

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.

Banking Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Electronic Banking Facilities

I.D. No. BNK-01-07-00005-P

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

Proposed action: Amendment of Part 73 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 14(1), 105-a, 240-a and 396-a

Subject: Establishment of electronic banking facilities (*i.e.*, ATMs, point-of-sale terminals, and similar facilities at which banking business may be conducted).

Purpose: To streamline the application and approval process for banking institutions when establishing electronic facilities.

Text of proposed rule: PART 73

ELECTRONIC FACILITIES

§ 73.1 — General statement.

A banking organization may conduct a banking business at electronic facilities that are either established (*i.e.*, owned or rented by a *single organization*) or shared, on a transaction fee or similar basis, by such banking organization, subject to the provisions of this Part. Such facilities are not branches but are subject to the limitations contained in sections 28-b and 105(1)(ii), 240(2)(b) or 396(2)(b) of the Banking Law, as the case

may be, as if they were branches. *In addition to the requirements of this Part, automated teller machines must comply with the security measures and reporting requirements set forth in Article II-AA of the New York Banking Law and Part 301 of the Superintendent's Regulations.*

§ 73.2 — Definitions.

For the purposes of this Part:

(a) Electronic facilities shall mean automated teller machines, point-of-sale terminals, and similar facilities at which the banking business may be conducted. Such term shall not include home banking terminals, telexes and similar equipment.

(b) Automated teller machines shall mean electronic devices, either on-line or off-line, which permit deposits, withdrawals, transfers of funds from one account to another, loan repayments or disbursements of funds pursuant to prearranged lines of credit. Except for facilities staffed for the purposes cited in section 73.7 of this Part, they shall not include staffed facilities.

(c) Point-of-sale terminals shall mean electronic devices, either on-line or off-line, whose function is to transfer funds or record transfers of funds in connection with the sale of goods or services but which may also be used to accept deposits and loan repayments, make cash withdrawals, and obtain funds pursuant to prearranged lines of credit. These terminals may be located only at bona fide checkout counters, cashier stations, customer convenience counters or other counters at which store functions are performed, or sales desks of other establishments, and may not be staffed by bank employees, with the exceptions noted in section 73.7 of this Part.

(d) Similar facilities shall mean electronic devices, either on-line or off-line, which may be used for making deposits, withdrawals, transfers of funds, loan repayments or disbursements of funds pursuant to prearranged lines of credit. Except as otherwise provided in section 73.7 of this Part, such facilities, if part of a store's bona fide customer convenience counter or other counter at which store functions are performed, or sales desks of other establishments, may be staffed but only by nonbank employees; if located anywhere else, they may not be staffed.

(e) Banking organizations shall mean banks, trust companies, savings banks, [and] savings and loan associations, *and out-of-state state banks with one or more branches in New York.*

§ 73.3 — Establishment or sharing of electronic facilities.

Any banking organization that has given the [s]Superintendent the notice described in section 73.6[(a) or (b)] of this Part [, as the case may be,] may establish or share an electronic facility upon receipt of written notification from the [s]Superintendent that he *or she* does not object to the establishment or sharing of such facility. The [s]Superintendent shall not object to the establishment or sharing of an electronic facility unless the banking organization submitting the notice fails to meet the requirements of Banking Law, section 28-b and Part 76 of this Title or the establishment or sharing of such facility is prohibited by the home office protection provisions of Banking Law, section 105(1)(ii), 240(2)(b) or 396(2)(b).

§ 73.4 — Sharing facilities.

To the extent consistent with law, banking organizations may share electronic facilities they have established with other banking organizations, banking institutions not subject to the provisions of this Part, and nonbanking entities, and may share electronic facilities established by other banking organizations, banking institutions not subject to this Part or nonbanking entities.

§ 73.5 — Facilities not requiring [prior] notification.

The following activities do not require [any prior] notification to the [s]Superintendent *under this Part:*

(a) the establishment by a banking organization of an electronic facility on the premises of one of its authorized, staffed banking offices or attached to the outer wall of such an office;

(b) the establishment or sharing of an electronic facility to the extent it is used solely to effect transactions among banking institutions, clearing-houses, clearing corporations, governmental institutions or governmental agencies, business firms or similar organizations, or between *two* or more of these types of organizations; and

(c) the sharing of an electronic facility when the customers [or] of the sharing institution may use the facility solely to obtain information about account balances, make cash withdrawals (including those that require transfers of funds among a customer's accounts), and obtain cash advances against credit lines.

§ 73.6 — Contents of notice.

[(a)] The notice to the [s]Superintendent [prior to] for the establishment or sharing of an electronic facility shall include the following:

[(1)a] the complete [legal] address of the proposed facility, including [whether such location is in a city, village or unincorporated area] *the name of the city, village, hamlet, or town in which the site is physically located (rather than that which is used in the mailing address, if different)*;

[(2) a certified copy of a resolution duly adopted by a majority of the banking organization's board of directors or board of trustees, as the case may be, authorizing the submission of the notice, which resolution may be a general resolution authorizing the submission of all such notices;]

[(3)b] identification of the type of facility [to be established] and a [description of the activities to be performed initially] *statement as to whether the facility will have deposit-taking capability*;

[(4)c] a statement as to whether the facility will be shared initially, including the names of any initial sharing institutions];

[(5) an estimate of the total initial and annual operating costs of the facility; and]

[(6)d] details of any transaction involving the establishment or initial sharing of the facility with an insider as defined in Part 11 of this Title or with any related interest of such a person[.]; and

(e) Any additional information which the Department may require on a case-by-case basis.

[(b) The notice to the superintendent prior to the sharing of an electronic facility shall include the following:

(1) the complete legal address of the facility, including whether such location is in a city, village or unincorporated area;

(2) a certified copy of a resolution duly adopted by a majority of the banking organization's board of directors or board of trustees, as the case may be, authorizing the submission of the notice, which resolution may be a general resolution authorizing the submission of all such notices; and

(3) identification of the type of facility to be shared and a description of the activities to be performed.]

§ 73.7 — Restrictions on electronic facilities.

(a) No electronic facility may be staffed by employees of a banking organization. However, employees of a banking organization may be used to demonstrate the equipment, to train nonbank employees for a reasonable period of time, to provide information, to repair and service the electronic equipment, or as security guards.

(b) All banking organizations shall take the necessary steps to protect their interests in the activities of their electronic facilities, including the acquisition of appropriate fidelity and other insurance coverage, and to safeguard the identity of bank customers in the use of such facilities.

(c) No new accounts may be opened at electronic facilities, and no cash, check, money order or draft of any kind may be taken with application forms if such forms are filled out and left at the electronic facility.

Text of proposed rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority. Section 14(1) of the Banking Law empowers the Banking Board to make, alter and amend rules and regulations not inconsistent with law. Section 105-a of the Banking Law authorizes a bank or trust company to conduct a banking business at automated teller machines, point-of-sale terminals and similar facilities subject to regulations which may be promulgated by the Banking Board. Sections 240-a and 396-a of the Banking Law provide comparable authorizations for savings banks and savings and loan associations, respectively.

2. Legislative Objectives. Sections 105-a, 240-a and 396-a of the Banking Law require that, prior to establishing electronic facilities, banks, trust companies, savings banks and savings and loan associations (hereafter "banking institutions") make application to the Superintendent and receive a notice of no objection. The Superintendent's review and approval is intended to ensure banking institutions are in compliance with section 28-b, which establishes community reinvestment act criteria for banking institutions, "home office" restrictions set forth in sections 105, 240 and 396 of such law, and the safety and soundness standards prescribed in section 10 of such law.

The Legislature thus intended that banking institutions should not be allowed to expand their businesses through the use of electronic facilities if the institutions were not maintaining sufficient community reinvestment activity. It also intended, notwithstanding that the noted statutes expressly declare electronic facilities are not deemed to be branches, the establishment of such facilities should not be an alternate means by which banking institution may enter and conduct banking business in a community having a population of 50,000 or less where an independent bank, trust company or national bank was headquartered, thus subverting the statutory standards that prohibit banking institutions from branching into such communities. Finally, the intent of section 10 of the Banking Law is that all banking business should be conducted in a sound and safe manner so as to maintain the public confidence in such institutions. One aspect of any expansion of banking facilities for a regulator is consideration of whether such expansion may adversely affect an institution's safe and sound conduct of the banking business.

3. Needs and Benefits. The proposed rule is intended to facilitate the application process for electronic facilities by eliminating unnecessary information and data requirements that must be addressed in such applications. The information and data to be eliminated is not pertinent to the determination whether such banking institutions meet the intended legislative objectives. Thus, the proposed rule should reduce the regulatory burden upon affected institutions. The additional provision added by the proposed rule is intended to remind banking institutions that such electronic facilities must be operated in compliance with the ATM Safety Act and its accompanying regulatory provisions.

4. Costs. The proposal will significantly reduce the information required to be provided as part of a notice by a banking organization that it proposes to establish or share an electronic facility. (see Item 6, "Paperwork" below). This streamlining of the notice requirement should in turn significantly reduce the time and resources needed to give such notices.

5. Local Government Mandates. None.

6. Paperwork. The effect of this rule upon regulated parties will be to reduce the paperwork required. Among other things, electronic facilities notices will no longer be required to include a certified copy of a resolution of the banking organization's board of directors, the required description of the activities to be performed at the facility has been drastically curtailed, and the requirement for an estimate of initial and annual operating costs has been eliminated. The Department does, however, retain the right to require additional information on a case-by-case basis.

7. Duplication. None.

8. Alternatives. The Department could have left existing Part 73 unchanged. However, doing so would not have been consistent with the Department's broader effort to review the various regulations, supervisory procedures and application requirements relating to branches, public accommodation offices and electronic facilities for banks and trust companies, savings banks, savings and loan associations and credit unions. The objectives of this review include developing simplified application forms, eliminating outdated or unnecessary informational requirements and, to the extent possible, developing consistent or similar requirements among the different types of banking institutions.

The Department initially considered amending Part 73 so as to permit a banking organization with a CRA rating from the Department of "satisfactory" or better to give notice to the Department within 10 days after establishing or sharing an electronic facility. A comment in opposition to that proposal was received from the Chair of the Assembly Standing Committee on Banks and the Assembly Chair of the Administrative Regulations Review Commission. The commenters were concerned that eliminating the prior review requirement in Part 73 would result in the Department applying less stringent standards to an after the fact review and would undercut the provision in Banking Law Section 28-b which contemplates the possibility of a public hearing.

In response to the commenters' concerns, the initial proposal to amend Part 73 was withdrawn. The current proposal retains the requirement that

all banking organizations wishing to establish or share an electronic facility provide prior notice to the Department.

9. Federal Standards. No federal standards apply to the establishment of electronic facilities by state-chartered banking institutions.

10. Compliance Schedule. The proposed rule will apply to applications to establish electronic facilities occurring on or after the effective date of the rule.

Regulatory Flexibility Analysis

The proposed rule making reduces the regulatory burden upon state-chartered banking institutions. The proposal imposes no mandates upon regulated parties, other small businesses, or units of local government. The proposal imposes no additional costs of any type upon regulated parties. The proposal, therefore, has no adverse impacts.

Rural Area Flexibility Analysis

The proposed rule making reduces the regulatory burden upon state-chartered banking institutions. The proposal will not adversely affect regulated parties, other business interests, local governments or consumers in rural areas of this state.

Job Impact Statement

The proposed rule making reduces the regulatory burden upon state-chartered banking institutions when making application to establish electronic facilities. This proposal therefore will have no adverse effect upon existing jobs or job opportunities within state-chartered banking institutions or other businesses in this state.

Department of Civil Service

NOTICE OF WITHDRAWAL

Jurisdictional Classification

I.D. No. CVS-41-06-00014-W

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

Action taken: Notice of proposed rule making, I.D. No. CVS-41-06-00014-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on October 11, 2006.

Subject: Jurisdictional classification.

Reason(s) for withdrawal of the proposed rule: Item was reconsidered and it was determined that the subject position should remain in the competitive class.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Continuing Education Requirements for Optometrists

I.D. No. EDU-01-07-00012-P

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

Proposed action: Repeal of section 66.5(f) and addition of section 66.6 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 6507(2)(a); 7101 (not subdivided); and 7101-a(7)

Subject: Continuing education requirements for optometrists certified in the use of therapeutic pharmaceutical agents.

Purpose: To establish and clarify existing continuing education requirements that must be met by licensed optometrists certified to use therapeutic pharmaceutical agents; and provide the commissioner with the flexibility to adjust the continuing education requirements in exceptional situations leading to non-compliance.

Text of proposed rule: 1. Subdivision (f) of section 66.5 of the Regulations of the Commissioner of Education is repealed, effective April 12, 2007.

2. Section 66.6 of the Regulations of the Commissioner of Education is added, effective April 12, 2007, as follows:

66.6 *Continuing education for licensed optometrists certified to use phase one and/or phase two therapeutic pharmaceutical agents.*

(a) *As used in this section, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accreditation at the postsecondary level, applying its criteria for granting accreditation in a fair, consistent and nondiscriminatory manner, such as an agency recognized for this purpose by the United States Department of Education.*

(b) *Mandatory continuing education requirement.*

(1) *General requirements.*

(i) *During each triennial registration period, meaning a registration period of three years duration, an applicant for registration shall complete at least 36 hours of formal continuing education acceptable to the department as defined in paragraph (2) of this subdivision. At least three-quarters of such continuing education in a registration period shall consist of live in-person instruction in a formal course of study. Up to one-quarter of such continuing education in a registration period may consist of live instruction in a formal course of study offered through audio, audiovisual, written, on-line, and other media, during which the student must be able to communicate and interact with the instructor.*

(ii) *Proration. During each registration or certification period of less than three years duration, an applicant shall complete acceptable continuing education, as defined in paragraph (2) of this subdivision, on a prorated basis at the rate of one hour of continuing education per month for such registration or certification period.*

(2) *Acceptable continuing education. To be acceptable to the department, continuing education shall be:*

(i) *in the area of ocular disease and pharmacology and may include both didactic and clinical components; and*

(ii) *approved by the department pursuant to subdivision (g) of this section.*

(c) *Adjustments to the requirement.*

(i) *An adjustment to the continuing education requirement, as prescribed in subdivision (b) of this section, may be made by the department, to permit the applicant to complete all or part of the continuing education requirement through equivalent study acceptable to the department provided that the applicant documents good cause that prevents compliance with the regular continuing education requirement, which good cause shall include, but not be limited to, any of the following reasons: poor health certified by a physician; or a specific physical or mental disability certified by an appropriate health care professional; or extended active duty with the armed forces of the United States; or other good cause beyond the applicant's control which in the judgment of the department makes it impossible for the applicant to comply with the continuing education requirement in a timely manner.*

(ii) *The department may permit an applicant to complete all or a part of the continuing education requirement in the new registration period through an approved adjustment pursuant to this subdivision, provided that the applicant will not obtain a renewal of certification until the continuing education requirement is met. In such a case, the applicant will also have to complete the continuing education requirement for the new registration period.*

(d) *Renewal of certification. At each re-registration for a renewal of certification, applicants shall certify to the department that they have complied with the continuing education requirement set forth in subdivision (b) of this section or an adjusted requirement approved by the department in accordance with subdivision (c) of this section.*

(e) *Licensee records.*

(1) *Each licensee subject to this section shall maintain and ensure access by the department to evidence of completed continuing education including:*

- (i) *the title of the course or program;*
- (ii) *the number of hours completed;*
- (iii) *the sponsor's name and any identifying number;*
- (iv) *attendance or participation verification; and*
- (v) *the date and location of the course.*

(2) *Retention. Such records shall be retained for at least six years from the date of completion of the course and shall be available for review by the department in the administration of the requirements of this section.*

(f) *Measurement of continuing education study. Continuing education credit shall be granted only for acceptable continuing education as prescribed in subdivision (b) of this section. For continuing education courses, a minimum of 50 minutes of study shall equal one continuing education hour of credit. For credit-bearing university or college courses, each semester-hour of credit shall equal 15 continuing education hours of credit, and each quarter-hour of credit shall equal 10 continuing education hours of credit.*

(g) *Continuing education course approval.*

(1) *To be approved by the department, a continuing education course shall meet the requirements of either paragraph (2) or (3) of this subdivision.*

(2) *The department shall deem approved a course that is in any one or more of the subjects prescribed for acceptable continuing education in subparagraph (b)(2)(i) of this section and that is either:*

(i) *approved by the Council on Optometric Practitioner Education or an organization determined by the department with assistance from the State Board for Optometry to have adequate standards for approving sponsors of continuing education for professionals regulated by Title VIII of the Education Law that include, but are not limited to, standards that are equivalent to the standards prescribed in clauses (3)(ii)(a) and (b) of this subdivision; or*

(ii) *is offered by a postsecondary institution that is authorized to offer programs in optometry leading to licensure that are registered pursuant to Part 52 of this Title or accredited by an acceptable accrediting agency.*

(3) *Department review of courses.*

(i) *The department shall conduct a review of courses that are not deemed approved pursuant to the requirements of paragraph (2) of this section.*

(ii) *A sponsor desiring to obtain approval of a continuing education course based upon a department review under this paragraph shall submit an application for advance approval of the course at least 14 days prior to the date of the commencement of such course that documents that the sponsor:*

(a) *will offer courses of learning in any one or more of the subjects prescribed for acceptable continuing education in subparagraph (b)(2)(i) of this section;*

(b) *provides staff who are qualified to teach the courses that will be offered, including, but not limited to, faculty of a college of optometry accredited by an acceptable accrediting agency, or a physician who specializes in diseases of the eye, or by licensed optometrists certified to treat patients with phase two therapeutic pharmaceutical agents, or qualified staff who are authorities in the health sciences specially qualified, in the opinion of the State Board for Optometry, to teach such courses; and*

(c) *will maintain records for at least six years from the date of completion of course work, which shall include, but shall not be limited to, the name and curriculum vitae of the faculty, a record of attendance of licensed optometrists in the course, an outline of the course, the date and location of the course, and the number of hours for completion of the course. In the event that the sponsor of approved courses discontinues operation, the governing body of such sponsor shall notify the department and transfer all records as directed by the department.*

(iii) *A course that is approved by the department pursuant to the requirements of this paragraph shall only be approved for specified dates that the course will be offered.*

(iv) *The department may conduct site visits of, or request information from a sponsor of an approved course to ensure compliance with the requirements of this paragraph, and a sponsor shall cooperate with the department in permitting such a site visit and providing such information.*

(v) *A determination by the department that a course approved pursuant to the requirements of this paragraph is not meeting the standards set forth in this paragraph shall result in the denial or termination of the approved status of the course.*

Text of proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Deputy Commissioner, Office of Higher Education, Education Department, Rm. 979, Education Bldg. Annex, 879 Washington Ave., Albany, NY 12234, (518) 474-5851, e-mail: hedepcom@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations relating to the admission of and the practice of the professions.

Section 7101 of the Education Law mandates that licensed optometrists use therapeutic pharmaceutical agents in accordance with the Commissioner's regulations.

Subdivision (7) of section 7101-a of the Education Law, mandates and gives general requirements for the completion of continuing education by optometrists who are certified in the use of therapeutic pharmaceutical agents.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statutes by clarifying the existing continuing education requirements that must be met by optometrists certified in the use of therapeutic pharmaceutical agents and to provide flexibility to the Department in exceptional circumstances that lead to non-compliance with the continuing education requirements.

3. NEEDS AND BENEFITS:

A subdivision of section 66.5 of the Regulations of the Commissioner of Education was added in 1996, to outline the requirements for continuing education to be completed by licensed optometrists certified to use therapeutic pharmaceutical agents. The purpose of the proposed amendment is to clarify the existing mandatory continuing education requirements and provide more flexibility to the Department for exceptional circumstances that lead to non-compliance. The proposed amendment makes the following major changes:

Under the current regulations, an applicant must complete at least 36 hours of continuing education, however, there is no standard as to what methods of study are acceptable to the Department. This amendment requires at least three-quarters of such continuing education to consist of live in-person instruction and up to one-quarter of such continuing education to consist of instruction through audio, audio-visual, written, on-line, and other media, during which the student must be able to communicate and interact with the instructor and other students.

The proposed amendment is also needed to address the Department's current lack of ability to adjust the continuing education requirements for exceptional circumstances that lead to non-compliance. This amendment provides the Department with the flexibility to permit an applicant to complete all or part of the continuing education requirement through an acceptable alternative course of study if the applicant documents good cause that prevents compliance with the regular continuing education requirements. However, the applicant will not be able to renew his/her certification until the continuing education requirement is met. This amendment further requires licensed optometrists to certify to the Department that they have complied with the continuing education requirements; or that the applicant has an approved adjustment to such continuing education requirements from the Department.

Under the current regulations, there are no requirements for the approval of program sponsors or courses. The proposed amendment provides that the Department shall deem approved courses approved by the Council on Optometric Practitioner Education or an organization determined by the Department with assistance from the State Board for Optometry to have adequate standards or a course offered by a postsecondary institution authorized to offer a program in optometry leading to licensure. Any course not deemed approved must be reviewed by the Department. For Department review, the sponsor will be required to submit an application for advance approval of the course 14 days prior to the date of commencement of such course. Any course approved by the Department will only be approved for the specified dates that the course is offered.

In order to ensure compliance, the proposed amendment also provides the Department with the authority to conduct site visits of, or request information from a sponsor of an approved course and provides the Department with the discretion to deny a course or terminate a course's approved status if they are not meeting the requirements set forth in this section.

4. COSTS:

(a) **Costs to State Government:** The amendment will not impose any additional cost on State government, including the State Education Department. The Department will use existing staff and resources to process requests for an adjustment of their continuing education requirement.

(b) **Costs to local government:** None.

(c) Costs to private regulated parties: The proposed amendment will not impose additional costs on optometrists certified in the use of therapeutic pharmaceutical agents. The continuing education requirement is already in Education Law, including a requirement for the licensee to submit evidence of completion at the time of renewal of his or her registration.

(d) Cost to the regulatory agency: As stated above in Costs to State Government, the proposed amendment does not impose costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment addresses continuing education requirements for optometrists certified to use therapeutic pharmaceutical agents. It does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment clarifies existing continuing education requirements for optometrists certified to use therapeutic pharmaceutical agents. The amendment does not require any additional paperwork for the licensee; it only requires that existing paperwork be retained for a longer period of time, six years instead of five years from the date of completion of the course.

7. DUPLICATION:

The proposed amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment, and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards for continuing education for optometrists.

10. COMPLIANCE SCHEDULE:

The proposed amendment must be complied with on its effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF RULE:

The proposed amendment to the Regulations of the Commissioner of Education relates to mandatory continuing education for licensed optometrists certified to use phase one and/or phase two therapeutic pharmaceutical agents. The regulation contains no compliance requirements for sponsors that are deemed approved through the approval of other organizations that approve continuing education for optometrists.

However, there are compliance requirements for sponsors seeking approval through a State Education Department review. Since the proposed regulation implements current practice, the State Education Department estimates that approximately 19 sponsors will seek approval through a State Education Department review. Of these, based on current practice, the Department estimates that approximately 6, or 33 percent of these are small businesses.

2. COMPLIANCE REQUIREMENTS:

The regulation contains no compliance requirements for sponsors that are deemed approved through the approval of other organizations that approve continuing education for optometrists.

There are compliance requirements for sponsors seeking approval through a State Education Department review. Organizations desiring to offer continuing education to licensed optometrists based upon a review by the State Education Department must submit an application for advance approval as a sponsor at least 14 days prior to the date for the commencement of the continuing education. The applicants must document in the application: curricular areas of offerings, the qualifications of course instructors, and recordkeeping procedures.

3. PROFESSIONAL SERVICES:

No professional services are expected to be required by small businesses to comply with the proposed amendment. The regular staff of small businesses will be able to complete the application needed for the review by the State Education Department.

4. COMPLIANCE COSTS:

Since the proposed regulation implements current practice, there will be no additional compliance costs. However, the State Education Department estimates that the proposed regulation would require a staff member to spend about five hours to complete the application. Based on an hourly rate of \$37 per hour (including fringe benefits), we estimate the cost of completing the application to be \$185. An application would have to be completed for each course. The State Education Department estimates that each sponsor will make approximately 3 applications per year. Therefore,

the annualized cost of completing applications for each sponsor is estimated to be \$555 (\$185 an application x approximately 3 applications per year, per sponsor).

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed regulation will not impose any special technological requirements on regulated parties.

6. MINIMIZING ADVERSE IMPACT:

The Department believes that the standards for sponsor review by the State Education Department are reasonable, and that uniform standards should apply, regardless of the size of the sponsoring organization, in order to ensure the quality of the continuing education.

7. SMALL BUSINESS PARTICIPATION:

Members of the State Board for Optometry and the New York State Optometric Association, many of whom have experience in a small business environment, provided input during the development of the proposed amendment.

(b) Local Governments:

The proposed amendment clarifies existing continuing education requirements for New York State licensed optometrists certified to use therapeutic pharmaceutical agents, and establishes requirements that sponsors of such continuing education must meet. It will not impose any adverse economic impact or reporting, recordkeeping, or other compliance requirements on local governments. Because it is evident from the nature of the proposed rule that it does not affect local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all licensed optometrists certified in the use of therapeutic pharmaceutical agents, including those that are located in the State's 44 rural counties and the 71 towns in urban counties with a population density of 150 per square mile or less. The Department estimates that approximately 12 percent of licensed optometrists are located in a rural area of New York State.

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

A subdivision of section 66.5 of the Regulations of the Commissioner of Education was added in 1996, to outline the requirements for continuing education to be completed by licensed optometrists certified to use therapeutic pharmaceutical agents. The purpose of the proposed amendment is to clarify the existing mandatory continuing education requirements and provide more flexibility to the Department for exceptional circumstances that lead to non-compliance. The proposed amendment makes the following major changes:

Under the current regulations, an applicant must complete at least 36 hours of continuing education, however, there is no standard as to what methods of study are acceptable to the Department. This amendment requires at least three-quarters of such continuing education to consist of live in-person instruction and up to one-quarter of such continuing education to consist of instruction through audio, audio-visual, written, on-line, and other media, during which the student must be able to communicate and interact with the instructor.

The proposed amendment is also needed to address the Commissioner's current lack of ability to adjust the continuing education requirements for exceptional circumstances that lead to non-compliance. This amendment provides the Department with the flexibility to permit an applicant to complete all or part of the continuing education requirement through an acceptable alternative course of study if the applicant documents good cause that prevents compliance with the regular continuing education requirements. However, the applicant will not be able to renew his/her certification until the continuing education requirement is met. This amendment further requires licensed optometrists to certify to the Department that they have complied with the continuing education requirement; or that the applicant has an approved adjustment to such continuing education requirement from the Department.

Under the current regulations, there are no requirements for the approval of program sponsors or courses. The proposed amendment provides that the Department shall deem approved courses approved by the Council on Optometric Practitioner Education or an organization determined by the Department with assistance from the State Board for Optometry to have adequate standards or a course offered by a postsecondary institution authorized to offer a program in optometry leading to licensure. Any course not deemed approved must be reviewed by the Department. For Department review, the sponsor will be required to submit an application

for advance approval of the course 14 days prior to the date of commencement of such course. Any course approved by the Department will only be approved for the specified dates that the course is offered.

In order to ensure compliance, the proposed amendment also provides the Department with the authority to conduct site visits of, or request information from a sponsor of an approved course and provides the Department with the discretion to deny or terminate a course's approved status if it is not meeting the requirements set forth in this section.

The proposed amendment will not require regulated parties to hire professional services in order to comply. The amendment will require the licensed optometrist to maintain a record verifying completion of continuing education for six years from the date of completion of the course. The amendment will not increase reporting requirements.

3. COSTS:

The proposed amendment does not impose additional costs on licensed optometrists, beyond those currently imposed by statute or regulation.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment makes no exception for licensed optometrists who are located in rural areas. In any event, consistent practice requirements should apply no matter the geographic origin of the licensee to ensure a uniform high standard of competency across the State. Because of the nature of the proposed amendment, establishing different standards for licensed optometrists located in rural areas of New York State is inappropriate.

5. RURAL AREA PARTICIPATION:

During the development of the proposed amendment, comments on the proposed amendment were solicited from statewide organizations representing parties having an interest in the practice of optometry, including the State Board for Optometry and the New York State Optometric Association, which represent optometrists who live or work in rural areas. Each organization has been provided notice of the proposed rule making and an opportunity to comment.

Job Impact Statement

The proposed amendment establishes and clarifies existing continuing education requirements that must be met by licensed optometrists certified to use therapeutic pharmaceutical agents. The amendment also provides the Commissioner with the flexibility to adjust the continuing education requirements in exceptional situations leading to non-compliance. The State Education Department expects that the proposed amendment will not have a negative impact on the number of jobs or employment opportunities by licensed optometrists, or in any other field. Because it is evident from the nature of the proposed amendment, that it will have no impact on the number of jobs or employment opportunities in the field of optometry or any other field, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

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

Assessment of Public Comment

Comments received by the Department concerning the proposed rule are summarized below, followed by the Department's response.

Comment: A number of individuals and organizations expressed support for the proposed Youth Pheasant Hunting weekend and other efforts to increase youth involvement in hunting. Some offered to assist in its implementation.

Response: The Department acknowledges this support for the proposed regulation.

Comment: The Youth Hunting Weekend should be held later in the fall, when the weather is cooler, especially for the dogs involved.

Response: The Department considered this alternative, but ultimately concluded that a hunt before the regular season had more advantages - the weather is usually better, dog handlers and adult hunters are more readily available to assist, and there are fewer potential conflicts with other hunters.

Comment: Releases on state land might concentrate too many young pheasant hunters. A controlled hunt is the best way to introduce young hunters to pheasant hunting.

Response: Although the Department does not anticipate over-crowding on youth pheasant hunting areas, participation at Department-stocked release sites will be monitored by Department staff.

Comment: Allowing for an early take and earlier dispersal of released birds will diminish opportunities for other hunters.

Response: The Youth Pheasant Hunt will not diminish hunting opportunity during the regular pheasant hunting season. Although stocking allocations will be determined at a later date, only a small proportion of birds produced by the Department will be released for the youth hunts, and by holding the hunts just prior to the regular season, some released birds may still be available to other hunters when the regular season opens.

Comment: Production of pheasants should be increased at the Reynolds Game Farm in order to supply pheasants for the youth pheasant hunt weekends.

Response: Pheasant production, stocking allocations and logistics for the youth pheasant hunt weekend are not part of this rulemaking proposal and will be determined at a later date. However, there are no plans to increase pheasant production at the Reynolds Game Farm at this time, as this would require construction of new brooding and rearing facilities.

Comment: Encouraging youth to hunt pheasants will lead to false expectations that the existing program can not sustain.

Response: The intent of the regulation is not limited to introducing youth to pheasant hunting. The Department hopes that the youth pheasant hunt will enable youth to experience a high quality introduction to small game hunting. The Department provided pheasants for 24 special hunts (mostly youth hunts) during the regular pheasant hunting season in 2006. These hunts were sponsored by sportsmen's organizations and provided great opportunity for more than 600 participants that enjoyed great fun afield. The Department hopes to expand these hunting opportunities by allowing such opportunities to take place during the weekend before the regular pheasant hunting season. There are 116 adult pheasant release sites listed on the Department's website. The Department and its cooperators release approximately 75,000 pheasants annually. All of the above should enable youth to gain valuable and enjoyable small game hunting experience.

Comment: To properly implement this program, there needs to be sufficient advertisement of the pheasant release sites and sufficient law enforcement to minimize poaching.

Response: The Department will advertise youth pheasant hunting opportunities via press releases and our website. The Department's law enforcement staff will be advised of the hunt details and will determine what level of law enforcement presence is appropriate.

Comment: I am against allowing 12 & 13 years olds to hunt, especially before the regular season starts.

Response: By law, licensed Junior Hunters (12-15 year olds) are already permitted to hunt pheasants and other small game in New York. The Department has established youth hunts for turkey and waterfowl. The Department provides youth hunting opportunities to sustain hunting participation, and its associated recreational, wildlife management, and economic benefits to communities. The youth pheasant hunt will add to these benefits.

Department of Environmental Conservation

NOTICE OF ADOPTION

Youth Pheasant Hunt

I.D. No. ENV-43-06-00005-A

Filing No. 1568

Filing date: Dec. 19, 2006

Effective date: Jan. 3, 2007

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

Action taken: Amendment of section 2.25 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0903 and 11-0905

Subject: Youth pheasant hunt.

Purpose: To establish a two-day youth pheasant hunt.

Text or summary was published in the notice of proposed rule making, I.D. No. ENV-43-06-00005-P, Issue of October 25, 2006.

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

The Department received a number of comments in response to the proposed rulemaking that were not relevant to the specific amendments proposed. The substance of these comments is not addressed in this Assessment of Public Comment as such comments fall outside the scope of this rulemaking.

The Department has determined that the proposed regulation should be adopted as originally published.

Department of Health

EMERGENCY RULE MAKING

Serialized Official New York State Prescription Form

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

Filing No. 1557

Filing date: Dec. 13, 2006

Effective date: Dec. 13, 2006

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 forged 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 the 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 implements and utilizes an electronic prescribing system to transmit prescriptions to pharmacies capable of receiving them. 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 Health-care 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 recordkeeping 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 February 10, 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: regsqna@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 center that implement and utilize an electronic prescription system to transmit prescriptions to pharmacies capable of receiving them.

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 saving 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.

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

Types and Estimated Numbers of Rural Areas:

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 pharmacies 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.

AMENDED NOTICE OF ADOPTION

Non-Transplant Anatomic Banks

I.D. No. HLT-20-06-00003-AA

Filing No. 1563

Filing date: Dec. 15, 2006

Effective date: Feb. 24, 2006

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

Action taken: Amendment of Part 52 of Title 10 NYCRR.

Amended action: This action amends the rule that was filed with the Secretary of State on December 12, 2006, to be effective December 27, 2006, File No. 1502. The notice of adoption, I.D. No. HLT-20-06-00003-A, was published in the December 27, 2006 issue of the *State Register*.

Statutory authority: Public Health Law, section 4365(1)

Subject: Establishment of minimum technical requirements for non-transplant anatomic banks.

Purpose: To refine the definition of non-transplant anatomic banks; eliminate any regulatory confusion; and establish certain technical requirements that reflect current standards of practice at non-transplant anatomic banking facilities.

Substance of amended rule: This amendment to Part 52 changes existing definitions and adds new definitions to reflect currently accepted nomenclature, and provide needed clarification and consistency specific to the regulation of nontransplant anatomic banks. In addition, the new Subpart 52-11 enables the Department to establish needed technical standards for nontransplant anatomic banks.

The amendment fine tunes the definition of nontransplant anatomic bank to eliminate any regulatory confusion, decrease the likelihood of misinterpretation by regulated parties, and clarify licensure requirements for nontransplant anatomic banks located outside New York State. Exclusion from licensure as a nontransplant anatomic bank are clarified.

The amendment includes a new Subpart 52-11, which establishes minimum technical standards for nontransplant anatomic banks. The terms whole body, whole body acquisition service, whole body user, and body segment are defined.

The amendment specifies informed consent requirements for nontransplant anatomic banks that recover nontransplant anatomic parts (whole bodies, body segments, organs and/or tissues) for use in research and education. Consent must be documented, and any restrictions on the use of the gift, specified by the donor or donating next of kin, must be honored by the nontransplant anatomic bank. Requirements for documenting the consent, including those consents obtained by telephone, are specified.

The amendment requires the retrieval or acquisition of nontransplant anatomic parts to be performed on the premises of a general hospital, a nontransplant anatomic bank licensed in the category of whole body acquisition service, or, for nontransplant anatomic parts other than whole bodies and body segments, a licensed comprehensive tissue procurement service.

Whole bodies, body segments, or other nontransplant anatomic parts are to be retrieved, acquired, distributed, transported, or used for purposes authorized by Public Health Law Section 4302.

Minimum staffing requirements for whole body acquisition services and whole body users are set forth. Included is a provision that permits individuals who do not meet educational requirements, but who serve as director of a whole body acquisition service at the time of adoption of this amendment, to continue as director.

Facility requisites for whole body acquisition services and whole body users are specified. The amendment requires that whole body acquisition services and whole body users have dedicated, secure and restricted space, or approved offsite locations for preparation of whole bodies and body segments for research and/or education purposes. Access to such space must be limited to individuals directly associated with receipt and preparation of whole bodies or body segments. Minimum requirements for preparation and storage space include: a working sink; adequate counter space; suitable space for storage of chemicals; counters, tables and cabinetry built of material that may be easily disinfected and cleaned; a dedicated, refrigerated room, walk-in cooler, or cadaver drawer cooler for the storage of whole bodies and body segments; U.S. Occupational and Health Administration (OSHA)-approved eye wash stations and devices for handling, lifting and internal transporting of whole bodies and body segments; and a morgue and/or crematory compliant with federal and state standards for embalming and cremation, if embalming and/or cremation services are performed.

Recordkeeping requirements, supplemental to those already detailed in Section 52-2.9(i), are specified.

The amendment includes provisions for the appropriate transfer of whole bodies, body segments, or other nontransplant anatomic parts in compliance with existing State standards for such transfer.

The amendment outlines requirements for the disposition of nontransplant anatomic parts, including whole bodies and body segments, once their use in education and research is concluded.

The amendment requires nontransplant anatomic banks to implement written safety and infection control policies and procedures to ensure protection of employees from unnecessary physical, chemical and biological hazards. Requisites are detailed for decontamination and disposal techniques for regulated medical waste as well as use of autoclave equipment. Restrictions on eating, drinking, smoking, and the application of cosmetics in work areas, and the use of gloves, laboratory coats, gowns or other protective clothing are imposed.

Finally, reporting requirements are set forth, consistent with those already in effect for licensed tissue banks. The amendment requires nontransplant anatomic bank directors to report to the Department certain information and data regarding the bank's activities.

Amended rule as compared with adopted rule: The effective date of the rule was changed.

Text of amended 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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Although the regulation has been changed since it was published in the *State Register* on May 17, 2006, the changes do not necessitate any changes to the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

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

Conditions of Citizenship and Immigration Eligibility

I.D. No. HLT-01-07-00008-P

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

Proposed action: Amendment of section 360-3.2(j) of Title 18 NYCRR.

Statutory authority: Social Services Law, section 363-a(2)

Subject: Citizenship and immigration status: conditions of eligibility.

Purpose: To update and bring them into compliance with the *Alliessa v. Novello* decision.

Text of proposed rule: Subdivision (j) of section 360-3.2 of Title 18 NYCRR is repealed and a new subdivision (j) is added to read as follows:

(j) *Citizenship and immigration status.*

(1) *Definitions.* (i) *Qualified immigrants.*

The term *qualified immigrant* includes the following categories of aliens:

(a) *refugees admitted under section 207 of the Immigration and Nationality Act;*

(b) *asylees granted asylum under section 208 of the Immigration and Nationality Act;*

(c) *aliens whose deportation was withheld under section 241(b)(3) or 243(h) of the Immigration and Nationality Act;*

(d) *Cuban and Haitian entrants (as defined in section 501(e) of the Refugee Education Assistance Act of 1980), including all Cuban or Haitian parolees;*

(e) *aliens admitted into the United States as Amerasian immigrants as described in section 402(a)(2)(A)(v) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. Section 1612(a)(2)(A)(v));*

(f) *aliens lawfully admitted for permanent residence in the United States;*

(g) *aliens paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act for a period of at least one year, except Cuban or Haitian parolees;*

(h) *aliens granted conditional entry into the United States under section 203(a)(7) of the Immigration and Nationality Act;*

(i) *battered spouses and dependents meeting the criteria of section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. Section 1641(c));*

(j) *aliens on active duty, other than active duty for training, in the United States Armed Forces or who are veterans who have received a discharge characterized as honorable and not on account of alienage, or the spouse, unmarried surviving spouse or unmarried dependent child of any such alien;*

(k) *Canadian born Native Americans;*

(l) *Native Americans belonging to a federally recognized tribe who were born outside the United States; and*

(m) *victims of a severe form of trafficking under section 107(b) of the Trafficking Victims Protection Act of 2000 (P.L. 106-386).*

(ii) *Permanently Residing Under Color of Law (PRUCOL).* The term *PRUCOL alien* means an alien who is residing in the United States with the knowledge and permission or acquiescence of the federal immigration agency and whose departure from the U.S. such agency does not contemplate enforcing. An alien will be considered as one whose departure the federal immigration agency does not contemplate enforcing if, based on all the facts and circumstances in a particular case, it appears that the federal immigration agency is otherwise permitting the alien to reside in the United States indefinitely or it is the policy or practice of such agency not to enforce the departure of aliens in a particular category. The following categories of aliens are PRUCOL:

(a) *aliens paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act for less than one year;*

(b) *aliens residing in the United States pursuant to an Order of Supervision;*

(c) *deportable aliens residing in the United States pursuant to an indefinite stay of deportation;*

(d) *aliens residing in the United States pursuant to an indefinite voluntary departure;*

(e) *aliens on whose behalf an immediate relative petition has been approved, and members of their families covered by the petition, who are entitled to voluntary departure and whose departure the federal immigration agency does not contemplate enforcing;*

(f) *aliens who have filed an application for adjustment to lawful permanent resident status pursuant to section 245 of the Immigration and Nationality Act, whose application the federal immigration agency has accepted as properly filed or has granted, and whose departure the federal immigration agency does not contemplate enforcing;*

(g) *aliens granted stays of deportation by court order, statute or regulation or by individual determination of the federal immigration agency pursuant to section 243 of the Immigration and Nationality Act, whose departure the federal immigration agency does not contemplate enforcing;*

(h) *aliens granted voluntary departure status pursuant to section 242(b) of the Immigration and Nationality Act whose departure the federal immigration agency does not contemplate enforcing;*

(i) *aliens granted deferred action status;*

(j) *aliens who entered and have continuously resided in the United States since before January 1, 1972;*

(k) *aliens granted suspension of deportation pursuant to section 244 of the Immigration and Nationality Act whose departure the federal immigration agency does not contemplate enforcing; and*

(l) *any other alien living in the United States with the knowledge and permission or acquiescence of the federal immigration agency and whose departure such agency does not contemplate enforcing.*

(iii) *Emergency medical condition. The term emergency medical condition means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:*

(a) *placing the person's health in serious jeopardy;*

(b) *serious impairment to bodily functions; or*

(c) *serious dysfunction of any bodily organ or part.*

(2) *Eligibility for Medical Assistance. (i) The following persons, if otherwise eligible, are eligible for medical assistance:*

(a) *citizens, qualified immigrants and PRUCOL aliens;*

(b) *any alien who, on August 4, 1997, resided in a residential health care facility licensed by the department or in a residential facility licensed, operated or funded by the office of mental health or the office of mental retardation and developmental disabilities, and was in receipt of a medical assistance authorization based on a finding that such alien was PRUCOL; and*

(c) *any alien who, on August 4, 1997, was diagnosed as having acquired immune deficiency syndrome, as defined in subdivision one of section two thousand seven hundred eighty of the public health law, and was in receipt of a medical assistance authorization based on a finding that such alien was PRUCOL.*

(ii) *Aliens other than those specified in subparagraph (i) of this paragraph, if otherwise eligible, are eligible for medical assistance only for care and services (not including care and services related to an organ transplant procedure) necessary for the treatment of an emergency medical condition. Nothing in this subparagraph shall be interpreted as affecting the eligibility for pre-natal care benefits for aliens otherwise eligible for such benefits.*

(3) *Other requirements. (i) Except as provided in subparagraph (ii) of this paragraph, an applicant for, or recipient of, medical assistance must provide:*

(a) *evidence of his or her citizenship or status as a qualified immigrant or PRUCOL alien; and*

(b) *a social security number or documentation that such person has applied for a social security number.*

(ii) *The requirements of subparagraph (i) of this paragraph do not apply to the following persons:*

(a) *aliens seeking medical assistance for the treatment of an emergency medical condition; and*

(b) *pregnant women for the duration of the pregnancy and the sixty day period that begins on the last day of the pregnancy and including, but not exceeding, the last day of the month in which the sixty day post-partum period ends.*

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

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

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law ("SSL") Section 363-a(1) provides that the Department is the "single state agency" responsible for supervising the administration of the State's medical assistance ("Medicaid") plan. As such, the Department is responsible for adopting such regulations, not inconsistent with law, as may be necessary to implement SSL Title 11, Article 5, entitled "Medical Assistance for Needy Persons" (SSL Section 363-a(2)). Section 201(1)(v) of the Public Health Law ("PHL") is in accord, providing that the Department, as the Medicaid "single state agency," shall adopt such regulations as may be necessary to implement the State's Medicaid plan.

SSL Section 122(1)(c) provides that the following persons shall, if otherwise eligible, be eligible for Medicaid: any person who, on August 4, 1997, was residing in a residential health care facility licensed by the

Department or in a residential facility licensed, operated or funded by the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities, and was in receipt of a Medicaid authorization based on a finding that he or she was a person "permanently residing in the United States under color of law" ("PRUCOL"); and, any person who, on August 4, 1997, was diagnosed as having acquired immune deficiency syndrome, as defined in PHL Section 2780(1), and was in receipt of a Medicaid authorization based on a finding that he or she was PRUCOL.

SSL Section 122(1)(e) provides that nothing in such section shall preclude the receipt by any alien of Medicaid for care and services (not including care and services related to an organ transplant procedure) necessary to treat an emergency medical condition as that term is defined in section 1903 of the federal Social Security Act (42 U.S.C. Section 1396b(v) (3)).

SSL Section 122(6) provides that nothing in such section shall be interpreted as affecting the eligibility for pre-natal care benefits for persons otherwise eligible for such benefits.

Social Security Act Section 1137(f) (42 U.S.C. Section 1320b-7(f)) exempts aliens seeking Medicaid coverage only for care and services necessary to treat an emergency medical condition from the requirement that applicants for, or recipients of, Medicaid must furnish a social security number.

The proposed regulations set forth eligibility standards for social services districts, which administer the Medicaid program, to apply when determining whether citizens, lawful aliens and other aliens are eligible for Medicaid and, if so, the scope of the Medicaid benefits that they may receive. The Department's statutory rulemaking authority as the "single state agency" responsible for supervising districts' administration of the Medicaid program thus authorizes the proposed regulations.

Legislative Objectives:

The proposed regulations would revise the Department's regulations governing aliens' Medicaid eligibility to be consistent with the June 5, 2001, decision of the New York Court of Appeals in *Aliessa v. Novello*, 96 N.Y. 2d 418 (2001) and the Department's implementation of such decision. The proposed regulations thus further the Legislature's objective that the Department's regulations governing the administration of the Medicaid program be consistent with law, including final decisions of the State's highest appellate court, the Court of Appeals.

The *Aliessa* decision resolved several years of State court litigation regarding the constitutionality of the restrictions on lawful aliens' Medicaid eligibility set forth in SSL Section 122. The Legislature enacted this statute in 1997 to implement the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), which dramatically changed lawful aliens' eligibility for Medicaid and other public benefit programs. (P. L. 104-193)

Prior to PRWORA, aliens' eligibility for Medicaid was governed, in general, by the federal Omnibus Budget Reconciliation Act of 1986 ("OBRA '86," P. L. 99-509) and the Immigration Reform and Control Act of 1986 ("IRCA," P. L. 99-603). Under OBRA '86 and its implementing regulations, state Medicaid programs were required to provide Medicaid to otherwise eligible aliens who were either lawfully admitted for permanent residence ("green card" holders) or who were "permanently residing in the United States under color of law" ("PRUCOL"). (42 U.S.C. Section 1396b(v), 42 C.F.R. Sections 435.406(a)(2), 435.408) Under IRCA and its implementing regulations, full Medicaid eligibility was extended to certain categories of aliens, including the aged, blind and disabled, who were granted temporary resident status under Sections 245A, 210A or 210 of the Immigration and Nationality Act. (8 U.S.C. Section 1255(a)(h), 42 C.F.R. Sections 435.406(a)(3), (4)) Other temporary lawful aliens were ineligible under IRCA for full Medicaid benefits for five years. (42 C.F.R. Section 435.406(b)) During this five year period, these lawful aliens were eligible only for Medicaid coverage for care and services related to the treatment of an emergency medical condition and for services for pregnant women. (42 C.F.R. Sections 435.406(b), 440.255) Undocumented and otherwise illegal aliens were eligible only for Medicaid coverage of services necessary to treat an emergency medical condition. (42 U.S.C. Section 1396b(v))

State law and regulations mirrored the federal requirements governing aliens' Medicaid eligibility that were prescribed by OBRA '86 and IRCA. (SSL Section 131-k(1), repealed by L. 1997, c. 436, pt. B, Section 15, effective August 20, 1997; 18 NYCRR Section 360-3.2(j))

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 curtailed lawful aliens' eligibility for Medicaid as well as other public benefit programs. With respect to Medicaid, aliens are generally classified into two categories: "qualified aliens" and "non-qualified aliens." The term "qualified alien" includes, but is not limited to, aliens

who are lawfully admitted for permanent residence, granted asylum, designated as refugees, paroled into the United States for at least one year, or who have had their deportation withheld. (8 U.S.C. Sections 1641(b),(c)) Under PRWORA, certain qualified aliens are eligible for Medicaid coverage of all care and services, while other qualified aliens are ineligible for full Medicaid coverage for five years. Whether a qualified alien is entitled to full Medicaid coverage under PRWORA depends, in the first instance, on whether he or she entered the United States prior to August 22, 1996, the date of the federal law's enactment. Some, but not all, qualified aliens who were lawfully present in the United States prior to August 22, 1996, are eligible under PRWORA for full Medicaid benefits. (8 U.S.C. Section 1612(b)(2)) With certain exceptions, qualified aliens who entered the United States on or after August 22, 1996, are ineligible under PRWORA for Medicaid for five years. (8 U.S.C. Section 1613(a)) During this five year period, these qualified aliens are eligible only for Medicaid coverage of care and services related to treatment of an emergency medical condition. (8 U.S.C. Section 1613(c)(2)(A)) Other qualified aliens who entered the United States on or after August 22, 1996, are exempt from the five year ban on Medicaid eligibility. (8 U.S.C. Section 1613(b)) All other aliens are "non-qualified aliens" and, under PRWORA, are eligible only for Medicaid coverage of services necessary to treat an emergency medical condition. (8 U.S.C. Section 1611(b)(1)(A))

To implement the changes in Medicaid and other public benefit programs mandated by PRWORA, the Legislature enacted SSL Section 122 effective August 4, 1997. As a general rule, the State law's provisions respecting aliens' Medicaid eligibility are fully consistent with the federal law. This meant that certain qualified aliens who entered the United States on or after August 22, 1996, were temporarily disqualified from receiving Medicaid for five years. (SSL Section 122(1)(c)(i)) During this five year period, these qualified aliens were eligible only for Medicaid coverage of care and services necessary to treat an emergency medical condition. Aliens who were PRUCOL were now largely ineligible for Medicaid although they could, if otherwise eligible, receive Medicaid coverage of care and services necessary to treat an emergency medical condition. (SSL Section 122(1)(c)(ii)) An exception applied to nursing home residents and AIDS patients. The Legislature extended full Medicaid eligibility, payable solely from State and local monies, to nursing home residents and AIDS patients who were receiving Medicaid as of August 4, 1997, based upon their status as PRUCOL aliens. (SSL Section 122(1)(c))

In 1998, a proposed class of lawful aliens who were no longer eligible for Medicaid as a result of SSL Section 122 sued the Department, challenging the constitutionality of the State law's restrictions on Medicaid eligibility. On June 5, 2001, the New York Court of Appeals, in *Aliessa v. Novello*, held that SSL Section 122 violated Article XVII, Section 1, of the New York State Constitution (the "Aid to the Needy clause") and the Equal Protection Clauses of the New York State and United States Constitutions to the extent that the State law denied Medicaid benefits to otherwise eligible aliens who were lawfully residing in New York State. This includes PRUCOL aliens and those qualified aliens who, under PRWORA, are subject to the five year ban on Medicaid eligibility. As a result of the Aliessa decision, social services districts could no longer deny Medicaid based on SSL Section 122 to otherwise eligible lawful aliens. These aliens are eligible to receive the full range of medically necessary care and services included in the State's Medicaid program.

The Legislature has not yet amended SSL Section 122 to reflect the Aliessa decision. The Department, however, is charged with the responsibility for promulgating such regulations as are necessary to implement the State's Medicaid plan in accordance with State law, which includes decisions of the State's highest appellate court, the Court of Appeals, respecting Medicaid eligibility.

Needs and Benefits:

Shortly after the Aliessa decision was issued, the Department advised social services districts of the Aliessa decision and that, effective June 1, 2001, districts must not deny or discontinue Medicaid benefits based on SSL Section 122 to otherwise eligible lawful aliens. Since that time, the Department has issued several additional directives to social services districts regarding their implementation of the Aliessa decision. The Department's regulations applicable to aliens' Medicaid eligibility are obsolete, however. These regulations, which are set forth at 18 NYCRR Section 360-3.2(j), do not accurately reflect the current Medicaid eligibility standards for aliens, as mandated by the Aliessa decision and the Department's directives to social services districts implementing such decision. The proposed regulations would repeal and reenact 18 NYCRR Section 360-3.2(j) to conform the Department's regulations to the Aliessa decision, as implemented by the Department since June 2001.

The proposed regulations implement the Aliessa decision by providing that qualified immigrants and PRUCOL aliens are eligible for Medicaid if they meet the program's other eligibility requirements. The term "qualified immigrant" is not a federal or State statutory term. Rather, the term "qualified immigrant," as used in the Department's policy directives and in the proposed regulations, refers to those aliens who are "qualified aliens" within the meaning of PRWORA. Under PRWORA, certain of these qualified aliens are eligible only for emergency Medicaid coverage for five years. The proposed regulations make no such distinction. Each of the groups of "qualified immigrants" listed in the proposed regulation, may, if otherwise eligible, receive Medicaid coverage for all medically necessary care and services, not just services necessary to treat an emergency medical condition. The same is true for each category of PRUCOL aliens listed in the proposed regulations.

The proposed regulations re-enact the limitation on Medicaid eligibility for undocumented aliens and all other aliens who are not qualified immigrants or PRUCOL aliens. The Aliessa decision did not address such aliens' Medicaid eligibility and they continue to remain eligible only for Medicaid coverage of care and services related to the treatment of an emergency medical condition. An exception applies to pregnant women, who may receive pre-natal care benefits, if otherwise eligible, as required pursuant to SSL Section 122(6).

Costs:

Costs to Regulated Parties:

The proposed rules would not result in additional costs to regulated parties.

Costs to State and Local Governments:

The proposed rule, which amends the Department's regulations to reflect the Aliessa decision, will not, by itself, result in additional costs to State and local governments. However, State and local governments have incurred additional Medicaid costs to comply with the Aliessa decision. These costs are funded solely through State and local Medicaid funds. Under the federal Personal Responsibility and Work Opportunity Reconciliation Act, the lawful aliens to whom the Aliessa decision applies are "non-qualified aliens" and, as such, are not eligible for federally funded Medicaid, with the exception of care and services necessary to treat an emergency medical condition. The cost of all other medically necessary non-emergency care and services for which Aliessa aliens are eligible must thus be funded solely through State and local monies. In general, the State and local governments' shares of such costs are evenly split; however, the State pays a greater share of the cost of certain long term care services, such as nursing home care, personal care services and home health services, pursuant to SSL Section 368-a(1)(g).

For State Fiscal Year ("SFY") 2003-'04, which is the most recent fiscal year for which Medicaid expenditure data attributable to Aliessa are fully available, the Department estimates that the total cost to the State and to local governments of providing non-emergency Medicaid benefits to lawful aliens pursuant to the Aliessa decision was approximately \$445.4 million. Of this amount, the State share is estimated to be approximately \$234.7 million and the local share is estimated to be approximately \$210.7 million. These cost estimates reflect costs that State and local governments expended for Medicaid services provided to lawful aliens who received traditional fee-for-service Medicaid as well as costs expended for Medicaid services provided to lawful aliens who were enrolled in Medicaid managed care plans and in Family Health Plus. The Department estimates that an average monthly total of 102,593 lawful aliens received Medicaid services under these programs in SFY 2003-'04. Certain of these aliens also received Medicaid coverage during this period for care and services necessary to treat an emergency medical condition, for which federal reimbursement of approximately \$4.4 million was available. The estimated total cost to the State and local governments of approximately \$445.4 million for SFY 2003-'04 reflects the cost of Medicaid services for which no federal reimbursement is available.

Preliminary data for SFY 2004-'05 suggest that the total cost to the State and local governments of providing non-emergency Medicaid to lawful aliens pursuant to Aliessa will be approximately \$472.7 million. Of this amount, the State share is estimated to be approximately \$262.4 million and the local share is estimated to be approximately \$210.3 million. The Department estimates that an average monthly total of 138,383 lawful aliens received Medicaid services during SFY 2004-'05, whether from traditional fee-for-service Medicaid, managed care or Family Health Plus. Again, certain of these aliens also received Medicaid coverage for care and services necessary to treat an emergency medical condition, for which federal reimbursement is available.

Costs to the Department:

The proposed rules would not result in additional costs to the Department.

Local Government Mandates:

Under this State's Medicaid program, social services districts generally determine whether applicants for, and recipients of, Medicaid are eligible to receive, or to continue to receive, Medicaid coverage. The proposed regulations codify eligibility standards that districts must follow when determining aliens' eligibility for Medicaid. The Department has issued policy directives to social services districts that implement the Aliessa decision and that reflect the proposed regulation's requirements. Accordingly, social services districts have been responsible for adhering to these eligibility standards. The proposed regulations would not impose any further or additional mandates upon districts.

Paperwork:

Certain qualified immigrants, as defined in the proposed regulations, become eligible for federally-funded Medicaid only after five years. At the end of the five year period, social services districts are responsible for transitioning these cases to maximize federal reimbursement. This process is invisible to the recipient and is intended only to secure federal financial reimbursement, when available. The Department has instructed social services districts regarding their obligations in this regard. The proposed regulations do not otherwise impose any new forms, reporting or other paperwork requirements.

Duplication:

The proposed regulations do not duplicate or overlap any existing State or federal requirement. The proposed regulations may conflict with a provision of the federal Personal Responsibility and Work Opportunity Reconciliation Act. Non-emergency Medicaid care and services provided to Aliessa aliens is funded solely by State and local Medicaid funds. However, PRWORA provides that aliens who are not "qualified aliens" are ineligible for any "state or local public benefit" except through enactment of a state law after August 22, 1996, that affirmatively provides for such eligibility. (8 U.S.C. Section 1621) Although the Legislature has not enacted such a law, the State's Medicaid program may not, consistent with the State Constitution, lawfully deny State and local funded Medicaid benefits to otherwise eligible PRUCOL aliens who, although not "qualified aliens" within the meaning of the federal act, are nonetheless encompassed by the Aliessa decision.

Alternatives:

There are no significant alternatives to the proposed regulations. The Department's regulations applicable to aliens' Medicaid eligibility are obsolete and should be revised to reflect current eligibility standards that the Department has instructed social services districts to follow when complying with the Aliessa decision.

Federal Standards:

Federal standards governing aliens' Medicaid eligibility are set forth in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The proposed regulations exceed these standards to the extent of extending Medicaid eligibility to otherwise eligible lawful aliens who are ineligible for federally funded Medicaid benefits.

Compliance Schedule:

Social services districts have been instructed to comply with the eligibility standards set forth in the proposed regulations and will thus be able to comply with the proposed regulations when they become effective.

Regulatory Flexibility Analysis

Effect of rule:

The proposed regulations would affect local governments that are social services districts. There are fifty-seven county social services districts and one city social services district. (Social Services Law ("SSL") Section 61) These social services districts are generally responsible for determining whether Medicaid applicants and recipients meet the program's financial and other applicable eligibility requirements. (SSL Sections 365-a, 366, 366-a). One such eligibility requirement applies to alienage, which the proposed regulations address.

Compliance requirements:

Social services districts would be required to apply the standards set forth in the proposed regulations when determining whether aliens are eligible for Medicaid and, if so, the scope of Medicaid care and services they may receive. This is not a new compliance requirement. To implement the New York Court of Appeals decision in *Aliessa v. Novello*, 96 N.Y. 2d 418 (2001), the Department has issued directives to social services districts advising them how they must determine whether lawful aliens are eligible for Medicaid consistent with the Aliessa decision. Accordingly, social services districts should be fully familiar with these standards.

Professional services:

The proposed regulations would not require social services districts to employ additional professional services.

Compliance costs:

Pursuant to SSL Section 368-a, social services districts are responsible for a portion of the Medicaid costs for services provided to lawful aliens who are qualified immigrants or PRUCOL aliens, as defined in the proposed regulations. For State Fiscal Year ("SFY") 2003-'04, which is the most recent fiscal year for which Medicaid expenditure data attributable to Aliessa are fully available, the Department estimates that the total cost to social services districts of providing non-emergency Medicaid to lawful aliens was approximately \$210.7 million. Preliminary data for SFY 2004-'05 suggest that the total cost to social services districts of providing such Medicaid is approximately \$210.3 million. Compliance costs will vary among social services districts depending upon the number of lawful aliens who reside in a district and whom the district determines to be eligible for Medicaid coverage of medically necessary care and services.

Economic and technological feasibility:

The proposed regulations are economically and technologically feasible.

Minimizing adverse impact:

Social services districts must determine Medicaid eligibility for aliens by applying eligibility standards that are consistent with State law as interpreted by the State's highest appellate court in the Aliessa decision. The Department has endeavored to limit the adverse impact upon social services districts through the issuance of comprehensive directives that instruct districts regarding how they must determine Medicaid eligibility for lawful aliens consistent with the Aliessa decision. On several occasions, the Department has also conducted training for social services district staff on Medicaid eligibility for aliens.

Small business and local government participation:

Social services district staff participated in the training sessions that the Department conducted. These training sessions, and the material that the Department distributed at such sessions, addressed Medicaid eligibility for aliens in a manner consistent with the proposed regulations.

Rural Area Flexibility Analysis

Types and estimated numbers of rural areas:

The proposed regulations would affect county social services districts in rural areas.

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

Social services districts would be required to apply the standards set forth in the proposed regulations when determining whether aliens are eligible for Medicaid as qualified immigrants or PRUCOL aliens. Social services districts would also be responsible assuring that the Medicaid cases of those qualified immigrants whose Medicaid benefits become eligible for federal financial participation after five years are appropriately transitioned to assure maximum federal reimbursement. The proposed regulations do not otherwise impose any reporting, recordkeeping or compliance requirements. Nor would the proposed regulations require social services districts to employ additional professional services.

Costs:

All social services districts, including county social services districts in rural areas, are responsible for a portion of the Medicaid costs for services provided to lawful aliens who are qualified immigrants or PRUCOL aliens.

Minimizing adverse impact:

All social services districts, rural and urban, must determine Medicaid eligibility consistent with the Court of Appeals decision in *Aliessa v. Novello*, 96 N.Y. 2d 418 (2001), which the proposed regulations reflect. Demographics, however, may result in a diminished effect upon rural social services districts. It is likely that the proposed regulations would have a greater impact upon social services districts located in metropolitan social services districts, such as New York City, that have a larger immigrant population than do rural social services districts.

Rural area participation:

County social services districts located in rural areas participated in training sessions that the Department conducted to familiarize districts with Medicaid eligibility requirements for lawful aliens in the wake of *Aliessa*.

Job Impact Statement

The proposed regulations would provide for Medicaid eligibility for aliens consistent with current practice and the decision of the New York Court of Appeals in *Aliessa v. Novello*, 96 N.Y.2d 418 (2001).

The proposed regulations would not have a substantial adverse impact on jobs and employment opportunities.

Insurance Department

EMERGENCY RULE MAKING

Rules Governing Individual and Group Accident and Health Insurance Reserves

I.D. No. INS-01-07-00004-E

Filing No. 1562

Filing date: Dec. 15, 2006

Effective date: Dec. 15, 2006

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

Action taken: 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

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

Specific reasons underlying the finding of necessity: Regulation No. 56 was originally effective August 18, 1971 in its present form and has not been substantively amended since that time. In the intervening 31 years, the National Association of Insurance Commissioners has adopted new reserving tables for individual and group disability income insurance policies, popularly referred to as the Commissioners' Disability Tables ("CDT"). The current CDT was adopted in 1986 and is used widely across the country as the standard for holding reserves for individual and group disability insurance policies. It reflects both modern morbidity and claims experience and the judgement of actuaries and regulators who are knowledgeable about the current state of the disability insurance market.

However, New York authorized insurers are required to use the 1964 CDT because it was required by Regulation No. 56 (see, e.g., 11 NYCRR Part 94.1(a)(4)(iii)(A)). Also, Regulation No. 56 did not apply to group insurance, providing little or no guidance to New York insurers that write this important form of protection. The effect of the application of this outdated regulation is that New York authorized insurers are required to hold reserves far in excess of the national standard for disability insurance active lives reserves, but below the prevailing standard for claims reserves. Most New York authorized insurers hold reserves in excess of the amount needed to pay claims due to the required use of the outdated tables. For these insurers, the adoption of the more recent tables will significantly reduce the cost of doing business and allow them to compete more effectively with insurers that are not subject to New York standards and to pass the cost savings on to consumers. For some insurers, this regulation may require an increase in reserves especially for coverages such as group health insurance for which there had been no standards previously. The adoption of these standards will help to ensure that such insurers remain financially capable of paying claims as they come due.

New York authorized insurers must file quarterly financial statements based upon minimum reserve standards in effect on December 31, 2006. The filing date for the December 31, 2006 annual statement is March 1, 2007. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner.

For all of the reasons stated above, an emergency adoption of this new Regulation No. 56 is necessary for the general welfare.

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.

Substance of emergency 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 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.

Section 94.12 establishes the severability provision of the regulation.

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 March 14, 2007.

Text of emergency 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

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 emergency 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 may linearly interpolate, over a four year period, between the higher reserves and those calculated based on the year-end 2002 standards. Insurers must be in full compliance with this Part by year-end 2006. This allows insurers subject to the regulation ample time to achieve full compliance.

Regulatory Flexibility Analysis

1. Small businesses:

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all insurance companies licensed to do business in New York State, none of which fall within the definition of "small business" as found in Section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and believes that none of them fall within the definition of "small business", because there are none which are both independently owned and have under one hundred employees.

2. Local governments:

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

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

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

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

The 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 June 28, 2006 issue of the State Register.

Job Impact Statement

Nature of impact:

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This regulation sets standards for setting 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.

Office of Mental Health

EMERGENCY RULE MAKING

Comprehensive Psychiatric Emergency Program Rates

I.D. No. OMH-01-07-00001-E

Filing No. 1558

Filing date: Dec. 13, 2006

Effective date: Dec. 13, 2006

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

Action taken: Amendment of Part 591 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b) and 31.04(a)

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

Specific reasons underlying the finding of necessity: These changes must be made immediately in order to avoid a reduction in comprehensive psychiatric emergency program services which would otherwise take place.

Subject: Comprehensive Psychiatric Emergency Program (CPEP) rates.

Purpose: To increase the Medicaid reimbursement rates associated with CPEP programs.

Text of emergency rule: Section 591.5 of Part 591 of 14 NYCRR is amended as follows:

§ 591.5 Reimbursement for comprehensive psychiatric emergency programs and suburban/rural comprehensive psychiatric emergency programs.

Reimbursement for comprehensive psychiatric emergency programs and suburban/rural comprehensive psychiatric emergency programs under the medical assistance program shall be in accordance with the following fee schedule:

Brief emergency visit	\$[76.00]	80.18
Full emergency visit	[445.00]	470.82
Crisis outreach service visit	[445.00]	470.82
Interim crisis service visit	[445.00]	470.82

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 March 12, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Dan Odell, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 473-6945, e-mail: dodell@omh.state.ny.us

Regulatory Impact Statement

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

Subdivision (a) of Section 31.04 of the Mental Hygiene Law empowers the Commissioner to issue regulations setting standards for licensed programs for the provision of services for persons with mental illness.

2. Legislative objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs.

3. Needs and benefits: These amendments provide a cost of living adjustment (COLA) for the Office of Mental Health's Comprehensive

Psychiatric Emergency Program (CPEP). Such COLA is required by Chapter 54 of the Laws of 2006, the enacted budget for State Fiscal Year 2006-07. The language authorizing the COLA for CPEP and certain other programs appears on pages 274-275 of Chapter 54 of the Laws of 2006. As required by the language of the enacted state budget, these rate increases have been approved by the Director of the Division of the Budget.

4. Costs:

a) Costs of regulated parties: There are no costs to providers associated with these amendments.

b) Costs to State and Local government and the agency: Implementation of the amendment to the Comprehensive Psychiatric Emergency Program rate has been budgeted to cost New York State \$117,943 annually, and appropriations for the state share of medicaid are included on page 273, line 20, of Chapter 54 of the Laws of 2005. There are no costs to local government.

5. Local government mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not increase the paperwork requirements of affected providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The only alternative to the regulatory amendment which was considered was inaction. This alternative was rejected as inconsistent with statutory requirements of the enacted budget.

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

10. Compliance schedule: These regulatory amendments will be effective upon their adoption, and shall be deemed to have been effective on and after October 1, 2006.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rule will not impose a significant economic impact on small businesses, or local governments. The rate increase associated with this rule is required by state statute, the enacted state budget for state fiscal year 2006-2007.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules will not impose any adverse economic impact on rural areas. This rule impacts Comprehensive Psychiatric Emergency Program (CPEP) rates. The impact of the rate change will be to increase the medicaid reimbursement rates associated with CPEP programs in rural and non-rural areas. This will support the continued provision of these vital programs which serve children, adolescents and adults.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is apparent from the nature and purpose of this rule that it involves adjustments to financing mechanisms for existing outpatient treatment programs and will not have a substantial adverse impact on jobs and employment activities.

EMERGENCY RULE MAKING

Medical Assistance Payment for Outpatient Programs

I.D. No. OMH-01-07-00011-E

Filing No. 1566

Filing date: Dec. 19, 2006

Effective date: Dec. 19, 2006

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

Action taken: Amendment of Part 588 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 7.09(b) and 31.04(a)

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

Specific reasons underlying the finding of necessity: These amendments increase the medicaid rate schedule associated with clinic treatment programs and day treatment programs serving children, equalize reimbursement fees for certain outpatient programs, and make certain other changes consistent with the enacted 2005-2006 state budget and the enacted 2006-2007 state budget. These changes will avoid a reduction in services that would otherwise take place.

Subject: Medical assistance payment for outpatient programs.

Purpose: To increase certain medicaid rate schedules and make other changes consistent with the enacted 2005-2006 and 2006-2007 state budgets.

Text of emergency rule: Part 588 of 14 NYCRR is amended as follows:

Subdivision (a) of Section 588.13 is amended to read as follows:

(a) Reimbursement under the medical assistance program for outpatient programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title which serve adults with a diagnosis of mental illness and children with a diagnosis of emotional disturbance shall be in accordance with the following fee schedule. This section shall not apply to programs licensed by both the Office of Mental Health and the Department of Health.

(1) Reimbursement under the medical assistance program for clinic treatment programs [operated by agencies which received State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City.] shall be in accordance with the following fee schedule. Such reimbursement shall be adjusted pursuant to [Section 579.7] subdivisions (i),(j) and (k) of this [Title] Section.

(i) For programs operated in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Putnam, Rockland and Westchester counties:

Regular at least 30 minutes [\$66.00] \$71.94
Brief at least 15 minutes [33.00] 35.97
Group at least 60 minutes [23.10] 25.18
Collateral at least 30 minutes [66.00] 71.94
Group Collateral at least 60 minutes [23.10] 25.18
Crisis at least 30 minutes [66.00] 71.94

(ii) For programs operated in Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming and Yates counties:

Regular at least 30 minutes [\$59.40] \$64.75
Brief at least 15 minutes [29.70] 32.37
Group at least 60 minutes [20.79] 22.66
Collateral at least 30 minutes [59.40] 64.75
Group Collateral at least 60 minutes [20.79] 22.66
Crisis at least 30 minutes [59.40] 64.75

(iii) For programs operated in Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Albany, Columbia, Dutchess, Greene, Orange, Rensselaer, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren and Washington counties:

Regular at least 30 minutes [\$58.30] \$63.55
Brief at least 15 minutes [29.15] 31.77
Group at least 60 minutes [20.41] 22.25
Collateral at least 30 minutes [58.30] 63.55
Group Collateral at least 60 minutes [20.41] 22.25
Crisis at least 30 minutes [58.30] 63.55

(2) [Reimbursement under the medical assistance program for clinic treatment programs operated by providers of services which did not receive State aid under article 41 of the Mental Hygiene Law during fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule unless a higher fee was approved by the commissioner in accordance with the appeal methodology under the previous reimbursement regulations.

Regular at least 30 minutes \$58.30
Brief at least 15 minutes 29.15
Group at least 60 minutes 20.41
Collateral at least 30 minutes 58.30
Group Collateral at least 60 minutes 20.41
Crisis at least 30 minutes 58.30

The minimum duration of a group or group collateral visit at a school-based clinic program shall consist of the duration of a scheduled class period at the school in which the program is based, or 60 minutes, whichever is less.

(3) Reimbursement under the medical assistance program for non-state operated continuing day treatment programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in accordance with the following fee schedule. [Such reimbursement shall be adjusted pursuant to Part 579.7 of this Title.]

(i) For programs operated in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Putnam, Rockland and Westchester counties:

(a) Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When the service hours of any single visit include more than one rate the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50	\$13.20 per service hour
Service hour 51-80	\$10.45 per service hour
Service hour beyond 80	\$ 7.70 per service hour

(ii) For programs operated in Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Tompkins, Wayne, Wyoming and Yates counties:

(a) Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When service hours of any single visit include more than one rate, the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50	\$11.88 per service hour
Service hour 51-80	\$10.45 per service hour
Service hour beyond 80	\$ 7.70 per service hour

(iii) For programs operated in Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Tioga, Albany, Columbia, Dutchess, Greene, Orange, Rensselaer, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren and Washington counties:

(a) Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When the service hours for any single visit include more than one rate, the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50	\$11.66 per service hour
Service hour 51-80	\$10.45 per service hour
Service hour beyond 80	\$ 7.70 per service hour

(4) Reimbursement under the medical assistance program for day treatment programs serving children [operated by agencies which received State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City.] shall be in accordance with the following fee schedule.

(i) For programs operated in Bronx, Kings, New York, Queens and Richmond counties:

Full day at least 5 hours [\$70.01] 72.89
Half day at least 3 hours [35.01] 36.45
Brief day at least 1 hour [23.34] 24.30
Collateral at least 30 minutes [23.34] 24.30
Home at least 30 minutes [70.01] 72.89
Crisis at least 30 minutes [70.01] 72.89
Preadmission - full day at least 5 hours [70.01] 72.89
Preadmission - half day at least 3 hours [35.01] 36.45

(ii) For programs operated in other than Bronx, Kings, New York, Queens and Richmond counties:

Full day at least 5 hours [\$67.68] 70.46
Half day at least 3 hours [33.84] 35.23
Brief day at least 1 hour [22.52] 23.45
Collateral at least 30 minutes [22.52] 23.45
Home at least 30 minutes [67.68] 70.46
Crisis at least 30 minutes [67.68] 70.46
Preadmission - full day at least 5 hours [67.68] 70.46
Preadmission - half day at least 3 hours [33.84] 35.23

(5) [Reimbursement under the medical assistance program for day treatment programs serving children operated by agencies which did not receive State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule unless a higher fee was approved by the commissioner in accordance with the appeal methodology under the previous reimbursement regulations.

Full day at least 5 hours \$63.80

Half day at least 3 hours 31.90
 Brief day at least 1 hour 21.23
 Collateral at least 30 minutes 21.23
 Home at least 30 minutes 63.80
 Crisis at least 30 minutes 63.80
 Preadmission - full day at least 5 hours 63.80
 Preadmission - half day at least 3 hours 31.90

(6) Providers whose reimbursement under the medical assistance program for clinic, continuing day treatment, and/or day treatment has been supplemented in accordance with subdivision (g) of this section will have this additional reimbursement limited in total to an amount established by the Commissioner which shall be subject to the availability of appropriations in the Office of Mental Health's budget. Supplemental reimbursement received in excess of this threshold will be recovered in a succeeding year through the medical assistance recovery process authorized pursuant to Section 368-c of the Social Services Law.

Subdivision (b) of Section 588.13 is amended to read as follows:

(b) Reimbursement under the medical assistance program for regular, collateral, and crisis visits to all non-State operated partial hospitalization programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in accordance with the following fee schedule.

(1) For programs located in Nassau and Suffolk counties, the fee shall be [\$21.55] \$22.15 for each service hour.

(2) For programs located in New York City, the fee shall be [\$28.30] \$29.09 for each service hour.

(3) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Hudson River Region, the fee shall be [\$23.78] \$24.45 for each service hour.

(4) For programs located in the counties in the region of New York State designated by the Office of Mental Health as the Central Region, the fee shall be [\$16.30] \$16.76 for each service hour.

(5) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Western Region, the fee shall be [\$20.21] \$20.78 for each service hour.

Subdivision (c) of section 588.13 is amended to read as follows:

(c) Reimbursement under the medical assistance program for on-site, and off-site visits for all *non-State operated* intensive psychiatric rehabilitation treatment programs, licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be at [\$23.22] \$23.87 for each service hour.

New subdivisions (i), (j), and (k) are added to Section 588.13 to read as follows:

(i) *Clinic treatment programs for which an operating certificate has been issued shall receive an adjustment to the fee schedules set forth in paragraph (1) of subdivision (a) of this Section if they are enrolled in a continuous quality improvement initiative implemented by the Commissioner. In order to be enrolled in such continuous quality improvement initiative, the program shall execute an agreement with the Office of Mental Health under which the provider agrees to participate in such initiative, and undertake such quality improvement measures as shall be developed by the Commissioner.*

(j) *Any program eligible to receive supplemental medical assistance reimbursement pursuant to subdivision (i) of this Section, and which fails at any time to meet the requirements set forth in the agreement executed pursuant to such subdivision, shall have its continuous quality improvement adjustment suspended until such time as the program meets such requirements, as determined by the Commissioner.*

(k) *A clinic treatment program that has been approved by the Office of Mental Health to provide services to children and adolescents during evening and weekend hours shall receive a rate enhancement for regular or collateral clinic visits provided to recipients under the age of 18 years, when such services are provided during weekdays commencing 6 p.m. or later, or on a Saturday or Sunday, provided, however, that an enhanced rate shall only be paid for one visit provided for a recipient on any given day.*

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 March 18, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Dan Odell, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 473-6945, e-mail: dodell@omh.state.ny.us

Regulatory Impact Statement

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

Subdivision (a) of Section 31.04 of the Mental Hygiene Law empowers the Commissioner to issue regulations setting standards for licensed programs for the provision of services for persons with mental illness.

Subdivision (a) of Section 43.02 of the Mental Hygiene Law grants the Commissioner the power to set rates for facilities licensed under Article 31 of the Mental Hygiene Law.

Sections 364-3 and 364-a of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for care and services eligible for Medicaid reimbursement in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

Chapter 54 of the Laws of 2005 provides increased funding appropriations in support of amendments to Part 588. (Section 1, State Agencies, Office of Mental Health, lines 25-29 on page 268 and lines 16-20 on page 273.)

Chapter 54 of the Laws of 2006 provides increased funding appropriations in support of further amendments to Part 588. (Section 1, State Agencies, Office of Mental Health, lines 44-50 on page 277 and lines 1-5 on page 278.)

2. Legislative objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs.

3. Needs and benefits: These amendments increase the Medicaid reimbursement associated with certain outpatient treatment programs regulated by the Office of Mental Health (OMH) consistent with the enacted 2005-2006 state budget and the enacted 2006-2007 state budget. These changes will be targeted in such a way as to provide general fiscal relief to providers, as well as improve the quality and availability of services. They will also clarify that the minimum duration of a group or group collateral visit for a school-based clinic is the shorter of 60 minutes or the duration of a scheduled class period at the school where the clinic is located. They will also equalize reimbursement fees for clinic, children's day treatment and continuing day treatment with geographic areas, as approved by the Division of the Budget.

The enacted state budget for State Fiscal Year 2005-2006 provided for an approximately \$6 million annual increase for clinic treatment programs. Clinic treatment programs provide outpatient treatment designed to reduce symptoms, improve functioning and provide ongoing support to adults and children admitted to the program with a diagnosis of a designated mental illness. Medicaid reimbursement for services provided by clinic treatment programs is available based on fee schedules established in Part 588 of 14 NYCRR. This rule making includes a proposed increase in the Medicaid fee schedules for clinics of approximately 9%.

The enacted state budget for State Fiscal Year 2005-2006 provided for implementation of Children's Day Treatment initiatives that are budgeted to cost \$200,000 per year. Children's Day Treatment programs provide treatment to individuals, up to 18 years of age, designed to stabilize children's adjustment to educational settings, to prepare children for return to educational settings, and to transition children to educational settings. Admission to Children's Day Treatment programs is based on a diagnosis of a designated mental illness, plus either an extended impairment in functioning due to emotional disturbance or a current impairment in functioning with severe symptoms. Medicaid reimbursement for services provided by Children's Day Treatment programs is available based on a fee schedule established in Part 588 of 14 NYCRR. This rule making includes a proposed increase in the Medicaid fee schedule for these programs of approximately 6%.

Additionally, this rule making adds a provision to Part 588 that the minimum duration of a group or group collateral visit at a school-based clinic treatment program shall consist of the duration of a scheduled class period at that school or 60 minutes, whichever is less. Currently the regulation provides only for a group or group collateral visit of 60 minutes minimum duration. In meeting with school-based clinic program providers, the agency learned that this caused problems when the regular school period was less than 60 minutes. Such school periods may range from 45 minutes to one hour. In order to comply with the 60 minute requirement, in some cases children had to be kept for a period greater than a normal school period, and this resulted in their being late to their next class. In other cases children had to leave class early to attend a group or group collateral session. Both of these situations caused difficulties for children, treatment staff, and teachers. By aligning the group and group collateral

visit duration with regular school periods, these services can be more effectively integrated into the child’s school day, are less likely to disrupt other educational activities, and will be more effective.

This rule making also provides authority to the Commissioner to provide an adjustment to the Medicaid fee schedules for those clinic treatment programs that choose to enroll in a Continuous Quality Improvement (CQI) enhancement to be implemented by the Commissioner. This initiative uses a proven best practices model to help providers deliver high quality services. In order to encourage broad participation, OMH will provide financial incentives to providers who undertake measurable quality improvement approaches.

Further, this rule making provides for an enhanced rate for clinic treatment programs, approved by OMH to provide services to children and adolescents during weekend and evening hours. This rate increase, to be known as the Children’s Evening and Weekend (CEW) enrichment, will be an incentive to serve children and families at times that are more convenient to their schedules.

Finally, the enacted state budget for State Fiscal Year 2006-2007 provided for approximately \$2,000,000 to equalize, within geographic areas, the reimbursement fees for clinics, children’s day treatment and continuing day treatment programs licensed solely under Article 31 of the Mental Hygiene Law, as approved by the Division of the Budget and provided for an increase in intensive psychiatric rehabilitation treatment program and partial hospital program fees.

4. Costs:

a) Costs of regulated parties: There are no costs to providers associated with these amendments.

b) Costs to State and Local government and the agency:

Costs associated with 2005-2006 enacted state budget:

Medicaid services typically involve both a state and county share in matching the federal portion. While the state share of this \$24 million outpatient initiative is over \$6 million, the impact on local governments is much less. This is because most of the increase is being implemented after the local share Medicaid cap is already in place. (The local share Medicaid cap was an initiative included in the enacted state budget for 2005-2006, under which the state pays for increases in the local share of Medicaid after January 1, 2006.) The 9% base increase was implemented April 1, 2005. But because Medicaid is billed on an approximate 2 month lag, only 7 months, or 7/12 of the expected increase will impact on the local share Medicaid cap in the first year. None of the 7% CQI increase was paid in calendar year 2004 nor was any of the CEW enrichment paid in calendar year 2005. Of the children’s school group visits, only September and October (2 out of the 10 school months) were paid in calendar year 2005. For this reason, the expected impact on local governments will be \$1.7 million each year.

Annual Costs Effective for 2005
Total Initiative State Share Local Share

Clinic Increase	10,781,260	2,695,315	1,572,267
CQI Enhancement	8,385,344	2,096,336	0
CEW Enrichment	4,439,068	1,109,767	0
School Based Group	370,012	92,503	9,250
Day Treatment Increase	799,528	199,882	139,917
TOTAL	24,775,212	6,193,803	1,721,434

Costs associated with and funded from the 2006-2007 enacted state budget:

For equalizing, within geographic areas the reimbursement fees for clinics, children’s day treatment and continuing day treatment effective October 1, 2006: \$2,000,000 for state share of Medicaid (no local share).

For intensive psychiatric rehabilitation program fee increases effective October 1, 2006: \$79,221.00 for state share of Medicaid (no local share).

For partial hospital fee increases, effective October 1, 2006: \$34,365.00 (no local share).

For implementation of children’s day treatment initiatives: \$300,000 for state share of Medicaid (no local share).

5. Local government mandates: Other than the local share of Medicaid participation, noted in Section 4, these regulatory amendments will not involve or result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not substantially increase the paperwork requirements of affected providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives:

A. Alternatives to providing increased Medicaid rates.

The application of the increased funding for certain outpatient programs consistent with the 2005-2006 enacted state budget, resulted in a statewide across the board rate increase for all clinic treatment programs, other than those operated by general hospitals, of approximately 9%. It was also determined to increase rates for Children’s Day Treatment programs on a statewide basis by approximately 6%.

Selection of these rate schedule changes was determined in consultation with the New York State Division of Budget, to be consistent with the enacted state budget. The programs selected were determined most in need of rate adjustments as they do not receive the cost based rate that is used for outpatient programs operated by general hospitals. This across the board increase is a balanced and fair approach. Other rate changes and increases consistent with the 2006-2007 enacted state budget were determined, in consultation with the New York State Division of Budget, to be consistent with the enacted state budget and to be necessary and required by the statute.

B. Alternatives to adjustment of minimum duration of group or group collateral visit duration.

The change in the minimum duration from a fixed 60 minutes for the duration of a scheduled class period was selected with input from providers. The alternative of reducing the time period to some fixed duration of less than 60 minutes was considered and rejected as unresponsive to needs given that the approach to be used, i.e., match the duration of group visit to that of a scheduled class period at the school where the clinic is located, will best address the concerns of providers and the children receiving services.

C. Alternatives to the continuous quality improvement incentive.

Provision of a fiscal incentive, in the 2005-2006 enacted state budget, for those clinic programs who meet requirements for enrolling in a continuous quality improvement (CQI) initiative was selected as a best practice model that will encourage providers to deliver high quality services. The alternative of developing a continuous quality improvement program without a financial incentive was rejected as lacking incentive and less fair to those providers who choose to invest the time and effort necessary to maintain and enhance quality service and improve their service delivery. The alternative of also providing added funds to programs that do not participate in the CQI initiative was rejected as not supportive of the Office’s efforts to improve program quality.

D. Alternatives to equalize reimbursement for certain outpatient programs.

Equalizing Medicaid reimbursement fees, within geographic areas, for clinic, children’s day treatment and continuing day treatment programs licensed solely under Article 31 of the Mental Hygiene Law is required by the enacted 2006-2007 state budget. This will provide added resources to these programs to enable them to continue to deliver quality services. The rates involved with equalization, or “leveling up”, require approval by the Division of Budget. The alternative of not providing equalization was not available since it would conflict with statute.

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

10. Compliance schedule: The rate changes associated with the 2005-2006 enacted state budget regulatory amendments were effective upon their adoption, and were deemed to have been effective on and after April 1, 2005 consistent with the 2006-2006 enacted state budget. The rule changes regarding MUTS, the adjustment of minimum duration of a group or group collateral visit, and the continuous quality improvement incentive were effective on September 26, 2005.

The rate changes associated with the 2005-2006 enacted budget which provide for equalization for clinic, children’s day treatment and continuing day treatment were effective upon adoption and were deemed to have been effective on and after April 1, 2006, consistent with the 2006-2007 enacted state budget. The fee increases for partial hospital programs and intensive psychiatric rehabilitation treatment programs were effective upon adoption and were deemed to have been effective on and after October 1, 2006, consistent with the 2006-2007 enacted state budget.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rule will not impose a significant economic impact on small businesses, or local governments. The rate increases associated with this rule are required by state statute, the enacted state budgets for state fiscal years 2005-2006 and 2006-2007.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules will not impose any adverse economic impact on rural areas. This rule impacts outpatient treatment program rates of reimbursement. The impact of the rate change will be to increase the medicaid reimbursement rates associated with outpatient programs in rural and non-rural areas. This will support the continued provision of these vital programs which serve children, adolescents and adults in both rural and non-rural areas.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is apparent from the nature and purpose of this rule that it involves adjustments to financing mechanisms for existing outpatient treatment programs and will not have a substantial adverse impact on jobs and employment activities.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Windshield Stickers

I.D. No. MTV-01-07-00009-P

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

Proposed action: This is a consensus rule making to amend Part 174 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 375(1)

Subject: Windshield stickers.

Purpose: To allow the New York City Taxi and Limousine Commission to place a for-hire sticker on the windshield of for-hire vehicles regulated by the commission.

Text of proposed rule: A new section 174.12 is added to read as follows:

174.12 New York City Taxi and Limousine Commission for-hire stickers: One licensed for-hire sticker may be displayed on the inside of the front windshield, in the lower right hand corner on those motor vehicles regulated by the New York City Taxi and Limousine Commission. Such stickers may not be of a size that would interfere with visibility.

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. Traschen, Supervising Attorney, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871

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

Consensus Rule Making Determination

The proposed amendment is necessary to allow the New York City Taxi and Limousine Commission to place a for-hire sticker on the windshield of for-hire vehicles regulated by the Commission. The sticker is intended to protect the safety of citizens who wish to use for-hire vehicles. The sticker will alert consumers that a vehicle is licensed by the NYC Taxi and Limousine Commission and has passed all safety requirements imposed by the Commission. The sticker will also alert law enforcement personnel that the for-hire vehicle is properly licensed. An amendment to Part 174 is necessary to allow the use of the stickers. A similar amendment was adopted in 1999 for the Westchester County Taxi and Limousine Commission.

Job Impact Statement

A Job Impact Statement is not submitted with this proposed rule because it would not have an adverse impact on job development in New York State.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Low Speed Vehicles

I.D. No. MTV-01-07-00010-P

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

Proposed action: This is a consensus rule making to amend Part 102 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 121-f and 2270

Subject: Low speed vehicles.

Purpose: To conform the regulatory definition of low speed vehicles to the statutory definition.

Text of proposed rule: Section 102.8 is amended by adding a new subdivision (i) to read as follows:

(i) The provisions of this subdivision shall apply to low speed vehicles as defined in subdivision (a) of section 102.10 of this Part.

Subdivision (a) of section 102.10 is amended to read as follows:

(a) A low speed vehicle is defined by Vehicle and Traffic Law section 121-f as a limited use automobile which has a maximum performance speed of greater than 20 miles an hour, but not greater than 25 miles an hour, or a truck which has a maximum performance speed of greater than twenty miles an hour, but not greater than twenty five miles an hour and whose gross vehicle weight rating (GVWR) is less than three thousand pounds. [and which complies] All such vehicles shall comply with the safety standards established in Federal Regulation 49 CFR 571.500. No person shall operate a low speed vehicle on any public highway with a speed limit in excess of 35 miles per hour; a low speed vehicle may cross a public highway with a speed limit in excess of 35 miles per hour where such highway intersects with a highway with a speed limit of 35 miles per hour or less. In the interest of public safety, a local authority or the Department of Transportation may prohibit low speed vehicles from designated highways.

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. Traschen, Supervising Attorney, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871

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

Consensus Rule Making Determination

In 2001, legislation was enacted that authorized the use of low speed vehicles (LSVs) on some roadways in the State of New York. LSVs provide a practical on-road alternative to the automobile for a fraction of the cost. Additionally, they are pollution free and count toward the California Zero Emission Vehicle Mandate, as they run on rechargeable batteries that have a range of 30 miles. In 2005, the National Highway Traffic Safety Administration (NHTSA) amended the definition of LSVs to include trucks with a Gross Vehicle Weight Rating (GVWR) of less than 3,000 pounds. These trucks, like other LSVs, will be subject to the federal motor vehicle safety standards set forth in 49 CFR 571.500 and other safety requirements set forth in 15 NYCRR Part 102.10. Chapter 698 of the Laws of 2006 amended Vehicle and Traffic Law section 121-f to mirror the federal definition of LSVs, which include trucks with a GVWR of less than 3,000 pounds. This consensus rule amends Part 102.10(a) to reflect the Vehicle and Traffic Law section 121-f definition of LSVs. It also amends Part 102 to make clear that all LSVs are subject to manufacturer certification.

Job Impact Statement

A Job Impact Statement is not submitted with this proposed rule because it has no adverse impact on job creation or development in New York State.

New York State 911 Board

INFORMATION NOTICE

NOTICE OF ADOPTION OF MINIMUM STANDARDS

The New York State 911 Board is established pursuant to County Law § 326. The Board is charged with assisting local governments, service suppliers, wireless telephone service suppliers and appropriate state agencies by facilitating the most efficient and effective routing of wireless 911 emergency calls; developing minimum standards for public safety answering points; promoting the exchange of information, including emerging technologies; and encouraging the use of best practice standards among the public safety answering point community. The Board is exempt from the requirements of the New York State Administrative Procedure Act, but is required to publish its proposed and final standards pursuant to the provisions of County Law § 327. This Notice is published pursuant to those provisions.

Amendments to Minimum Standards Regarding Equipment, Facilities and Security for Public Safety Answering Points. Summary. At its meeting of September 18, 2006, the Board proposed an amendment to the minimum standards regarding equipment, facilities and security for public safety answering points (PSAPs). This amendment applies greater specificity to the requirement for updating mapping programs, in that all mapping programs other than those that are CAD-based will now have to be updated at least every three years. The current standard only requires that such mapping programs be updated "regularly". A Notice of Proposed Amendment was published in the October 11, 2006, issue of the Register. Following a period of public comment, the Board at its meeting of December 12, 2006, adopted the amendments as the final standards which appear in this Notice. These final standards are identical to the standards as originally proposed. For further information, contact Thomas J. Wutz, Chief, Fire Service Bureau, New York State Department of State, Office of Fire Prevention and Control, 41 State Street, Albany NY 12231, phone: 518-474-6746.

Text of rule: Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Section § 5203.2(c), is amended to read as follows. Material deleted appears within brackets []; material added appears in *italics*:

(c) Mapping program (Other than CAD based).

- (1) All mapping programs shall be compatible with the IWS system.
- (2) All mapping programs shall be able to plot and display X and Y coordinates provided by all wireless service providers.
- (3) All mapping programs shall be [regularly] updated *at least every three years* to reflect changes in the PSAP's coverage area.
- (4) All mapping systems shall display a map display which can be navigated based on address and location coordinates provided from the PSAP's ALI system.

INFORMATION NOTICE**NOTICE OF ADOPTION OF MINIMUM STANDARDS**

The New York State 911 Board is established pursuant to County Law § 326. The Board is charged with assisting local governments, service suppliers, wireless telephone service suppliers and appropriate state agencies by facilitating the most efficient and effective routing of wireless 911 emergency calls; developing minimum standards for public safety answering points; promoting the exchange of information, including emerging technologies; and encouraging the use of best practice standards among the public safety answering point community. The Board is exempt from the requirements of the New York State Administrative Procedure Act, but is required to publish its proposed and final standards pursuant to the provisions of County Law § 327. This Notice is published pursuant to those provisions.

Amendments to Minimum Standards Regarding Jurisdictional Protocols. Summary. At its meeting of September 18, 2006, the Board proposed an amendment to the minimum standards regarding jurisdictional protocols. A jurisdictional protocol is a written agreement entered into by two or more law enforcement agencies setting forth procedures to ensure the organized, coordinated, and prompt mobilization of personnel, equipment, services, or facilities in order to achieve the fastest response to a 911 emergency. Current standards require that all jurisdictional protocols be reviewed "on an ongoing basis" to ensure that the most efficient procedures are being used. This amendment replaces that requirement with the more specific requirement that dispatch procedures must be reviewed at least annually. A Notice of Proposed Amendment was published in the October 11, 2006, issue of the Register. Following a period of public comment, the Board at its meeting of December 12, 2006, adopted the amendments as the final standards which appear in this Notice. These final standards are identical to the standards as originally proposed.

For further information, contact Thomas J. Wutz, Chief, Fire Service Bureau, New York State Department of State, Office of Fire Prevention and Control, 41 State Street, Albany NY 12231, phone: 518-474-6746.

Text of rule: Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Section § 5250.3 is amended to read as follows. Material deleted appears within brackets []; material added appears in *italics*:

§ 5250.3. Wireless 911 calls shall be routed pursuant to County Law § 330. The jurisdictional protocols utilized by the law enforcement agencies responding to such calls shall, at a minimum, include or provide:

- (a) a list of all participating law enforcement agencies;
- (b) a method of providing for the dispatch of the closest police unit, which may be via any of the following:
 - (1) AVL (CAD mapping);
 - (2) indirect polling (asking for any unit in the area);
 - (3) direct polling (determining the location of a unit by its number);
- (c) a method of transferring calls to the proper agency or jurisdiction after dispatching;
- (d) that the methods provided for pursuant to subparagraphs b and c above shall be used in the case of all 911 calls dispatched for service;
- (e) that in all other respects, the Direct Dispatch Protocol developed by the New York State 911 Board shall apply;
- (f) that dispatch procedures shall be reviewed [on an ongoing basis] *at least annually* to ensure that the most efficient procedures are being used;
- (g) that all investigative duties shall be conducted by the law enforcement agency having ordinary investigative jurisdiction in any area, regardless of initial response to an emergency, provided, that no law enforcement agency shall be prohibited from requesting assistance from any other agency as may be provided under current law or regulation; and
- (h) a procedure for resolving all disputes among the parties relating to the operation of the protocol, which may include referral of such disputes to a body designated by agreement among the parties.

Power Authority of the State of New York

NOTICE OF ADOPTION**Rates for the Sale of Power and Energy**

I.D. No. PAS-41-06-00032-A

Filing date: Dec. 19, 2006

Effective date: First full billing period following the date of filing this notice

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

Action taken: Increase in rates for sale of firm power and related tariff changes applicable to governmental customers located in Westchester County.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for sale of power and energy.

Purpose: To recover the authority's cost of providing firm power and energy services.

Text or summary was published in the notice of proposed rule making, I.D. No. PAS-41-06-00032-P, Issue of October 11, 2006.

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

Text of 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., White Plains, NY 10601, (914) 390-8036, e-mail: anne.cahill@nypa.gov

Assessment of Public Comment:

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

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-41-06-00033-A

Filing date: Dec. 19, 2006

Effective date: First full billing period following the date of filing this notice

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

Action taken: Increase in rates for sale of firm power to governmental customers located in New York City.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for sale of power and energy.

Purpose: To recover the authority's cost of providing firm power and energy services.

Text or summary was published in the notice of proposed rule making, I.D. No. PAS-41-06-00033-P, Issue of October 11, 2006.

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

Text of 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., 15M, White Plains, NY 10601, (914) 390-8036, e-mail: anne.cahill@nypa.gov

Assessment of Public Comment:

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

Public Service Commission

NOTICE OF ADOPTION

Recovery of Unavoided Costs by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-38-05-00013-A

Filing date: Dec. 18, 2006

Effective date: Dec. 18, 2006

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

Action taken: The commission, on Dec. 13, 2006, adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Edison) request to recover unavoidable costs associated with Phase 6 of its Retail Access Program.

Statutory authority: Public Service Law, section 66(9)

Subject: Request to recover unavoidable costs related to Con Edison's Retail Access Program.

Purpose: To approve the recovery of unavoidable costs.

Substance of final rule: The Public Service Commission adopted an order approving Consolidated Edison Company of New York, Inc.'s request to recover \$9.78 million of costs associated with Phase 6 of the company's Retail Access Program and to defer the unavoidable costs with interest at the unadjusted customer deposit rate, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-E-0931SA1)

NOTICE OF ADOPTION

Gas Curtailment Procedures by Niagara Mohawk Power Corporation

I.D. No. PSC-04-06-00020-A

Filing date: Dec. 13, 2006

Effective date: Dec. 13, 2006

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

Action taken: The commission, on Dec. 13, 2006, approved Niagara Mohawk Power Corporation d/b/a National Grid's request to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 219.

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

Subject: Gas curtailment procedures.

Purpose: To revise Rule 3 which sets forth the company's rules regarding priority of service in the event the company is required to implement short term or long term curtailment; revised Rule 3.2.3 which sets forth the company's obligations regarding customers purchasing non-company gas supplies; and revise the rate applicable to unauthorized overrun usage during periods of curtailment.

Substance of final rule: The Commission approved Niagara Mohawk Power Corporation d/b/a National Grid's request to make revisions to the company's Rule No. 3 regarding Priority of Service to implement Short Term or Long Term Curtailment. The revision also includes changes to Rule No. 3.2.3 regarding customers purchasing non-company gas supplies and revising the rate applicable to unauthorized overrun usage during periods of curtailment, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-G-0004SA1)

NOTICE OF ADOPTION

Gas Curtailment Procedures by National Fuel Gas Distribution Corporation

I.D. No. PSC-04-06-00021-A

Filing date: Dec. 13, 2006

Effective date: Dec. 13, 2006

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

Action taken: The commission, on Dec. 13, 2006, approved National Fuel Gas Distribution Corporation's request to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 8.

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

Subject: Gas curtailment procedures.

Purpose: To revise curtailment procedures to extend Energy Service Company (ESCO) daily citygate delivery requirements to apply even when the ESCO's customers are curtailed; and revise its short-term curtailment procedure by eliminating the clause that limits short-term curtailments to 96 hours.

Substance of final rule: The Commission approved National Fuel Gas Distribution Corporation's request to make revisions to its gas curtailment procedures by extending Energy Service Company (ESCO) daily citygate delivery requirements to apply even when the ESCO's customers are curtailed and eliminating the clause that limits short-term curtailment to 96 hours, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-G-0005SA1)

NOTICE OF ADOPTION

Water Rates and Charges by Sunrise Ridge Water Company

I.D. No. PSC-07-06-00016-A

Filing date: Dec. 19, 2006

Effective date: Dec. 19, 2006

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

Action taken: The commission, on Dec. 13, 2006, adopted an order approving a request filed by Sunrise Ridge Water Company to make various changes in the rates and charges contained in its tariff schedule P.S.C. No. 2—Water, to become effective Jan. 1, 2007.

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

Subject: Water rates and charges.

Purpose: To increase Sunrise Ridge Water Company's annual revenues by about \$5,487 or 19.9%.

Substance of final rule: The Commission adopted an order allowing Sunrise Ridge Water Company to increase its annual revenues by about \$5,487 or 19.9%, effective January 1, 2007, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-W-0112SA1)

NOTICE OF ADOPTION

Quarterly Surcharge by Sunrise Ridge Water Company

I.D. No. PSC-07-06-00017-A

Filing date: Dec. 19, 2006

Effective date: Dec. 19, 2006

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

Action taken: The commission, on Dec. 13, 2006, adopted an order approving a request filed by Sunrise Ridge Water Company to make various changes in the rates and charges contained in its tariff schedule P.S.C. No 2—Water, to become effective Jan. 1, 2007.

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

Subject: To approve surcharges for capital improvements.

Purpose: To approve quarterly surcharge to cover the costs of capital improvements.

Substance of final rule: The Commission adopted an order authorizing Sunrise Ridge Water Company (Sunrise) to implement a 2003 DWSRF Emergency Capital Improvement Surcharge, effective January 1, 2007, of \$29.30 per customer to contribute toward the repayment of a loan and authorized Sunrise to implement quarterly surcharges, on a temporary basis, to recover costs associated with permanent interconnection with a nearby water system, Rainbow Water Company, Inc., subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-W-0112SA2)

NOTICE OF ADOPTION

Water Rates and Charges by Rainbow Water Company, Inc.

I.D. No. PSC-07-06-00018-A

Filing date: Dec. 19, 2006

Effective date: Dec. 19, 2006

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

Action taken: The commission, on Dec. 13, 2006, adopted an order approving a request filed by Rainbow Water Company, Inc. to make a change in the rates and charges contained in its tariff schedule P.S.C. No. 3—Water, to become effective Jan. 1, 2007.

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

Subject: Water rates and charges.

Purpose: To increase Rainbow Water Company, Inc.'s annual revenues by about \$5,425 or 13.6%.

Substance of final rule: The Commission adopted an order allowing Sunrise Ridge Water Company to increase its annual revenues by about \$5,425 or 13.6%, effective January 1, 2007, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-W-0114SA1)

NOTICE OF ADOPTION

Federal Income Tax Refund by Niagara Mohawk Power Corporation

I.D. No. PSC-29-06-00012-A

Filing date: Dec. 15, 2006

Effective date: Dec. 15, 2006

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

Action taken: The commission, on Dec. 13, 2006, adopted an order regarding the distribution of a tax refund received by Niagara Mohawk Power Corporation d/b/a National Grid for calendar years 1999 and 2000.

Statutory authority: Public Service Law, section 113(2)

Subject: Disposition of the Federal income tax refund received from the Internal Revenue Service by National Grid.

Purpose: To approve the disposition of the Federal income tax refund received by National Grid from the Internal Revenue Service.

Substance of final rule: The Commission adopted an order regarding the accounting and distribution of a tax refund received by Niagara Mohawk Power Corporation d/b/a National Grid for Alternative Minimum Tax payments in 1999 and 2000, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(01-M-0075SA31)

NOTICE OF ADOPTION

Rates Set for New York State Electric & Gas Corporation**I.D. No.** PSC-39-06-00015-A**Filing date:** Dec. 15, 2006**Effective date:** Dec. 15, 2006

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

Action taken: The commission, on Dec. 13, 2006, concerning several petitions for rehearing and/or clarification of its Aug. 23, 2006 order adopting recommended decisions with modifications.

Statutory authority: Public Service Law, section 22

Subject: New York State Electric and Gas Corporation's rates and services.

Purpose: To consider several petitions for rehearing and/or clarification of the commission's order of Aug. 23, 2006.

Substance of final rule: The Commission adopted an order in response to several petitions for rehearing and/or clarification of its August 23, 2006 order, and decided to reaffirm without change its prior decisions, except to modify the order to set a date by which New York State Electric & Gas Corporation must give notice of its intent to offer fixed price commodity service in 2008; and to clarify the order to state that EOSA customers will not pay a merchant function charge, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-E-1222SA3)

NOTICE OF ADOPTION

Economic Development Rider by Orange and Rockland Utilities, Inc.**I.D. No.** PSC-40-06-00004-A**Filing date:** Dec. 14, 2006**Effective date:** Dec. 14, 2006

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

Action taken: The commission, on Dec. 13, 2006, adopted an order approving Orange and Rockland Utilities, Inc.'s request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 2.

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

Subject: Economic development rider.

Purpose: To continue the rate discount available under the company's economic development rider.

Substance of final rule: The Commission adopted an order approving Orange and Rockland Utilities, Inc.'s request for the continuation of the rate discount available under the company's Economic Development Rider for electric services.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(06-E-1086SA1)

NOTICE OF ADOPTION

Electric Transmission Lines**I.D. No.** PSC-41-06-00027-A**Filing No.** 1559**Filing date:** Dec. 14, 2006**Effective date:** Dec. 14, 2006

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

Action taken: Addition of section 85-2.9 and amendment of sections 86.8 and 88.4 of Title 16 NYCRR.

Statutory authority: Public Service Law, sections 4(1), 20(1) and 122(1)(f)

Subject: Electric transmission facilities.

Purpose: To clarify and streamline the rules so that applications for certificates to construct and operate electric transmission facilities in national interest electric transmission corridors may be acted upon within one year of their filing because they contain all the information necessary for prompt environmental and engineering review to occur, thus avoiding preemption by the Federal Energy Regulatory Commission.

Substance of final rule: The Commission adopted amendments to 16 NYCRR Subpart 85-2 and Parts 86 and 88 by adding a new section (§ 85-2.9) and revising others (§§ 86.8 and 88.4) to clarify and streamline the rules so that applications for certificates to construct and operate electric transmission facilities in national interest electric transmission corridors may be acted upon within one year of their filing because they contain all the information necessary for prompt environmental and engineering review to occur, thus avoiding preemption by the Federal Energy Regulatory Commission.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 85-2.9(f) and 88.4(a)(4).

Text of rule and any required statements and analyses may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 486-2660

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

Changes to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

Assessment of Public Comment

Four Comments were submitted on behalf of nine organizations: The City of Utica (Utica); Hudson Transmission Partners, LLC (HTP); Niagara Mohawk Power Corporation d/b/a National Grid (National Grid); and, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation (Transmission Owners). Late comments were submitted by Assemblymen Ruben Diaz, Jr. and Paul D. Tonko and by Noble Environmental Power (NEP). We will exercise our discretion and consider the late-filed comments.

DISCUSSION

Additional Regulatory Changes

Utica asks for adoption of a pre-filing procedure that would require applicants for electric transmission lines in NIETC to consult with State Agencies, Elected Officials and affected property owners, providing them with detailed information concerning their proposed projects before filing their applications. Utica suggests that, at a minimum, 16 NYCRR § 85-2.8(c) should be amended to require applicants to provide a summary and description of all environmental studies required or recommended by the Staffs of the Department of Environmental Conservation (DEC) and Department of Public Service (DPS).

Utica requests that § 85-2.8(e) be revised to require applicants to explain why their proposed transmission lines are superior to generation or demand side management alternatives. Moreover, it suggests that § 86.4 be amended to require applicants to consider all feasible alternatives to their proposed transmission lines. In addition, Utica urges us to require applicants to follow the Department of Environmental Conservation's (DEC) Program Policy: "Assessing and Mitigating Visual Impacts" (GEP-00-2, July 31, 2000), demonstrate their technical competence and financial capability, discuss the health and safety impacts associated with their proposed projects, provide a comprehensive cost-benefit analysis, and describe the property rights applicants hold on their preferred and any alternative routes. Furthermore, Utica asks that we require that documents in certifica-

tion proceedings be served by e-mail and that applicants host a Web site where all project documents will be posted.

Transmission Owners and National Grid urge us to revise proposed 16 NYCRR § 85-2.9 to make its provisions applicable to all Article VII applications for electric transmission facilities. Moreover, National Grid asks that we streamline our regulations as they apply to electric transmission lines undergoing refurbishment.

Assembly members Diaz and Tonko request that we require that applications contain information (including demographic data on communities in the path of proposed transmission lines and any identified alternative routes) sufficient for us to determine whether any issues of environmental justice are involved.

* * * * *

Utica's request that we specify a pre-application procedure, as well as its suggested language concerning environmental impact studies, seeks relief beyond that authorized in PSL Article VII. That statute does not require pre-application consultation,¹ nor does PSL § 122(1)(c) explicitly require that environmental impact studies be conducted.²

The changes Utica suggests regarding alternatives, health and safety, e-mail service and Web site hosting are unnecessary. The requirements of §§ 85-2.8(e) and 86.4, taken together, already accomplish Utica's goal of requiring applicants to describe reasonable alternatives as well as other alternatives they considered. According to PSL § 126(1)(f), all applicable State laws and regulations (including those on health and safety) are binding; moreover, our opinions regarding electric and magnetic fields are in force. Our regulation at 16 NYCRR § 3.5(g)(4) already specifies that parties to any proceeding who agree to be served by electric means may be so served. Our Web site provides electronic access to a significant number of documents in certification proceedings.

The changes proposed by Transmission Owners and National Grid, as well as the request by Utica that we require compliance with DEC's visual impact policy, would result in substantial revisions to our proposed regulations. Given the desirability of putting regulations into effect promptly, to promote timely and efficient consideration of NIETC-related applications, we will not take time now to consider proposing further major changes. Similarly, while we will not add language to our proposed regulations regarding environmental justice, we note that applicants bear the burden of proving we can make the statutory findings required by PSL § 126(1). Those findings include that the facility represents the minimum adverse environmental impact, given pertinent considerations, and that it will serve the public interest, convenience and necessity. Moreover, according to 16 NYCRR 85-2.5, we may require the provision of additional information deemed necessary or desirable.

NIETC Regulations

Utica expresses concern that the proposed regulations, in § 85-2.9(c), (d) and (e), reduce the information required to be provided by § 86.3. It claims that elimination of archeological site identification, as well as specific information concerning the relationship between the proposed facilities and near-by facilities, is not justified. Utica also asserts that the elimination of the requirement that aerial photographs of urban and urbanizing fringe areas be taken within six months of the date an application is filed will leave the parties and Commission unable to determine whether aerial photography reflect the current situation.

Utica is concerned that the proposed regulations, at § 85-2.9(f), eliminate the requirement that applications for transmission facilities whose costs will not be reflected in regulated utility rate base contain a detailed estimate of the total capital costs of proposed facilities. It contends that the parties, particularly those who have tax assessment and collection responsibilities, will be hampered in evaluating the potential tax revenues that would emanate from proposed projects.

Transmission Owners also opine that the proposed subdivision is overly broad. They claim that we should limit the cost reporting exemption to developers that certify that they will recover their costs only through contracts negotiated with their customers, and not through any other regulatory mechanism at either the State or Federal level. To assure adequate consideration of project cost data where the project switches from merchant to regulated status while the Article VII case is still pending, Transmission Owners believe the letter provided for in § 85-2.9 should state that, in the event of such a switch, the recognized date of receipt of the application will be reset to allow review and consideration of the cost data. They opine that the approvals of Article VII applications for merchant projects should be conditioned on the continuation of merchant status and should provide for the reopening of the record to consider project cost data in cases where the project changes from merchant to regulated status after

the application is approved. Moreover, according to Transmission Owners, we should retain the right to require cost information on our own initiative.

* * * * *

The elimination of the requirement that applications identify archaeological sites near the routes of proposed transmission lines ensures that such sites will not be disturbed because their location would be readily ascertainable from the application. DPS Staff and others with legitimate reasons for possessing such information can readily obtain it. The elimination of the specific information identified as § 86.3(a)(2)(i)-(iv) from required maps ensures that such maps will not be cluttered. According to § 86.3(a), such information must be provided in explanatory text. The automatic waiver of the requirement that certain aerial photographs be provided no less than six months before an application is filed will not hinder the ability of parties to evaluate whether such photographs reflect current conditions because the source and date of such photography must still be specified.

The requirement that applicants provide a detailed estimate of the total capital costs of their proposed facilities was included in § 86.10 at a time when applicants were subject to our rate regulation. Now, however, some applicants do not propose that the cost of their facilities be included in utility rate base. In such instances, capital cost information is not necessary for our regulatory purposes.

We will adopt the suggestion of Transmission Owners that the application contain a certification that rate base treatment of project cost will not be proposed (if that is the case), as an improvement to the specificity to the regulations. It is not necessary, however, to change the proposed regulations to provide for the circumstance where a proposed facility switches from merchant to regulated status, since we have the ability to respond appropriately in that event. Moreover, § 85-2.5 enables us to seek any additional information (including cost information) deemed necessary or desirable.

Local Legal Provisions

HTP argues that we should not expand the requirement in § 86.8 to include resolutions and other legal provisions in addition to local laws and ordinances because such provisions are difficult to obtain, particularly if they have been promulgated improperly. National Grid claims that we should only require applicants to describe local ordinances that are impractical or impossible to meet. By contrast, Transmission Owners recognize that proposed § 86.8(a) simply conforms our regulations to the language of PSL § 126(1)(f).

Transmission Owners assert, however, that proposed § 86.8(b)(1)-(3) should not be adopted, contending that compliance with it may not be reasonably achievable in certain instances, and indeed, in some instances could establish a preference for an underground transmission facility. They allege that the proposed requirement that adverse impacts be mitigated "to the maximum extent practicable" is so broadly stated that it may be difficult or impossible to comply with. They opine that the proposed requirements appear to envision an inflexible and detailed justification process for every requested waiver, which may compel applicants to incur significant expenses. The requirements, argue Transmission Owners, also could be interpreted as compelling an applicant to make a different justification for each of similar waivers requested from multiple municipalities.

* * * * *

As Transmission Owners note, the language proposed to be added to § 86.8(a) conforms our regulations more closely to the statute. PSL § 126(1)(f) refers specifically to applicable resolutions or other actions issued pursuant to local laws.

The concerns of Transmission owners that the requirements proposed in § 86.8(b) are too narrowly tailored are misplaced, because they merely provide guidance to applicants on how to provide justifications for refusing to apply a local legal requirement that we can find compelling. It is better for applicants to know how to meet their burden of proof before filing their applications, rather than waiting until late in a certification proceeding to find that they had not carried their burden. Furthermore, we expect all applicants, municipalities and other parties to act in good faith in their consideration of the applicability of local legal requirements.

Transmission Studies

According to HTP, the proposed requirement that a system reliability impact study (SRIS) approved by the transmission planning advisory subcommittee (TPAS) of the New York Independent System Operator (NYISO) be included in applications will produce unnecessary delay in the siting of new electric transmission lines. It therefore urges that 16 NYCRR § 88.4(a)(4) be amended to require that applications contain the Interconnection Feasibility Study that is required by the NYISO before the SRIS is conducted.

For similar reasons, NEP suggests that the regulations be amended to require applicants to provide Staff and interested parties copies of their SRIS when filed with TPAS and subsequently to file and serve on active parties the complete documentation regarding their SRIS. NEP alleges that, even without action by TPAS and approval by the NYISO Operating Committee, Staff and other interested parties will have information sufficient to start reviewing and analyzing the application. Transmission owners note that it is the Operating Committee, not TPAS, that approves SRIS, and § 88.4(a)(4) should be revised accordingly.

* * * * *

Requiring applications to contain only Interconnection Feasibility Studies, as HTP requests, is inappropriate because such studies do not consider the “effects on stability of the interconnected system,” as we have required since 1970. Requiring that applications contain SRIS submitted to, but not yet considered by, TPAS might well necessitate the filing of supplemental information should consideration by TPAS require the SRIS to be changed. By contrast, requiring applications to contain a SRIS approved by the NYISO’s Operating Committee might involve delay without any corresponding benefit. Given the roles of TPAS and the Operating Committee, we will clarify our regulations by requiring that applications contain the SRIS forwarded by TPAS for approval by the Operating Committee of the NYISO.

¹ Our regulation at 16 NYCRR § 85-2.6 encourages such consultation.

² PSL § 122(1)(f) provides that applications must contain such information as the Commission may by regulation require and 16 NYCRR Part 86 implements this statutory provision regarding appropriate environmental studies.

(06-M-1019SA1)

NOTICE OF ADOPTION

Lease Expenses by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-41-06-00029-A

Filing date: Dec. 18, 2006

Effective date: Dec. 18, 2006

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

Action taken: The commission, on Dec. 13, 2006, approved a request by Consolidated Edison Company of New York, Inc. to change its accounting treatment of lease expenses related to rental payments made to the City of New York for transformer vaults from actual to straight-line accrual, as required by SFAS No. 13, accounting for leases on an earning and rate making neutral basis.

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

Subject: Authorization of accounting change and related matters.

Purpose: To approve a request for accounting change for lease expenses and related matters.

Substance of final rule: The Public Service Commission approved a request by Consolidated Edison Company of New York, Inc. to change its accounting treatment of lease expenses related to rental payments made to the City of New York for transformer vaults from actual to straight-line accrual, as required by SFAS No. 13, Accounting for Leases on an earning and rate making neutral basis, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(06-E-1101SA1)

NOTICE OF ADOPTION

Net Metering Tariff Changes by Central Hudson Gas and Electric Corporation

I.D. No. PSC-41-06-00030-A

Filing date: Dec. 13, 2006

Effective date: Dec. 13, 2006

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

Action taken: The commission, on Dec. 13, 2006, adopted an order approving Central Hudson Gas and Electric Corporation’s request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 15.

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

Subject: Net metering tariff changes.

Purpose: To approve the company’s net meter provisions applicable to Service Classification Nos. 1, 6 and 14.

Substance of final rule: The Commission adopted an order approving Central Hudson Gas and Electric Corporation’s request to modify its net metering provisions applicable to Service Classification Nos. 1 – Residential, 6 – Residential Time-of-Use and 14 – Standby Service for electric services.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(06-E-1146SA1)

NOTICE OF ADOPTION

Rates and Terms of Electric Service for New York State Electric & Gas Corporation

I.D. No. PSC-41-06-00031-A

Filing date: Dec. 15, 2006

Effective date: Dec. 15, 2006

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

Action taken: The commission, on Dec. 13, 2006, concerning several petitions for rehearing and/or clarification of its Aug. 23, 2006 order adopting recommended decision with modifications.

Statutory authority: Public Service Law, section 22

Subject: New York State Electric and Gas Corporation’s rates and services.

Purpose: To consider several petitions for rehearing and/or clarification of the commission’s order of Aug. 23, 2006.

Substance of final rule: The Commission adopted an order in response to several petitions for rehearing and/or clarification of its August 23, 2006 order, and decided to reaffirm without change its prior decisions, except to modify the order to set a date by which new York State Electric & Gas Corporation must give notice of its intent to offer fixed price commodity service in 2008; and to clarify the order to state that EOSA customers will not pay a merchant function charge, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-E-1222SA4)

NOTICE OF ADOPTION

Water Rates and Charges by United Water New York Incorporated**I.D. No.** PSC-42-06-00013-A**Filing date:** Dec. 14, 2006**Effective date:** Dec. 14, 2006

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

Action taken: The commission, on Dec. 13, 2006, adopted an order regarding United Water New York Inc. and United Water South County Water Inc.'s request to make various changes in the rates, charges, rules and regulations contained in its schedule for water service, P.S.C. No. 1.

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

Subject: Water rates and charges.

Purpose: To approve a three-year rate plan for United Water New York Incorporated.

Substance of final rule: The Commission approved a three-year rate plan for United Water New York Incorporated and directed the company to file the necessary tariff amendments, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-W-0131SA1)

NOTICE OF ADOPTION

Merger of United Water New York Incorporated and United Water South County Water Inc.**I.D. No.** PSC-42-06-00014-A**Filing date:** Dec. 14, 2006**Effective date:** Dec. 14, 2006

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

Action taken: The commission, on Dec. 13, 2006, adopted an order approving a joint proposal for a merger between United Water New York Incorporated and United Water South County Water Inc. with United Water New York Incorporated as the surviving corporation.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c, 89-h and 108

Subject: Merger of United Water New York Incorporated and United Water South County Water Inc.

Purpose: To approve the merger of United Water New York Incorporated and United Water South County Water Inc. with United Water New York Incorporated as the surviving corporation.

Substance of final rule: The Commission adopted an order approving a joint proposal for a merger between United Water New York Incorporated and United Water South County Water Inc. with United Water New York Incorporated as the surviving corporation, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-W-0244SA1)

PROPOSED RULE MAKING
HEARING(S) SCHEDULED**Major Rate Filing by Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York****I.D. No.** PSC-01-07-00027-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject or modify, in whole or in part, a proposal filed by Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 12—Gas.

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

Subject: Major rate filing.

Purpose: To increase annual gas revenues by approximately \$213 million or 9.1 percent (increase delivery rates by approximately 27 percent).

Public hearing(s) will be held at: 1:30 p.m., Jan. 16, 2007 at Kingsborough Community College, Marine and Academic Center, Playhouse Theatre, 2001 Oriental Blvd., Brooklyn, NY; 3:30 p.m. and 7:00 p.m., Jan. 17, 2007 at Brooklyn Borough Hall, Court Rm., 2nd Fl., 209 Joralemon St., Brooklyn, NY; and 7:00 p.m., Jan. 18, 2007 at Queens Borough Hall, 120-55 Queens Blvd., Kew Gardens, NY.

There could be requests to reschedule the hearings. Notification of any subsequent scheduling changes will be available at the DPS web site (www.dps.state.ny.us) under Case 06-G-1185.

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 Commission is considering The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York's request to increase annual gas revenues by approximately \$213 million or 9.1%. The proposed increase in base rates would be \$180 million and the projected increase in non-gas margin revenues would be \$33 million which would be recovered through the Gas Adjustment Clause and/or the Transportation Adjustment Clause. The proposed delivery rate increase equates to 27%.

The rate filing under consideration in Case 06-G-1185 is an alternative to a multi-year rate gas plan proposed in connection with a proposed merger of National Grid and KeySpan Corporation. The proposed merger and multi-year rate plan are both under consideration in Public Service Commission Case 06-M-0878.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 486-2660

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-G-1185SA1)

PROPOSED RULE MAKING
HEARING(S) SCHEDULED**Major Rate Filing by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island****I.D. No.** PSC-01-07-00028-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 or modify, in whole or in part, a proposal filed by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long

Island to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 1—Gas.

Statutory authority: Public Service Law, 66(12)

Subject: Major rate filing.

Purpose: To increase annual gas revenues by approximately \$159 million or 10.9 percent (increase delivery rates by approximately 34 percent).

Public hearing(s) will be held at: 1:00 p.m. and 7:30 p.m., Jan. 9, 2007 at The Evans K. Griffing Bldg., 300 Center Dr., The Riverhead County Center Auditorium, Riverhead, NY; 1:00 p.m. and 7:30 p.m., Jan. 10, 2007 at The William H. Rogers Legislative Bldg., 725 Veterans Memorial Hwy., Smithtown, NY; and 1:00 p.m. and 7:30 p.m., Jan. 11, 2007 at Ralph G. Caso Executive & Legislative Bldg., Legislative Chambers, 5th Fl., One West St., Mineola, NY.

There could be requests to reschedule the hearings. Notification of any subsequent scheduling changes will be available at the DPS web site (www.dps.state.ny.us) under Case 06-G-1186.

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 Commission is considering KeySpan Gas East Corporation, d/b/a KeySpan Energy Delivery Long Island's request to increase annual gas revenues by approximately \$159 million or 10.9%. The proposed increase in base rates would be \$145 million and the projected increase in non-gas margin revenues would be \$14 million which would be recovered through the Gas Adjustment Clause and/or the Transportation Adjustment Clause. The proposed delivery rate increase equates to 34%.

The rate filing under consideration in Case 06-G-1186 is an alternative to a multi-year rate gas plan proposed in connection with a proposed merger of National Grid and KeySpan Corporation. The proposed merger and multi-year rate plan are both under consideration in Public Service Commission Case 06-M-0878.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 486-2660

Data, views or argument 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.

(06-G-1186SA1)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Stock Purchase and Other Regulatory Requirements by National Grid, plc, et al.

I.D. No. PSC-01-07-00032-P

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

Proposed action: The Public Service Commission is considering whether to approve in whole or in part, a joint petition by National Grid, plc, National Grid, USA, Inc., Niagara Mohawk Power Corporation, KeySpan Corporation and its Jurisdictional Affiliates for approval of (1) the acquisition by National Grid, plc of the stock of KeySpan Corporation and (2) other regulatory authorizations.

Statutory authority: Public Service Law, sections 66(12), 70, 99, 100 and 110

Subject: Stock purchase and other regulatory authorizations.

Purpose: To approve the transfer of stock of KeySpan Corporation to National Grid, plc and provide other regulatory authorizations.

Public hearing(s) will be held at: 1:00 p.m. and 7:30 p.m., Jan. 9, 2007 at The Evans K. Griffing Bldg., 300 Center Dr., The Riverhead County Center Auditorium, Riverhead, NY; 1:00 p.m. and 7:30 p.m., Jan. 10, 2007

at The William H. Rogers Legislative Bldg., 725 Veterans Memorial Hwy., Smithtown, NY; 1:00 p.m. and 7:30 p.m., Jan. 11, 2007 at Ralph G. Caso Executive & Legislative Bldg., Legislative Chambers, 5th Fl., One West St., Mineola, NY; 7:00 p.m., Jan. 16, 2007 at Kings Borough Community College, Marine and Academic Center, Playhouse Theatre, 2001 Oriental Blvd., Brooklyn, NY; 3:30 p.m. and 7:00 p.m., Jan. 17, 2007 at Brooklyn Borough Hall, Court Rm., 2nd Fl., 209 Joralemon St., Brooklyn, NY; and 7:00 p.m., Jan. 18, 2007 at Queens Borough Hall, 120-55 Queens Blvd., Kew Gardens, Queens, NY.

There could be requests to reschedule the hearings. Notification of any subsequent scheduling changes will be available at the DPS web site (www.dps.state.ny.us) under Case 06-M-0878.

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 New York Public Service Commission is considering whether it would be in the public interest for National Grid USA, an indirectly owned subsidiary of National Grid Public Limited Company, to acquire the stock of KeySpan Corporation. Among other things, some of KeySpan Corporation's subsidiaries own and operate electric generation facilities in New York City and on Long Island, maintain and operate under contract the electric transmission and distribution system of the Long Island Power Authority, and provide regulated gas delivery and commodity service in parts of New York City and Long Island.

Among the issues to be considered are whether the long-term effects of the proposed acquisition on regulated service reliability, customer service, and rates are likely to be reasonable in New York, whether it would be reasonable for the proposed acquisition to be funded exclusively or primarily by debt, and whether the proposed acquisition of unregulated electric generation assets would undermine New York's competitive wholesale electric market.

Other issues to be considered concern whether proposed ten-year rate plans should be adopted for the Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KEDNY), which provides regulated gas delivery and commodity service in Brooklyn, Queens and Staten Island, and for KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (KEDLI), which provides regulated gas delivery and commodity services in Nassau and Suffolk counties. The proposed rate plans, in the event the stock acquisition is approved, are as follows:

KeySpan Energy Delivery New York

Gas delivery service bill increases on 4/1/09; 4/1/11, 4/1/13, and 4/1/15 of 2.55%, 2.43%, 2.34%, and 2.28%, respectively, plus incremental annual gas delivery rate adjustments every 4/1 from 2009 through 2016, to recover deferred costs and actual cost increases greater than forecast but with each such annual adjustment capped at not more than 2.5%.

KeySpan Energy Delivery Long Island

Gas delivery service bill increases on 4/1/09; 4/1/11; 4/1/13; and 4/1/15 of 2.46%, 2.37%, 2.28%, and 2.20%, respectively, plus incremental annual gas delivery rate adjustments every 4/1 from 2009 through 2016, to recover deferred costs and actual cost increases greater than forecast, but with each such annual adjustment capped at not more than 2.5%.

There are also proposals to shift recovery of some costs from delivery rates to commodity rates, but these will not affect the bills of full service customers.

Issues identified thus far with respect to the multi-year rate plan proposals concern whether the acquisition of the stock of KeySpan Corporation will likely result, as claimed, in net cost reductions for the provision of service in New York in excess of \$1 billion over the next ten years and whether 50% of such cost reductions should be allocated, respectively, to shareholders and New York ratepayers. Also under consideration is whether total estimated cost savings proposed to be allocated for the benefit of ratepayers, an estimated 518 million in nominal dollars, should be allocated within New York on the basis of relative transmission and distribution revenues as follows:

Customers Of:	Percentage
Niagara Mohawk d/b/a National Grid	39.19
The Brooklyn Union Gas Company d/b/a KEDNY	21.04
KeySpan Gas East Corporation d/b/a KEDLI	12.36
Long Island Power Authority	27.41
All National Grid Customers in New York	100.00

The Commission may adopt in whole or in part or reject the various pending proposals. The Commission may also change rates for gas delivery and related services of KEDNY and KEDLI for which no change is proposed in the captioned case.

This case is being considered on a common record with other cases (06-G-1185 and 06-G-1186) that concern rate plans for KEDNY and KEDLI if the proposed stock acquisition is not approved.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 486-2660

Data, views or argument 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.

(06-M-0878SA1)

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

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

I.D. No. PSC-01-07-00013-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, a proposal filed by Verizon New York Inc. and Ygnition Networks, Inc. for approval of an interconnection agreement executed on Nov. 8, 2006.

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

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Verizon New York Inc. and Ygnition Networks, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Ygnition Networks, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until November 7, 2008, or as extended.

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.

(06-C-1494SA1)

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

Interconnection Agreement between Verizon New York Inc. and Vitcom LLC

I.D. No. PSC-01-07-00014-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, a proposal filed by Verizon New York Inc. and Vitcom LLC for approval of an interconnection agreement executed on Oct. 10, 2006.

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

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Verizon New York Inc. and Vitcom LLC have reached a negotiated agreement whereby Verizon New York Inc. and Vitcom LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until October 9, 2008, or as extended.

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.

(06-C-1495SA1)

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

Interconnection Agreement between Verizon New York Inc. and Simlab

I.D. No. PSC-01-07-00015-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 Verizon New York Inc. and Simlab for approval or an interconnection agreement executed on Dec. 1, 2006.

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

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Verizon New York Inc. and Simlab have reached a negotiated agreement whereby Verizon New York Inc. and Simlab will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until November 30, 2008, or as extended.

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.

(06-C-1497SA1)

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

Interconnection Agreement between Verizon New York Inc. and McGraw Communications, Inc.

I.D. No. PSC-01-07-00016-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and McGraw Communications, Inc. for approval of an interconnection agreement executed on Nov. 20, 2006.

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

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Verizon New York Inc. and McGraw Communications, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and McGraw Communications, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until November 19, 2008, or as extended.

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.

(06-C-1498SA1)

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

Interconnection Agreement between Verizon New York Inc. and Globetel, Inc.

I.D. No. PSC-01-07-00017-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 Verizon New York Inc. and Globetel, Inc. for approval of an interconnection agreement executed on Oct. 17, 2006.

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

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Verizon New York Inc. and Globetel, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Globetel, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until October 16, 2008, or as extended.

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.

(06-C-1499SA1)

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

Interconnection Agreement between Verizon New York Inc. and SBC Long Distance, LLC

I.D. No. PSC-01-07-00018-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and SBC Long Distance, LLC for approval of an interconnection agreement executed on Oct. 16, 2006.

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

Subject: Interconnection of the networks between Verizon New York Inc. and SBC Long Distance, LLC for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Verizon New York Inc. and SBC Long Distance, LLC have reached a negotiated agreement whereby Verizon New York Inc. and SBC Long Distance, LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until July 31, 2009, or as extended.

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.

(06-C-1500SA1)

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

Mandatory Number Pooling

I.D. No. PSC-01-07-00019-P

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

Proposed action: The commission, is considering directing telephone companies to comply with mandatory number pooling as authorized by the FCC's order in Docket No. 99-200, released on Nov. 9, 2006.

Statutory authority: Public Service Law, section 99(4)

Subject: Mandatory number pooling.

Purpose: To consider requiring mandatory number pooling in area codes: 212/646, 315, 518, 631 and 845.

Substance of proposed rule: The Commission is considering requiring all telephone companies to comply with mandatory thousand block number pooling in the following area codes: 212/646, 315, 518, 631 and 845, as authorized by the FCC in Docket No. 99-200, Order released November 9, 2006.

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

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

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

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

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

(06-C-1521SA1)

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

Investment and Outreach Program by Rochester Gas and Electric Corporation

I.D. No. PSC-01-07-00020-P

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

Proposed action: In a filing dated Nov. 8, 2006, Rochester Gas and Electric Corporation (RG&E) proposes to add an Investment and Outreach Program to its economic development programs, primarily to attract new business investment into its service territory.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10) and (12-b)

Subject: Addition of an Investment and Outreach Program to RG&E's economic development programs.

Purpose: To approve the programs.

Substance of proposed rule: In a filing dated November 8, 2006, Rochester Gas and Electric Corporation proposes to add an Investment and Outreach Program to its economic development programs, primarily to attract new business investment into its service territory. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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.

(02-E-0198SA10)

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

Farm Wind Net Metering by Rochester Gas and Electric Corporation

I.D. No. PSC-01-07-00021-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 Rochester Gas

and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 19, to become effective March 22, 2007.

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

Subject: Farm wind net metering.

Purpose: To incorporate the amended Wind Net Metering Law which clarified the wind net metering eligibility of farm generators.

Substance of proposed rule: The Commission is considering Rochester Gas and Electric Corporation's (RG&E's) request to revise its electric tariff, P.S.C. No. 19, to eliminate the requirement that wind generating equipment has to be installed at a residential meter to qualify for net energy metering, pursuant to amendments in Public Service Law Section 66-l, signed into effect on September 13, 2006. RG&E proposes that farm service wind generating equipment with a rated generating capacity of not more than 125 kW can be installed at a farm meter and participate in net energy metering as long as the customer's primary residence is located on the same land used for such farm service. The proposed effective date of RG&E's filing is March 22, 2007. The Commission may approve, reject or modify, in whole or in part, RG&E'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.

(06-E-1524SA1)

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

Farm Wind Net Metering by New York State Gas and Electric Corporation

I.D. No. PSC-01-07-00022-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 and Gas Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 120, to become effective March 22, 2007.

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

Subject: Farm wind net metering.

Purpose: To incorporate the amended Wind Net Metering Law which clarified the wind net metering eligibility of farm generators.

Substance of proposed rule: The Commission is considering New York State Electric and Gas Corporation's (NYSEG's) request to revise its electric tariff, P.S.C. No. 120, to eliminate the requirement that wind generating equipment has to be installed at a residential meter to qualify for net energy metering, pursuant to amendments in Public Service Law Section 66-l, signed into effect on September 13, 2006. NYSEG proposes that farm service wind generating equipment with a rated generating capacity of not more than 125 kW can be installed at a farm meter and participate in net energy metering as long as the customer's primary residence is located on the same land used for such farm service. The proposed effective date of NYSEG's filing is March 22, 2007. 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.

(06-E-1525SA1)

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

Farm Wind Net Metering by Central Hudson Gas and Electric Corporation

I.D. No. PSC-01-07-00023-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 15, to become effective March 22, 2007.

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

Subject: Farm wind net metering.

Purpose: To incorporate the amended Wind Net Metering Law which clarified the wind net metering eligibility of farm generators.

Substance of proposed rule: The Commission is considering Central Hudson Gas and Electric Corporation's (Central Hudson's) request to revise its electric tariff, P.S.C. No. 15, to eliminate the requirement that wind generating equipment has to be installed at a residential meter to qualify for net energy metering, pursuant to amendments in Public Service Law Section 66-I, signed into effect on September 13, 2006. Central Hudson proposes that farm service wind generating equipment with a rated generating capacity of not more than 125 kW can be installed at a farm meter and participate in net energy metering as long as the customer's primary residence is located on the same land used for such farm service. The proposed effective date of the Central Hudson's filing is March 22, 2007. The Commission may approve, reject or modify, in whole or in part, Central Hudson'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.

(06-E-1530SA1)

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

Farm Wind Net Metering by Niagara Mohawk Power Corporation

I.D. No. PSC-01-07-00024-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 207, to become effective March 22, 2007.

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

Subject: Farm wind net metering.

Purpose: To incorporate the amended Wind Net Metering Law which clarified the wind net metering eligibility of farm generators.

Substance of proposed rule: The Commission is considering Niagara Mohawk Power Corporation's (Niagara Mohawk's) request to revise its electric tariff, P.S.C. No. 207, to eliminate the requirement that wind generating equipment has to be installed at a residential meter to qualify for net energy metering, pursuant to amendments in Public Service Law Section 66-I, signed into effect on September 13, 2006. Niagara Mohawk proposes that farm service wind generating equipment with a rated generating capacity of not more than 125kW can be installed at a farm meter and participate in net energy metering as long as the customer's primary residence is located on the same land used for such farm service. The proposed effective date of Niagara Mohawk's filing is March 22, 2007. The Commission may approve, reject or modify, in whole or in part, Niagara Mohawk'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.

(06-E-1531SA1)

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

Farm Wind Net Metering by Orange and Rockland Utilities, Inc.

I.D. No. PSC-01-07-00025-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 Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 2, to become effective March 22, 2007.

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

Subject: Farm wind net metering.

Purpose: To incorporate the amended Wind Net Metering Law which clarified the wind net metering eligibility of farm generators.

Substance of proposed rule: The Commission is considering Orange and Rockland Utilities, Inc.'s (O&R's) request to revise its electric tariff, P.S.C. No. 2, to eliminate the requirement that wind generating equipment has to be installed at a residential meter to qualify for net energy metering, pursuant to amendments in Public Service Law Section 66-I, signed into effect on September 13, 2006. O&R proposes that farm service wind generating equipment with a rated generating capacity of not more than 125 kW can be installed at a farm meter and participate in net energy metering as long as the customer's primary residence is located on the same land used for such farm service. The proposed effective date of O&R's filing is March 22, 2007. The Commission may approve, reject or modify, in whole or in part, O&R'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.
(06-E-1532SA1)

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

Farm Wind Net Metering by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-01-07-00026-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 Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 9, to become effective March 22, 2007.

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

Subject: Farm wind net metering.

Purpose: To incorporate the amended Wind Net Metering Law which clarified the wind net metering eligibility of farm generators.

Substance of proposed rule: The Commission is considering Consolidated Edison Company of New York, Inc.'s (Con Edison's) request to revise its electric tariff, P.S.C. No. 9, to eliminate the requirement that wind generating equipment has been installed at a residential meter to qualify for net energy metering, pursuant to amendments in Public Service Law Section 66-I, signed into effect on September 13, 2006. Con Edison proposes that farm service wind generating equipment with a rated generating capacity of not more than 125kW can be installed at a farm meter and participate in net energy metering as long as the customer's primary residence is located on the same land used for such farm service. The proposed effective date of Con Edison's filing is March 22, 2007. The Commission may approve, reject or modify, in whole or in part, Con Edison'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.

(06-E-1533SA1)

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

Deferral of Expenses by St. Lawrence Gas Company, Inc.

I.D. No. PSC-01-07-00029-P

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

Proposed action: The Public Service Commission proposes to approve or reject in whole or in part, or modify a request by St. Lawrence Gas Company, Inc. (St. Lawrence) to defer various incremental expenses until rates are set in the next rate case.

Statutory authority: Public Service Law, sections 4(1) and 66(1), (4) and (12)

Subject: A request by St. Lawrence to defer various incremental expenses until rates are set in the next rate case.

Purpose: To consider the request by St. Lawrence.

Substance of proposed rule: By Petition filed December 4, 2006, St. Lawrence Gas Company, Inc. seeks the Public Service Commission's

permission to defer the incremental carrying costs of \$374,000 on Gas in Storage, as well as \$233,300 in incremental uncollectible expense, \$67,200 in incremental Regulatory Commission expense and \$76,000 of incremental property tax expense over what was allowed in rates (in CASE 02-G-1275) until rates are set in its next rate case.

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

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

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

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

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

(06-G-1471SA1)

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

ESCO Referral Program by New York State Electric and Gas Corporation

I.D. No. PSC-01-07-00030-P

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

Proposed action: The Public Service Commission is considering whether to adopt, modify or reject, in whole or in part, a proposal by New York State Electric and Gas Corporation (NYSEG) to establish an Energy Service Company (ESCO) Referral Program. In addition to specific program components, NYSEG included incremental, ongoing and start-up cost estimates and requested waivers of certain provisions of the uniform business practices (UBPs) with its filing.

Statutory authority: Public Service Law, sections 5 and 66

Subject: Consideration of the establishment of NYSEG's ESCO Referral Program.

Purpose: To approve the program and associated cost estimates.

Substance of proposed rule: The Public Service Commission is considering whether to adopt, modify or reject, in whole or in part, a proposal by New York State Electric and Gas Corporation (NYSEG) to establish an Energy Service Company (ESCO) Referral Program based upon the general guidelines set forth in the order adopting ESCO Referral Program guidelines and approving an ESCO Referral Program subject to modifications (issued December 22, 2005) in Case 05-M-0858. The program sets forth specific components, including among other things, an introductory discount period for customers choosing to obtain supply from an ESCO, the method for enrolling the customer, the various rights and obligations of the company, participating ESCOs and the customers. NYSEG has included incremental, ongoing and start-up cost estimates and requested waivers of certain provisions of the uniform business practices (UBPs) with its filing.

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-M-0858SA4)

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

Enforcement Mechanisms by National Fuel Gas Distribution Corporation

I.D. No. PSC-01-07-00031-P

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

Proposed action: In a petition dated Dec. 6, 2006, National Fuel Gas Distribution Corporation requests rehearing of the Public Service Commission’s order adopting ESCO price reporting requirements and enforcement mechanisms issued Nov. 8, 2006 in Cases 06-M-0647 and 98-M-1343, and asks that the enforcement mechanisms adopted there be modified.

Statutory authority: Public Service Law, sections 2(12) and (13), 5(1)(b) and (2)

Subject: Rehearing to modify enforcement mechanisms.

Purpose: To adopt modifications to enforcement mechanisms.

Substance of proposed rule: In petition dated December 6, 2006, National Fuel Gas Distribution Corporation requests rehearing of the Public Service Commissions Order Adopting ESCO Price Reporting Requirements and Enforcement Mechanisms issued November 8, 2006 in Cases 06-M-0647 and 98-M-1343, and asks that the enforcement mechanisms adopted there be modified. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-M-0647SA2)

New York State Fire Prevention and Building Code Council (the Code Council). 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 provisions of chapter 257 of the Laws of 2002 were implemented by the adoption of section 1225.2 of Title 19 NYCRR. This rule would implement chapter 438 of the Laws of 2005 by amending said section 1225.2 to extend the carbon monoxide alarm requirements to newly constructed “multiple dwellings” (as defined in the statute) and multiple dwellings that are offered for sale, and by adding certain limitations and definitions that were added to the statute by chapter 438 of the Laws of 2005. Adoption of this rule on an emergency basis is necessary to protect public safety and to extend the carbon monoxide alarm requirement to multiple dwellings as quickly as possible. At its meeting held on December 6, 2006, the Code Council determined that establishing the date of filing as the effective date is necessary to protect the public safety and to extend the carbon monoxide alarm requirement to multiple dwellings as quickly as possible. Therefore, this rule will be effective immediately upon the filing of this Notice of Adoption.

Subject: Installation of carbon monoxide alarms in multiple dwellings.

Purpose: To implement Executive Law, section 378(5-a), as amended by chapter 438 of the Laws of 2005.

Text of emergency rule: Section 1225.2 of Title 19 NYCRR is amended to read as follows:

Section 1225.2 Carbon monoxide alarms.

Single and multiple station carbon monoxide alarms shall be installed and maintained in newly constructed dwelling units *and multiple dwellings* and in dwelling units *and multiple dwellings* offered for sale, as provided in this section.

(a) Where required:

(1) one- and two-family dwellings and multiple single family dwellings (townhouses); [and]

(2) dwelling units in buildings [of Group R-2 occupancy classification] owned as condominiums or cooperatives[.]; *and*

(3) *multiple dwellings (as defined in subdivision (f) of this section).*

However, a carbon monoxide alarm shall not be required in a dwelling unit if no fuel-fired appliance, no fuel-fired equipment, no solid-fuel burning appliance, no solid-fuel burning equipment, no wood stove, no fireplace, no other appliance or device that runs on or uses flammable or combustible fuel, no system that runs on or uses flammable or combustible fuel, no attached garage, and no other motor-vehicle related occupancy, is located in, or attached to, such dwelling unit or the structure in which such dwelling unit is located.

(b) Location of carbon monoxide alarms. [At]

(1) *In the case of a building that contains at least one dwelling unit (as defined in subdivision (f) of this section), at least one carbon monoxide alarm shall be provided in each such dwelling unit. The required carbon monoxide alarm shall be installed in the immediate vicinity of bedroom(s) on the lowest floor level of the dwelling unit containing bedroom(s).*

(2) *In the case of a building that contains at least one sleeping unit (as defined in subdivision (f) of this section), at least one carbon monoxide alarm shall be provided on each floor level containing sleeping unit(s). The required carbon monoxide alarm shall be installed in the immediate vicinity of such sleeping unit(s). In addition, at least one carbon monoxide alarm shall be provided inside each sleeping unit that contains any fuel-fired appliance, fuel-fired equipment, solid-fuel burning appliance, solid-fuel burning equipment, wood stove, fireplace, any other appliance or device that runs on or uses flammable or combustible fuel, or any system that runs on or uses flammable or combustible fuel.*

(3) *In the case of a building that contains at least one dwelling unit (as defined in subdivision (f) of this section) and at least one sleeping unit (as defined in subdivision (f) of this section), compliance with paragraph (1) and paragraph (2) of this subdivision shall be required.*

(c) Equipment and installation. Carbon monoxide alarms shall be listed and labeled as complying with UL 2034-2002 (Single and Multiple Station Carbon Monoxide Alarms, Second Edition, October 29, 1996 - with revisions through and including June 28, 2002, published by Underwriters Laboratories, Inc.), shall be installed, *used and maintained* in accordance with the manufacturer’s installation instructions, and shall conform with paragraphs (1) and (2) of this subdivision. This subdivision shall not

Department of State

**EMERGENCY
RULE MAKING**

Carbon Monoxide Alarms

I.D. No. DOS-01-07-00002-E

Filing No. 1560

Filing date: Dec. 14, 2006

Effective date: Dec. 14, 2006

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

Action taken: Amendment of section 1225.2 of 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 subdivision (5-a) of section 378 of the Executive Law, as amended by chapter 438 of the Laws of 2005. The amendment to Executive Law section 378(5-a) requires that the New York State Uniform Fire Prevention and Building Code (the Uniform Code) include standards requiring that multiple dwellings shall have installed an operable carbon monoxide detector of such manufacture, design and installation standards as are established by the

preclude the installation of listed combination smoke/carbon monoxide alarms.

(1) Power source. Carbon monoxide alarms are permitted to be permanently connected to the building wiring system, connected by cord or plug to the wiring system, or battery operated. Where carbon monoxide alarms are permanently installed, they shall receive their primary power from a lighting circuit of the building wiring system, provided that such wiring system is served from a commercial source. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.

(2) Combination systems and supervisory service. Where carbon monoxide alarms are a component of a fire/burglar/carbon monoxide system, or alarms are monitored by an approved supervising station, a distinctive alarm signal shall be used to differentiate between the carbon monoxide alarms and other alarm system functions. Activation of a carbon monoxide alarm shall not activate a fire alarm signal. Carbon monoxide alarms shall be wired such that short circuits, open circuits, or any other ground-fault will not interfere with monitoring for integrity of the fire warning system.

(d) Maintenance. Carbon monoxide alarms shall be maintained in conformance with the manufacturer's instructions. Where a carbon monoxide alarm receives primary or backup power from a battery, the alarm shall emit a signal when batteries are low. Where the battery is of a removable type, it shall be replaced in conformance with the manufacturer's instructions.

(e) Disabling of alarms. Required carbon monoxide alarms shall not be removed or disabled, except for replacement, service or repair purposes.

(f) Definitions. For purposes of this section, the following words and terms shall have the following meanings:

(1) The term "dwelling unit" means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(2) The term "multiple dwelling" means a building all or any part of which is either rented, leased, let or hired out, to be occupied, or is occupied as the temporary or permanent residence or home of three or more individuals or families living independently of each other, including but not limited to the following: a tenement, flat house, maisonette apartment, apartment house, apartment hotel, tourist house, bachelor apartment, studio apartment, duplex apartment, kitchenette apartment, hotel, lodging house, rooming house, boarding house, boarding and nursery school, furnished room house, club, sorority house, fraternity house, college and school dormitory, convalescent, old age or nursing homes or residences. The term "multiple dwelling" shall also include a dwelling, two or more stories in height, and with five or more boarders, roomers or lodgers residing with any one family. For the purposes of this paragraph, each individual or family occupying a hotel, tourist house, bachelor apartment, rooming house, boarding house, boarding school, nursery school, furnished room house, lodging, club, college or school dormitory, sorority house, fraternity house, convalescent, old age or nursing home or residence, or other similar facility shall be deemed to be living independently of each other individual or family occupying such facility notwithstanding any eating, cooking, kitchen, sanitation or other facilities that may be shared in common by such occupants.

(3) The term "new construction" means a new facility or a separate building added to an existing facility.

(4) The word "sale" means the transfer of ownership of a business or property, provided however, transfer of franchises shall not be deemed a sale.

(5) The term "sleeping unit" means a room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

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 March 13, 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

Regulatory Impact Statement

1. Statutory Authority:

Subdivision 1 of Executive Law section 377 authorizes the State Fire Prevention and Building Code Council periodically to amend the provisions of the New York State Uniform Fire Prevention and Building Code ("Uniform Code"). Subdivision 1 of Executive Law section 378 directs

that the Uniform Code shall address standards for safety and sanitary conditions. Prior to the enactment of Chapter 438 of the Laws of 2005, subdivision 5-a of Executive Law section 378 provided that the Uniform Code must require that every one or two-family dwelling and every dwelling accommodation located in a building owned as a condominium or cooperative, constructed or offered for sale after the effective date of subdivision 5-a, shall have installed an operable carbon monoxide detector of such manufacture, design and installation standards as are established by the New York Fire Prevention and Building Code Council (the "Council"). Those provisions were implemented by section 1225.2 of Title 19 NYCRR. Executive Law section 378(5-a) was amended by Chapter 438 of the Laws of 2005 to provide that the Uniform Code must require "multiple dwellings" be equipped with carbon monoxide detectors. Executive Law section 378(5-a), as amended, further provides that carbon monoxide detectors are to be required only where the dwelling unit has appliances, devices or systems that run on combustible fuels or has an attached garage. Executive Law section 378(5-a), as amended, also defines the terms "multiple dwelling," "sale" and "new construction." This rule making amends 19 NYCRR section 1225.2 in the manner necessary to implement the amendments to Executive Law section 378(5-a) made by Chapter 438 of the Laws of 2005.

2. Legislative Objectives:

Subdivision 5-a of Executive Law section 378 directs that the Uniform Code shall address standards for the installation of carbon monoxide detectors in the occupancies listed above. In the memorandum accompanying the bill which amended subdivision 5-a to Executive Law section 378, the Legislature stated as justification for the bill:

This legislation is aimed at preventing more unnecessary deaths due to carbon monoxide poisoning. On January 4, 2003, Daniel J. Watson of Rochester died in his apartment from carbon monoxide intoxication. This law would be named in his honor with the intent of saving lives in the future.

As with smoke detector/fire alarms many years ago, carbon monoxide alarms have earned the respect of the fire service as a valuable tool in the saving of lives. Everyone recognizes that carbon monoxide kills if not responded to immediately. The most serious quality of CO is that, unlike smoke, it is virtually undetectable, even when someone is awake and alert. Chapter 257 of the laws of 2002 required carbon monoxide alarms be installed in one and two family dwellings and in condominiums and cooperatives that are constructed or sold in order to prevent the loss of life.

"This bill requires multiple dwelling units of three or more families to install carbon monoxide alarms as well."

This rule making amends the Uniform Code by adding new provisions that require carbon monoxide alarms to be installed and maintained in "multiple dwellings" (as that term is defined in the Executive Law section 378(5-a)). Additional provisions direct the location of carbon monoxide alarms within such multiple dwellings, require that the alarms be listed and labeled, and set standards for the power source, supervision and maintenance of such devices. These provisions provide the minimum technical standards needed to ensure the level of protection intended by the Legislature.

3. Needs and Benefits:

Carbon monoxide is an invisible, odorless gas that is generated by the incomplete combustion of carbonaceous fuels such as fuel oil, natural gas, kerosene and wood. 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.

The rule provides that carbon monoxide alarms shall be listed and labeled as complying with UL 2034-2002, the consensus standard for single and multiple station carbon monoxide alarms in the United States. 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 carbon monoxide (in parts per million) within specified time frames. These are based on limiting carboxyhaemoglobin saturation to 10 percent, which earlier studies indicated would have no significant effects on human subjects.

A number of different sources were reviewed to develop an estimate of the annual number of fatalities attributable to unintentional, non-fire, building source carbon monoxide poisoning. The sources reviewed contain estimates ranging between 200 and 1200, nationally. The sources include the U.S. Consumer Product Safety Commission (CPSC), California Air

Resources Board, the *Journal of the American Medical Association*, the *Morbidity and Mortality Weekly Report* (published by the U.S. Centers for Disease Control) and studies by Dr. David Penney (Wayne State University School of Medicine). Extrapolating these data to New York State, excluding New York City, leads the Code Council to expect between 8 and 48 annual fatalities. Using specific coding in the Vital Statistics Death File prepared by its Bureau of Injury Prevention, the New York State Department of Health (DOH) estimates 14 fatalities annually.

In situations where CO poisoning does not result in death, it may cause significant injuries and long term health consequences. In an observation in *Archives of Neurology* (Vol. 57, No. 8, August 2000), Sohn *et al.* noted the incidence of parkinsonism and intellectual impairment in a married couple who experienced CO poisoning simultaneously. While it was noted that both individuals showed complete recovery after thirteen months, the observation is suggestive of additional potential consequences. It should also be noted that CPSC has estimated an average of 10,000 injuries or hospital emergency room visits annually from carbon monoxide poisoning. Based solely on population, New York State (excluding New York City) could experience approximately 400 injuries annually.

In an article in the *American Journal of Forensic Medicine and Pathology* (Vol. 10, No. 1, 1989), I. R. Hill notes that fine discriminatory functions begin to be impaired at 5 percent saturations, with significant decrements being noted at the 10 percent saturation level. Hill also notes that headaches occur at 20 to 30 percent saturation, and that nausea, dizziness and muscular weakness occur at 30 to 40 percent. Thus, CO poisoning will affect the judgment and capability of persons to evacuate or take other appropriate actions well before concentrations reach fatal levels.

The rule addresses new construction and multiple dwellings offered for sale. While the initial benefits of installing carbon monoxide 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:

Costs to regulated parties for compliance with the rule are minimal. 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.

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 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 carbon monoxide alarms; second, with regard to new construction, authorities administering and enforcing the Uniform Code will have one additional item to verify in the course of construction inspections. The need to verify the installation of required carbon monoxide alarms will not have a significant impact on the inspection process. With regard to the sale of existing dwellings, state and local governments are not required to conduct inspections to verify compliance with the rule and, consequently, will not incur associated costs.

5. Local Government Mandates:

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 install carbon monoxide alarms in the same manner as any private party.

Cities, towns and villages (and sometimes counties) are charged by Executive Law section 381 with the responsibility of administering and enforcing the Uniform Code. As the rule adds provisions to the Uniform Code, the aforementioned local governments 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.

6. Paperwork:

No reporting requirement or paperwork is required as a result of the adoption of this rule.

7. Duplication:

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

8. Alternatives:

Consideration was given to adopting a rule requiring all one and two family dwellings and multiple dwellings be required to install carbon monoxide 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 carbon monoxide alarms.

10. Compliance Schedule:

Regulated persons will be able to achieve compliance with the rule in the normal course of operations, either as part of the construction process of a new multiple dwelling or as part of the transfer process for an existing multiple dwelling offered for sale.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

Small businesses and local governments that construct "multiple dwellings" (as that term is defined in subdivision (5-a) of section 378 of the Executive Law) and small businesses and local governments that offer multiple dwellings for sale are subject to the requirements of the rule.

As the rule adds a requirement to the regulation designated as the Uniform Fire Prevention and Building Code (the Uniform Code), those local governments that are responsible for administering and enforcing the Uniform Code will be required to enforce this rule as part of their overall Uniform Code administration and enforcement duties.

2. COMPLIANCE REQUIREMENTS:

No reporting or record keeping requirements are imposed upon regulated parties by the rule. Small businesses and local governments that construct multiple dwellings or offer multiple dwellings for sale must install and maintain carbon monoxide alarms in accordance with the rule's provisions.

3. PROFESSIONAL SERVICES:

No professional services are necessary to comply with the rule.

4. COMPLIANCE COSTS:

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:

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:

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.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department of State will notify code enforcement officials throughout the State and other interested parties of the new requirements imposed by 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. In addition, when this rule is proposed for permanent adoption, whether as a stand-alone provision or as part of a revision of the entire Uniform Code, the Code Council and 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 subdivision (5-a) of section 378 of the Executive Law, as amended by Chapter 438 of the Laws of 2005, by adding a requirement to the Uniform Fire Prevention and Building Code

("Uniform Code") that carbon monoxide alarms be installed in any newly constructed "multiple dwelling" (as that term is defined in subdivision (5-a) of section 378 of the Executive Law) and in any multiple dwelling that is offered for sale. 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 the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

The rule will not impose any reporting or recordkeeping requirements.

The rule will impose the following compliance requirements: all newly constructed multiple dwellings and all multiple dwellings that are offered for sale 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. No professional services that are likely to be needed in a rural area in order to comply with such requirements.

3. COMPLIANCE COSTS.

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.

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 newly constructed multiple dwellings and to all multiple dwellings that are offered for sale. 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 will notify code enforcement officials throughout the State, including those in rural areas, and other interested parties of the new requirements imposed by 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. In addition, when this rule is proposed for permanent adoption, whether as a stand-alone provision or as part of a revision of the entire Uniform Code, the Code Council and 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 State Fire Prevention and Building Code Council (the Code Council) 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 in New York.

The rule adds a requirement to the Uniform Fire Prevention and Building Code ("Uniform Code") that carbon monoxide alarms be installed in "multiple dwellings" (as that term is defined in subdivision (5-a) of section 378 of the Executive Law). The alarms must be installed in newly constructed multiple dwellings and in existing multiple dwellings that are offered for sale. For newly constructed multiple dwellings, the carbon monoxide alarms will be installed as part of the construction process. In existing multiple dwellings, 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.

The Code Council finds that it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities.

EMERGENCY RULE MAKING

Pool Alarms

I.D. No. DOS-01-07-00003-E

Filing No. 1561

Filing date: Dec. 14, 2006

Effective date: Dec. 14, 2006

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

Action taken: Addition of sections 1220.5 and 1221.3 to Title 19 NYCRR.

Statutory authority: Executive Law, sections 377 and 378 and L. 2006, ch. 450, section 3

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 new 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 the effective date of this paragraph (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." The Introducer's Memorandum in Support of chapter 450 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." Section 3 of chapter 450 of the Laws of 2006 provides ". . . the addition, amendment and/or repeal of any rule or regulation by the secretary of state necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date." This rule will implement chapter 450 of the Laws of 2006 by adding new section 1220.5 to part 1220 (Residential Code) of Title 19 NYCRR and new section 1221.3 to Part 1221 (Building Code) of Title 19 NYCRR. These new sections will require all residential or commercial swimming pools that are installed, constructed or substantially modified after December 14, 2006 to be equipped with an acceptable pool alarm. These new sections will be effective on December 14, 2006 because statute (section 3 of chapter 450 of the Laws of 2006) so requires. In addition, at its meeting held on December 6, 2006, the State Fire Prevention and Building Code Council voted to adopt this rule on an emergency basis, and determined that establishing an effective date of December 14, 2006 was necessary to preserve the public safety and to reduce the number of accidental drownings in swimming pools, as well as to satisfy the mandate of section 3 of chapter 450 of the Laws of 2006.

Subject: Installation of pool alarms in residential and commercial swimming pools that are installed, constructed or substantially modified after Dec. 14, 2006.

Purpose: To implement Executive Law, section 378(14)(b), as added by chapter 450 of the Laws of 2006.

Text of emergency rule: Part 1220 of Title 19 NYCRR is amended by adding a new section 1220.5 to read as follows:

1220.5. Swimming pool alarms.

(a) Purpose. Paragraph (b) of subdivision (14) of section 378 of the Executive Law, as added by Chapter 450 of the Laws of 2006, 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 the effective date of this paragraph (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.” The Introducer’s Memorandum in Support of Chapter 450 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 section and section 1221.3 of Part 1221 of this Title are intended to implement the provisions of Executive Law section 378(14)(b).

(b) Definitions. The terms “approved,” “commercial swimming pool,” “residential swimming pool,” “swimming pool,” “substantial damage,” and “substantial modification” shall, for the purposes of this section, have the meanings ascribed in subdivision (b) of section 1221.3 of Part 1221 of this Title.

(c) Pool alarms. Each residential swimming pool installed, constructed or substantially modified after December 14, 2006 and each commercial swimming pool installed, constructed or substantially modified after December 14, 2006 shall be equipped with an approved pool alarm which:

(1) is capable of detecting a child entering the water and giving an audible alarm when it detects a child entering the water;

(2) is audible poolside and at another location on the premises where the swimming pool is located;

(3) is installed, used and maintained in accordance with the manufacturer’s instructions;

(4) is classified by Underwriter’s Laboratory, Inc. (or other approved independent testing laboratory) to reference standard ASTM F2208, entitled “Standard Specification for Pool Alarms,” as adopted in 2002 and editorially corrected in June 2005, published by ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428; and

(5) is not an alarm device which is located on person(s) or which is dependent on device(s) located on person(s) for its proper operation.

(d) Multiple pool alarms. A pool alarm installed pursuant to subdivision (c) of this section must be capable of detecting entry into the water at any point on the surface of the swimming pool. If necessary to provide detection capability at every point on the surface of the swimming pool, more than one pool alarm shall be installed.

Part 1221 of Title 19 NYCRR is amended by adding a new section 1221.3 to read as follows:

1221.3. Swimming pool alarms.

(a) Purpose. Paragraph (b) of subdivision (14) of section 378 of the Executive Law, as added by Chapter 450 of the Laws of 2006, 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 the effective date of this paragraph (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.” The Introducer’s Memorandum in Support of Chapter 450 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 section and section 1220.5 of Part 1220 of this Title are intended to implement the provisions of Executive Law section 378(14)(b).

(b) Definitions. The following terms shall, for the purposes of this section and for the purposes of section 1220.5 in Part 1220 of this Title, have the following meanings:

(1) Approved. Approved by the code enforcement official responsible for enforcement and administration of the Uniform Code as complying with and satisfying the purposes of this section and section 1220.5 in Part 1220 of this Title.

(2) Commercial swimming pool. Any swimming pool (as defined in paragraph (4) of this subdivision) that is not a residential swimming pool (as defined in paragraph (3) of this subdivision).

(3) Residential swimming pool. A swimming pool (as defined in paragraph (4) of this subdivision) which is situated on the premises of a detached one- or two-family dwelling; a multiple single-family dwelling (townhouse) not more than three stories in height; a one-family dwelling converted to a bed and breakfast; a community residence for 14 or fewer mentally disabled persons, operated by or subject to licensure by the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities; a one- or two-family dwelling operated for the purpose of providing care to more than two but not more than eight hospice patients, created pursuant to Article 40 of the Public Health Law, and defined as a hospice residence in § 4002 of said Law; a manufactured home; a mobile home; or a factory manufactured dwelling unit.

(4) Swimming pool. Any structure intended for swimming, recreational bathing or wading which contains or which is designed to contain water over 24 inches (610 mm) deep. This includes in-ground, above-ground and on-ground pools; indoor pools; hot tubs; spas; and fixed-in-place wading pools.

(5) Substantial damage. Damage of any origin sustained by a swimming pool whereby the cost of restoring the swimming pool to its before damaged condition would equal or exceed 50 percent of the market value of the swimming pool before the damage occurred.

(6) Substantial modification. Any repair reconstruction, rehabilitation, addition, or improvement of a swimming pool, the cost of which equals or exceeds 50 percent of the market value of the swimming pool before the repair, rehabilitation, addition, or improvement is started. If a swimming pool has sustained substantial damage, any repairs are considered to be a substantial modification regardless of the actual repair work performed.

(c) Pool alarms. Each residential swimming pool installed, constructed or substantially modified after December 14, 2006 and each commercial swimming pool installed, constructed or substantially modified after December 14, 2006 shall be equipped with an approved pool alarm which:

(1) is capable of detecting a child entering the water and giving an audible alarm when it detects a child entering the water;

(2) is audible poolside and at another location on the premises where the swimming pool is located;

(3) is installed, used and maintained in accordance with the manufacturer’s instructions;

(4) is classified by Underwriter’s Laboratory, Inc. (or other approved independent testing laboratory) to reference standard ASTM F2208, entitled “Standard Specification for Pool Alarms,” as adopted in 2002 and editorially corrected in June 2005, published by ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428; and

(5) is not an alarm device which is located on person(s) or which is dependent on device(s) located on person(s) for its proper operation.

(d) Multiple pool alarms. A pool alarm installed pursuant to subdivision (c) of this section must be capable of detecting entry into the water at any point on the surface of the swimming pool. If necessary to provide detection capability at every point on the surface of the swimming pool, more than one pool alarm shall be installed.

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 March 13, 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

Regulatory Impact Statement

1. Statutory Authority:

Subdivision 1 of Executive Law section 377 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”). Subdivision 1 of Executive Law section 378 directs that the Uniform Code shall address standards for safety and sanitary conditions. Paragraph (b) of subdivision (14) of Executive Law section 378 directs that the Uniform Code shall provide that residential and commercial swimming pools constructed or substantially modified after the effective date of said paragraph (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. This rule making adds provisions to Part 1220 (Residential Code) and Part 1221 (Building Code) of Title 19 NYCRR that require the installation of pool alarms.

2. Legislative Objectives:

In the memorandum accompanying the bill which added paragraph (b) to subdivision (14) of Executive Law section 378, the Legislature stated as justification for the bill:

According to the National Center for Injury and Control (NCIPC), 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. NCIPC data also shows [sic] that twenty-six infants and children under fourteen drowned in New York State, in 2002 alone. Local laws often require barriers for residential pools, but technological 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.

The Legislative objective to sought to be achieved by this rule is a reduction in the number of accidental drownings in swimming pools in this State.

3. Needs and Benefits:

This rule making amends the Uniform Code by adding new provisions that require residential and commercial swimming pools installed, constructed or substantially modified after December 14, 2006 be equipped with approved pool alarms. By requiring the use of a device that provides rapid and automatic detection of an unintentional, unsupervised or accidental entry of a child into a pool, this rule should provide the benefit intended by the Legislature: a reduction in the number of accidental drownings.

This rule provides that the required pool alarms must be capable of detecting a child entering the water; must be capable of giving an audible alarm; must be audible poolside and at another location on the premises where the swimming pool is located; must be installed, used and maintained in accordance with the manufacturer's instructions; and must be classified by Underwriter's Laboratory, Inc. (or other approved independent testing laboratory) to reference standard ASTM F2208-02-e1, entitled "Standard Specification for 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.

4. Costs:

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. The annual costs of complying with the rule will include the costs of operating and maintaining the alarm, which are anticipated to be modest.

There are no costs to the Department of State, New York State or local governments for the implementation of the rule. The Department is not required to develop any additional regulations or develop any programs to implement the rule. In a situation where the installation, construction or substantial modification of a swimming pool requires a building permit, the governmental authority responsible for administering and enforcing the Uniform Code will have one additional item to verify in the course of construction inspections; it is anticipated that will not have a significant impact on the inspection 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 installed, constructed or substantially modified after December 14, 2006 will be required to comply with this rule. Second, cities, towns and villages (and sometimes counties) are charged by Executive Law section 381 with the responsibility of adminis-

tering and enforcing the Uniform Code; since this rule adds provisions to the Uniform Code, the aforementioned local governments will be responsible for administering and enforcing the requirements of the rule along with all other provisions of the Uniform Code.

7. Duplication:

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

8. Alternatives:

New paragraph (b) of subdivision (14) of section 378 of the Executive Law requires that the Uniform Code provide that any residential or commercial swimming pool constructed or substantially modified after December 14, 2006 (the effective date of said paragraph) shall be equipped with an acceptable pool alarm capable of detecting a child entering the water and of giving an audible alarm. No significant alternatives to this rule were considered, since it appears that no such alternative would satisfy the specific directive of the Legislature as set forth in Executive Law section 378(14)(b).

9. Federal Standards:

There are no standards of the Federal Government which address the subject matter of the rule.

10. Compliance Schedule:

Regulated persons will be able to achieve compliance with the 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.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

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 State Fire Prevention and Building Code Council (the Code Council) and the Department of State are unable 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.

Since this rule adds a 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 State Fire Prevention and Building Code Council (the Code Council) and 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 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 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:

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. 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 such costs 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.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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:

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.

This rule implements Executive Law section 378(14)(b). That statute 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 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.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department of State will notify local governments and other interested parties throughout the State of the new requirements imposed by 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. In addition, when this rule is proposed for permanent adoption, whether as a stand-alone provision or as part of a revision of the entire Uniform Code, the Code Council and 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 a requirement to the Uniform Fire Prevention and Building Code ("Uniform Code") that pool alarms be installed in any residential or commercial swimming pool that is installed, constructed or substantially modified after December 14, 2006. 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 the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

The rule will not impose any reporting or recordkeeping requirements. The rule will impose the following compliance requirements: 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. No professional services that are likely to be needed in a rural area in order to comply with such requirements.

3. COMPLIANCE COSTS.

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. 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.

4. MINIMIZING ADVERSE IMPACT.

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.

5. RURAL AREA PARTICIPATION.

The Department of State will notify code enforcement officials throughout the State, including those in rural areas, and other interested parties of the new requirements imposed by 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. In addition, when this rule is proposed for permanent adoption, whether as a stand-alone provision or as part of a revision of the entire Uniform Code, the Code Council and 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 State Fire Prevention and Building Code Council 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.

The rule adds a requirement to the Uniform Fire Prevention and Building Code ("Uniform Code") 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. This rule is added pursuant to 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.

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."

EMERGENCY RULE MAKING

Manufacturer's Warranty Seals and Installer's Warranty Seals to Manufactured Homes

I.D. No. DOS-01-07-00007-E

Filing No. 1564

Filing date: Dec. 18, 2006

Effective date: Dec. 18, 2006

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

Action taken: Addition of Part 1210 to Title 19 NYCRR.

Statutory authority: L. 2005, ch. 729, section 4

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

Specific reasons underlying the finding of necessity: This rule is adopted as an emergency measure to preserve the general welfare and because time is of the essence. This rule implements the provisions of new article 21-B (Manufactured Homes) of the Executive Law, which was added by chapter 729 of the Laws of 2005, and which became effective on January 1, 2006. This rule establishes procedures for obtaining the manufacturer's warranty seals and installer's warranty seals required by article 21-B; establishes standards regarding the initial training, certification, and continuing education of manufacturers, retailers, installers, and mechanics of manufactured homes; establishes procedures for the resolution of disputes relating to manufactured homes; and otherwise implements the provisions article 21-B of the Executive Law. Adoption of this rule on an emergency basis preserves the general welfare by permitting the continuation of all aspects of the manufactured housing industry in this State without interruption.

Subject: Obtaining and attaching manufacturer's warranty seals and installer's warranty seals to manufactured homes; certification of manufacturers, retailers, installers, and mechanics of manufactured homes; and administrative procedures for resolution of disputes relating to the construction, installation, or servicing of manufactured homes.

Purpose: To implement article 21-B of the Executive Law, as added by chapter 729 of the Laws of 2005.

Substance of emergency rule: Chapter 729 of the Laws of 2005 added Article 21-B (Manufactured Homes) of the Executive Law. This emergency rule has been adopted to implement the provisions of the new Article 21-B. This rule establishes procedures for obtaining and the manufacturer's warranty seals and installer's warranty seals which must be attached to manufactured homes. This rule establishes the qualifications for certification of manufacturers, retailers, installers, and mechanics of manufactured homes. This rule establishes administrative procedures for resolution of disputes relating to the construction, installation, or servicing of manufactured homes. This rule also establishes fees relating to warranty seals, certifications, approval of instructional providers and approval of courses.

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 March 17, 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

Regulatory Impact Statement

1. STATUTORY AUTHORITY.

The statutory authority for this rule is section 4 of Chapter 729 of the Laws of 2005, which provides that the Department of State (the Department) is authorized and empowered to take such steps, including the promulgation of rules and regulations, as may be necessary for the proper implementation of Article 21-B of the Executive Law on January 1, 2006. Article 21-B of the Executive Law was added by Chapter 729 of the Laws of 2005, and took effect on January 1, 2006. Rules similar to this rule were adopted on an emergency basis on December 22, 2005, March 22, 2006,

June 20, 2006, and September 18, 2006. Those rules have expired. This rule, which will be effective on the date of filing, implements Article 21-B.

2. LEGISLATIVE OBJECTIVES.

Article 21-B of the Executive Law was enacted for the purpose of ensuring that manufactured homes are installed and serviced in a professional manner; ensuring that disputes regarding the manufacture, installation, and servicing of manufactured homes be resolved fairly and expeditiously; providing a degree of security for the payment of legitimate claims; and otherwise implementing the provisions of the federal Manufactured Housing Improvement Act of 2000 (PL 106-569). The Manufactured Housing Improvement Act of 2000 requires States to enact requirements for the licensing or certification of installers of manufactured homes, training, dispute resolution, and other matters relating to manufactured homes. Article 21-B of the Executive Law requires manufacturers and installers to attach warranty seals to manufactured homes installed in this State, requires manufacturers, retailers, installers, and mechanics to be certified by the Department, and requires the Department to provide administrative procedures for the resolution of disputes.

This rule establishes procedures for obtaining and attaching the warranty seals required by Article 21-B; establishes standards for certification as a manufacturer, retailer, installer, or mechanic of manufactured homes; establishes administrative dispute resolution procedures; and establishes fees.

3. NEEDS AND BENEFITS.

This rule establishes procedures regarding manufacturer's and installer's warranty seals. These procedures are necessary to implement the warranty seal provisions of Article 21-B. These provisions permit manufacturers and installers to obtain the warranty seals, specify the manner in which and place where the warranty seals are to be attached, establish the fees to be paid by manufacturers and installers for obtaining the warranty seals, and establish the maximum fees that can be charged by manufacturers and installers for attaching the warranty seals.

This rule establishes qualifications and procedures for obtaining certification as a manufacturer, retailer, installer, or mechanic. These qualifications and procedures are necessary to implement the certification provisions of Article 21-B. The qualifications established by this rule include minimum experience and education requirements for retailers, installers, and mechanics; initial training requirements for installers and mechanics; and continuing education requirements for all classes of certificate holders. These provisions in this rule will benefit purchasers of manufactured homes by helping to ensure that homes will be installed in a professional manner.

This rule requires each certificate holder to file a deposit account control agreement evidencing the existence of a deposit account which is maintained with a financial institution and which is pledged to the Department, a letter of credit, or a surety bond (provided, however, that a person holding a limited certificate will not be required to file his or her own deposit account control agreement, letter of credit, or surety bond if he or she is covered by his or her employer's deposit account control agreement, letter of credit, or surety bond). These financial responsibility requirements will benefit owners of manufactured homes by providing a measure of assurance that legitimate claims relating to the delivered condition, installation, service, or construction of a manufactured home will be satisfied.

The rule establishes procedures for the resolution of disputes involving the delivered condition, installation, service or construction of manufactured homes. These procedures are necessary to implement the dispute resolution provisions of Article 21-B. These procedures will benefit manufacturers, retailers, installers, mechanics, lending entities, and manufactured home owners by permitting expeditious and cost-effective resolution of disputes.

The rule establishes fees, as required by Article 21-B. The fees will defray the cost of administering Article 21-B.

4. COSTS.

a. Cost to regulated parties for the implementation of and continuing compliance with this rule:

This rule will require manufacturers and installers to obtain warranty seals to be attached to manufactured homes. Manufacturers will pay \$125 per seal, and installers will pay \$35 per seal if they request 5 or fewer, or \$25 per seal if they request 6 or more. This rule will also permit manufacturers and installers to charge purchasers a fee for attaching such seals. The fee that manufacturers and installers will be permitted to charge for attaching the seals will cover their cost of obtaining the seals and provide an additional sum (between \$15 and \$25) to cover anticipated administrative expenses.

This rule will require manufacturers, retailers, installers, and mechanics to be certified by the Department. The fee for certification for a period of 2 years will be \$200 for manufacturers, retailers, and installers, and \$100 for mechanics. However, a person employed by a person who or a business entity which is certified may apply for a limited certificate, which is valid only while such person is acting within the scope of his or her employment by his or her certified employer. The fee for a limited certificate will be \$25 for the 2-year term of the limited certificate.

A certified party must also file a deposit account control agreement, letter of credit, or surety bond with the Department (provided, however, that person who holds a limited certificate will not be required to file his or her own deposit account control agreement, letter of credit, or surety bond if he or she is covered by the deposit account control agreement, letter of credit, or surety bond filed by his or her employer). Based on discussions with a representative of the insurance industry, the Department estimates that the premiums to be paid for surety bonds having terms of 2 years will be between \$800 and \$1,200 for the \$50,000 surety bond to be filed by a manufacturer, between \$400 and \$600 for the \$25,000 surety bond to be filed by a retailer, approximately \$200 for the \$10,000 surety bond to be filed by an installer, and approximately \$200 for the \$5,000 surety bond to be filed by a mechanic. The Department estimates that the fee for obtaining a letter of credit will typically be 1% of the face amount of the letter of credit per year, subject to a minimum fee of \$100 per year; this indicates that the fee for a \$50,000 letter of credit will be \$500 per year (or \$1,000 for 2 years), the fee for a \$25,000 letter of credit will be \$250 per year (or \$500 for 2 years), the fee for a \$10,000 letter of credit will be \$100 per year (or \$200 for 2 years), and the fee for a \$5,000 letter of credit will be \$100 per year (or \$200 for 2 years).

A person certified as an installer will be required to complete 16 hours of initial training prior to certification, and a business entity certified as an installer will be required to employ at least one person who has completed such initial training and who is certified by the Department. Based on discussions with a representative of a private trade organization that currently provides instructional courses in the manufactured housing industry, the Department estimates that the fees that will be charged by instructional providers who provide such initial training will be between \$200 and \$300.

A person certified as a mechanic will be required to complete 6 hours of initial training prior to certification, and a business entity certified as a mechanic will be required to employ at least one person who has completed such initial training and who is certified by the Department. Based on discussions with a representative of a private trade organization that currently provides instructional courses in the manufactured housing industry, the Department estimates that the fees that will be charged by instructional providers who provide such initial training will be between \$100 and \$125.

A person certified as a manufacturer, retailer, installer, or mechanic will be required to complete 3 hours of continuing education every 2 years, and a business entity certified as a manufacturer, retailer, installer, or mechanic will be required to employ at least one person who has completed such continuing education and who is certified by the Department. Based on discussions with a representative of a private trade organization that currently provides instructional courses in the manufactured housing industry, the Department estimates that the fees that will be charged by instructional providers who provide such continuing education will be approximately \$50.

A private trade association or other entity applying for approval as an instructional provider will be required to pay \$100 once every 2 years. An approved instructional provider applying for approval of a course it wishes to provide will be required to pay \$50 plus \$5 for each student who takes the course.

b. Costs to the Department:

The Department anticipates that the cost to the Department to administer the programs contemplated by Article 21-B will be approximately \$490,000 per year. Those costs include the costs associated with the 5 employees that the Department anticipates it will need to administer the programs. The costs of administering Article 21-B are largely attributed to the statute and not significantly to this implementing rule.

c. Costs to other State agencies:

This rule does not impose any costs on other State agencies.

d. Cost to local governments:

This rule does not impose any costs on local governments.

5. PAPERWORK.

Under this rule, manufacturers and installers will be required to file written requests for warranty seals; installers will be required to file quarterly reports of installations performed; manufacturers, retailers, installers,

and mechanics will be required to file written applications for certification and for periodic renewal of certification; a private trade organization or other entity wishing to provide initial training or continuing education will be required to file a written application for approval as an instructional provider and for periodic renewals of such approval; approved instructional providers will be required to file written applications for approval or courses to be provided; and instructional providers will be required to file reports of each course presented. It is the intention of the Department to develop and implement request, application, and report forms, to post such forms on the Department's web page, and otherwise to make such forms freely available to regulated parties.

6. LOCAL GOVERNMENT MANDATES.

This rule does not impose any duty on local governments.

7. DUPLICATION.

The Department is not aware of any relevant rule or other legal requirement of the State or Federal government which duplicates, overlaps or conflicts with this rule.

8. ALTERNATIVES.

The Department has not considered any significant alternatives to this rule.

9. FEDERAL STANDARDS.

The Department is not aware of any instance in which this rule exceeds any minimum standards of the federal government for the same or similar subject areas.

10. COMPLIANCE SCHEDULE.

This rule can be complied with immediately. Rules substantially similar to this rule have been in effect since December 22, 2005. Previous versions of this rule established the qualifications for certification, and provided regulated parties with the information necessary to apply for and obtain the required certification prior to the date certification was first required (July 1, 2006). Previous versions of this rule also included transitional provisions, as required by section 3 of Chapter 729 of the Laws of 2005, that permitted installers and mechanics to obtain certification prior to completion of the initial training requirements that otherwise would apply. This rule continues, without substantial change, the qualifications for certification first established on December 22, 2005.

Regulatory Flexibility Analysis

1. EFFECT OF RULE.

This rule applies to all persons and all business entities who manufacture, sell, install, or service manufactured homes, including all small businesses that manufacturer, sell, install, or service manufactured homes. The Department of State estimates that this rule will apply to approximately 268 small businesses engaged in the retail selling of manufactured homes and approximately 100 small businesses engaged in the installation of manufactured homes for buyers. This rule will also apply to small businesses that "service" (*i.e.*, modify, alter or repair the structural systems of) manufactured homes; however, the Department of State is unable to determine at this time the number of small businesses that service manufactured homes. This rule will also apply to any small business that manufactures or produces manufactured homes. The Department of State estimates that this rule will apply to approximately 36 manufacturers; however, the Department of State believes that few, if any, of such manufacturers are small businesses.

This rule does not apply directly to local governments. However, this rule does specify that no certificate of occupancy shall be issued for any manufactured home installed on or after January 1, 2006 unless the required warranty seals have been attached to the home. This provision will affect every local government that issues certificates of occupancy.

2. COMPLIANCE REQUIREMENTS.

This rule requires manufacturers and installers of manufactured homes to obtain warranty seals from the Department of State, and to attach the warranty seals to manufactured homes that are installed on or after January 1, 2006. (The rule specifies certain situations in which a manufacturer's warranty seal is not required.)

This rule requires installers to file quarterly reports with the Department of State.

This rule requires each person and each business entity that manufactures, sells, installs, or services manufactured homes to obtain certification from the Department of State. The qualifications for obtaining and retaining certification include (1) the filing of a surety bond, letter of credit, or deposit account control agreement; (2) having have at least a high school education, or the equivalent; (3) satisfying specified experience requirements; (4) satisfying specified initial training requirements; (5) in the case of an installer or mechanic, passing a written examination; and (6) satisfying specified continuing education requirements. In addition, a certified

manufacturer must be approved by the United States Department of Housing and Urban Development to construct manufactured homes.

Each certified business entity must employ at least one certified person.

At least one person certified by the Department of State as an installer must be present at the home site during the installation of a manufactured home.

At least one person certified by the Department of State as a mechanic must be present at the home site during the performance of any service.

Any person or business entity owning or operating more than one manufacturing plant that manufactures, delivers, or sells manufactured homes in the State of New York shall be required to obtain a separate certification as a manufacturer for each such manufacturing plant.

Any person or business entity owning or operating more than one retail sales location in the State of New York shall be required to obtain a separate certification as a retailer for each such retail sales location.

This rule establishes requirements for approval of instructional providers.

This rule provides that no governmental agency or department or other person or entity responsible for issuing certificates of occupancy in any jurisdiction shall issue a certificate of occupancy for any manufactured home installed in such jurisdiction at any time on or after January 1, 2006 unless the manufacturer's warranty seal has been attached to such manufactured home (unless such manufacturer's warranty seal is not required by reason of an exception set forth in the rule) and the installer's warranty seal has been attached to such manufactured home.

3. PROFESSIONAL SERVICES.

Professional services are not likely to be required to comply with the reporting, record keeping and other requirements of this rule.

4. COMPLIANCE COSTS.

Manufacturers will be required to pay \$125 for each manufacturer's warranty seal, and will be permitted to charge up to \$150 for attaching a seal to a manufacture home.

Installers will be required to pay between \$25 and \$35 for each installer's warranty seal, and will be permitted to charge up to \$50 for attaching a seal to a manufacture home.

The initial cost of obtaining certification will include (1) the cost of obtaining the required surety bond, letter of credit, or deposit account control agreement, (2) the certification fee to be paid to the Department of State, and (3) in the case of certification as an installer or mechanic, the cost of the required initial training. The Department of State estimates that the initial cost of obtaining certification as a manufacturer will be between \$1,000 and \$1,400, the initial cost of obtaining certification as a retailer will be between \$600 and \$800, the initial cost of obtaining certification as an installer will be between \$600 and \$700, and the initial cost of obtaining certification as a mechanic will be between \$400 and \$425.

A person applying for a limited certificate is not required to provide his or her own surety bond, letter of credit, or deposit account control agreement. In addition, the fee to be paid to the Department of State for a limited certificate is lower than the fee to be paid for a corresponding non-limited certificate. The Department of State estimates that the initial cost of obtaining limited certification as a manufacturer or retailer will be \$25, the initial cost of obtaining limited certification as an installer will be between \$225 and \$325, and the initial cost of obtaining limited certification as a mechanic will be between \$125 and \$150.

The cost of maintaining certification will include (1) the cost of renewing the required surety bond, letter of credit, or deposit account control agreement, (2) the renewal fee to be paid to the Department of State, and (3) the cost of the required continuing education courses. The Department of State estimates that the cost of maintaining certification as a manufacturer will be between \$1,050 and \$1,450 every 2 years (or between \$525 and \$725 per year), the cost of maintaining certification as a retailer will be between \$650 and \$850 every 2 years (or between \$325 and \$425 per year), the cost of maintaining certification as an installer will be \$450 every 2 years (or \$225 per year), and the cost of maintaining certification as a mechanic will be \$350 every 2 years (or \$175 per year).

A person holding a limited certificate will not incur the expense of renewing his or her own surety bond, letter of credit or deposit account control agreement. In addition, the fee to be paid to the Department of State to renew a limited certificate will be less than the fee to be paid to renew a corresponding non-limited certificate. The Department of State estimates that the cost of maintaining limited certification in any category (manufacturer, retailer, installer or mechanic) will be \$75 every 2 years (or \$37.50 per year).

The foregoing compliance costs are not likely to vary significantly by reason of the size of the business.

Local governments are not likely to incur any costs in complying with this rule.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

The Department of State will print the warranty seals required by this rule. The Department of State intends to prepare the application forms that will be required by this rule, and to posts such forms on the Department's web page and otherwise make such forms freely available to the regulated parties. The Department of State believes that it will be economically and technologically feasible for small businesses to comply with this rules.

6. MINIMIZING ADVERSE IMPACT.

It appears that the Legislature intended that purchasers of manufactured homes be afforded the full measure of the consumer protections contemplated by Article 21-B without regard to the size of the businesses involved in the manufacture, sale, installation, or servicing of the home. Further, the Department of State is not aware of any information suggesting that compliance with this rule will be significantly more difficult for small businesses than for it will be for larger businesses. Accordingly, this rule makes no special provisions for small businesses.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

The Department of State has solicited comments from the manufactured home industry, including manufacturers, retailers, and installers, and from the insurance industry, and the Department of State will continue to solicit comments from those industries.

The Department of State will notify code enforcement officials throughout the State and other interested parties of the new requirements imposed by 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.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule implements Article 21-B of the Executive Law. Both Article 21-B and this rule apply uniformly throughout the State, including all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

The reporting, recordkeeping and other compliance requirements of this rule are described in paragraph 2 of the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Professional services are not likely to be required in rural areas in order to comply with such requirements.

3. COSTS.

An estimate of the initial capital costs and an estimate of the annual cost of complying with this rule are set forth in paragraph 4 of the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Such costs are not likely to vary significantly for different types of public and private entities in rural areas. An installer who requests fewer than 6 installer's warranty seals at a time will be required to pay \$35 per seal, or \$10 per seal more than an installer who requests at least 6 warranty seals at a time. In addition, the fee for a letter of credit or premium for a surety bond may be dependent, in part, on the location of the business for which the letter of credit or surety bond is issued.

4. MINIMIZING ADVERSE IMPACT.

It appears that the Legislature intended that purchasers of manufactured homes be afforded the full measure of the consumer protections contemplated by Article 21-B without regard to the location of the businesses involved in the manufacture, sale, installation, or servicing of the home. Further, the Department of State is not aware of any information suggesting that compliance with this rule will be significantly more difficult for regulated parties located in rural areas than for it will be for regulated parties located in suburban or metropolitan areas. Accordingly, this rule makes no special provisions for regulated parties located in rural areas.

5. RURAL AREA PARTICIPATION.

The Department of State has solicited comments from the manufactured home industry, including manufacturers, retailers, and installers, and from the insurance industry, and the Department of State will continue to solicit comments from those industries, including representatives of those industries located in rural areas.

The Department of State will notify code enforcement officials throughout the State, including those in rural areas, and other interested parties of the new requirements imposed by 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 pre-

pared by the Department of State and currently distributed to approximately 3,700 subscribers representing all aspects of the construction industry.

Job Impact Statement

The Department of State has determined that this rule will not have a substantial adverse impact on jobs or employment opportunities.

This rule establishes the procedures for obtaining and attaching the manufacturer's warranty seal and installer's warranty seal required by Article 21-B of the Executive Law, the fees to be paid by the manufacturer and installer to obtain the warranty seals, and the maximum fees that may be charged to the customer for attaching the warranty seals to the manufactured home. The maximum fee that may be charged to a customer for attaching the required seals will be \$200. The typical delivered and installed cost of a manufactured home in this State is approximately \$70,000. Therefore, the cost of the warranty seals will be less than 0.3% of the cost of a home, and the statutory requirement that warranty seals be attached, as implemented by this rule, should not have a substantial impact on the market for manufactured homes or on jobs or employment opportunities in the manufactured home industry.

This rule also establishes procedures for determination of certain disputes regarding manufactured homes by the Department of State. Article 21-B directs the Department of State to establish such procedures. It is anticipated that by providing for administrative determination of disputes, this rule will reduce the litigation expenses for all parties involved in such disputes. Therefore, the statutory requirement that the Department of State provided for administrative resolution of disputes, as implemented by this rule, should not have a substantial impact on jobs or employment opportunities in the manufactured home industry.

This rule also established the qualifications for obtaining certification as a manufacturer, retailer, installer, or mechanic of manufactured homes. A person or business entity applying for certification will incur the following costs:

(1) Generally, the cost of obtaining a certification will be \$100 per year in the case of a manufacturer, retailer, and installer, and \$50 per year in the case of a mechanic. However, a person who is employed by a person who or a business entity which is certified may apply for a limited certification, which is valid only while such person is acting within the scope of his or her employment by his or her certified employer; the cost of obtaining such a limited certificate will be \$12.50 per year.

(2) Installers and mechanics may be required to pay fees to the instructional providers who present the initial training courses required for certification, and all certificate holders may be required to pay fees to the instructional providers who present the continuing education courses required to maintain certified status.

(3) Generally, each certificate holder will be required to file a deposit account control agreement, letter of credit, or surety bond. Those certificate holders who file a letter of credit will be required to pay fees to the financial institutions that issue such letters of credit, and those certificate holders who file a surety bond will be required to pay premiums to the insurance companies that issue such bonds. However, the holder of a limited certificate will not be required to file a deposit account control agreement, letter of credit, or surety bond, provided that his or her certified employer has filed an acceptable deposit account control agreement, letter of credit, or surety bond.

It is anticipated that the total cost of certification, instruction, and bonding will be relatively modest, particularly when these costs are spread over all the units manufactured by a certified manufacturer, sold by a certified retailer, installed by a certified installer, or serviced by a certified mechanic, during the course of a year. Therefore, the statutorily mandated certification process, as implemented by this rule, should not add a significant sum to the total cost of a manufactured home in this State, and should not have a substantial impact on jobs or employment opportunities in the manufactured home industry.

Department of Transportation

NOTICE OF ADOPTION

Divisible Load Overweight Permit Insurance Compliance Requirements

I.D. No. TRN-44-06-00002-A

Filing No. 1567

Filing date: Dec. 19, 2006

Effective date: Jan. 3, 2007

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

Action taken: Amendment to sections 154-2.3 and 154-2.10; addition of section 154-2.7; and repeal of section 154-2.8(b) of Title 17 NYCRR.

Statutory authority: Vehicle and Traffic Law, paragraph (a) of subdivision 15 of section 385

Subject: Divisible load overweight permit insurance compliance requirements.

Purpose: To set forth in regulation existing insurance requirements for issuance of divisible load overweight permits and to streamline processes for compliance.

Text or summary was published in the notice of proposed rule making, I.D. No. TRN-44-06-00002-P, Issue of October 17, 2006.

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

Text of rule and any required statements and analyses may be obtained from: David Rundinger, Department of Transportation, Registration and Permitting Bureau, 50 Wolf Rd., POD 53, Albany, NY 12232, (518) 485-2448, drudinger@dot.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Access of Overdimensional and Overweight Vehicles

I.D. No. TRN-01-07-00006-P

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

Proposed action: This is a consensus rule making to add section 8160.1(b) to Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 385(16)(t) and Transportation Law, section 14(18)

Subject: Access of overdimensional and overweight vehicles including Thruway tandem trailers to an .8 mile segment of highway in vicinity of Exit 44 of NYS Thruway in Town of Farmington.

Purpose: To formalize the department's determination that Thruway vehicles could operate safely on such route.

Text of proposed rule: Section 8160 of Part 8160 of Title 15 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new subdivision (b) to read as follows:

(b) *Over a route extending north and south on New York State Route 332 between New York State Thruway exit number 44 and its intersection with Gateway Drive and west on Gateway Drive to its intersection with Plastermill Road and east on Plastermill Road to its intersection with Loomis Road and east and west on Loomis Road between said intersection and No. 5923 Loomis Road, a distance of approximately 0.8 miles in the Town of Farmington, Ontario County.*

Text of proposed rule and any required statements and analyses may be obtained from: David Woodin, Department of Transportation, 50 Wolf Rd., POD 42, Albany, NY 12232, (518) 457-1793, e-mail: dwoodin@dot.state.ny.us

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

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

Consensus Rule Making Determination

The Department of Transportation proposes the adoption of a new subdivision (b) to section 8160 of part 8160 of Title 15 of the Official Compilation of Codes, Rules and Regulations of the State of New York as

a consensus rule. No person is likely to object because the proposed rule making merely implements a provision of the Vehicle and Traffic Law based upon two specific determinations made by the Department. The statutory authority for this proposal is paragraph (t) of subdivision 16 of section 385 of the Vehicle and Traffic Law and subdivision 18 of section 14 of the Transportation Law. Section 385(16) (t) of the Vehicle and Traffic Law provides for the use of an eight-tenths mile section of highway in the vicinity of Exit 44 in the Town of Farmington, Ontario County, "where the commissioner of transportation determines that the vehicle or combination of vehicles could operate safely along the designated route and that no applicable federal law, regulation or other requirement prohibits the operation of such vehicle or combination of vehicles on such route." Section 14(18) of the Transportation Law authorizes the Department of Transportation to promulgate regulations related to the functions of the Department under State law.

The Vehicle and Traffic Law generally provides that vehicle combinations, such as tractor and tandem-trailer combinations, cannot exceed sixty-five feet in length and cannot exceed certain weight limitations. (Vehicle and Traffic Law, section 385 (4) &(10). The Public Authorities Law authorizes the New York State Thruway Authority to permit the use of the New York State Thruway by vehicle combinations exceeding these general limitations. (Public Authorities Law section 361; Vehicle and Traffic Law section 1630) An example of such vehicle combinations permitted by the Thruway Authority is the "thruway tandem" (a tractor towing twin forty-eight foot trailers). Subdivision 16 of section 385 of the Vehicle and Traffic Law provides that the dimensional limitations do not apply to vehicles "proceeding to or from the New York State Thruway" which are "in compliance with the maximum dimension and weight limitations applicable to New York State Thruway". Subdivision 16 of section 385 sets forth State and local highways on which such vehicles may travel. Current Law, section 385 (16) (c), allows the vehicles to use New York state route 332 up to and beyond Loomis Road. Paragraph (t) of subdivision 16 of section 385 of the Vehicle and Traffic Law enacted as Chapter 681 of the Laws of 2006, provides that vehicles authorized to use the Thruway may also use an additional eight-tenths mile segment of highway "over a route extending north and south on New York state route 332 between New York State Thruway exit number 44 and its intersection with Gateway drive and west on Gateway Drive to its intersection with Plastermill Road and east on Plastermill Road to its intersection with Loomis Road and east and west on Loomis road between said intersection and no. 5923 Loomis Road". This rule is proposed as the Department has determined that vehicles authorized to use the Thruway may safely traverse the additional eight-tenths mile segment of highway and the use of such highway segment is not prohibited by applicable Federal requirements.

As referenced above, Thruway tandem-trailers are authorized to use the New York State Thruway. When such tandem-trailers leave the Thruway and proceed on state or local routes that are not designated for their use, the trailers must be separated and towed by individual tractors. Such separation and separate towing increase costs of operation, as the individual trailers must be separated and moved by the use of two separate tractors. Accordingly, in the circumstances where roads adjacent to the Thruway may accommodate the use of tandem-trailers, the Legislature has authorized such use. By allowing the tandem-trailers to directly proceed to the Thruway to and from terminals, costs of operation are reduced.

The Department is not aware of any costs that this rule will impose on any governmental or other entities. Tandem-trailers are authorized under current law to use the first eight-tenths of a mile segment of state route 332 up to and beyond Loomis Road. This regulation, consistent with the State law, would extend the authorization by an additional eight-tenths of a mile. While some additional tandem-trailers would travel over the new eight-tenths of a mile segment where they have previously not been authorized, the wear and tear on the highway is not expected to increase because their loads are currently carried over that highway by separate tractors. The authorization could result in marginal loss of Thruway Authority toll revenue, but such loss would be minimal as only a limited number of Thruway tandem-trailers would utilize the additional eight-tenths mile segment.

The Department is not aware of any program, service, duty or responsibility that this will impose upon any county, city, town, village, school district, fire district or other special district.

The Department is not aware of any need for any reporting requirements that would be created by this rule.

The Department is not aware of any duplication of this regulation with other State or Federal requirements. Federal requirements currently prohibit states from expanding the use of interstate highways, or highways

designated as national network highways by the Federal Highway Administration pursuant to Federal law, for use by longer combination vehicles. Said highway segment is not an interstate highway and is not on the national network as designated by the Federal Highway Administration pursuant to 23 CFR Part 658, Appendix A.

The alternative to this rule making would be not to authorize those vehicles permitted to use the Thruway to use the additional eight-tenths mile segment of highway in the vicinity of Exit 44 in the Town of Farmington, Ontario County. Pursuant to paragraph (t) of subdivision 16 of section 385 of the Vehicle and Traffic Law, the only basis for this alternative would be a finding by the Commissioner of Transportation that such vehicles could not safely operate on the highway or that Federal requirements prohibit their use. As the Department has determined that the vehicles may operate safely on this route and that their operation would be consistent with Federal requirements, there would be no basis for this alternative.

Federal standards set forth in 49 U.S.C. '31112 (b) and 23 CFR 658.23(a) provide that states may not expand the use of interstate and national network highways by longer combination vehicles, such as Thruway tandems. Additionally, 23 U.S.C. 127(d) prohibits states from expanding the use of interstate highways by longer combination vehicles with excess weights. Since said highway segment is not an interstate highway and has not been designated as a national network highway by the Federal Highway Administration, these standards do not apply. The Department is not aware of any applicable Federal standards or requirements in this matter.

This rule making would become effective upon adoption. Thruway tandems, and other vehicles permitted to operate on the Thruway, would be permitted to utilize the additional eight-tenths mile segment of highway at that time.

Job Impact Statement

A Job Impact Statement is not submitted because the proposed rule, by its nature, would not have a substantial adverse impact on jobs and employment opportunities. Prior to examining drivers work patterns, one might expect the rule to cause marginal impact by requiring fewer driver hours than are now necessary to haul the trailers to alternative, less convenient locations for separation and assembly. However, any marginal adverse impact on employment is negated since adoption of the proposed rule would likely allow drivers to use those same driver hours to earn commensurate or increased compensation while performing over-the-road duties.

We expect that implementation of the proposed rule would expedite service, timeliness and customer benefits. Increased company efficiencies would result in commensurate increases in capacity, which could create opportunities for additional qualified drivers and support personnel.