver of premium benefit on accident and health policies.

Section 94.9 provides that a company shall maintain adequate reserves for all individual and group accident and health insurance policies that reflect a sound value being placed on its liabilities under those policies.

Section 94.10 provides the specific standards for morbidity, interest and mortality.

Section 94.11 allows for a four-year period for grading into the higher reserves beginning with year-end 2003 for insurers for which higher reserves are required because of this Part.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5257, e-mail: amais@ins.state.ny.us

Insurance Department

NOTICE OF ADOPTION

Financial Statement Filings and Accounting Practices and Procedures

I.D. No. INS-06-07-00007-A

Filing No. 378

Filing date: April 4, 2007

Effective date: April 25, 2007

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

Action taken: Amendment of section 83.2(c) (Regulation 172) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327, and 6404; Public Health Law, sections 4403, 4403-a, 4403-c, and 4408-a; and L. 2002, ch. 599

Subject: Financial statement filings and accounting practices and procedures.

Purpose: To update a citation in section 83.2(c) to refer to an accounting manual entitled Accounting Practices and Procedures Manual as of March 2006 (instead of 2005).

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 adoption of Regulation No. 56 (11 NYCRR 94) is derived from sections 201, 301, 1303, 1304, 1305, 1308, 4117, 4217, 4310 and 4517 of the Insurance Law.

These sections establish the Superintendent's authority to promulgate regulations governing reserve requirements for 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 1303 covers loss or claim reserves for insurers.

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 1305 covers unearned premium reserves for insurers.

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

Section 4117 covers loss reserves for Property and Casualty (P&C) insurers.

Section 4217(d) provides that reserves for all individual and group accident and health policies shall reflect a sound value placed on the liabilities of such policies and permits the Superintendent to issue, by regulation, guidelines for the application of reserve valuation provisions for these types of policies.

Section 4310 covers investments, financial conditions, and reserves for non-profit health plans.

For fraternal benefit societies, section 4517(d) provides that reserves for all individual accident and health certificates shall reflect a sound value placed on the liabilities of such certificates and permits the Superintendent to issue, by regulation, standards for minimum reserve requirements on these types of certificates. Additionally, section 4517(f) provides that reserves for unearned premiums and disabled lives be held in accordance with standards prescribed by the Superintendent for certificates or other obligations which provide for benefits in case of death or disability resulting solely from accident, or temporary disability resulting from sickness, or hospital expense or surgical and medical expense benefits.

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 licensed 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 insurers doing business in New York. The Insurance Law does not specify mortality, morbidity, and interest standards used to value individual and group accident and health insurance policies and relies on the Superintendent to specify the method. Without this regulation, there would be no standard method for valuing such products and, in fact, the current regulation, absent the proposed rule, provides no guidance related to certain coverages such as group accident and health policies. This could result in inadequate reserves for some insurers, which would jeopardize the security of policyholder funds.

Additionally, the current regulation, absent the proposed rule, requires higher reserves than necessary for certain individual accident and health insurance policies. This proposed rule, by lowering such reserves for individual policies, will result in a lower cost of doing business in New York.

4. Costs:

Costs to most insurers licensed to do business in New York State will be minimal, including the cost to develop computer programs which calculate reserves for accident and health insurance due to several changes in the underlying reserve methodology and new morbidity tables. Companies that are domiciled in New York and are not licensed to do business in other states will be impacted the most by this adoption. Most insurers that are domiciled in New York and licensed to do business in other states already have in place identical or similar procedures for reserve requirements and morbidity tables due to adoption by many states of the Health Insurance

Reserves Model Regulation of the National Association of Insurance Commissioners (NAIC). The adoption of this regulation by New York State improves reserve uniformity throughout the insurance industry. Therefore, minimal additional costs will be incurred in most cases. For some insurers doing business only in New York or in other states that have not adopted the NAIC model regulation, the adoption for the first time of standards for certain coverages such as group health insurance may require an increase in reserves and would therefore increase the insurer's cost of capital. In addition, an insurer that needs to modify its current systems could produce modifications internally or purchase software from a consultant, who would typically charge \$5,000 to \$10,000. Once the program has been developed, no additional systems costs should be incurred due to those requirements.

Costs to the Insurance Department will be minimal. 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:

The Department considered allowing an additional grade-in period, beyond the grade-in period currently cited in the proposed rule, for health and property and casualty insurers. The Department has decided against allowing an additional grade-in period since during an outreach effort to the property and health industries, only one insurer notified the Department that a material reserve increase would result. That insurer was notified of the proposed change to the rule during 2004 and has had ample time to prepare for the reserve change. Additionally, it is important that all insurers hold the correct amount of reserves as soon as possible and therefore be held to the same grade-in period.

The only other significant alternative to be considered was to keep the current version of Regulation No. 56, without adopting this proposed rule, which would result in different reserve requirements for those insurers licensed in New York.

9. Federal standards:

There are no federal standards in the subject area.

10. Compliance schedule:

Beginning with year-end 2003, where the requirements of this regulation produce reserves higher than those calculated at year-end 2002, the insurer were allowed to linearly interpolate, over a four year period, between the higher reserves and those calculated based on the year-end 2002 standards. Insurers were required to be in full compliance with this Part by year-end 2006.

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 insurance companies licensed to do business in New York State, none of which fall within the definition of "small business", under section 102(8) of the State Administrative Procedure Act, because there are none that are both independently owned and that employ fewer than 100 persons. 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" under section 102(8) of the State Administrative Procedure Act, because there are none that are both independently owned and that employ fewer than 100 persons.

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 numbers of rural areas:

Insurance companies covered by the regulation do business in every county in this state, including rural areas as defined under Section 102(10) of the State Administrative Procedure Act.

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

The regulation establishes reserve requirements for individual and group accident and health policies and establishes standards for valuing

certain accident and health benefits in life insurance policies and annuity contracts.

3. Costs:

Costs to most insurers licensed to do business in New York State will be minimal, including the cost to develop computer programs which calculate reserves for accident and health insurance due to several changes in the underlying reserve methodology and new morbidity tables. Companies that are domiciled in New York and are not licensed to do business in other states will be impacted the most by this adoption. Most insurers that are domiciled in New York and licensed to do business in other states already have in place identical or similar procedures for reserve requirements and morbidity tables due to adoption by many states of the Health Insurance Reserves Model Regulation of the National Association of Insurance Commissioners (NAIC). The adoption of this regulation by New York State improves reserve uniformity throughout the insurance industry. Therefore, minimal additional costs will be incurred in most cases. For some insurers doing business only in New York or in other states that have not adopted the NAIC model regulation, the adoption for the first time of standards for certain coverages such as group health insurance may require an increase in reserves and would therefore increase the insurer's cost of capital. In addition, an insurer that needs to modify its current systems could produce modifications internally or purchase software from a consultant, who would typically charge \$5,000 to \$10,000. Once the program has been developed, no additional systems costs should be incurred due to those requirements.

4. Minimizing adverse impact:

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

5. Rural area participation:

The regulation was drafted after consultation with member companies of the Life Insurance Council of New York (LICONY). A copy of the draft was distributed to LICONY in November, 2002. Additional changes were made to the text of the regulation based on changes made to the NAIC's Health Insurance Reserves Model Regulation in December 2003 and a revised draft of the regulation was distributed to LICONY in January 2004. The draft was sent to American Insurance Association (AIA), Property Casualty Insurers Association of America (PCI) and National Association of Mutual Insurance Companies (NAMIC) for property and casualty insurers and to selected health insurers during late 2004 and early 2005. In addition, a discussion of the proposed rule making was included in the Insurance Department's regulatory agenda which was published in the January 3, 2007 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 reserves for insurers. Most insurers will be able to reduce reserves and a few may need to increase reserves but this 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 licensed 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.

Department of Motor Vehicles

NOTICE OF ADOPTION

Colored Lights

I.D. No. MTV-06-07-00011-A

Filing No. 384

Filing date: April 10, 2007

Effective date: April 25, 2007

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

Action taken: Amendment of Part 44 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 375(41)

Subject: Colored lights.

Purpose: To authorize the affixing and display of blue lights on police vehicles as required by chapter 45 of the Laws of 2006.

Text of final rule: Subdivision (a) of Section 44.4 is amended to read as follows:

(a)(1) *One or more blue lights or combination blue and red lights or combination blue, red and white lights may be affixed to a police vehicle, provided that such blue light or lights shall be displayed on a police vehicle for rear projection only. In the event that the trunk or rear gate of a police vehicle obstructs or diminishes the visibility of other emergency lighting on such vehicle, a blue light may be affixed to and displayed from the trunk, rear gate or interior of such vehicle. Such lights may be displayed on a police vehicle when such vehicle is engaged in an emergency operation. Nothing contained in this subdivision shall be deemed to authorize the use of blue lights on a police vehicle unless such vehicle also displays one or more red, or combination red and white lights as otherwise authorized in this section.*

(2) One blue light may be affixed to any motor vehicle owned by a volunteer member of a fire department or on a motor vehicle owned by a member of such person's family residing in the same household or by a business enterprise in which such person has a proprietary interest or by which he is employed.

Subdivision (c) of Section 44.4 is amended to read as follows:

(c) Authorization to affix a blue light to each of the motor vehicles described in paragraph (2) of subdivision (a) must be in writing, signed by the chief of the fire department or company. Authorization to affix a green light to each of the vehicles described in subdivision (b) must be in writing and signed by the chief officer of the volunteer ambulance service. The authorization given to members of their respective organization may be revoked at any time by the chief officer who issued the same or his successor in office. Such written authority must be carried upon the person of the operator of the vehicle whenever such lights are displayed.

Subdivision (d) of Section 44.4 is amended to read as follows:

(d) A green light may not be affixed, nor may the authorization be given to do so, to a vehicle described in paragraph (2) of subdivision (a) where an ambulance service is operated by and is a function of a volunteer fire department or company.

Subdivision (f) of Section 44.4 is amended to read as follows:

(f) A green light may be affixed to a vehicle, other than a police vehicle, which is entitled to have a blue light affixed and such blue light is affixed and both are properly authorized.

Subdivision (h) of Section 44.4 is amended to read as follows:

(h) [A] *Except as provided in paragraph (1) of subdivision (a), a blue or green light may not be affixed to a vehicle which is entitled to have red lights affixed and one or more red lights are so affixed.*

Subdivision (k) of Section 44.4 is amended by adding a new paragraph (10) to read as follows:

(10) *The provisions of this subdivision shall not apply to a police vehicle.*

Final rule as compared with last published rule: Nonsubstantive changes were made in section 44.4(a), (c), (d), (f), (h) and (k).

Text of rule and any required statements and analyses may be obtained from: Michele L. Welch, Counsel's Office, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

Job Impact Statement

A Job Impact Statement that was included in the original filing states that there will be no impact on jobs as a result of the adoption of this regulation. The revised proposal will also have no impact on jobs. The regulation merely authorizes the display of blue lights on police vehicles, and neither the original nor the revised proposal will have any impact on jobs.

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

Drinking Driver Program and Conditional License Eligibility Re-licensure Requirements

I.D. No. MTV-17-07-00006-P

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

Proposed action: Amendment of Parts 134 and 136 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 510(6)(a), 1192(10)(a) and (d), 1193(2)(c)(1), 1196(4) and (7)(a)

Subject: Drinking Driver Program and conditional license eligibility and re-licensure requirements.

Purpose: To set forth the Drinking Driver Program and conditional license eligibility criteria for multiple DWI offenders and establishes re-licensure requirements for such offenders.

Text of proposed rule: Section 134.2 is amended to read as follows:

134.2 Persons eligible for program. Any person who is convicted of a violation of any subdivision of section 1192 of the Vehicle and Traffic Law, or is found to have been operating a motor vehicle after having consumed alcohol in violation of section 1192-a of this article, or of an alcohol or drug related traffic offense in another state, shall be eligible for enrollment in an alcohol and drug rehabilitation program unless: such person has participated in a program established pursuant to article 31 of the Vehicle and Traffic Law within the five years immediately preceding the date of commission of the alcohol or drug-related offense or such person has been convicted of a violation of any subdivision of section 1192 of such law [other than a violation committed prior to November 1, 1988] during the five years immediately preceding commission of an alcohol or drug-related offense; with respect to persons convicted of a violation of section 1192 of the Vehicle and Traffic Law, is prohibited from enrolling in a program by the judge who imposes sentence upon the conviction; or the commissioner is prohibited from issuing such new license to a person because of two convictions of a violation of section 1192 of the Vehicle and Traffic Law where physical injury, as defined in section 10.00 of the Penal Law, has resulted in both instances. *Notwithstanding the provisions of this section, a person shall be eligible for enrollment in the alcohol and drug rehabilitation program if such person is sentenced pursuant to the plea bargaining provisions set forth in Vehicle and Traffic Law section 1192(10)(a)(ii) and 1192(10)(d).*

Paragraph (8) of subdivision (a) of section 134.7 is amended to read as follows:

(8) The person has been penalized under section 1193(1)(d)(1) of the Vehicle and Traffic Law for any violation of subdivision 2, 2-a, 3, [or] 4, or 4-a of [such] section 1192 of such law.

Subdivision (a) of section 134.7 is amended by adding a new paragraph (13) to read as follows:

(13) *The person, during the five years preceding the commission of the alcohol or drug-related offense or a finding of a violation of section 1192-a of the Vehicle and Traffic Law, participated in the alcohol and drug rehabilitation program or has been convicted of a violation of any subdivision of section 1192 of such law.*

Subdivision (b) of section 134.10 is amended to read as follows:

(b) Results of satisfactory completion of a rehabilitation program. Upon satisfactory completion of a program, any unexpired suspension or revocation which was issued as a result of the conviction for which the person was eligible for enrollment in the program may be terminated by the commissioner unless the termination is prohibited under section 1193 of the Vehicle and Traffic Law or this Subchapter or if the termination is based upon enrollment in the program pursuant to the plea bargaining provisions of Vehicle and Traffic Law section 1192(10)(a)(ii) and 1192(10)(d), if such person would not otherwise be eligible for enrollment in the program pursuant to section 1196(4) of such law.

Section 134.11 is amended to read as follows:

134.11 Issuance of unconditional driver's license. Satisfactory completion of a rehabilitation program or expiration of the term of suspension, whichever occurs first, will initiate the necessary action to provide for the

termination of the suspension or revocation which was the basis for entry into the rehabilitation program. Upon a determination of satisfactory completion of the rehabilitation program or the term of suspension, and unless otherwise determined by the commissioner, as provided for in subdivision (b) of section 134.10 of this Part, a notice of termination of the suspension or revocation and an unconditional license will be issued. However, no such license will be issued until all civil penalties due the department are paid or if there are any outstanding suspensions, revocations, or bars against such license until such suspensions, revocations, or bars are satisfactorily disposed of by the applicant. Any conditional license which is still valid will be terminated concurrently with the return of the unconditional driver's license and must be returned to the department. A conditional license shall not be renewed more than one year after the issuance of the conditional license if a revocation is issued for a chemical test refusal and the holder of the conditional license has not paid the civil penalty required by section 1194 of the Vehicle and Traffic Law.

Subdivision (a) of Section 136.6 is amended to read as follows:

(a) There shall be assigned to each safety factor a negative unit as follows:

Safety Factor	Assigned Negative Units	
	Over one year to three years of application	Within one year of application
(1) for each reportable accident of record with a finding by the referee of gross negligence in the operation of a motor vehicle in a manner showing a reckless disregard for the life and property of others.	-5	-8
(2) for each reportable accident of record with conviction involvement or with a finding by the referee of a violation of the Vehicle and Traffic Law	-3	-4
(3) for the first and second speeding conviction of record*	-3	-4
(4) for the third and subsequent speeding conviction*	-5	-8
(5) for reckless driving	-5	-8
(6) for each conviction of record for leaving the scene of a personal injury accident of record	-8	-11
(7) for each alcohol related offense of record as follows:		
(i) conviction for violation of sub-division (1) of section 1192 of the Vehicle and Traffic Law:		
1st offense	-5	-8
2nd offense	-8	-11
3rd offense	-11	-14
(ii) conviction for violation of subdivision (2), (2-a), (3), [or] (4), or (4-a) of section 1192 of the Vehicle and Traffic Law:		
1st offense	-8	-11
2nd or subsequent offense	-11	-14
(iii) chemical test refusal	-6	-11
(8) for each conviction of homicide, criminally negligent homicide, or assault arising out of the operation of a motor vehicle	-11	-14
(9) (i) for each incident of driving during a period of alcohol-related license suspension or revocation	-10	-12

(ii) for each other incident of driving during a period of license suspension or revocation	-8	-10
(10) for each conviction or finding by the Commissioner's referee of a violation of section 392 of the Vehicle and Traffic Law	-3	-4
(11) for each other conviction of record for a moving violation	-2	-3

*For each speeding violation of 25 miles per hour or more over the posted speed limit, add one point.

Paragraph (2) of subdivision (d) of Section 136.6 is amended to read as follows:

(2) Where a first conviction of any subdivision [(2)] of section 1192 of the Vehicle and Traffic Law and a finding of a chemical test refusal arise out of the same incident, only one of these two safety factors having equal weight is considered in a review of the total record because these safety factors are not independent of each other.

Section 136.9 is amended to read as follows:

136.9 Effect of completion of the alcohol and drug rehabilitation program. The successful completion of the article 21 alcohol and drug rehabilitation program, where no intervening safety factors occurred between the date such person entered the program and the date the application for a license is made and with no subsequent incidents of operating a motor vehicle while under the influence of alcoholic beverages or drugs, shall be considered evidence of rehabilitative effort satisfactory for the purposes of this Part. *Provided, however, if enrollment in the program based upon the plea bargaining provisions of Vehicle and Traffic Law section 1192(10)(a)(ii) and 1192(10)(d), and if such person would not otherwise have been eligible for enrollment in the program pursuant to section 1196(4) of such law, then completion of the program, may not, in the commissioner's discretion, be deemed evidence of rehabilitative effort.*

Text of proposed rule and any required statements and analyses may be obtained from: Michele L. Welch, Counsel's Office, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

Data, views or arguments may be submitted to: Ida L. Trashen, Supervising Attorney, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority: Section 215(a) of the Vehicle and Traffic Law authorizes the Commissioner to enact regulations to control the exercise of the powers of the Department of Motor Vehicles. Section 510(6)(a) of such law provides that where a license revocation is mandatory, no new license shall be issued except in the discretion of the Commissioner. Section 1193(2)(c)(1) of such law provides that where a license is revoked pursuant to an alcohol-related conviction, no new license shall be issued after the expiration of the minimum revocation period, except in the discretion of the Commissioner. Section 1192(10)(a) and (d) of such law relate to plea bargaining provisions in driving while intoxicated prosecutions and the requirement to attend the Drinking Driver Program. Section 1196(4) of such law relates to eligibility to enroll in the Drinking Driver Program. Section 1196(5) of such law provides that completion of the Drinking Driver Program may, in the discretion of the Commissioner, serve to terminate the suspension or revocation arising out of the alcohol-related conviction. Section 1196(7)(a) of such law relates to conditional license eligibility for those persons convicted of alcohol-related offenses.

2. Legislative objectives: This proposal is consistent with legislative objectives that grant the Commissioner of Motor Vehicles broad discretion in establishing criteria for the restoration of driver's licenses and the re-licensing of individuals whose licenses have been suspended or revoked for alcohol-related offenses. It is also in accord with legislative objectives that afford the Commissioner discretion in determining eligibility for a conditional license, a limited use license issued to persons convicted of alcohol-related offenses. Currently, a person convicted of alcohol-related offenses may enroll in the Drinking Driver Program (DDP), as set forth in

section 1196 of the Vehicle and Traffic Law, if such person has not, within the preceding five years, been convicted of an alcohol related offense or participated in the DDP. Under Chapter 732 of the Laws of 2006, section 1192(10) of such law is amended to provide that under certain plea bargaining provisions involving alcohol-related offenses, the court must require the defendant to enroll in the DDP even if such person is not otherwise eligible. Under current law, when a person successfully completes DDP, the suspension or revocation arising out of the alcohol conviction is terminated. Under this proposal, DDP completion would not serve to terminate the suspension or revocation for individuals who are not otherwise DDP eligible. This accords with the Legislature's intent, and DMV's current policy, that multiple alcohol offenders must show proof of rehabilitation in order to have their licenses restored.

3. Needs and benefits: These regulations are necessary to put the public on notice that multiple alcohol-related offenders who are not otherwise eligible for the DDP, pursuant to Vehicle and Traffic Law section 1196(4), shall not have their licenses restored upon completion of DDP, if enrollment for DDP is mandated by a court pursuant to the plea bargaining provision in Vehicle and Traffic Law section 1192(10). Currently, a person convicted of alcohol-related offenses may enroll in the Drinking Driver Program (DDP), as set forth in section 1196 of the Vehicle and Traffic Law, if such person has not, within the preceding five years, been convicted of an alcohol related offense or participated in the DDP. Under Chapter 732 of the Laws of 2006, section 1192(10) of such law is amended to provide that under certain plea bargaining provisions involving alcohol-related offenses, the court must require the defendant to enroll in the DDP even if such person is not otherwise eligible under section 1196(4). Under current law, when a person successfully completes DDP, the suspension or revocation arising out of the alcohol conviction is terminated. Under this proposal, DDP completion would not serve to terminate the suspension or revocation for individuals who are not otherwise DDP eligible. In addition, under this proposal, and consistent with current law, a person not eligible for the DDP would not be eligible for a conditional license.

This regulation is important because it provides, in accordance with current DMV policies and reapplication procedures, as set forth in Parts 134 and 136, that a recidivist DWI offender who is not eligible for the DDP must show proof of rehabilitation from an approved treatment provider prior to re-licensure. It would be contrary to public safety if a multiple DWI offender who completed DDP twice within five years is permitted to be re-licensed without having been evaluated by a treatment provider with expertise in alcohol counseling. In addition, under Part 136, applicants for re-licensure are denied a license if they have 25 or more negative units accumulated within a specified time period. Negative units are assigned for various violations of the Vehicle and Traffic Law. This amendment adds the two new alcohol offenses, Vehicle and Traffic Law 1192(2-a) and (4-a), to the offenses that trigger negative units. Thus, these amendments are necessary to protect the public from drivers who pose a significant highway risk.

4. Costs: There are no costs to the public, local government or to this agency. The Department already has staff and procedures in place to process multiple offenders applying for re-licensure.

Source: DMV's Driver Improvement Bureau.

5. Local government mandates: This proposal does not impose any mandates upon local governments.

6. Paperwork: This proposal does not impose any additional paperwork requirements on the Department.

7. Duplication: This proposal does not duplicate, overlap or conflict with any relevant rule or legal requirement of the State and federal governments.

8. Alternatives: No significant alternatives were considered. A no action alternative was not considered.

9. Federal standards: The proposal does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: Immediate with adoption of this rule.

Regulatory Flexibility Analysis

A RFA is not attached because this rule will not have a disproportionate impact on small businesses or local governments, nor will it impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this proposal because it will have no adverse or disproportionate impact on the rural areas of the State.

Job Impact Statement

A Job Impact Statement is not submitted with this statement because it will not have an adverse impact on job creation or development in New York State.

Power Authority of the State of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rates for the Sale of Power and Energy

I.D. No. PAS-17-07-00003-P

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

Proposed action: Revision in rates for the Village of Greenport.

Statutory authority: Public Authorities Law, section 1005(5)

Subject: Rates for the sale of power and energy.

Purpose: To maintain the system's fiscal integrity.

Text of proposed rule:

VILLAGE OF GREENPORT
Proposed Monthly Rates

	Proposed Rates ¹
<u>Residential S.C. 1</u>	
Customer Charge	\$9.44
	Non-Winter (April-October)
Energy Charge, per kWh	\$0.969
	Winter (November-March)
Energy Charge, per kWh	\$0.969
First 1,200 kWh.	\$1.164
Over 1,200 kWh only	\$1.164
<u>Commercial S.C. 2</u>	
Customer Charge	\$12.43
	Non-Winter (July-October)
Energy Charge, per kWh	\$1.070
First 1,200 kWh.	\$1.187
1,201 to 2,999 kWh only	\$1.280
Over 3,000 kWh only	All Other Months
<u>Industrial S.C. 3</u>	
Demand Charge, per kW	\$11.75
Energy Charge, per kWh	\$0.559
<u>Street Lights - Town S.C. 4</u>	
(Charge per lamp, per month)	
70 Watts High Pressure Sodium	\$ 5.80
90 Watts High Pressure Sodium	\$ 7.49
100 Watts Mercury Vapor	\$ 8.28
175 Watts Mercury Vapor	\$15.71
250 Watts Mercury Vapor	\$19.60
400 Watts Mercury Vapor	\$24.78
<u>Street Lights - Village S.C. 5</u>	
Energy Charge, per kWh, per month	\$1.152
<u>Outdoor Lighting S.C. 6</u>	
(Charge per lamp, per month)	
90 Watts Mercury Vapor	\$ 9.50
100 Watts Mercury Vapor	\$10.61
175 Watts Mercury Vapor	\$19.12
250 Watts Mercury Vapor	\$21.60

Text of proposed rule and any required statements and analyses may be obtained from: Anne B. Cahill, Power Authority of the State of New York, 123 Main St., 15th Fl., White Plains, NY 10601, (914) 390-8036, e-mail: secretaries.office@nypa.gov

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

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

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

Statements and analyses are 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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Stipulation of Parties by Niagara Mohawk Power Corporation

I.D. No. PSC-17-07-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the stipulation of parties filed by Niagara Mohawk Power Corporation on March 22, 2007 concerning the audit of the deferral account in Case 01-M-0075 and various other rate making and accounting issues.

Statutory authority: Public Service Law, section 66

Subject: A stipulation of parties which resolves issues raised in a deferral audit, including a write-down of the amount in the deferral account, and resolution of other accounting and rate making issues.

Purpose: To implement various accounting procedures, and adjustment to the deferral account.

Public hearing(s) will be held at: 10:00 a.m., May 17, 2007 at Department of Public Service, 3rd Fl. Hearing Rm., Three Empire State Plaza, Albany, NY.

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

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

Substance of proposed rule: The Public Service Commission is considering whether to approve, reject or modify, in whole or in part, a Stipulation of Parties, filed on March 22, 2007 which is proposed to resolve issues raised in testimony by staff of the Department of Public Service of amounts deferred by Niagara Mohawk Power Corporation (Niagara Mohawk or the Company) pursuant to the provisions of the Merger Joint Proposal approved by the Commission in Opinion 01-6 in Case No. 01-M-0075. The Stipulation requires, *inter alia*, a downward adjustment of the balance in the Deferral Account as of June 30, 2005 by approximately \$93 million. It further provides for certain treatment and implementation processes of deferrals from July 1, 2005 through December 3, 2011. The Stipulation also includes resolution of the issues in: 1) the Company's March 27, 2006, filing in Case 01-E-0011 concerning rate effects on the Company of a settlement between Niagara Mohawk and the Nine Mile co-tenants, 2) the pension settlement deferral petitions in Case Nos. 04-M-0938 and 07-M-0173, 3) the January 14, 2004, petition in Case 01-M-0075 concerning requested modifications of the customer service quality targets, and 4) the March 21, 2006 petition regarding stray voltage costs in Case 04-M-0159. As part of the Stipulation the Company has agreed not to increase its electric delivery rates for 2008 and 2009 to recover any additional deferrals above the \$200 million annual recovery authorized for 2007 in the Commission's December 27, 2005 Order in Case No. 01-M-0075. However, to the extent Niagara Mohawk would have otherwise been permitted an increase above this amount, the Company may include carrying charges in the Deferral Account.

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.

(01-M-0075SA32)

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

Interconnection Agreement between Verizon New York Inc. and Broadview Networks, Inc.

I.D. No. PSC-17-07-00007-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 or reject, in whole or in part, a modification filed by Verizon New York Inc. and Broadview Networks, Inc. to revise the interconnection agreement effective on April 12, 2003.

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

Subject: Inter-carrier agreement to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the Verizon New York Inc. and Broadview Networks, Inc. interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and Broadview Networks, Inc. in July 2003. The companies subsequently have jointly filed amendments to clarify the provisions regarding certain billing and related matters in the amended Interconnection Agreement.

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.

(03-C-0616SA3)

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

Interconnection Agreement between Verizon New York Inc. and BridgeCom International, Inc.

I.D. No. PSC-17-07-00008-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 or reject, in whole or in part, a modification filed by Verizon New York Inc. and BridgeCom International, Inc. to revise the interconnection agreement effective on Dec. 10, 2004.

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

Subject: Inter-carrier agreement to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the Verizon New York Inc. and BridgeCom International, Inc. interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and BridgeCom International, Inc. in March 2005. The companies subsequently have jointly filed

amendments to clarify the provisions regarding certain billing and related matters in the amended Interconnection Agreement.

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.

(04-C-0739SA2)

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

Interconnection Agreement between Verizon New York Inc. and Broadview NP Acquisition Corp.

I.D. No. PSC-17-07-00009-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, a modification filed by Verizon New York Inc. and Broadview NP Acquisition Corp. to revise the interconnection agreement effective on Oct. 1, 2004.

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

Subject: Inter-carrier agreement to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the Verizon New York Inc. and Broadview NP Acquisition Corp. interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and Broadview NP Acquisition Corp. in January 2005. The companies subsequently have jointly filed amendments to clarify the provisions regarding certain billing and related matters in the amended Interconnection Agreement.

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.

(04-C-1285SA2)

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

Fixed Supply Service for 2008 by New York State Electric & Gas Corporation

I.D. No. PSC-17-07-00010-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, a proposal filed by New York State Electric & Gas Corporation (NYSEG) to make various changes in the rates, charges, rules and regulations contained in its schedules for electric

service, P.S.C. Nos. 120 and 121—Electricity, to become effective Jan. 1, 2008.

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

Subject: Fixed supply service for 2008.

Purpose: To provide a simplified supply program whereby NYSEG will offer customers a single fixed supply service.

Substance of proposed rule: The Commission is considering New York State Electric & Gas Corporation's (NYSEG) request to update its electric tariffs, P.S.C. Nos. 120 and 121, to provide a simplified supply program whereby NYSEG will offer customers a single fixed supply service. The proposed filing has an effective date of January 1, 2008. The Commission may approve, reject or modify, in whole or in part, NYSEG's request.

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.

(05-E-1222SA7)

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

Submetering of Electricity by CRP/Entell Parcel I, LP

I.D. No. PSC-17-07-00011-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by CRP/Extell Parcel I, LP, to submeter electricity at 80 Riverside Blvd., New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To submeter electricity at 80 Riverside Blvd., New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by CRP/Extell Parcel I, LP, to submeter electricity at 80 Riverside Boulevard, New York, New York.

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.

(07-E-0357SA1)

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

Submetering of Electricity by American Metering and Planning Services, Inc.

I.D. No. PSC-17-07-00012-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by American Metering and Planning Services, Inc., to submeter electricity at Kalahari Apartments Condominium, 40 W. 115th St., New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To submeter electricity at Kalahari Apartments Condominium, 40 W. 115th St., New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by American Metering and Planning Services, Inc., to submeter electricity at Kalahari Apartments Condominium, 40 West 115th Street, New York, New York.

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.

(07-E-0380SA1)

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

Replenishable Escrow Account by Kiamesha Artesian Spring Water Co., Inc.

I.D. No. PSC-17-07-00014-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, tariff revisions filed by Kiamesha Artesian Spring Water Co., Inc. to become effective July 1, 2007 to establish a \$15,000 replenishable escrow account for extraordinary expenditures, emergency maintenance and major improvements and to use a portion of these funds to recover recent emergency repairs and an extraordinary expenditure totaling about \$8,000.

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

Subject: Approve a replenishable escrow account in the amount of \$15,000 and the recovery of about \$8,000 for recent expenditures.

Purpose: To allow Kiamesha Artesian Spring Water Co., Inc. to establish a \$15,000 replenishable escrow account for extraordinary expenditures, emergency maintenance and major improvements and to use a portion of these funds to recover recent emergency repairs and an extraordinary expenditure totaling about \$8,000.

Substance of proposed rule: On April 4, 2007, Kiamesha Artesian Spring Water Co., Inc. (Kiamesha or the company) made a tariff filing to become effective July 1, 2007 to establish a \$15,000 replenishable escrow account for extraordinary expenditures, emergency maintenance and major improvements and to use a portion of these funds to recover recent emergency repairs and an extraordinary expenditure totaling about \$8,000. Kiamesha provides metered water service to about 380 customers in Kiamesha Lake, Town of Thompson, Sullivan County. The company also provides both private and public fire protection service. Kiamesha's tariff is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) - located under the file room - Tariffs). The Commission may approve or reject, in whole or in part, or modify Kiamesha's request.

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. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-W-0395SA1)

Department of State

EMERGENCY RULE MAKING

Installation of Pool Alarms and Carbon Monoxide Alarms

I.D. No. DOS-17-07-00001-E

Filing No. 377

Filing date: April 5, 2007

Effective date: April 5, 2007

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

Action taken: Repeal of section 1225.2 and addition of Part 1228 to Title 19 NYCRR.

Statutory authority: Executive Law, sections 377 and 378

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

Specific reasons underlying the finding of necessity: This rule is adopted as an emergency measure to preserve public safety and because time is of the essence. This rule implements the provisions of paragraph (b) of subdivision (14) of section 378 of the Executive Law, which requires that the New York State Uniform Fire Prevention and Building Code (the Uniform Code) provide that any residential or commercial swimming pool constructed or substantially modified after Dec. 14, 2006 shall be equipped with an acceptable pool alarm capable of detecting a child entering the water and of giving an audible alarm. This rule also implements the amendment of subdivision (5-a) of section 378 of the Executive Law made by chapter 438 of the Laws of 2005, which requires that the Uniform Code provide that every multiple dwelling constructed or offered for sale after Aug. 9, 2005 shall have installed an operable carbon monoxide alarm.

The Introducer's Memorandum in Support of the bill that added paragraph (b) of subdivision (14) of section 378 of the Executive Law (chapter 450 of the Laws of 2006) states, in pertinent part, that "drowning is the second leading cause of unintentional injury-related deaths in children between the ages of one and fourteen nation wide, and the third leading cause of injury-related deaths of children in New York. . . . (T)echnological advances have produced several different types of pool alarms designed to sound a warning if a child falls into the water. When used in conjunction with access barriers, these alarms provide greater protection against accidental pool drownings." This pool alarm provisions added by this rule are similar to the provisions added by a prior emergency rule which was filed on Dec. 14, 2006 and expired on March 13, 2007.

Executive Law section 378(5-a) was amended by chapter 438 of the Laws of 2005 to require that the Uniform Code also provide for the installation of carbon monoxide alarms in multiple dwellings constructed or offered for sale after Aug. 9, 2005. The Introducer's Memorandum in Support of chapter 438 of the Laws of 2005 states, in pertinent part, that "(t)his legislation is aimed at preventing more unnecessary deaths due to carbon monoxide poisoning. . . . chapter 257 of the Laws of 2002 required carbon monoxide alarms be installed in one and two family dwellings and in condominiums and cooperatives This bill requires multiple dwelling units of three or more families to install carbon monoxide alarms as well." The carbon monoxide alarm provisions to be added by this rule are similar to the provisions added by a previous emergency rule which was filed on Dec. 14, 2006 and expired on March 13, 2007. (Executive Law,

section 378(5-a) also requires the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002. The Uniform Code currently includes provisions [in section 1225.2 of Title 19 NYCRR] requiring the installation of carbon monoxide alarms in such occupancies. Said section 1225.2 is repealed by this rule. However, provisions requiring the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 have been combined with the new provisions requiring the installation of carbon monoxide alarms in multiple dwellings constructed or offered for sale after Aug. 9, 2005, and the combined carbon monoxide alarm provisions are included in a single section [section 1228.3] which is part of the new Part 1228 added by this rule.)

Adoption of this rule on an emergency basis is necessary to protect public safety, to reduce the number of accidental drownings in swimming pools, the number of deaths and injuries due to carbon monoxide poisoning, and to satisfy the requirements of Executive Law, section 378 (5-a) and (14)(b). At its meeting held on March 22, 2007, the State Fire Prevention and Building Code Council determined that adopting this rule on an emergency basis is necessary to preserve the public safety, and establishing the date of filing of this rule as the effective date of this rule is necessary to protect health, safety and security.

Subject: Installation of pool alarms in residential and commercial swimming pools and the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings.

Purpose: To implement Executive Law, sections 378(5-a) and 378(14)(b); reduce the number of accidental drownings in swimming pools, and the number of deaths and injuries due to carbon monoxide poisoning.

Substance of emergency rule: This rule repeals section 1225.2 of Title 19 NYCRR and adds a new Part 1228 to Title 19 NYCRR.

Section 1225.2 of Title 19 NYCRR requires the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives. Said section 1225.2 is repealed by this rule. However, provisions which require the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 have been combined with new provisions requiring the installation of carbon monoxide alarms in multiple dwellings, and the combined carbon monoxide alarm provisions are included in a single section (section 1228.3), which is part of new Part 1228 added by this rule.

New Part 1228 adds the following provisions to the State Uniform Fire Prevention and Building Code (the "Uniform Code"):

New section 1228.2 requires the installation of pool alarms in all commercial and residential swimming pools that are constructed, installed or substantially modified after December 14, 2006. New section 1228.2 provides that a spa or hot tub that complies with all applicable barrier requirements will be deemed to be in compliance, provided that all doors providing direct access to the spa or hot tub are equipped with door alarms.

New section 1228.3 requires the installation of carbon monoxide alarms in multiple dwellings constructed or offered for sale after August 9, 2005.

As indicated above, provisions which require the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling accommodations in condominiums and cooperatives constructed or offered for sale after July 30, 2002 have been combined with the new provisions requiring the installation of carbon monoxide alarms in multiple dwellings, and the combined carbon monoxide alarm provisions are included in the new section 1228.3 added by this rule.

This rule also adds a new section 1228.1, which provides that (1) Part 1228 is part of the Uniform Code, (2) Part 1228 is not repealed by the rule which was recently approved by the State Fire Prevention and Building Code Council (the "Code Council") and which amends that Uniform Code in its entirety, (3) Part 1228 will not be repealed by reason of the new version of the entire Uniform Code becoming effective, and (4) notwithstanding the fact that the Code Council has provided that during the transition period between adoption of the rule that amends the entire Uniform Code and the date on which that rule becomes effective, a person shall have the option of complying with the Uniform Code as it existed prior to the adoption of that rule or with the Uniform Code as it will be amended by that rule, such person must also comply with the provisions set forth in Part 1228.

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 June 21, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Joseph Ball, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740, e-mail: jball@dos.state.ny.us

Summary of Regulatory Impact Statement

1. STATUTORY AUTHORITY.

Executive Law section 377(1) authorizes the State Fire Prevention and Building Code Council to periodically amend the provisions of the New York State Uniform Fire Prevention and Building Code ("Uniform Code").

Executive Law section 378(1) directs that the Uniform Code shall address standards for safety and sanitary conditions.

Executive Law section 378(14)(b) provides that the Uniform Code must require that residential and commercial swimming pools constructed or substantially modified after December 14, 2006 shall be equipped with an acceptable pool alarm capable of detecting a child entering the water and of giving an audible alarm.

Executive Law section 378(5-a), as amended by Chapter 438 of the Laws of 2005, provides that the Uniform Code must require multiple dwellings constructed or offered for sale after August 9, 2005 shall be equipped with carbon monoxide (CO) detectors.

This rule making adds provisions to the Uniform Code that (1) require the installation of pool alarms or, in the case of a spa and hot tub, the installation of door alarms on all doors that provide direct access to the spa or hot tub, and (2) require the installation of CO alarms in multiple dwellings.

(Executive Law section 378(5-a) also provides that the Uniform Code must require the installation of CO alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002. The Uniform Code currently includes provisions [in section 1225.2 of Title 19 NYCRR] requiring the installation of CO alarms in such occupancies. Said section 1225.2 is repealed by this rule. However, provisions requiring the installation of CO alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 and been combined with the new provisions requiring installation of CO alarms in multiple dwellings, and the combined CO alarm provisions are included in a single section [new section 1228.3] which is added by this rule.)

2. LEGISLATIVE OBJECTIVES.

The Legislative objectives to sought to be achieved by this rule are (1) reducing the number of accidental drownings in swimming pools in this State and (2) reducing the number of deaths and injuries caused by CO poisoning in this State.

3. NEEDS AND BENEFITS.

This rule requires residential and commercial swimming pools installed, constructed or substantially modified after December 14, 2006 to be equipped with approved pool alarms. However, the Department of State has received comments indicating that no pool alarm currently available on the market is suitable for use in a spa or hot tub. To address such comments, this rule provides that a spa or hot tub which complies with all applicable barrier requirements will be deemed to be in compliance with this rule, provided that all doors providing direct access to the spa or hot tub are equipped with a door alarm. By requiring the use of pool alarms in swimming pools other than spas and hot tubs, and by requiring door alarms on doors that lead to spas and hot tubs, this rule should meet the objective and provide the benefit intended by the Legislature: a reduction in the number of accidental drownings.

This rule also requires the installation of CO alarms in multiple dwellings constructed or offered for sale after August 9, 2005. CO poisoning results from displacement of oxygen in the blood supply by carboxyhaemoglobin, reducing oxygen supply to the brain. In non-fire situations, elevated CO levels may be caused by improperly installed or maintained fuel-fired appliances, motor vehicles operated in enclosed garages, or appliances intended for outdoor use being used indoors during power failures. As CO is not detectable by the senses, its presence and concentration can only be determined by instruments.

A number of different sources, including those listed in the full Regulatory Impact Statement, were reviewed to develop an estimate of the annual number of fatalities attributable to unintentional, non-fire, building source CO poisoning. Extrapolating the national data from these sources indicates

that New York State (excluding New York City) could expect between 8 and 48 annual fatalities.

CO poisoning will affect the judgment and capability of persons to evacuate or take other appropriate actions well before concentrations reach fatal levels. In addition, in situations where CO poisoning does not result in death, it may cause significant injuries and long term health consequences. Extrapolating national data provided by CPSC indicates that New York State (excluding New York City) could expect approximately 400 injuries annually.

The rule provides that CO alarms shall be listed and labeled as complying with UL 2034-2002. Listing of alarm devices ensures their safety and compliance with performance standards. The sensitivity standard in UL 2034 is based on an alarm response to specified concentrations of CO (in parts per million) within specified time frames. These are based on limiting carboxyhaemoglobin saturation to 10 percent.

The rule addresses multiple dwellings constructed or offered for sale after August 9, 2005 (the date specified in the statute). While the initial benefits of installing CO alarms in the multiple dwellings specified in the statute will be limited, there will be a cumulative effect over a period of years as multiple dwellings are sold and newly constructed multiple dwellings replace older multiple dwellings.

4. COSTS.

The initial capital costs of complying with the pool alarm provisions added by this rule will include the cost of purchasing and installing the pool alarm. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (*i.e.*, for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200. Larger pools or irregularly shaped pools may require more than one such alarm. In the case of a large, complex shaped pools, more sophisticated system may be required. It is estimated that a self-setting pool alarm system using invisible sonar technology and capable of protecting a large, complex shaped swimming pool would cost between \$5,000 and \$8,000. A pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000.

In the case of a spa or hot tub, the initial capital costs of complying with the rule will include the cost of purchasing and installing the door alarms. (The owner of a spa or hot tub will also be required to comply with all applicable barrier requirements. However, such compliance is already required by the Uniform Code and other applicable laws.) The cost of a typical door alarm is estimated to be \$40 to \$50.

The initial costs of complying with the CO alarm provisions added by this rule include the cost of purchasing and installing the alarm. Cord or plug connected and battery operated CO alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device.

The annual costs of complying with the rule will include the costs of operating and maintaining the alarms. It is anticipated that these costs will be modest.

There are no costs to the Department of State for the implementation of the rule. The Department is not required to develop any additional regulations or develop any programs to implement the rule.

There are no costs to the State of New York or to local governments for the implementation of this rule, except as follows:

First, if the State or any local government constructs, installs or substantially modifies a swimming pool, the State of such local government, as the case may be, will be required to install a pool alarm. Similarly, if the State or any local government constructs a new multiple dwelling or offers an existing multiple dwelling for sale, the State or such local government, as the case may be, will be required to install CO alarms.

Second, since this rule adds provisions to the Uniform Code, the authorities responsible for administering and enforcing the Uniform Code will be responsible for enforcing the provisions added by this rule, along with the other provisions of the Uniform Code. However, the need to verify the installation of required pool alarms and CO alarms should not have a significant impact on the code enforcement process.

5. PAPERWORK.

This rule imposes no new reporting requirements. No new forms or other paperwork will be required as a result of this rule.

6. LOCAL GOVERNMENT MANDATES.

This rule does not impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, except as follows:

First, any county, city, town, village, school district, fire district or other special district that owns or operates a swimming pool that is in-

stalled, constructed or substantially modified after December 14, 2006 will be required to comply with the pool alarm provisions added by this rule. Similarly, any county, city, town, village, school district, fire district or other special district that constructs a new multiple dwelling or sells an existing multiple dwelling will be required to comply with the CO alarm provisions added by this rule.

Second, since this rule adds provisions to the Uniform Code, cities, towns, villages and counties that are responsible for administering and enforcing the Uniform Code will be responsible for administering and enforcing the requirements of the rule, along with all other provisions of the Uniform Code.

The rule does not otherwise impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

7. DUPLICATION.

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

8. ALTERNATIVES.

Pool alarms. While the use of personal immersion alarms may provide supplemental protection in certain situations, such devices would not protect a child who was not wearing the device when he or she entered the water. Therefore, this rule provides that an alarm device which is located on person(s) or which is dependent on device(s) located on person(s) for its proper operation will not satisfy the requirements of the new provisions.

Following the adoption of the previous rule implementing Executive Law section 378(14)(b), the Department of State received comments indicating that no pool alarm suitable for use in a spa or hot tub is currently available on the market. Therefore, this rule provides that a spa or hot tub that complies with all applicable barrier requirements will be deemed to be in compliance with this rule, provided that all doors providing direct access to the spa or hot tub are equipped with door alarms.

CO alarms. This rule requires installation of CO alarms in multiple dwellings constructed or offered for sale after August 9, 2005. Consideration was given to adopting a rule requiring all multiple dwellings be required to install CO detectors retroactively. This alternative was rejected at this time as it extends beyond the specific directive of the Legislature as set forth in subdivision (5-a) of Executive Law section 378.

9. FEDERAL STANDARDS.

There are no standards of the Federal Government which address the subject matter of the rule. The U.S. Consumer Product Safety Commission does recommend installation of CO alarms.

10. COMPLIANCE SCHEDULE.

Regulated persons will be able to achieve compliance with the pool alarm provisions added by this rule in the normal course of operations, either as part of the installation or construction of a new swimming pool or the substantial modification of an existing swimming pool.

Regulated persons will be able to achieve compliance with the CO provisions added by this rule in the normal course of operations, either as part of the construction process of a new multiple dwelling, as part of routine maintenance of an existing multiple dwelling constructed after August 9, 2005, or as part of the transfer process for an existing multiple dwelling offered for sale.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The new section 1228.2 which is added to Title 19 NYCRR by this rule will apply to any small business and any local government that owns or operates a swimming pool that is installed, constructed or substantially modified after December 14, 2006. The Department of State has not been able to estimate the number of small businesses and local governments that own or operate swimming pools, but it is believed that a majority of the non-residential swimming pools in this State are owned or operated by small businesses or local governments. Small businesses that install, construct or modify swimming pools and small businesses that sell swimming pool alarms will also be affected by this rule.

The new section 1228.3 which is added to Title 19 NYCRR by this rule will apply to any small business and any local government that constructs a "multiple dwelling" (as that term is defined in subdivision (5-a) of section 378 of the Executive Law) or offers a multiple dwelling for sale. The Department of State believes that the majority of multiple dwellings in this State are owned by small businesses.

(Executive Law section 378(5-a) also provides that the Uniform Code must require the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002. The Uniform Code currently contains provisions [in section 1225.2 of Title 19 NYCRR] requiring the installation of carbon monoxide alarms in such

occupancies. Said section 1225.2 is repealed by this rule. However, provisions requiring the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 have been combined with the new provisions requiring the installation of carbon monoxide alarms in multiple dwellings, and the combined carbon monoxide alarm provisions are included in a single section [section 1228.3] which is part of the new Part 1228 added by this rule.)

Since this rule adds provisions to the Uniform Fire Prevention and Building Code (the "Uniform Code"), each local government that is responsible for administering and enforcing the Uniform Code will be affected by this rule. The Department of State estimate that approximately 1,604 local governments (mostly cities, towns and villages, as well as several counties) are responsible for administering and enforcing the Uniform Code.

2. COMPLIANCE REQUIREMENTS:

No reporting or record keeping requirements are imposed upon regulated parties by the rule. Small businesses and local governments subject to the rule will be required to install, use and maintain swimming pool alarms and carbon monoxide alarms in accordance with the rule's provisions. In cases where the installation, construction or substantial modification of a swimming pool involves the issuance of a building permit, the local government responsible for administering and enforcing the Uniform Code will be required to consider the pool alarm requirements of this rule when reviewing plans and inspecting work. When a multiple dwelling is constructed, the local government responsible for administering and enforcing the Uniform Code will be required to consider the carbon monoxide alarm requirements of this rule when reviewing plans and inspecting work.

3. PROFESSIONAL SERVICES:

No professional services will be required to comply with the rule.

4. COMPLIANCE COSTS:

Pool alarms. The initial capital costs of complying with the rule will include the cost of purchasing and installing the pool alarm. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (*i.e.*, for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200. Larger pools or irregularly shaped pools may require more than one such alarm. In the case of a large, complex shaped pools, more sophisticated system may be required. It is estimated that a self-setting pool alarm system using invisible sonar technology and capable of protecting a large, complex shaped swimming pool would cost between \$5,000 and \$8,000. A pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. In the case of a spa or hot tub, the initial capital costs of complying with the rule will include the cost of purchasing and installing the door alarms. (The owner of a spa or hot tub will also be required to comply with all applicable barrier requirements. However, such compliance is already required by the Uniform Code and other applicable laws.) The cost of a typical door alarm is estimated to be \$40 to \$50. The annual costs of complying with the rule will include the costs of operating and maintaining the alarm, which are anticipated to be modest. Any variations in the initial capital cost of complying with the rule or in the annual cost of complying with the rule are likely to be attributable to variations in the size and configuration of the swimming pools to be protected, and not to the type or size of the small businesses and local governments that own the pools. To the extent that larger businesses and larger local governments may tend to own larger swimming pools, or more than one swimming pool, the total costs of compliance would be higher for larger entities and larger local governments.

Carbon monoxide alarms. The initial capital costs of complying with the rule will include the cost of purchasing and installing the carbon monoxide alarm(s). Cord or plug connected and battery operated carbon monoxide alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. With regard to the sale of existing multiple dwellings, regulated parties must purchase and install a carbon monoxide alarm, with similar costs as described above. Such costs are not likely to vary for small businesses or local governments of different types and differing sizes.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

Pool alarms. It is economically and technologically feasible for regulated parties to comply with the rule. Except in the case of very large or complex shaped swimming pools, which may require a more sophisticated alarm system, this rule imposes no substantial capital expenditures. No new technology need be developed for compliance with this rule.

Carbon monoxide alarms. It is economically and technologically feasible for regulated parties to comply with the rule. No substantial capital expenditures are imposed and no new technology need be developed for compliance.

6. MINIMIZING ADVERSE IMPACT:

Pool alarms. The rule minimizes any potential adverse economic impact on regulated parties (including small businesses or local governments) by allowing several types of pool alarms on the market to be used. In the case of spas and hot tubs that fall within the Uniform Code's definition of "swimming pool," the rule minimizes any potential adverse impact by permitting the spa or hot tub which complies with all applicable barrier requirements to be in compliance with this rule by equipping all doors that provided access to the spa or hot tub with a door alarm. The applicable statute (Executive Law section 378(14)(b)) requires that this rule apply to all swimming pools constructed or substantially modified after December 14, 2006. The statute does not authorize the establishment of differing compliance requirements or timetables with respect to swimming pools owned or operated by small businesses or local governments. Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(14)(b) and would endanger public safety.

Carbon monoxide alarms. The rule minimizes any potential adverse economic impact on regulated parties (including small businesses or local governments) by allowing for the installation of all types of carbon monoxide alarms, including those that are permanently connected to the building wiring system, those that are connected by cord or plug to the electrical system, and those that are battery operated. The applicable statute (Executive Law section 378(5-a)) requires that this rule apply to all multiple dwellings constructed or offered for sale after August 9, 2005. The statute does not authorize the establishment of differing compliance requirements or timetables with respect to multiple dwellings owned or operated by small businesses or local governments. Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(5-a) and would endanger public safety.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department of State notified local governments and other interested parties throughout the State of the adoption of the previous rules that were similar to this rule by means of a notice in *Building New York*, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and currently distributed to approximately 3,700 subscribers representing all aspects of the construction industry. The Department of State will publish a similar notice regarding the adoption of this rule in a future edition of *Building New York*. In addition, when this rule is proposed for permanent adoption, the Department of State will conduct hearings and will solicit comments from the general public on this matter prior to voting to propose the adoption of this rule on a permanent basis.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule implements the provisions of paragraph (b) of subdivision (14) of section 378 of the Executive Law, as added by Chapter 450 of the Laws of 2006, by adding provisions to the Uniform Fire Prevention and Building Code ("Uniform Code") requiring that a pool alarm be installed in any residential or commercial swimming pool that is installed, constructed or substantially modified after December 14, 2006.

This rule also implements the provisions of subdivision (5-a) of section 378 of the Executive Law, as amended by Chapter 438 of the Laws of 2005, by adding provisions to the Uniform Code requiring that carbon monoxide alarms be installed in any "multiple dwelling" (as that term is defined in subdivision (5-a) of section 378 of the Executive Law) that is constructed or offered for sale after August 9, 2005.

Since the Uniform Code applies in all areas of the State (other than New York City), this rule will apply in all rural areas of this State.

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

The rule will not impose any reporting or recordkeeping requirements. The rule will impose the following compliance requirements:

Pool alarms. All residential and all commercial swimming pools that are installed, constructed or substantially modified after December 14, 2006 will be required to be equipped with an acceptable pool alarm that is capable of detecting a child entering the water and of giving an audible alarm, and such alarms will be required to be installed, used and maintained in accordance with the manufacturer's instructions. Spas and hot

tubs that fall within the Uniform Code's definition of swimming pool will be required to comply with all applicable barrier requirements and, in addition, and without regard to the manner in which compliance with the barrier requirements is achieved, to have all doors that provide direct access to the spa or hot tub equipped with a door alarm. No professional services that are likely to be needed in a rural area in order to comply with such requirements.

Carbon monoxide alarms. All multiple dwellings constructed or offered for sale after August 9, 2005 will be required to be equipped with one or more carbon monoxide alarms. In the case of a multiple dwelling that contains dwelling units, at least one carbon monoxide alarm must be installed in each such dwelling unit. In the case of a multiple dwelling that contains sleeping units, at least one alarm must be installed on each floor level that contains sleeping units and, in addition, at least one alarm must be installed in each sleeping unit that contains any fuel-fired or solid-fuel burning appliance, equipment or system. Since this rule permits the use of battery operated carbon monoxide alarms, no professional services that are likely to be needed in a rural area in order to comply with such requirements.

(Executive Law section 378(5-a) also provides that the Uniform Code must require the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses and dwelling units constructed or offered for sale after July 30, 2002. The Uniform Code currently contains provisions [in section 1225.2 of Title 19 NYCRR] requiring the installation of carbon monoxide alarms in such occupancies. Section 1225.2 is repealed by this rule. However, provisions requiring the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 have been combined with the new provisions requiring the installation of carbon monoxide alarms in multiple dwellings, and the combined carbon monoxide alarm provisions are included in a single section [section 1228.3] which is part of the new Part 1228 added by this rule.)

3. COMPLIANCE COSTS.

Pool alarms. The initial capital costs of complying with the rule will include the cost of purchasing and installing the pool alarm. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (*i.e.*, for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200. Larger pools or irregularly shaped pools may require more than one such alarm. In the case of a large, complex shaped pools, more sophisticated system may be required. It is estimated that a self-setting pool alarm system using invisible sonar technology and capable of protecting a large, complex shaped swimming pool would cost between \$5,000 and \$8,000. A pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. In the case of a spa or hot tub, the initial capital costs of complying with the rule will include the cost of purchasing and installing the door alarms. (The owner of a spa or hot tub will also be required to comply with all applicable barrier requirements. However, such compliance is already required by the Uniform Code and other applicable laws.) The cost of a typical door alarm is estimated to be \$40 to \$50. The annual costs of complying with the rule will include the costs of operating and maintaining the alarm, which are anticipated to be modest. Any variation in such costs for different types of public and private entities in rural areas will be attributable to the size and configuration of the swimming pools owned or operated by such entities, and not to nature or type of such entities or to the location of such entities in rural areas.

Carbon monoxide alarms. The initial capital costs of complying with the rule will include the cost of purchasing and installing the carbon monoxide alarm(s). Cord or plug connected and battery operated carbon monoxide alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. With regard to the sale of existing multiple dwellings, regulated parties must purchase and install a carbon monoxide alarm, with similar costs as described above. Such costs are not likely to vary for different types of public and private entities in rural areas.

4. MINIMIZING ADVERSE IMPACT.

Pool alarms. Executive Law section 378(14)(b) makes no distinction between swimming pools located in rural areas and swimming pools located in non-rural areas. However, the economic impact of this rule in rural areas will be no greater than the economic impact of this rule in non-rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no less than the ability of individuals or public or private entities located

in non-rural areas. Executive Law section 378(14)(b) requires that this rule apply to all swimming pools constructed or substantially modified after the effective date of section 378(14)(b), which is December 14, 2006. The statute does not authorize the establishment of differing compliance requirements or timetables in rural areas. Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(14)(b) and would endanger public safety.

Carbon monoxide alarms. Executive Law section 378(5-a) makes no distinction between multiple dwellings located in rural areas and multiple dwellings located in non-rural areas. However, the impact of this rule in rural areas will be no greater than the impact of this rule in non-rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no less than the ability of individuals or public or private entities located in non-rural areas. Executive Law section 378(5-a) requires that this rule apply to all multiple dwellings constructed or offered for sale after August 9, 2005. The statute does not authorize the establishment of differing compliance requirements or timetables in rural areas. Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(5-a) and would endanger public safety.

5. RURAL AREA PARTICIPATION.

The Department of State notified code enforcement officials throughout the State, including those in rural areas, and other interested parties of the new requirements imposed by the previously adopted rules by means of notices in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and currently distributed to approximately 3,700 subscribers representing all aspects of the construction industry. The Department of State will include a similar notice regarding the adoption of this rule in a future edition of Building New York. In addition, when this rule is proposed for permanent adoption, the Department of State will conduct hearings and will solicit comments from the general public on this matter prior to voting to propose the adoption of this rule on a permanent basis.

Job Impact Statement

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a "substantial adverse impact on jobs and employment opportunities" (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

1. Pool alarms. The rule adds a new Part 1228 to Title 19 NYCRR. New Part 1228 adds new provisions to the Uniform Fire Prevention and Building Code ("Uniform Code") requiring that residential and commercial swimming pools installed, constructed or substantially modified after December 14, 2006 be equipped with an pool alarm that is capable of detecting a child entering the water and giving an audible alarm. The pool alarms must be installed, used and maintained in conformance with the manufacturer's instructions. These provisions are added to satisfy the requirements of paragraph (b) of subdivision (14) of section 378 of the Executive Law, which was added by Chapter 450 of the Laws of 2006. The pool alarm requirements added by this rule are substantially similar to the requirements that were added by an emergency rule filed on December 14, 2006. That prior emergency rule expired on March 13, 2007.

Pool alarms that satisfy the requirements of this rule are currently available. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (*i.e.*, for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200. Larger pools or irregularly shaped pools may require more than one such alarm. The cost of providing the appropriate surface wave sensor or subsurface disturbance sensor pool alarm(s) is considered to be modest, particularly when considered in relation to the cost of the typical swimming pool. It is anticipated that requiring pool alarms will have no significant adverse impact on jobs or employment opportunities in businesses that manufacture, install or construct the types of swimming pools that can be protected by such surface wave sensor or subsurface disturbance sensor pool alarm(s). It is also anticipated that requiring pool alarms may have a positive impact on employment opportunities in businesses that sell, install and service pool alarms.

In the case of a large, complex shaped swimming pool, a more sophisticated system may be required. At least one manufacturer produces a pool alarm system, using sonar technology, which is claimed to be suitable for pools of virtually any size or shape. The cost of such a system is estimated to be between \$5,000 and \$8,000. A sonar-based pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. In these cases,

the cost of providing the appropriate pool alarm system may add between 5% and 10% to the cost of the pool to be protected. This may have some negative impact on the segment of the swimming pool industry that constructs large, complex shaped swimming pools that require the more expensive sonar pool alarm systems. However, based on information provided on the International Aquatic Foundation website (http://www.iafh2o.org/IAF_Statistics.asp), of the estimated 8,349,000 swimming pools in the United States, only 270,000, or less than 3.25%, are "commercial" swimming pools. Based on this information, it is estimated that less than 3.25% of swimming pools that will be installed, constructed or substantially modified after December 14, 2006 will be "commercial" swimming pools. It is also anticipated that many such "commercial" swimming pools will be of a size and shape that can be protected by the less expensive surface wave sensor or subsurface disturbance sensor pool alarms mentioned above and, accordingly, it is estimated that the percentage of new swimming pools that will require the more expensive sonar pool alarm systems will be much less than 3.25%. Therefore, it is anticipated that this rule will not have a substantial adverse impact on jobs and employment opportunities.

Spas and hot tubs are expressly included in the Uniform Code's definition of the term "swimming pool" and, therefore, are covered by the legislative mandate that the Uniform Code provide that all "swimming pools" be equipped with pool alarms. However, the Department of State has received comments indicating that no pool alarm suitable for use in spas and hot tubs is currently available on the market. Therefore, this rule provides that in the case of hot tubs and spas, compliance with the new alarm requirements can be achieved by installing door alarms on all doors that provide direct access to the hot tub or spa. The Department of State understands that such door alarms are currently available, and the Department of State estimates the cost of such a door alarm to be \$40 to \$50. Therefore, it is anticipated that this rule will not have a substantial adverse impact on jobs and employment opportunities even within the spa and hot tub industries.

2. Carbon monoxide alarms. The new Part 1228 added by this rule also adds provisions to the Uniform Code requiring that multiple dwellings constructed or offered for sale after August 9, 2005 be equipped with carbon monoxide alarms. The carbon monoxide alarm requirements were extended to multiple dwellings to satisfy the requirements of subdivision (5-a) of section 378 of the Executive Law, as amended by Chapter 438 of the Laws of 2005. The carbon monoxide alarm provisions added by this rule are substantially similar to the provisions added by an emergency rule filed on December 14, 2006. That prior emergency rule expired on March 13, 2007. (Executive Law section 378(5-a) also provides that the Uniform Code must require the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed after July 30, 2002. The Uniform Code currently contains provisions [in section 1225.2 of Title 19 NYCRR] requiring the installation of carbon monoxide alarms in such occupancies. Said section 1225.2 is repealed by this rule. However, provisions requiring the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 have been combined with the new provisions requiring the installation of carbon monoxide alarms in multiple dwellings, and the combined carbon monoxide alarm provisions are set forth in a single section [section 1228.3] in new Part 1228 added by this rule.)

For newly constructed multiple dwellings, the carbon monoxide alarms will be installed as part of the construction process. Carbon monoxide alarms must also be installed in existing multiple dwellings constructed after August 9, 2005. In existing multiple dwellings constructed on or before August 9, 2005, carbon monoxide alarms may be installed at any time after the rule takes effect, or installation may be postponed until the multiple dwelling is offered for sale. Any potential adverse economic impact on regulated parties is minimized by the provisions of the rule that allow the installation of all types of carbon monoxide alarms, including those that are permanently connected to the building wiring system, those that are connected by cord or plug to the electrical system, and those that are battery operated.

Once installed, the carbon monoxide alarms must be used and maintained in accordance with manufacturer's instructions.

The costs of purchasing, installing and maintaining the alarms is insignificant in comparison to the cost of construction of a typical new multiple dwelling and the sale price of a typical existing multiple dwelling that is offered for sale. Therefore, this rule should have no impact on jobs and

employment opportunities related to the construction of new multiple dwellings or the sale of existing multiple dwellings.

Urban Development Corporation

EMERGENCY RULE MAKING

Empire State Economic Development Fund

I.D. No. UDC-17-07-00004-E

Filing No. 379

Filing date: April 5, 2007

Effective date: April 5, 2007

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

Action taken: Amendment of Part 4243 of Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); L. 1968, ch. 174; L. 1994, ch. 169; and L. 2001, ch. 471

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

Specific reasons underlying the finding of necessity: Effective provision of economic development assistance in accordance with the enabling legislation (including recent amendments thereto) requires clarification of the rule and elimination of inconsistencies in the rule.

Subject: Economic development and job creation throughout New York State.

Purpose: To provide the framework for administration of The Empire State Economic Development Fund, evaluation criteria, terms and conditions, and the application and evaluation process; and make changes to expand the types of program assistance.

Substance of emergency rule: The Empire State Economic Development Fund (the "Program") was created pursuant to Chapter 309 of the Laws of 1996 as amended by Chapter 432 of the Laws of 1997 and Chapter 471 of the Laws of 2001 (the "Enabling Legislation"). The general purpose of the Program is to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State.

The Enabling Legislation creates Sections 16-m and 16-l of the New York State Urban Development Corporation Act (the "UDC Act") which govern the Program. The Enabling Legislation requires the New York State Urban Development Corporation d/b/a the Empire State Development Corporation (the "Corporation") to promulgate rules and regulations for the Program (the "Rules") in accordance with the provisions of the State Administrative Procedure Act ("SAPA"). The Rules set forth the framework for the eligibility, evaluation criteria, application and project process and administrative procedures of the Program as follows:

1. Program Assistance:

a) General Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; working capital; and feasibility or planning studies.

b) Federal and Urban Site Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; and preliminary planning and the soft costs related to any of the above uses.

c) Competitiveness Improvement Program for Competitiveness Improvement projects.

d) Infrastructure Development Financing for construction or renovation of basic systems and facilities on public or privately-owned property including drainage systems, sewer systems, access roads, sidewalks, docks, parking, wharves, water supply systems, and site clearance, preparation, improvements and demolition; soft costs related to any of the above uses; and preliminary planning.

e) Regional and Economic Industrial Planning Studies and Economic Development Initiatives for the purpose of preparation of strategic plans for local and or regional economic development; the analysis of business

sectors; marketing and promoting regional business clusters and feasibility studies. Grants for Economic Development Initiatives may be made for the identification of new business opportunities; planning for new enterprise development; and the management of economic development projects provided that the Corporation could not undertake such project.

f) Commercial Area Development Financing for new construction, renovation or leasehold improvements; the soft costs related to any of the above uses; and preliminary planning, including feasibility studies and surveys and reports.

g) Capital Access Program funds for Capital Access Projects provided through Flexible Financing Programs may be used for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; and working capital.

h) Rural Revitalization Program to support community economic development programs and activities including value added small business growth, agricultural, agribusiness and forest products and those projects that promote the family farm, increase or retain employment opportunities and otherwise contribute to the revitalization of local rural areas which are economically distressed.

The proposed amended Rule expands the types of assistance available under the Program. Specifically, the proposed Sections 4243.40-4243.41 allow for grants for the purpose of developing a statewide infrastructure that delivers financing and technical assistance to micro businesses across the state to stimulate new and existing micro business development relating to the use of agricultural products, forest products, cottage and crafts industries, tourism, and other businesses as provided for in subparagraph (i) of paragraph (e) of subdivision 2 of Section 16-l of the section 1 of chapter 174 of the laws of 1968 and 4243.39(a)(4)(i) of this Part, provided such business employs five or fewer full-time persons and is based on the production, processing, and/or marketing of products grown or produced in New York State.

Additionally, the proposed Sections 4243.42-4243.44 provide emergency General Development Financing working capital grant assistance to small businesses, not-for-profit entities, and large businesses that were damaged by the floods that occurred in Southern Tier, Mid-Hudson, Capital and Mohawk Valley Regions and surrounding vicinity of the State of New York during the week of June 26, 2006.

Furthermore, the proposed Sections 4243.45-4243.46 allow for General Development Financing working capital assistance exclusively to State agencies and authorities that own or operate facilities used in connection with the tourism industry. With respect to this type of assistance, costs may be incurred before the application date and before the receipt of a program acceptance letter for such assistance and such assistance may be used for the reduction and repayment of outstanding debt, including payment of any tax or employee benefit arrearages, or to create a reserve for future costs and expenses.

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 July 3, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Antovk Pidedjian, New York State Urban Development Corporation d/b/a Empire State Development Corporation, 633 Third Ave., 37th Fl., New York, NY 10017, (212) 803-3792

Regulatory Impact Statement

1. Statutory Authority:

Chapter 84, Laws of 2002 (Unconsolidated Laws, Section 6266-m), which was originally enacted by Chapter 309, Laws of 1996 and amended by Part M1 Section 5 of the Article VII Bill of the Budget of 2003, authorized the Urban Development Corporation, d/b/a Empire State Development Corporation (the "Corporation") to implement The Empire State Economic Development Fund (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers private businesses, government entities and not-for-profit entities various forms of assistance, including loans, loan guarantees and grants. Chapter 471, Laws of 2001, (Unconsolidated Laws, Section 6266-l) authorized the Corporation to extend this type of assistance to eligible beneficiaries in rural areas of the State. Chapter 236, Laws of 2004 added micro business revolving loan assistance for rural development. Section 5(4) of the New York State Urban Development Corporation Act (Unconsolidated Laws, Section 6255(4)), which was originally enacted as Chapter 174 of the Laws of 1968, authorizes the Corporation to make rules and regulations

with respect to its projects, operations, properties and facilities, in accordance with Section 102 of the Executive Law.

2. Legislative Objective:

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention of jobs or increasing business activity within municipalities or regions of the State.

3. Needs and Benefits:

Currently, the Program's legislation assists job creation throughout the State by providing the following types of assistance:

1) General Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; working capital; and feasibility or planning studies.

2) Federal and Urban Site Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; and preliminary planning and the soft costs related to any of the above uses.

3) Competitiveness Improvement Program for Competitiveness Improvement projects.

4) Infrastructure Development Financing for construction or renovation of basic systems and facilities on public or privately-owned property including drainage systems, sewer systems, access roads, sidewalks, docks, parking, wharves, water supply systems, and site clearance, preparation, improvements and demolition; soft costs related to any of the above uses; and preliminary planning.

5) Regional and Economic Industrial Planning Studies and Economic Development Initiatives for the purpose of preparation of strategic plans for local and or regional economic development; the analysis of business sectors; marketing and promoting regional business clusters and feasibility studies. Grants for Economic Development Initiatives may be made for the identification of new business opportunities; planning for new enterprise development; and the management of economic development projects provided that the Corporation could not undertake such project.

6) Commercial Area Development Financing for new construction, renovation or leasehold improvements; the soft costs related to any of the above uses; and preliminary planning, including feasibility studies and surveys and reports.

7) Capital Access Program funds for Capital Access Projects provided through Flexible Financing Programs may be used for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; and working capital.

8) Rural Revitalization Assistance grants or contracts for services, on a competitive basis in response to requests for proposals, to eligible entities and organizations to support community economic development programs and activities which increase or retain employment opportunities in rural New York State and otherwise contribute to the revitalization of local rural areas which are economically distressed through innovative activities designed to generate economic alternatives and opportunities in rural areas.

The proposed change will improve the accessibility of the program to eligible entities throughout the State and enable the Corporation to more effectively administer the Program. The goal of such improvements is to better achieve the Program's objectives, including the retention and creation of employment opportunities, and to otherwise contribute to the economic health of New York State.

The proposed amended Rule expands the types of assistance available under the Program. Specifically, the proposed Sections 4243.40-4243.41 allow for grants for the purpose of developing a statewide infrastructure that delivers financing and technical assistance to micro businesses across the state to stimulate new and existing micro business development relating to the use of agricultural products, forest products, cottage and crafts industries, tourism, and other businesses as provided for in subparagraph (i) of paragraph (e) of subdivision 2 of Section 16-1 of the section 1 of chapter 174 of the laws of 1968 and 4243.39(a)(4)(i) of this Part, provided such business employs five or fewer full-time persons and is based on the production, processing, and/or marketing of products grown or produced in New York State.

Additionally, the proposed Sections 4243.42-4243.44 provide emergency General Development Financing working capital grant assistance to small businesses, not-for-profit entities, and large businesses that were damaged by the floods that occurred in Southern Tier, Mid-Hudson, Capital and Mohawk Valley Regions and surrounding vicinity of the State of New York during the week of June 26, 2006.

Furthermore, the proposed Sections 4243.45-4243.46 allow for General Development Financing working capital assistance exclusively to State agencies and authorities that own or operate facilities used in connection with the tourism industry. With respect to this type of assistance, costs may be incurred before the application date and before the receipt of a program acceptance letter for such assistance and such assistance may be used for the reduction and repayment of outstanding debt, including payment of any tax or employee benefit arrearages, or to create a reserve for future costs and expenses.

1. Evaluation Criteria – The Corporation, will continue to review and evaluate applications for assistance pursuant to eligibility requirements and criteria set forth in the UDC Act and the Rule.

2. Application procedure – Approval of applications shall be made only upon a determination by the Corporation:

(i) that the proposed project would promote the economic health of the State by facilitating the creation or retention of jobs or would increase business activity within a political subdivision or region of the State or would enhance or help to maintain the economic viability the State.

(ii) that the project would be unlikely to take place in the State without the requested assistance; and

(iii) that the project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs.

4. Costs:

The changes should not increase costs for the Program.

The funding source is appropriation funds. Savings will occur as a result of the use of standard applications which allow staff to efficiently assist in the application process.

5. Local Government Mandates:

There is no imposition of any mandates upon local governments by the amended rule.

6. Paperwork:

There are no additional reporting or paperwork requirements as a result of this amended rule. Standard applications used for most other Corporation assistance will be employed. This simplification and consolidation is part of the Corporation's overall effort to streamline all of its programs, and, thereby, facilitate, the application process for all of the Corporation's clients.

7. Duplication:

There are no duplicative, overlapping or conflicting rules or legal requirements, either federal or state.

8. Federal Standards:

There are no applicable federal government standards which apply.

9. Alternatives:

This Program was created by the Legislature in our representative form of government. The Corporation is implementing this legislation. It is not for the Corporation to say what harm would be caused by doing nothing. With respect to implementing legislation, doing nothing is NOT an option.

10. Compliance Schedule:

No significant time will be needed for compliance.

Regulatory Flexibility Analysis

1. Effect of Rule:

The amended Rule will improve the accessibility of the program to eligible entities throughout the State and enable the Corporation to more effectively administer the Program. The goal of such improvements is to better achieve the Program's objectives, including the retention and creation of employment opportunities, and to otherwise contribute to the economic health of New York State.

The proposed amended Rule expands the types of assistance available under the Program. Specifically, the proposed Sections 4243.40-4243.41 allow for grants for the purpose of developing a statewide infrastructure that delivers financing and technical assistance to micro businesses across the state to stimulate new and existing micro business development relating to the use of agricultural products, forest products, cottage and crafts industries, tourism, and other businesses as provided for in subparagraph (i) of paragraph (e) of subdivision 2 of Section 16-1 of the section 1 of chapter 174 of the laws of 1968 and 4243.39(a)(4)(i) of this Part, provided such business employs five or fewer full-time persons and is based on the production, processing, and/or marketing of products grown or produced in New York State.

Additionally, the proposed Sections 4243.42-4243.44 provide emergency General Development Financing working capital grant assistance to small businesses, not-for-profit entities, and large businesses that were damaged by the floods that occurred in Southern Tier, Mid-Hudson, Capital and Mohawk Valley Regions and surrounding vicinity of the State of New York during the week of June 26, 2006.

Furthermore, the proposed Sections 4243.45-4243.46 allow for General Development Financing working capital assistance exclusively to State agencies and authorities that own or operate facilities used in connection with the tourism industry. With respect to this type of assistance, costs may be incurred before the application date and before the receipt of a program acceptance letter for such assistance and such assistance may be used for the reduction and repayment of outstanding debt, including payment of any tax or employee benefit arrearages, or to create a reserve for future costs and expenses.

This should not affect the Program's accessibility to small business.

2. Compliance Requirement:

No affirmative acts will be needed to comply.

3. Professional Services:

No professional services will be needed to comply.

4. Compliance Costs:

No initial costs will be needed to comply with the amended rule.

5. Economic and Technological Feasibility:

The Rule makes The Empire State Economic Development Fund assistance feasible for small businesses, by expressly stating that small businesses are eligible for certain types of program assistance while permitting small businesses access to all other types of program assistance for which they may be eligible, notwithstanding the size of such businesses. The Rule also makes the program assistance feasible for local governments by expressly stating that government entities and municipalities are eligible for program assistance. It is also economically feasible for local governments to coordinate their respective economic development and job retention and attraction efforts with the program. There are no aspects of the Rule that make The Empire State Economic Development Fund assistance or the Rule technologically infeasible for small business or local government.

6. Minimizing Adverse Impact:

The revised rule will have no adverse economic impact on small business or local governments.

7. Small Business and Local Participation:

The Program is a product of the legislative process and, thereby, has had the input of all small businesses participating in the representative process of government. The Empire State Economic Development Fund emphasizes the effective provision of economic development throughout New York State. Small business may participate by requesting assistance when the requisite eligibility criteria are met. The Corporation will work with local governments to identify problem areas and make grant applications available.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis Statement is not submitted because the amended rule will not impose any adverse economic impact, reporting requirements, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A JIS is not submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities. In fact, the proposed amended rule should have a positive impact on job creation because it will facilitate administration of and access to the Empire State Economic Development Fund, which should improve the opportunities for the creation of jobs throughout the State by encouraging business expansion and attraction.

EMERGENCY RULE MAKING

Restore New York's Communities Initiative

I.D. No. UDC-17-07-00005-E

Filing No. 380

Filing date: April 5, 2007

Effective date: April 5, 2007

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

Action taken: Addition of Part 4245 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); L. 1968, ch. 174; L. 1994, ch. 169; and L. 2001, ch. 471

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

Specific reasons underlying the finding of necessity: Effective provision of economic development assistance in accordance with the enabling legislation (including recent amendments thereto) requires the creation of

the rule. The assistance is necessary to address the dangers to public health, safety and welfare posed by vacant, abandoned, surplus or condemned buildings in municipalities.

Subject: Economic development and job creation throughout New York State and preservation of public health and public safety via the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities.

Purpose: To provide the framework for administration of the restore New York's Communities Initiative evaluation criteria, terms and conditions, and the application and evaluation process.

Substance of emergency rule: The Restore New York's Communities Initiative (the "Program") was created pursuant to Chapter 109 of the Laws of 2006 (the "Enabling Legislation"). The general purpose of the Program is to promote economic development in the State by encouraging economic and employment opportunities for the State's citizen's and stimulating development of communities throughout the State.

The Enabling Legislation creates Sections 16-n of the New York State Urban Development Corporation Act (the "UDC Act") which governs the Program. The Enabling Legislation requires the New York State Urban Development Corporation d/b/a the Empire State Development Corporation (the "Corporation") to promulgate rules and regulations for the Program (the "Rules") in accordance with the provisions of the State Administrative Procedure Act ("SAPA"). The Rules set forth the framework for the eligibility, evaluation criteria, application and project process and administrative procedures of the Program as follows:

1. Program Assistance:

a) Demolition and Deconstruction Grants of up to twenty thousand dollars per residential real property in need of demolition or deconstruction on the property assessment list.

b) Rehabilitation and Reconstruction Grants of up to one hundred thousand dollars for real property in need of rehabilitation or reconstruction on the property assessment list.

The proposed new Rule sets for the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York's Communities Initiative set forth in Section 16-n of the Urban Development Corporation Act. The initiative promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

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 July 3, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Antovk Pidedjian, New York State Urban Development Corporation d/b/a Empire State Development Corporation, 633 Third Ave., 37th Fl., New York, NY 10017, (212) 803-3792

Regulatory Impact Statement

1. Statutory Authority:

Chapter 109, Laws of 2006 (Unconsolidated Laws, Section 6266-n. Another Unconsolidated Laws Section 6266-n was added by another act) authorized the Urban Development Corporation, d/b/a Empire State Development Corporation (the "Corporation") to implement the Restore New York's Communities Initiative (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers municipalities assistance for the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities.

2. Legislative Objective:

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention of jobs or increasing business activity within municipalities or regions of the State.

3. Needs and Benefits:

The Program's legislation assists job creation throughout the State by providing the following types of assistance:

a) Demolition and Deconstruction Grants of up to twenty thousand dollars per residential real property in need of demolition or deconstruction on the property assessment list.

b) Rehabilitation and Reconstruction Grants of up to one hundred thousand dollars for real property in need of rehabilitation or reconstruction on the property assessment list.

The proposed new Rule sets for the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York’s Communities Initiative set forth in Section 16-n of the Urban Development Corporation Act. The initiative promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

1. Evaluation Criteria – The Corporation, will review and evaluate applications for assistance pursuant to eligibility requirements and criteria set forth in the UDC Act and the Rule.

2. Application procedure – Approval of applications shall be made only upon a determination by the Corporation:

(i) that the proposed project would promote the economic health of the State by facilitating the creation or retention of jobs or would increase business activity within a political subdivision or region of the State or would enhance or help to maintain the economic viability the State.

(ii) that the project would be unlikely to take place in the State without the requested assistance; and

(iii) that the project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs.

3. Costs:

The funding source is appropriation funds. Savings will occur as a result of the use of standard applications which allow staff to efficiently assist in the application process.

4. Local Government Mandates:

There is no imposition of any mandates upon local governments by the amended rule.

5. Paperwork:

There are no additional reporting or paperwork requirements as a result of this amended rule. Standard applications used for most other Corporation assistance will be employed. This simplification and consolidation is part of the Corporation’s overall effort to streamline all of its programs, and, thereby, facilitate, the application process for all of the Corporation’s clients.

6. Duplication:

There are no duplicative, overlapping or conflicting rules or legal requirements, either federal or state.

7. Federal Standards:

There are no applicable federal government standards which apply.

8. Alternatives:

This Program was created by the Legislature in our representative form of government. The Corporation is implementing this legislation. It is not for the Corporation to say what harm would be caused by doing nothing. With respect to implementing legislation, doing nothing is NOT an option.

9. Compliance Schedule:

No significant time will be needed for compliance.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The proposed Rule will provide the framework for administration of the Restore New York’s Communities Initiative (the “Program”) to promote economic development in the State by encouraging economic and employment opportunities for the State’s citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers municipalities assistance for the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities.

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention of jobs or increasing business activity within municipalities or regions of the State.

The proposed new Rule sets for the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York’s Communities Initiative set forth in Section 16-n of the Urban Development Corporation Act. The Program promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

2. Compliance Requirement:

No affirmative acts will be needed to comply.

3. Professional Services:

No professional services will be needed to comply.

4. Compliance Costs:

No initial costs will be needed to comply with the proposed Rule.

5. Economic and Technological Feasibility:

The Rule makes the Program assistance feasible for local governments, by expressly stating that municipalities are eligible for certain types of Program assistance while permitting local governments access to all other types of Program assistance for which they may be eligible. It is also economically feasible for local governments to coordinate their respective economic development and job retention and attraction efforts.

6. Minimizing Adverse Impact:

The revised rule will have no adverse economic impact on small business or local governments.

7. Small Business and Local Participation:

The Program is a product of the legislative process and, thereby, has had the input of all small businesses participating in the representative process of government. The Program emphasizes the effective provision of economic development throughout New York State. Program funds are available only to municipalities. Small business will benefit from the aid to municipalities provided for this economic development. The Corporation will work with local governments to identify problem areas and make grant applications available.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis Statement is not submitted because the amended rule will not impose any adverse economic impact, reporting requirements, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A JIS is not submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities. In fact, the proposed amended rule should have a positive impact on job creation because it will facilitate administration of and access to the Empire State Economic Development Fund, which should improve the opportunities for the creation of jobs throughout the State by encouraging business expansion and attraction.